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Rules and Regulations

Federal Register
Vol. 87, No. 227
Monday, November 28, 2022

DEPARTMENT OF AGRICULTURE

Federal Crop Insurance Corporation

7 CFR Part 457

RIN 0563–AC81

[Docket ID FCIC–22–0009]

Increasing Crop Insurance Flexibility for Sugar Beets

AGENCY: Federal Crop Insurance Corporation, U.S. Department of Agriculture (USDA).

ACTION: Final rule with request for comments.

SUMMARY: The Federal Crop Insurance Corporation (FCIC) amends the Common Crop Insurance Regulations, Sugar Beet Crop Insurance Provisions. This rule will reinstate stage guarantees and make the stage removal option permanent to ensure all producers have maximum flexibility to obtain the crop insurance coverage they need for their operation. The changes will be effective for the 2023 and succeeding crop years for counties with a contract change date on or after November 30, 2022, and for the 2024 and succeeding crop years for counties with a contract change date prior to November 30, 2022.

DATES:

Effective date: November 28, 2022.

Comment date: We will consider comments that we receive by the close of business January 27, 2023. FCIC may consider the comments received and may conduct additional rulemaking based on the comments.

ADDRESSES: We invite you to submit comments on this rule. You may submit comments by going through the Federal eRulemaking Portal as follows:

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov* and search for Docket ID FCIC–22–0009. Follow the instructions for submitting comments.

All comments will be posted without change and will be publicly available on *www.regulations.gov*.

FOR FURTHER INFORMATION CONTACT: Francie Tolle; telephone (816) 926–7829; or email *francie.tolle@usda.gov*. Persons with disabilities who require alternative means for communication should contact the USDA Target Center at (202) 720–2600 or (844) 433–2774 (toll-free nationwide).

SUPPLEMENTARY INFORMATION:

Background

FCIC serves America's agricultural producers through effective, market-based risk management tools to strengthen the economic stability of agricultural producers and rural communities. FCIC is committed to increasing the availability and effectiveness of Federal crop insurance as a risk management tool. Approved Insurance Providers (AIPs) sell and service Federal crop insurance policies in every state through a public-private partnership. FCIC reinsures the AIPs who share the risks associated with catastrophic losses due to major weather events. FCIC's vision is to secure the future of agriculture by providing world class risk management tools to rural America.

Federal crop insurance policies typically consist of the Basic Provisions, the Crop Provisions, the Special Provisions, the Commodity Exchange Price Provisions, if applicable, other applicable endorsements or options, the actuarial documents for the insured agricultural commodity, the Catastrophic Risk Protection Endorsement, if applicable, and the applicable regulations published in 7 CFR chapter IV. Throughout this rule, the terms ''Crop Provisions,'' ''Special Provisions,'' and ''policy'' are used as defined in the Common Crop Insurance Policy (CCIP) Basic Provisions in 7 CFR 457.8. Additional information and definitions related to Federal crop insurance policies are in 7 CFR 457.8.

FCIC amends the Common Crop Insurance Regulations by revising 7 CFR 457.109 Sugar Beet Crop Insurance Provisions to be effective for the 2023 and succeeding crop years for counties with a contract change date on or after November 30, 2022, and for the 2024 and succeeding crop years for counties with a contract change date prior to November 30, 2022.

The changes to 7 CFR 457.109 Sugar Beet Crop Insurance Provisions are to reintroduce stage guarantees and add a new section with a stage removal option.

Stage guarantees provide progressive yield production guarantees for the crop as production costs accumulate through the growing season. For sugar beets, the first stage provides a 60% production guarantee from the date of planting until the earlier of thinning or 90 days after planting in California, or until July 1 in all other States. The final stage provides a 100% production guarantee thereafter. During the first stage, producers would have incurred fewer input costs. A lower stage guarantee during that time is more reflective of their costs. By the time the crop reaches the final stage, the majority of the producer's costs would already have been incurred and the higher (100%) production guarantee is more reflective of their inputs. Because indemnity payments are lower for losses during the first stage, stage guarantees provide a lower-cost crop insurance option for producers. The lower premium costs are allowed in exchange for receiving a lower guarantee (60%) for losses that occur during the first stage of the crop's growth.

Following discussions with the American Sugar Beet Growers Association, FCIC removed stage guarantees from the Crop Provisions in the Common Crop Insurance Regulations; Sugar Beet Crop Insurance Provisions final rule, published in the **Federal Register** on September 10, 2018 (83 FR 45535). In response to public comments, FCIC made additional changes in the Common Crop Insurance Regulations; Sugar Beet Crop Insurance Provisions final rule published in the **Federal Register** on November 29, 2019 (84 FR 65627). At that time, public comments favored the removal of stage guarantees from the policy. Prior to the 2018 final rule, there had been a Sugar Beet Stage Removal Option Pilot (SBSROP) endorsement to the Crop Provisions that allowed a producer to pay extra premium in exchange for removal of stage guarantees from their policy (and thereby receive the final stage guarantee for insurable losses incurred at any time during the growing season). At that time, FCIC determined a large majority of producers elected the SBSROP endorsement and sugar beet producers expressed interest in permanently removing stage guarantees from the policy. Since the removal of stage guarantees with the 2018 final

rule, however, FCIC has heard complaints from a small number of producers that they can no longer afford to purchase the level of coverage they once benefitted from. The few producers who had not previously purchased the stage removal option have faced hardships from the higher cost of insurance.

In this rule, FCIC will reinstate stage guarantees and make the stage removal option permanent to ensure all producers have maximum flexibility to obtain the crop insurance coverage they need for their operation. The specific changes to the Crop Provisions to allow optional stage guarantees include:

FCIC is adding a definition for ''production guarantee (per acre)'' which specifies: (1) First stage production guarantee—The final stage production guarantee multiplied by 60 percent; and (2) Final stage production guarantee—The number of pounds of raw sugar determined by multiplying the approved yield per acre by the coverage level percentage you elect.

FCIC is specifying how production guarantees are computed for polices with stage guarantees in section 3. The production guarantees are progressive by stages and increase at specified intervals to the final stage. The first stage has a guarantee of 60 percent (60%) of the final stage production guarantee. The first stage extends from planting until the earlier of thinning or 90 days after planting in California; and July 1 in all other States. The final stage has a guarantee of 100 percent (100%) of the final stage production guarantee. The final stage applies to all insured sugar beets that complete the first stage. Any acreage of sugar beets damaged in the first stage to the extent that growers in the area would not normally further care for the sugar beets will be deemed to have been destroyed, even though you may continue to care for it. The production guarantee for such acreage will not exceed the first stage production guarantee.

FCIC is specifying how annual premiums are computed for policies with stage guarantees in a new section 7. The new section 7 ''Annual Premiums'' matches the corresponding section 7 in the Basic Provisions. As a result of inserting a new section into the Crop Provisions, FCIC is redesignating subsequent sections of the Crop Provisions as sections 8 through 16. In lieu of the premium computation method contained in section 7 of the Basic Provisions, the annual premium amount is computed by multiplying the final stage production guarantee by the price election, the premium rate, the insured acreage, your share at the time of planting, and any applicable premium adjustment factors contained in the actuarial documents.

FCIC is clarifying that replanting payments determinations for policies with stage guarantees are based on whether the remaining stand will produce at least 90 percent of the final stage production guarantee, by adding ''final stage'' to describe which production guarantee is the basis of the determination in section 12.

FCIC is clarifying how to determine production to count in the settlement of a claim for a policy with stage guarantees in section 14(c). Only appraised production in excess of the difference between the first and final stage production guarantee for acreage that does not qualify for the final stage guarantee will be counted, except that appraised production will be counted not less than the production guarantee:

1. That is abandoned;
2. Put to another use without our consent;
3. That is damaged solely by uninsured causes; or
4. For which the producer fails to provide acceptable production records that are acceptable to the AIP.

FCIC is adding a new section 17 ''Stage Removal Option'' to provide the option to remove stage guarantees. Under the stage removal option, the production guarantee (per acre) will be the final stage guarantee; any provisions referring to the first stage production guarantee are not applicable. The stage removal option is only available to policyholders with additional coverage. The option is not available with the Catastrophic Risk Protection Endorsement and an election of the Catastrophic Risk Protection Endorsement is considered a cancellation of the stage removal option. The option must be elected by the sales closing date for the first year it is in effect. Coverage under the option is continuously provided in subsequent years, unless cancelled by the policyholder by the cancellation date. All insurable acreage of sugar beets in the county will be included under the option unless any acreage is specifically excluded by the Special Provisions. The premium adjustment factor in the actuarial documents for the stage removal option will apply to the annual premium computation method specified in section 7.

In addition, this rule will make corrections to grammatical and spelling errors and will remove the erroneous and duplicative text from sections 6 and 14. In the redesignated section 6, the section title and provision (a)(3) from the redesignated section 7 were erroneously placed at the end of the introductory paragraph. In the redesignated section 14, the text ''(f) * * *'' erroneously appears between paragraphs (f)(1) and (2). This rule corrects those errors.

Effective Date, Notice and Comment, and Exemptions

The Administrative Procedure Act (APA, 5 U.S.C. 553) provides that the notice and comment and 30-day delay in the effective date provisions do not apply when the rule involves specified actions, including matters relating to contracts. This rule governs contracts for crop insurance policies and therefore falls within that exemption. Although not required by APA or any other law, FCIC has chosen to request comments on this rule.

This rule is exempt from the regulatory analysis requirements of the Regulatory Flexibility Act (5 U.S.C. 601–612), as amended by the Small Business Regulatory Enforcement Fairness Act of 1996.

For major rules, the Congressional Review Act requires a delay the effective date of 60 days after publication to allow for Congressional review. This rule is not a major rule under the Congressional Review Act, as defined by 5 U.S.C. 804(2). Therefore, this final rule is effective on the date of publication in the **Federal Register**.

Executive Orders 12866 and 13563

Executive Order 12866, ''Regulatory Planning and Review,'' and Executive Order 13563, ''Improving Regulation and Regulatory Review,'' direct agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). Executive Order 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. The requirements in Executive Orders 12866 and 13563 for the analysis of costs and benefits apply to rules that are determined to be significant.

The Office of Management and Budget (OMB) designated this rule as not significant under Executive Order 12866. Therefore, OMB has not reviewed this rule and analysis of the costs and benefits is not required under either Executive Order 12866 or Executive Order 13563.

Clarity of the Regulation

Executive Order 12866, as supplemented by Executive Order 13563, requires each agency to write all rules in plain language. In addition to your substantive comments on this rule, we invite your comments on how to make the rule easier to understand. For example:

- Are the requirements in the rule clearly stated? Are the scope and intent of the rule clear?
- Does the rule contain technical language or jargon that is not clear?
- Is the material logically organized?
- Would changing the grouping or order of sections or adding headings make the rule easier to understand?
- Could we improve clarity by adding tables, lists, or diagrams?
- Would more, but shorter, sections be better? Are there specific sections that are too long or confusing?
- What else could we do to make the rule easier to understand?

Environmental Review

In general, the environmental impacts of rules are to be considered in a manner consistent with the provisions of the National Environmental Policy Act (NEPA, 42 U.S.C. 4321–4347) and the regulations of the Council on Environmental Quality (40 CFR parts 1500–1508). FCIC conducts programs and activities that have been determined to have no individual or cumulative effect on the human environment. As specified in 7 CFR 1b.4, FCIC is categorically excluded from the preparation of an Environmental Analysis or Environmental Impact Statement unless the FCIC Manager (agency head) determines that an action may have a significant environmental effect. The FCIC Manager has determined this rule will not have a significant environmental effect. Therefore, FCIC will not prepare an environmental assessment or environmental impact statement for this action and this rule serves as documentation of the programmatic environmental compliance decision.

Executive Order 12988

This rule has been reviewed under Executive Order 12988, ''Civil Justice Reform.'' This rule will not preempt State or local laws, regulations, or policies unless they represent an irreconcilable conflict with this rule. Before any judicial actions may be brought regarding the provisions of this rule, the administrative appeal provisions of 7 CFR part 11 are to be exhausted.

Executive Order 13175

This rule has been reviewed in accordance with the requirements of Executive Order 13175, ''Consultation and Coordination with Indian Tribal Governments.'' Executive Order 13175 requires Federal agencies to consult and coordinate with Tribes on a government-to-government basis on policies that have Tribal implications, including regulations, legislative comments or proposed legislation, and other policy statements or actions that have substantial direct effects on one or more Indian Tribes, on the relationship between the Federal Government and Indian Tribes or on the distribution of power and responsibilities between the Federal Government and Indian Tribes.

RMA has assessed the impact of this rule on Indian Tribes and determined that this rule does not, to our knowledge, have Tribal implications that require Tribal consultation under E.O. 13175. The regulation changes do not have Tribal implications that preempt Tribal law and are not expected have a substantial direct effect on one or more Indian Tribes. If a Tribe requests consultation, RMA will work with the USDA Office of Tribal Relations to ensure meaningful consultation is provided where changes, additions and modifications identified in this rule are not expressly mandated by Congress.

The Unfunded Mandates Reform Act of 1995

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA, Pub. L. 104–4) requires Federal agencies to assess the effects of their regulatory actions of State, local, and Tribal governments or the private sector. Agencies generally must prepare a written statement, including cost benefits analysis, for proposed and final rules with Federal mandates that may result in expenditures of $100 million or more in any 1 year for State, local or Tribal governments, in the aggregate, or to the private sector. UMRA generally requires agencies to consider alternatives and adopt the more cost effective or least burdensome alternative that achieves the objectives of the rule. This rule contains no Federal mandates, as defined in Title II of UMRA, for State, local, and Tribal governments or the private sector. Therefore, this rule is not subject to the requirements of sections 202 and 205 of UMRA.

Federal Assistance Program

The title and number of the Assistance Listing,[1] to which this rule applies is No. 10.450—Crop Insurance.

[1] See *https://sam.gov/content/assistance-listings.*

Paperwork Reduction Act of 1995

The purpose of the Paperwork Reduction Act of 1995 (44 U.S.C. chapter 35, subchapter I), among other things, are to minimize the paperwork burden on individuals, and to require Federal agencies to request and receive approval from the Office of Management and Budget (OMB) prior to collecting information from ten or more persons. This rule does not change the information collection approved by OMB under control numbers 0563–0053.

USDA Non-Discrimination Policy

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

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List of Subjects in 7 CFR Part 457

Acreage allotments, Crop insurance, Reporting and recordkeeping requirements.

Final Rule

For the reasons discussed above, FCIC amends 7 CFR part 457 as follows:

PART 457—COMMON CROP INSURANCE REGULATIONS

■ 1. The authority citation for 7 CFR part 457 continues to read as follows:

Authority: 7 U.S.C. 1506(l), 1506(o).

■ 2. Amend § 457.109 as follows:
■ a. In the introductory text, remove the phrase ''2019 and succeeding crop years in states with a November 30 contract change date and for the 2020'' and add the phrase ''2023 and succeeding crop years in states with a November 30 contract change date and for the 2024'' in its place;
■ b. In section 1, add a definition for ''Production guarantee (per acre)'' in alphabetical order;
■ c. Revise sections 3 and 6;
■ d. Redesignate sections 7 through 15 as sections 8 through 16;
■ e. Add a new section 7;
■ f. In newly redesignated section 10, remove the words ''actuarial documents'' and add ''Special Provisions'' in their place;
■ g. In the newly redesignated section 12, in paragraph (a), remove the words ''(90%) of the production guarantee'' and add ''(90%) of the final stage production guarantee'' in their place;
■ h. In the newly redesignated section 14:
■ i. In paragraph (a)(2), remove the word ''havested'' and add ''harvested'' in its place;
■ ii. Redesignate paragraph (c)(1)(iv) as paragraph (c)(1)(v);
■ iii. Add a new paragraph (c)(1)(iv); and
■ iv. In paragraph (f) introductory text, remove the words ''actuarial documents'' and add ''Special Provisions'' in its place;
■ v. Remove ''(f)***'' following paragraph (f)(1);
■ i. Add section 17.

The revisions and additions read as follows:

§ 457.109 Sugar Beet Crop Insurance Provisions.

* * * * *

1. Definitions

* * * * *

Production guarantee (per acre):

(1) First stage production guarantee—The final stage production guarantee multiplied by 60 percent.

(2) Final stage production guarantee—The number of pounds of raw sugar determined by multiplying the approved yield per acre by the coverage level percentage you elect.

* * * * *

3. Insurance Guarantees, Coverage Levels, and Prices

(a) In addition to the requirements of section 3 of the Basic Provisions, you may select only one price election for all the sugar beets in the county insured under this policy.

(b) The production guarantees are progressive by stages and increase at specified intervals to the final stage. The stages are:

(1) First stage, with a guarantee of 60 percent (60%) of the final stage production guarantee, extends from planting until:

(i) The earlier of thinning or 90 days after planting in California; and

(ii) July 1 in all other States.

(2) Final stage, with a guarantee of 100 percent (100%) of the final stage production guarantee, applies to all insured sugar beets that complete the first stage.

(c) The production guarantee will be expressed in pounds of raw sugar.

(d) Any acreage of sugar beets damaged in the first stage to the extent that growers in the area would not normally further care for the sugar beets will be deemed to have been destroyed, even though you may continue to care for it. The production guarantee for such acreage will not exceed the first stage production guarantee.

* * * * *

6. Report of Acreage

In addition to the requirements of section 6 of the Basic Provisions, you must provide a copy of all production agreements to us on or before the acreage reporting date.

7. Annual Premium

In lieu of the premium computation method contained in section 7 of the Basic Provisions, the annual premium amount is computed by multiplying the final stage production guarantee by the price election, the premium rate, the insured acreage, your share at the time of planting, and any applicable premium adjustment factors contained in the actuarial documents.

* * * * *

14. * * *

(c) * * *

(1) * * *

(iv) Only appraised production in excess of the difference between the first and final stage production guarantee for acreage that does not qualify for the final stage guarantee will be counted, except that all production from acreage subject to paragraphs (c)(1)(i) and (ii) of this section will be counted; and

* * * * *

17. Stage Removal Option

(a) Applicability:

(1) You must have an additional coverage policy to elect this option.

(2) You must elect this option in writing on or before the sales closing date for the first year it is in effect.

(3) This election is continuous, in accordance with section 2 of the Basic Provisions, unless canceled by the cancellation date. Your election of the Catastrophic Risk Protection Endorsement for your sugar beets in any crop year will be deemed to be cancellation of this option by you.

(4) All insurable acreage of sugar beets in the county will be included under this option unless any acreage is specifically excluded by the Special Provisions.

(b) Insurance Guarantees:

(1) The production guarantee (per acre) will be the final stage guarantee.

(2) The terms and conditions contained in sections 3(b) and 3(d) do not apply under this option.

(c) Premium Adjustment Factor: The premium adjustment factor in the actuarial documents for the stage removal option will apply to the premium computation method in section 7.

(d) Settlement of Claim:

(1) The ''respective production guarantee'' referenced in section 14(b) will be the final stage guarantee.

(2) The terms and conditions of section 14(c)(1)(iv) do not apply under this option.

Marcia Bunger,

Manager, Federal Crop Insurance Corporation.

[FR Doc. 2022–25531 Filed 11–25–22; 8:45 am]

BILLING CODE 3410–08–P

DEPARTMENT OF ENERGY

10 CFR Part 430

[EERE–2013–BT–TP–0050]

RIN 1904–AD88

Energy Conservation Program: Energy Conservation Standards for Ceiling Fans

AGENCY: Office of Energy Efficiency and Renewable Energy, Department of Energy.

ACTION: Final rule; technical amendment.

SUMMARY: The Energy Policy and Conservation Act, as amended (''EPCA''), prescribes energy conservation standards for various consumer products, including ceiling fans. The Energy Act of 2020 amended the energy conservation standards for large-diameter ceiling fans (''LDCFs''). DOE codified these efficiency requirements in a final rule published May 27, 2021. When DOE published the final rule codifying the standards for LDCFs in 2021, DOE's test procedure for LDCFs was applicable only to those ceiling fans with a diameter less than or equal to 24 feet. As a result, DOE could not implement the full scope of LDCF standards set forth in the Energy Act of 2020. In order to remedy this situation, DOE has removed this limit on ceiling fan diameter in the most recent test procedure rulemaking for ceiling fans. As such, DOE is now able to implement in this final rule the full scope of standards for LDCFs set forth in the Energy Act of 2020.

DATES: The effective date of this rule is November 28, 2022.

FOR FURTHER INFORMATION CONTACT: Mr. Jeremy Dommu, 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. Email: *ApplianceStandardsQuestions@ee.doe.gov.*

Ms. Amelia Whiting, U.S. Department of Energy, Office of the General Counsel, GC–33, 1000 Independence Avenue SW, Washington, DC 20585–0121. Telephone: (202) 586–2588. Email: *amelia.whiting@hq.doe.gov.*

SUPPLEMENTARY INFORMATION:

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I. Authority and Background

EPCA authorizes DOE to regulate the energy efficiency of a number of consumer products and certain industrial equipment. Title III, Part B of EPCA established the Energy Conservation Program for Consumer Products Other Than Automobiles. These products include ceiling fans, the subject of this document. (42 U.S.C. 6291(49); 42 U.S.C. 6293(b)(16)(A)(i) and (B); and 42 U.S.C. 6295(ff))

DOE's energy conservation standards and test procedures for ceiling fans are currently prescribed in the Code of Federal Regulations (''CFR'') at 10 CFR 430.32(s)(1) and (2), 10 CFR 430.23(w), and 10 CFR part 430, subpart B, appendix U (''appendix U''), respectively.

The DOE test procedure for ceiling fans was amended in a test procedure final rule published on July 25, 2016. 81 FR 48619 (''July 2016 Final Rule''). The July 2016 Final Rule defined a large-diameter ceiling fan (''LDCF'') as ''a ceiling fan that is greater than seven feet in diameter.''. *Id.* at 81 FR 48640. In the July 2016 Final Rule, DOE stated that it was unaware at the time of any commercially available large-diameter fans with blade spans greater than 24 feet, and therefore could not confirm that the test procedure would produce reliable results for fans larger than 24 feet in diameter. 81 FR 48619, 48632. As such, the July 2016 Final Rule established in section 3.4.1 of appendix U that the test procedure was applicable to large-diameter ceiling fans (''LDCFs'') less than or equal to 24 feet in diameter. *Id.* at 81 FR 48643.

On January 19, 2017, DOE issued a final rule establishing energy conservation standards for the LDCF product class. 82 FR 6826, 6886 (''January 2017 Final Rule''). LDCFs manufactured on or after January 21, 2020, had to meet a minimum efficiency in cubic feet per minute per watt of 0.91D–30.00, where ''D'' is the ceiling fan's blade span, in inches. *Id.*

Section 1008 of the Energy Act of 2020 (the ''Energy Act'') amended section 325(ff)(6) of EPCA to specify that LDCFs manufactured on or after January 21, 2020, are not required to meet minimum ceiling fan efficiency requirements in terms of the total airflow to the total power consumption, CFM/W, as established in the January 2017 Final Rule, but instead must meet minimum efficiency requirements based on the Ceiling Fan Energy Index (''CFEI'') metric. (42 U.S.C. 6295(ff)(6)(C)(i)(I), as codified) The Energy Act requires LDCFs to have a CFEI greater than or equal to 1.00 at high speed and 1.31 at 40 percent speed or the nearest speed that is not less than 40 percent speed. (42 U.S.C. 6295(ff)(6)(C)(i)(II), as codified) Further, the Energy Act specifies that CFEI is to be calculated in accordance with American National Standards Institute ANSI/Air Movement and Control Association International, Inc. (''AMCA'') Standard 208–18, ''Calculation of Fan Energy Index,'' with the following modifications: (I) Using an airflow constant (Q_0) of 26,500 cubic feet per minute; (II) Using a pressure constant (P_0) of 0.0027 inches water gauge; and (III) Using a fan efficiency constant (η_0) of 42 percent. (42 U.S.C. 6295(ff)(6)(C)(ii), as codified) Finally, section 1008(b) of the Energy Act states that for the purposes of the periodic review requirements in section 325(m) of EPCA, the standard established in the Energy Act shall be treated as if such standard was issued on January 19, 2017. The Energy Act did not restrict application of the referenced industry test procedure or amended energy conservation standards to LDCFs with diameters less than 24 ft.

On May 27, 2021, DOE published a technical amendment to codify the amended regulations for LDCFs enacted by Congress through the Energy Act. 86 FR 28469 (''May 2021 Technical Amendment''). At that time because the DOE test procedure was limited to ceiling fans with diameters less than or equal to 24 ft, DOE was unable to implement the revised energy conservation standards for the full scope of LDCFs set forth in the Energy Act. In order to remedy this situation, DOE first published a test procedure final rule on August 16, 2022 (''August 2022 Final Rule''), that extended the scope of the test procedure to include ceiling fans with a diameter greater than 24 feet. 87 FR 50396. In the August 2022 Final Rule, DOE explained that nothing inherent to the test procedure would prevent testing of a ceiling fan greater than 24 feet, and that the ceiling fan industry trade group had confirmed that the test facilities used by industry are capable of accommodating ceiling fans with blade spans substantially larger than 24 feet. *Id.* at 87 FR 50403. DOE explained in the August 2022 Final Rule that it would address any potential changes to the scope of standards for LDCFs in a separate rulemaking. *Id.* This final rule implements the full scope of energy conservation standards for LDCFs set forth in the Energy Act of 2020.

II. Implementation of the Full Scope of Standards for LDCF's set Forth in the Energy Act of 2020

DOE codified the standards in the Energy Act for LDCFs with diameters less than or equal to 24 ft in the May 2021 Technical Amendment. In this final rule, DOE is codifying the full scope of energy conservation standards set forth in the Energy Act by extending the current standards for LDCFs to ceiling fans with diameters greater than 24 ft. Consistent with this implementation, DOE is amending 10 CFR 430.32(s)(2)(ii) to clarify that the energy conservation standards apply to large-diameter ceiling fans as defined in appendix U. Namely that large-diameter ceiling fan means ''a ceiling fan that is not a highly-decorative ceiling fan or belt-driven ceiling fan and has a represented value of blade span, as determined in 10 CFR 420.32(a)(3)(i), greater than seven feet.''

III. Testing and Enforcement

While this final rule is effective November 28, 2022, DOE is aware that testing subject to appendix U for LDCFs greater than 24 feet is not required until February 13, 2023. See 87 FR 50396. As such, DOE is not requiring compliance with the standards until use of the test method is required, *i.e.,* February 13, 2023.

IV. Final Action

DOE has determined, pursuant to 5 U.S.C. 553(b)(B), that prior notice and an opportunity for public comment on this final rule are unnecessary. DOE is merely placing in the Code of Federal Regulations for the benefit of the public energy conservation standards for LDCFs prescribed by Congress in the Energy Act of 2020. DOE is not exercising any of the discretionary authority that Congress has provided in EPCA for the Secretary of Energy to revise, by rule, product or equipment definitions, test procedures and energy conservation standards. DOE, therefore, finds that good cause exists to waive prior notice and an opportunity to comment for this rulemaking. For the same reasons, DOE, pursuant to 5 U.S.C. 553(d)(3), finds that good cause exists for making this final rule effective upon publication in the **Federal Register**.

V. Procedural Issues and Regulator Review

A. Review Under Executive Order 12866

This final rule is not a ''significant regulatory action'' under any of the criteria set out in section 3(f) of Executive Order 12866, ''Regulatory Planning and Review.'' 58 FR 51735 (October 4, 1993). Accordingly, this action was not subject to review by the Office of Information and Regulatory Affairs (OIRA) in the Office of Management and Budget (OMB).

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 is revising the Code of Federal Regulations to incorporate revised requirements for large-diameter ceiling fans prescribed by Public Law 116–260 and conforming amendments. Because this is a technical amendment for which a general notice of proposed rulemaking is not required, the analytical requirements of the Regulatory Flexibility Act do not apply to this rulemaking.

C. Review Under the Paperwork Reduction Act of 1995

Manufacturers of ceiling fans must certify to DOE that their products comply with any applicable energy conservation standards. DOE has established regulations for the certification and recordkeeping requirements for all covered consumer products and commercial equipment, including ceiling fans. (*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, certifying compliance, and completing and reviewing the collection of information.

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

Pursuant to the National Environmental Policy Act (''NEPA'') of 1969, DOE has analyzed this proposed action in accordance with NEPA and DOE's NEPA implementing regulations (10 CFR part 1021). DOE has determined that this rule qualifies for categorical exclusion under 10 CFR part 1021, subpart D, appendix A5, because it is an interpretive rulemaking that does not change the environmental effect of the rule and meets the requirements for application of a categorical exclusion. *See* 10 CFR 1021.410. Therefore, DOE has determined that promulgation of this rule is not a major Federal action significantly affecting the quality of the human environment within the meaning of NEPA, and does not require an environmental assessment or environmental impact statement.

E. Review Under Executive Order 13132

Executive Order 13132, ''Federalism,'' 64 FR 43255 (August 4, 1999), imposes certain requirements on agencies formulating and implementing policies or regulations that preempt State law or that have federalism implications. The Executive order requires agencies to examine the constitutional and statutory authority supporting any action that would limit the policymaking discretion of the States and to carefully assess the necessity for such actions. The Executive order also requires agencies to have an accountable process to ensure meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications. On March 14, 2000, DOE published a statement of policy describing the intergovernmental consultation process it will follow in the development of such regulations. 65 FR 13735. DOE examined this final rule and determined that it will not have a substantial direct effect on the States, on the relationship between the National Government and the States, or on the distribution of power and responsibilities among the various levels of government. EPCA governs and prescribes Federal preemption of State regulations as to energy conservation for the products that are the subject of this final rule. States can petition DOE for exemption from such preemption to the

extent, and based on criteria, set forth in EPCA. (42 U.S.C. 6297(d)) No further action is required by Executive Order 13132.

F. Review Under Executive Order 12988

Regarding the review of existing regulations and the promulgation of new regulations, section 3(a) of Executive Order 12988, ''Civil Justice Reform,'' 61 FR 4729 (Feb. 7, 1996), imposes on Federal agencies the general duty to adhere to the following requirements: (1) eliminate drafting errors and ambiguity; (2) write regulations to minimize litigation; (3) provide a clear legal standard for affected conduct rather than a general standard; and (4) promote simplification and burden reduction. Section 3(b) of Executive Order 12988 specifically requires that Executive agencies make every reasonable effort to ensure that the regulation (1) clearly specifies the preemptive effect, if any; (2) clearly specifies any effect on existing Federal law or regulation; (3) provides a clear legal standard for affected conduct while promoting simplification and burden reduction; (4) specifies the retroactive effect, if any; (5) adequately defines key terms; and (6) addresses other important issues affecting clarity and general draftsmanship under any guidelines issued by the Attorney General. Section 3(c) of Executive Order 12988 requires Executive agencies to review regulations in light of applicable standards in sections 3(a) and 3(b) to determine whether they are met or it is unreasonable to meet one or more of them. DOE has completed the required review and determined that, to the extent permitted by law, this final rule meets the relevant standards of Executive Order 12988.

G. Review Under the Unfunded Mandates Reform Act of 1995

Title II of the Unfunded Mandates Reform Act of 1995 (''UMRA'') requires each Federal agency to assess the effects of Federal regulatory actions on State, local, and Tribal governments and the private sector. Public Law 104–4, sec. 201 (codified at 2 U.S.C. 1531). For a regulatory action resulting in a rule that may cause the expenditure by State, local, and Tribal governments, in the aggregate, or by the private sector of $100 million or more in any one year (adjusted annually for inflation), section 202 of UMRA requires a Federal agency to publish a written statement that estimates the resulting costs, benefits, and other effects on the national economy. (2 U.S.C. 1532(a), (b)) The UMRA also requires a Federal agency to develop an effective process to permit timely input by elected officers of State, local, and Tribal governments on a proposed ''significant intergovernmental mandate,'' and requires an agency plan for giving notice and opportunity for timely input to potentially affected small governments before establishing any requirements that might significantly or uniquely affect small governments. On March 18, 1997, DOE published a statement of policy on its process for intergovernmental consultation under UMRA. 62 FR 12820; also available at *www.energy.gov/gc/office-general-counsel.* DOE examined this final rule according to UMRA and its statement of policy and determined that the rule contains neither an intergovernmental mandate, nor a mandate that may result in the expenditure of $100 million or more in any year, so these requirements do not apply.

H. Review Under the Treasury and General Government Appropriations Act, 1999

Section 654 of the Treasury and General Government Appropriations Act, 1999 (Pub. L. 105–277) requires Federal agencies to issue a Family Policymaking Assessment for any rule that may affect family well-being. This final rule will not have any impact on the autonomy or integrity of the family as an institution. Accordingly, DOE has concluded that it is not necessary to prepare a Family Policymaking Assessment.

I. Review Under Executive Order 12630

DOE has determined, under Executive Order 12630, ''Governmental Actions and Interference with Constitutionally Protected Property Rights'' 53 FR 8859 (March 18, 1988), that this regulation will not result in any takings that might require compensation under the Fifth Amendment to the U.S. Constitution.

J. Review Under Treasury and General Government Appropriations Act, 2001

Section 515 of the Treasury and General Government Appropriations Act, 2001 (44 U.S.C. 3516 note) provides for agencies to review most disseminations of information to the public under guidelines established by each agency pursuant to general guidelines issued by OMB. OMB's guidelines were published at 67 FR 8452 (Feb. 22, 2002), and DOE's guidelines were published at 67 FR 62446 (Oct. 7, 2002). Pursuant to OMB Memorandum M–19–15, Improving Implementation of the Information Quality Act (April 24, 2019), DOE published updated guidelines which are available at *www.energy.gov/sites/prod/files/2019/12/f70/DOE%20Final%20Updated%20IQA%20Guidelines%20Dec%202019.pdf.* DOE has reviewed this final rule under the OMB and DOE guidelines and has concluded that it is consistent with applicable policies in those guidelines.

K. Review Under Executive Order 13211

Executive Order 13211, ''Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use,'' 66 FR 28355 (May 22, 2001), requires Federal agencies to prepare and submit to OMB, a Statement of Energy Effects for any significant energy action. A ''significant energy action'' is defined as any action by an agency that promulgated or is expected to lead to promulgation of a final rule, and that (1) is a significant regulatory action under Executive Order 12866, or any successor order; and (2) is likely to have a significant adverse effect on the supply, distribution, or use of energy; or (3) is designated by the Administrator of OIRA as a significant energy action. For any significant energy action, the agency must give a detailed statement of any adverse effects on energy supply, distribution, or use if the regulation is implemented, and of reasonable alternatives to the action and their expected benefits on energy supply, distribution, and use.

This regulatory action is not a significant regulatory action under Executive Order 12866. Moreover, it would not have a significant adverse effect on the supply, distribution, or use of energy, nor has it been designated as a significant energy action by the Administrator of OIRA. Therefore, it is not a significant energy action, and, accordingly, DOE has not prepared a Statement of Energy Effects.

L. Congressional Notification

As required by 5 U.S.C. 801, DOE will report to Congress on the promulgation of this rule prior to its effective date. The report will state that it has been determined that the rule is not a ''major rule'' as defined by 5 U.S.C. 804(2).

V. Approval of the Office of the Secretary

The Secretary of Energy has approved publication of this Final rule; technical amendment.

List of Subjects in 10 CFR Part 430

Administrative practice and procedure, Confidential business information, Energy conservation, Household appliances, Imports, Intergovernmental relations, Small businesses.

Signing Authority

This document of the Department of Energy was signed on November 21, 2022, 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 November 21, 2022.

Treena V. Garrett,

Federal Register Liaison Officer, U.S. Department of Energy.

For the reasons set forth in the preamble, DOE amends part 430 of chapter II of title 10, Code of Federal Regulations as set forth below:

PART 430—ENERGY CONSERVATION PROGRAM FOR CONSUMER PRODUCTS

■ 1. The authority citation for part 430 continues to read as follows:

Authority: 42 U.S.C. 6291–6309; 28 U.S.C. 2461 note.

■ 2. Section 430.32 is amended by revising paragraph (s)(2)(ii) introductory text to read as follows:

§ 430.32 Energy and water conservation standards and their compliance dates.

* * * * *

(s) * * *

(2) * * *

(ii) Large-diameter ceiling fans, as defined in appendix U to subpart B of this part, manufactured on or after January 21, 2020, shall have a CFEI greater than or equal to –

* * * * *

[FR Doc. 2022–25749 Filed 11–25–22; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2022–1003; Airspace Docket No. 22–AGL–30]

RIN 2120–AA66

Amendment of Class E Airspace; Menominee, MI

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action amends the Class E airspace at Menominee, MI. This action is due to an airspace review conducted as part of the decommissioning of the Menominee very high frequency (VHF) omnidirectional range (VOR) as part of the VOR Minimal Operational Network (MON) Program. The name and geographic coordinates of the airport are also being updated to coincide with the FAA's aeronautical database.

DATES: Effective 0901 UTC, February 23, 2023. 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 Airspace Policy Group, Federal Aviation Administration, 800 Independence Avenue SW, Washington, DC 20591; telephone: (202) 267–8783.

FOR FURTHER INFORMATION CONTACT: Jeffrey Claypool, Federal Aviation Administration, Operations Support Group, Central Service Center, 10101 Hillwood Parkway, Fort Worth, TX 76177; telephone (817) 222–5711.

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 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 amends the Class E airspace extending upward from 700 feet above the surface at Menominee Regional Airport, Menominee, MI, to support instrument flight rule operations at this airport.

History

The FAA published a notice of proposed rulemaking (NPRM) in the **Federal Register** (87 FR 51623; August 23, 2022) for Docket No. FAA–2022–1003 to amend the Class E airspace at Menominee, MI. Interested parties were invited to participate in this rulemaking effort by submitting written comments on the proposal to the FAA. No comments were received.

Class E airspace designations are published in paragraph 6005 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 Class E airspace designations 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.

Differences From the NPRM

Subsequent to publication, a typographical error was discovered in the geographic coordinates listed in the airspace legal description: ''(Lat. 45°07′36″ N, long. 87°38′17″ W)'' should be ''(Lat. 45°07′36″ N, long. 87°38′19″ W).'' This error has been corrected in this action.

The Rule

This amendment to 14 CFR part 71 amends the Class E airspace extending upward from 700 feet above the surface at Menominee Regional Airport, Menominee, MI, by removing the extension to the north of the airport as it is no longer required; and updates the name (previously Menominee-Marinette Twin County Airport) and geographic coordinates of the airport to coincide with the FAA's aeronautical database.

This action is due to an airspace review conducted as part of the decommissioning of the Menominee

VOR, which provided navigation information for the instrument procedures at this airport, as part of the VOR MON Program.

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, is non-controversial and unlikely to result in adverse or negative comments. It, therefore: (1) is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under 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 action qualifies for categorical exclusion under the National Environmental Policy Act in accordance with FAA Order 1050.1F, ''Environmental Impacts: Policies and Procedures,'' paragraph 5–6.5.a. This airspace action is not expected to cause any potentially significant environmental impacts, and no extraordinary circumstances exist that warrant preparation of an environmental assessment.

Lists of Subjects in 14 CFR 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of 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 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 6005 Class E Airspace Areas Extending Upward From 700 Feet or More Above the Surface of the Earth

* * * * *

AGL MI E5 Menominee, MI [Amended]

Menominee Regional Airport, MI
(Lat. 45°07′36″ N, long. 87°38′19″ W)

That airspace extending upward from 700 feet above the surface within a 6.7-mile radius of the Menominee Regional Airport.

Issued in Fort Worth, Texas, on November 22, 2022.

Steven T. Phillips,

Acting Manager, Operations Support Group, ATO Central Service Center.

[FR Doc. 2022–25815 Filed 11–25–22; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2022–1002; Airspace Docket No. 22–ASW–20]

RIN 2120–AA66

Amendment and Revocation of Class E Airspace; Bartlesville and Miami, OK

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action amends and removes Class E airspace at Bartlesville and Miami, OK. This action is due to airspace reviews conducted as part of the decommissioning of the Oswego very high frequency (VHF) omnidirectional range (VOR) as part of the VOR Minimal Operational Network (MON) Program. The name and geographic coordinates of the airports and navigation aids are also being updated to coincide with the FAA's aeronautical database.

DATES: Effective 0901 UTC, February 23, 2023. 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 Airspace Policy Group, Federal Aviation Administration, 800 Independence Avenue SW, Washington, DC 20591; telephone: (202) 267–8783.

FOR FURTHER INFORMATION CONTACT: Jeffrey Claypool, Federal Aviation Administration, Operations Support Group, Central Service Center, 10101 Hillwood Parkway, Fort Worth, TX 76177; telephone (817) 222–5711.

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 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 amends the Class E surface airspace and Class E airspace extending upward from 700 feet above the surface at Bartlesville Municipal Airport, Bartlesville, OK; amends the Class E airspace extending upward from 700 feet above the surface at Miami Regional Airport, Miami, OK; and removes the Class E airspace extending upward from 700 feet above the surface at Jane Phillips Medical Center Heliport, Bartlesville, OK, and Baptist Regional Health Center Heliport, Miami, OK, to support instrument flight rule operations at these airports.

History

The FAA published a notice of proposed rulemaking in the **Federal Register** (87 FR 51621; August 23, 2022) for Docket No. FAA–2022–1002 to amend and remove Class E airspace at Bartlesville and Miami, OK. Interested parties were invited to participate in this rulemaking effort by submitting written comments on the proposal to the FAA. No comments were received.

Class E airspace designations are published in paragraphs 6002 and 6005, respectively, 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 Class E airspace designations 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 amendment to 14 CFR 71:

Amends the Class E airspace surface airspace to within a 4.1-mile (decreased from 4.3-mile) radius of Bartlesville Municipal Airport, Bartlesville, OK; and within 1 mile each side of the 359° bearing from the airport extending from the 4.1-mile radius to 4.6 miles north of the airport; and within 1.5 miles each side of the Bartlesville VOR/DME 168° radial extending from the 4.1-mile radius of the airport to 4.4 miles south of the airport; and within 1 mile each side of the 179° bearing from the airport extending from the 4.1-mile radius to 4.5 miles south of the airport; removes the exclusionary language from the airspace legal description as there is no technical requirement for this area and it imposes on protected airspace needed for the current public instrument procedures; updates the geographic coordinates of the airport to coincide with the FAA's aeronautical database; and replaces the outdated terms ''Notice to Airmen'' with ''Notice to Air Missions'' and ''Airport/Facility Directory'' with ''Chart Supplement'';

Amends the Class E airspace extending upward from 700 feet above the surface to within a 6.6-mile (decreased from a 6.8-mile) radius of Bartlesville Municipal Airport; amends the extension north of the airport to within 4 miles (increased from 2.2 miles) each side of the 359° bearing from the Bartlesville Municipal: RWY 17–LOC (previously Dewie LOM) extending from the 6.6-mile (decreased from 6.8-mile) radius of the airport to 14.1 miles (increased from 11.7 miles) north of the airport; amends the extension south of the airport to 4.1 miles east and 7.6 miles west (previously 1.6 miles each side) of the Bartlesville VOR/DME 168° (previously 176°) radial extending from the 6.6-mile (decreased from 6.8-mile) radius to 15.5 (increased from 11.3) miles south of the Bartlesville VOR/DME (previously the airport); removes the extension north of the airport from the Bartlesville VOR/DME as it is no longer needed; removes the Jane Phillips Medial Center Heliport point in space and associated airspace as the associated instrument procedures have been cancelled and the airspace is no longer required; removes the Dewie LOM from the airspace legal description as it is no longer required; and updates the geographic coordinates of the airport and the Bartlesville VOR/DME to coincide with the FAA's aeronautical database;

And amends the Class E airspace extending upward from 700 feet above the surface to within a 6.5-mile (decreased from a 7.3-mile) radius of Miami Regional Airport, Miami, OK; removes the Baptist Regional Health Center Heliport point in space coordinates and associated airspace from the airspace legal description as the associated instrument procedures have been cancelled and the airspace is no longer required; and updates name of the airport to coincide with the FAA's aeronautical database.

This action is due to airspace reviews conducted as part of the decommissioning of the Oswego VOR, which provided navigation information for the instrument procedures at these airports, as part of the VOR MON Program.

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, is non-controversial and unlikely to result in adverse or negative comments. It, therefore: (1) is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under 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 action qualifies for categorical exclusion under the National Environmental Policy Act in accordance with FAA Order 1050.1F, ''Environmental Impacts: Policies and Procedures,'' paragraph 5–6.5.a. This airspace action is not expected to cause any potentially significant environmental impacts, and no extraordinary circumstances exist that warrant preparation of an environmental assessment.

Lists of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of 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 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 6002 Class E Airspace Areas Designated as Surface Areas.

* * * * *

ASW OK E2 Bartlesville, OK [Amended]

Bartlesville Municipal Airport, OK
(Lat. 36°45′48″ N, long. 96°00′40″ W)
Bartlesville VOR/DME
(Lat. 36°50′04″ N, long. 96°01′06″ W)

Within a 4.1-mile radius of Bartlesville Municipal Airport; and within 1 mile each side of the 359° bearing from the airport extending from the 4.1-mile radius of the airport to 4.6 miles north of the airport; and within 1.5 miles each side of the Bartlesville VOR/DME 168° radial extending from the 4.1-mile radius of the airport to 4.4 miles south of the airport; and within 1 mile each side of the 179° bearing from the airport extending from the 4.1-mile radius of the airport to 4.5 miles south of the airport. This Class E airspace area is effective during the specific dates and times established in advance by a Notice to Air Missions. The effective dates and times will thereafter be continuously published in the Chart Supplement.

Paragraph 6005 Class E Airspace Areas Extending Upward From 700 Feet or More Above the Surface of the Earth.

* * * * *

ASW OK E5 Bartlesville, OK [Amended]

Bartlesville Municipal Airport, OK
(Lat. 36°45′48″ N, long. 96°00′40″ W)
Bartlesville Municipal: RWY 17–LOC
(Lat. 36°45′11″ N, long. 96°00′39″ W)

Bartlesville VOR/DME
(Lat. 36°50′04″ N, long. 96°01′06″ W)

That airspace extending upward from 700 feet above the surface within a 6.6-mile radius of Bartlesville Municipal Airport; and within 4 miles each side of the 359° bearing from the Bartlesville Municipal: RWY 17–LOC extending from the 6.6-mile radius of the airport to 14.1 miles north of the airport; and within 4.1 miles east and 7.6 miles west of the Bartlesville VOR/DME 168° radial extending from the 6.6-mile radius of the airport to 15.5 miles south of the Bartlesville VOR/DME.

* * * * *

ASW OK E5 Miami, OK [Amended]

Miami Regional Airport, OK
(Lat. 36°54′33″ N, long. 94°53′15″ W)

That airspace extending upward from 700 feet above the surface within a 6.5-mile radius of Miami Regional Airport.

Issued in Fort Worth, Texas, on November 22, 2022.

Steven T. Phillips,

Acting Manager, Operations Support Group, ATO Central Service Center.

[FR Doc. 2022–25818 Filed 11–25–22; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2021–1152; Airspace Docket No. 19–AAL–72]

RIN 2120–AA66

Amendment of United States Area Navigation (RNAV) Route T–269; Yakutat, AK

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule; correction.

SUMMARY: This action corrects a final rule published by the FAA in the **Federal Register** on October 24, 2022, that amends United States Area Navigation (RNAV) route T–269 in the vicinity of Yakutat, AK, in support of a large and comprehensive T-route modernization project for the state of Alaska. The final rule identified the MALAS, AK, route point as a waypoint (WP), in error. This action makes an editorial correction to the reference of the MALAS, AK, WP to change it to be reflected as a Fix and match the FAA's National Airspace System Resource (NASR) database information.

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 7400.11 and publication of conforming amendments.

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

FOR FURTHER INFORMATION CONTACT: 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:

History

The FAA published a final rule in the **Federal Register** (87 FR 64159; October 24, 2022), amending T–269 in support of a large and comprehensive T-route modernization project for the state of Alaska. Additionally, the FAA published a final rule correction in the **Federal Register** (87 FR 65680; November 1, 2022), correcting T–269 to reflect the KATAT, AK, route point as a Fix. Subsequent to publication of the final rule correction, the FAA determined that the MALAS, AK, route point was also inadvertently identified as a WP, in error. This rule corrects that error by changing the reference of the MALAS, AK, WP to the MALAS, AK, Fix. This is an editorial change only to match the FAA's NASR database information and does not alter the alignment of the affected T–269 route.

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 T-route listed in this document will be published subsequently in FAA Order JO 7400.11.

Correction to Final Rule

Accordingly, pursuant to the authority delegated to me, reference to the MALAS, AK, WP that is reflected in Docket No. FAA–2021–1152, as published in the **Federal Register** of October 24, 2022 (87 FR 64159), FR Doc. 2022–22496, and as published in the **Federal Register** of November 1, 2022 (87 FR 65680), FR Doc. 2022–23536, is corrected as follows:

■ 1. On page 64160 for FR Doc. 2022–22496 and pages 65680 and 65681 for FR Doc. 2022–23536, correct the table for T–269 Annette Island, AK (ANN) to MKLUK, AK [Amended] to read:

T–269 ANNETTE ISLAND, AK (ANN) TO MKLUK, AK [AMENDED]

Annette Island, AK (ANN)	VOR/DME	(Lat. 55°03′37.47″ N, long. 131°34′42.24″ W)
Biorka Island, AK (BKA)	VORTAC	(Lat. 56°51′33.87″ N, long. 135°33′04.72″ W)
Yakutat, AK (YAK)	VOR/DME	(Lat. 59°30′38.99″ N, long. 139°38′53.26″ W)
MALAS, AK	FIX	(Lat. 59°39′58.52″ N, long. 140°34′57.61″ W)
OXIDS, AK	WP	(Lat. 59°41′51.68″ N, long. 141°03′17.73″ W)
FOGNU, AK	WP	(Lat. 59°53′31.88″ N, long. 141°49′02.83″ W)
HORGI, AK	WP	(Lat. 60°00′04.68″ N, long. 142°35′23.34″ W)
ZIXIM, AK	WP	(Lat. 60°03′48.75″ N, long. 143°13′27.77″ W)
JOVOM, AK	WP	(Lat. 60°07′40.55″ N, long. 143°42′56.99″ W)
OXUGE, AK	WP	(Lat. 60°06′15.81″ N, long. 144°13′28.54″ W)
KATAT, AK	FIX	(Lat. 60°15′29.17″ N, long. 144°42′18.77″ W)
Johnstone Point, AK (JOH)	VOR/DME	(Lat. 60°28′51.43″ N, long. 146°35′57.61″ W)
Anchorage, AK (TED)	VOR/DME	(Lat. 61°10′04.32″ N, long. 149°57′36.51″ W)
MKLUK, AK	WP	(Lat. 60°26′40.04″ N, long. 165°55′17.28″ W)

* * * * *

Issued in Washington, DC, on November 21, 2022.

Scott M. Rosenbloom,

Manager, Airspace Rules and Regulations.

[FR Doc. 2022–25820 Filed 11–25–22; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2022–1007; Airspace Docket No. 22–ACE–17]

RIN 2120–AA66

Amendment of Class E Airspace; Independence and Pittsburg, KS

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action amends the Class E airspace at Independence and Pittsburg, KS. This action is the result of an airspace review conducted as part of the decommissioning of the Oswego very high frequency (VHF) omnidirectional range (VOR) as part of the VOR Minimal Operational Network (MON) Program. The geographic coordinates of the airports are also being updated to coincide with the FAA's aeronautical database.

DATES: Effective 0901 UTC, February 23, 2023. 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 Airspace Policy Group, Federal Aviation Administration, 800 Independence Avenue SW, Washington, DC 20591; telephone: (202) 267–8783.

FOR FURTHER INFORMATION CONTACT: Jeffrey Claypool, Federal Aviation Administration, Operations Support Group, Central Service Center, 10101 Hillwood Parkway, Fort Worth, TX 76177; telephone (817) 222–5711.

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 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 amends the Class E airspace extending upward from 700 feet above the surface at Independence Municipal Airport, Independence, KS, and Atkinson Municipal Airport, Pittsburg, KS, to support instrument flight rule operations at these airports.

History

The FAA published a notice of proposed rulemaking in the **Federal Register** (87 FR 52357; August 25, 2022) for Docket No. FAA–2022–1007 to amend the Class E airspace at Independence and Pittsburg, KS. Interested parties were invited to participate in this rulemaking effort by submitting written comments on the proposal to the FAA. No comments were received.

Class E airspace designations are published in paragraph 6005 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 Class E airspace designations 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 amendment to 14 CFR part 71:

Amends the Class E airspace extending upward from 700 feet above the surface within a 6.6-mile (decreased from a 7.6-mile) radius of Independence Municipal Airport, Independence, KS; and updates the geographic coordinates of the airport to coincide with the FAA's aeronautical database;

And amends the Class E airspace extending upward from 700 feet above the surface at Atkinson Municipal Airport, Pittsburgh, KS, by updating the geographic coordinates of the airport to coincide with the FAA's aeronautical database; and removes the city associated with the airport in the header of the airspace legal description to comply with FAA Order JO 7400.2N, Procedures for Handling Airspace Matters.

This action is the result of airspace reviews conducted as part of the decommissioning of the Oswego VOR, which provided navigation information for the instrument procedures these airports, as part of the VOR MON Program.

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, is non-controversial and unlikely to result in adverse or negative comments. It, therefore: (1) is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under 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 action qualifies for categorical exclusion under the National Environmental Policy Act in accordance with FAA Order 1050.1F, ''Environmental Impacts: Policies and Procedures,'' paragraph 5–6.5.a. This airspace action is not expected to cause any potentially significant environmental impacts, and no extraordinary circumstances exist that warrant preparation of an environmental assessment.

Lists of Subjects in 14 CFR 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of 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 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 6005 Class E Airspace Areas Extending Upward From 700 Feet or More Above the Surface of the Earth.

* * * * *

ACE KS E5 Independence, KS [Amended]

Independence Municipal Airport, KS
(Lat. 37°09′29″ N, long. 95°46′44″ W)

That airspace extending upward from 700 feet above the surface within a 6.6-mile radius of Independence Municipal Airport.

* * * * *

ACE KS E5 Pittsburg, KS [Amended]

Atkinson Municipal Airport, KS
(Lat. 37°27′00″ N, long. 94°43′52″ W)

That airspace extending upward from 700 feet above the surface within a 6.6-mile radius of Atkinson Municipal Airport.

Issued in Fort Worth, Texas, on November 22, 2022.

Steven T. Phillips,

Acting Manager, Operations Support Group, ATO Central Service Center.

[FR Doc. 2022–25814 Filed 11–25–22; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2022–0245; Airspace Docket No. 19–AAL–49]

RIN 2120–AA66

Establishment of United States Area Navigation (RNAV) Route T–380; Emmonak, AK

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule, delay of effective date.

SUMMARY: This action delays the effective date of a final rule published in the **Federal Register** on October 26, 2022, establishing area navigation (RNAV) route T–380 in the vicinity of Emmonak, AK. The FAA is delaying the effective date to allow sufficient time for completion of the required flight inspection of the route.

DATES: The effective date of the final rule published on October 26, 2022 (87 FR 64697) is delayed until April 20, 2023. The Director of the Federal Register approved this incorporation by reference action under 1 CFR part 51, subject to the annual revision of FAA Order 7400.11 and publication of conforming amendments.

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:

Background

The FAA published a final rule in the **Federal Register** for Docket No. FAA–2022–0245 (85 FR 64697, October 26, 2022), establishing RNAV route T–380 in the vicinity of Emmonak, AK. The effective date for that final rule is December 29, 2022. Subsequent to the final rule, it was determined that the required flight inspection of T–380 was not completed due to weather conditions. The pending onset of winter weather conditions in Alaska will further impact the completion of flight inspections in the State.

To facilitate the safe and continuous use of existing air traffic procedures and allow sufficient time for completion of the required flight inspection of route T–380, the effective date of this rule is delayed to April 20, 2023.

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 7400.11G.

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

Good Cause for No Notice and Comment

Section 553(b)(3)(B) of Title 5, United States Code, (the Administrative Procedure Act) authorizes agencies to dispense with notice and comment procedures for rules when the agency for ''good cause'' finds that those procedures are ''impracticable, unnecessary, or contrary to the public interest.'' Under this section, an agency, upon finding good cause, may issue a final rule without seeking comment prior to the rulemaking. The FAA finds that prior notice and public comment to this final rule is unnecessary due to the brief length of the extension of the effective date and the fact that there is no substantive change to the rule.''

Delay of Effective Date

Accordingly, pursuant to the authority delegated to me, the effective date of the final rule, Airspace Docket 19–AAL–49, as published in the **Federal Register** on October 26, 2022 (87 FR 64697, FR Doc. 2022–22782), is hereby delayed until April 20, 2023.

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.

* * * * *

Issued in Washington, DC, on November 21, 2022.

Scott M. Rosenbloom,

Manager, Airspace Rules and Regulations.

[FR Doc. 2022–25802 Filed 11–25–22; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2022–1004; Airspace Docket No. 22–ACE–16]

RIN 2120–AA66

Amendment of Class E Airspace; Liberal, KS

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action amends the Class E airspace at Liberal, KS. This action is the result of an airspace review conducted as part of the decommissioning of the Liberal very high frequency (VHF) omnidirectional range (VOR) as part of the VOR Minimal Operational Network (MON) Program. The name and geographic coordinates of the airport and the name of the navigational aid are also being updated to coincide with the FAA's aeronautical database.

DATES: Effective 0901 UTC, February 23, 2023. 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 Airspace Policy Group, Federal Aviation Administration, 800 Independence Avenue SW, Washington, DC 20591; telephone: (202) 267–8783.

FOR FURTHER INFORMATION CONTACT: Jeffrey Claypool, Federal Aviation Administration, Operations Support Group, Central Service Center, 10101 Hillwood Parkway, Fort Worth, TX 76177; telephone (817) 222–5711.

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 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 amends the Class E surface airspace, and the Class E airspace extending upward from 700 feet above the surface at Liberal Mid-America Regional Airport, Liberal, KS, to support instrument flight rule operations at this airport.

History

The FAA published a notice of proposed rulemaking (NPRM) in the **Federal Register** (87 FR 51620; August 23, 2022) for Docket No. FAA–2022–1004 to amend the Class E airspace at Liberal, KS. Interested parties were invited to participate in this rulemaking effort by submitting written comments on the proposal to the FAA. No comments were received.

Class E airspace designations are published in paragraphs 6002 and 6005, respectively, 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 Class E airspace designations 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.

Differences From the NPRM

Subsequent to publication, it was discovered that the name of the airport was not updated in the Class E airspace area designated as a surface area airspace legal description. That error has been corrected in this action.

The Rule

This amendment to 14 CFR part 71:

Amends the Class E surface airspace at Liberal Mid-America Regional Airport, Liberal, KS, by removing the Liberal VORTAC and associated extensions from the airspace legal description; updates the name (previously Liberal Municipal Airport) and geographic coordinates of the airport to coincide with the FAA's aeronautical database; and updates the outdated terms ''Notice to Airmen'' with ''Notice to Air Missions'' and ''Airport/Facility Directory'' with ''Chart Supplement'';

And amends the Class E airspace extending upward from 700 feet above the surface within a 6.7-mile (increased form a 6.4-mile) radius of Liberal Mid-America Regional Airport; removes the Liberal VORTAC and associated extensions from the airspace legal description; updates the extension south of the airport to 3.9 (increased from 3) miles each side of the 180° bearing from the Liberal Mid-America Regional: RWY 35–LOC (previously ILS localizer course) extending from the 6.7-mile (increased from 6.4-mile) radius of the airport to 11.9 (decreased from 12) miles south of the airport; and updates the name (previously Liberal Municipal Airport) and geographic coordinates of the airport and the name of the Liberal Mid-America Regional: RWY 35–LOC (previously Liberal Municipal Airport ILS) to coincide with the FAA's aeronautical database.

This action is due to an airspace review conducted as part of the decommissioning of the Liberal VOR, which provided navigation information for the instrument procedures this airport, as part of the VOR MON Program.

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, is non-controversial and unlikely to result in adverse or negative comments. It, therefore: (1) is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under 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 action qualifies for categorical exclusion under the National Environmental Policy Act in accordance with FAA Order 1050.1F, ''Environmental Impacts: Policies and Procedures,'' paragraph 5–6.5.a. This airspace action is not expected to cause any potentially significant environmental impacts, and no extraordinary circumstances exist that warrant preparation of an environmental assessment.

Lists of Subjects in 14 CFR 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of 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 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 6002 Class E Airspace Areas Designated as Surface Areas

* * * * *

ACE KS E2 Liberal, KS [Amended]

Liberal Mid-America Regional Airport, KS

(Lat. 37°02′38″ N, long. 100°57′36″ W)

Within a 4.2-mile radius of Liberal Mid-America Regional Airport. This Class E airspace area is effective during the specific dates and times established in advance by a Notice to Air Missions. The effective dates and times will thereafter be continuously published in the Chart Supplement.

Paragraph 6005 Class E Airspace Areas Extending Upward From 700 Feet or More Above the Surface of the Earth

* * * * *

ACE KS E5 Liberal, KS [Amended]

Liberal Mid-America Regional Airport, KS
(Lat. 37°02′38″ N, long. 100°57′36″ W)
Liberal Mid-America Regional: RWY 35–LOC
(Lat. 37°03′27″ N, long. 100°57′23″ W)

That airspace extending upward from 700 feet above the surface within a 6.7-mile radius of Liberal Mid-America Regional Airport; and within 3.9 miles each side of the 180° bearing from the Liberal Mid-America Regional: RWY 35–LOC extending from the 6.7-mile radius of the airport to 11.9 miles south of the airport.

Issued in Fort Worth, Texas, on November 22, 2022.

Steven T. Phillips,

Acting Manager, Operations Support Group, ATO Central Service Center.

[FR Doc. 2022–25817 Filed 11–25–22; 8:45 am]

BILLING CODE 4910–13–P

CONSUMER PRODUCT SAFETY COMMISSION

16 CFR Part 1120

[CPSC Docket No. CPSC–2021–0038]

Substantial Product Hazard List: Window Covering Cords

AGENCY: Consumer Product Safety Commission

ACTION: Final rule.

SUMMARY: To address the risk of strangulation to young children associated with certain window covering cords, the Consumer Product Safety Commission (CPSC) is issuing this final rule to deem that one or more of the following readily observable characteristics of window coverings present a substantial product hazard (SPH) under the Consumer Product Safety Act (CPSA): the presence of hazardous operating cords on stock window coverings, the presence of hazardous inner cords on stock and custom window coverings, or the absence of a manufacturer label on stock and custom window coverings. The rule amends regulations which list products that the Commission has determined present an SPH.

DATES: The rule is effective December 28, 2022. The incorporation by reference of the publication listed in this rule is approved by the Director of the Federal Register as of December 28, 2022.

FOR FURTHER INFORMATION CONTACT: Jennifer Colten, Compliance Officer, Office of Compliance and Field Operations, Consumer Product Safety Commission, 4330 East West Highway; telephone: 301–504–8165; *jcolten@cpsc.gov*.

SUPPLEMENTARY INFORMATION:

I. Introduction

A. Overview of the Final Rule

The purpose of the final rule is to address the risk of strangulation to children 8 years old and younger associated with hazardous cords on window coverings.[1] On January 7, 2022 CPSC published a proposed rule pursuant to section 15(j) of the CPSA, 15 U.S.C. 2064(j), to amend the substantial product hazard list in 16 CFR part 1120 (part 1120) to deem the presence of hazardous window covering cords on stock and custom window coverings, which have been adequately addressed by the voluntary standard for window coverings, ANSI/WCMA A100.1—2018, American National Standard for Safety of Corded Window Covering Products (ANSI/WCMA–2018), as an SPH, as defined in section 15(a)(2) of the CPSA. 87 FR 891. The Commission received five comments in support of the rule and is now finalizing the rule as proposed.

The final rule is based on information and analysis contained in (1) CPSC staff's September 29, 2021, Staff Briefing Package: Notice of Proposed Rulemaking for Corded Window Coverings (Staff's NPR Briefing Package),[2] and (2) CPSC staff's September 28, 2022, Staff Briefing Package: Final Rule for Corded Window Coverings (Staff's Final Rule Briefing Package).[3]

As proposed, in the final rule the Commission deems three readily observable characteristics of stock window coverings an SPH:

(1) presence of hazardous operating cords;

(2) presence of hazardous inner cords; and

(3) absence of a required manufacturer label.

Additionally, the Commission deems two readily observable characteristics of custom window coverings an SPH:

(1) presence of hazardous inner cords; and

(2) absence of a required manufacturer label.

The Commission is addressing the presence of hazardous operating cords on custom window coverings under a separate, concurrent rulemaking pursuant to sections 7 and 9 of the CPSA, because the ANSI/WCMA–2018 standard does not adequately address this hazard. *See* CPSC Docket No. CPSC–2013–0028.

As detailed in this final rule the Commission determines that:

- the following are readily observable characteristics of window coverings: (a) the presence of hazardous operating cords (accessible operating cords longer than 8 inches in any use position) on stock window coverings; (b) the presence of hazardous inner cords (accessible inner cords that create a loop large enough to insert a child's head) on stock and custom window coverings; and (c) the absence of a required manufacturer label on stock and custom window coverings;
- the identified readily observable characteristics are adequately addressed by a voluntary standard, sections 4.3.1, 4.5, 5.3, 6.3, 6.7, and Appendices C and D of ANSI/WCMA–2018;
- window coverings that conform to sections 4.3.1, 4.5, 5.3, 6.3, 6.7, and Appendices C and D of ANSI/WCMA–2018 regarding the identified characteristics have been effective in reducing the risk of injury from strangulation associated with operating cords on stock window coverings, and inner cords on stock and custom window coverings. Additionally, the required manufacturer label effectively distinguishes between stock and custom window coverings, and expedites timely and effective recalls, by requiring identification of the manufacturer name and manufacture date on the product; and
- stock and custom window coverings manufactured or imported for sale in the United States substantially comply with the specified characteristics in sections 4.3.1, 4.5, 5.3, 6.3, 6.7, and Appendices C and D of ANSI/WCMA–2018.

[1] On November 2, 2022, the Commission voted 4–0 to publish this final rule, and each Commissioner issued a statement in connection with their vote.

[2] Staff's NPR Briefing Package is available at: *https://www.cpsc.gov/s3fs-public/NPRs-Add-Window-Covering-Cords-to-Substantial-Product-Hazard-List-Establish-Safety-Standard-for-Operating-Cords-on-Custom-Window-Coverings-updated-10-29-2021.pdf?VersionId=HIM05bK3WDLRZrlNGogQLknhFvhtx3PD.*

[3] Staff's Final Rule Briefing Package is available at: *https://www.cpsc.gov/s3fs-public/Final-Rules-to-1-Add-Window-Covering-Cords-to-the-Substantial-Product-Hazard-List-and-2-Establish-a-Safety-Standard-for-Operating-Cords-on-Custom-Window-Coverings.pdf?VersionId=nDxz9G5hfDy5k.SnXkqgGKLiDsMK4hpe.*

B. Background and Statutory Authority

Section 15(j) of the CPSA authorizes the Commission to specify, by rule, for any consumer product or class of consumer products, characteristics whose existence or absence are deemed a substantial product hazard under section 15(a)(2) of the CPSA. 15 U.S.C. 2064(j). Section 15(a)(2) of the CPSA defines a ''substantial product hazard,'' in relevant part, as a product defect which (because of the pattern of defect, the number of defective products distributed in commerce, the severity of the risk, or otherwise) creates a substantial risk of injury to the public. For the Commission to issue a rule under section 15(j) of the CPSA, the characteristics involved must be ''readily observable'' and must have been addressed by a voluntary standard. Moreover, the voluntary standard must be effective in reducing the risk of injury associated with the consumer products; and there must be substantial compliance with the voluntary standard. *Id.*

As explained in more detail in section II.A of this preamble, the ''readily observable'' characteristics of window covering cords include visual observation for the presence of operating and inner cords, and a manufacturer label; and when cords are present, simple manipulations and observation of the window covering to assess cord accessibility by children, and to measure the length of accessible cords to determine whether they present a strangulation hazard.

C. Product Description

Window coverings include shades, blinds, curtains, and draperies, among other products. Both blinds and shades may have inner cords that distribute forces to cause a motion, such as raising, lowering, or rotating the window covering to achieve a consumer's desired level of light control. Manufacturers use inner cords on window coverings to open and close blinds and shades, using a variety of mechanisms, including traditional operating cords, motors, or direct-lift of the bottom rail of the product, to manipulate inner cords. Curtains and draperies do not contain inner cords, but consumers can operate curtains and drapes using a continuous loop operating cord or a wand.

A cord or loop used by consumers to manipulate a window covering is called an ''operating cord'' and may be in the form of a single cord, multiple cords, or continuous loops. ''Cordless'' window coverings are products designed to function without an operating cord, but they may contain inner cords. Figures 1 through 6 explain window covering terminology and show examples of different types of window coverings.

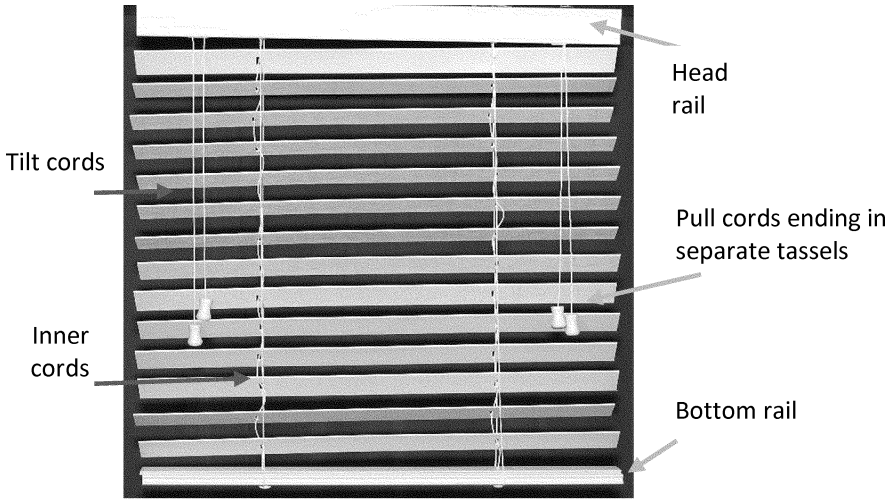


Figure 1. Horizontal blind

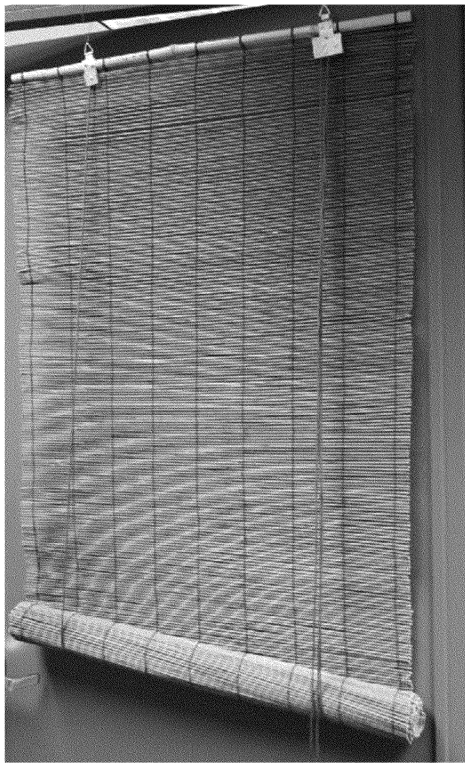


Figure 2. Roll-up shade with lifting loops

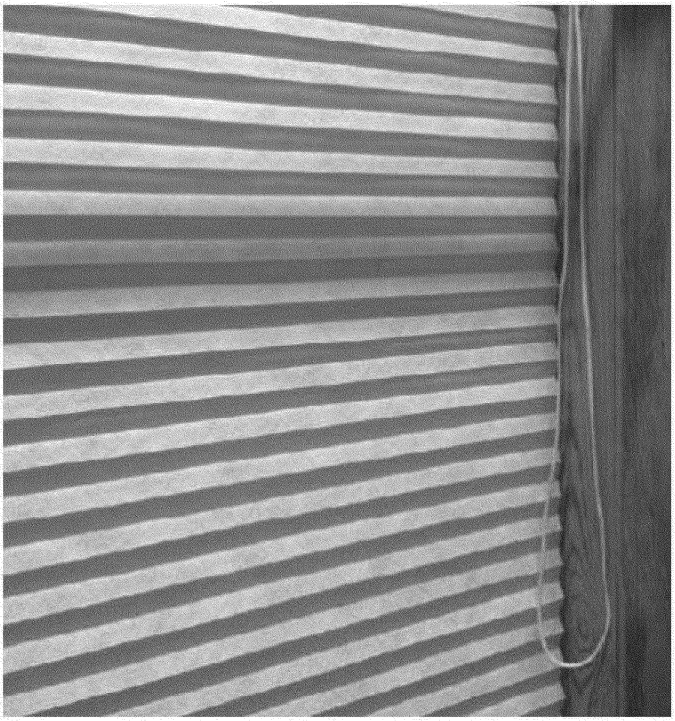


Figure 3. Cellular shade with looped operating cord

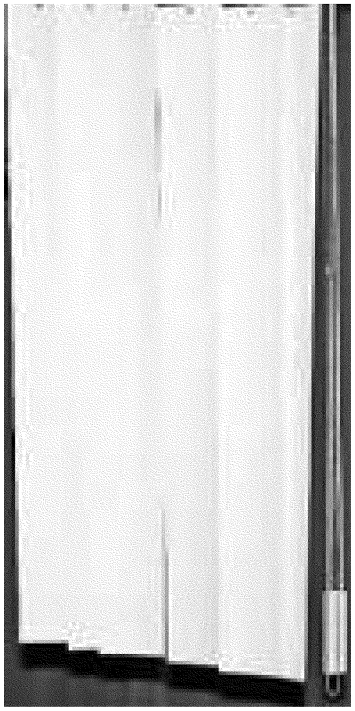


Figure 4. Vertical blind

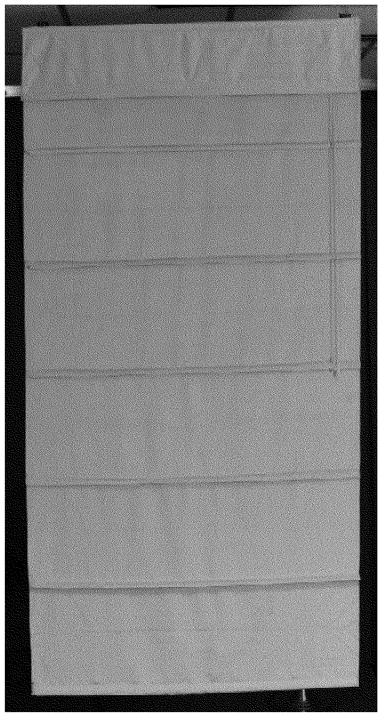


Figure 5. Roman shade

Figure 6. Cordless horizontal blind

Figure 1 shows a horizontal blind containing inner cords, operating cords, and tilt cords. Figure 2 shows a roll-up shade containing lifting loops and operating cords. Figure 3 shows a cellular shade with inner cords between two layers of fabric and operating cords. Figure 4 shows a vertical blind with a looped operating cord to traverse the

blind and a looped bead chain to tilt the vanes. Figure 5 shows a Roman shade with inner cords that run on the back side of the shade and operating cords. Figure 6 is a horizontal blind that is marketed as ''cordless'' because it has no operating cords, but it still contains inner cords.

This final rule relies on the definitions of window coverings and their features as set forth in the ANSI/WCMA–2018 standard, which requires ''stock'' and ''custom'' window coverings to meet different sets of requirements. The final rule defines a ''stock window covering'' using the definition of ''Stock Blinds, Shades, and Shadings'' in section 3, definition 5.02 of ANSI/WCMA–2018, describing them as a product that is completely or substantially fabricated prior to being distributed in commerce and as a specific stock-keeping unit (SKU). Even when the seller, manufacturer, or distributor modifies a pre-assembled product, by adjusting to size, attaching the top rail or bottom rail, or tying cords to secure the bottom rail, the product is still considered ''stock'' as defined in the voluntary standard. Moreover, under the voluntary standard, online sales of a window covering, or the size of the order, such as multifamily housing orders, do not make the product a non-stock product. ANSI/WCMA–2018 provides these examples to clarify that, as long as the product is ''substantially fabricated'' prior to distribution in commerce, subsequent changes to the product do not change its categorization from ''stock'' to ''custom.'' The final rule defines a ''custom window covering'' the same as the definition of ''Custom Blinds, Shades, and Shadings'' in section 3, definition 5.01 of the ANSI/WCMA–2018 standard, which is any window covering that is not classified as a stock window covering.

D. Hazards Associated With Window Covering Cords

Window coverings can pose strangulation hazards to children when they have cords that are accessible and long enough to wrap around a child's neck. Figures 7, 8, and 9, below, depict the strangulation hazard for different window covering cord types.

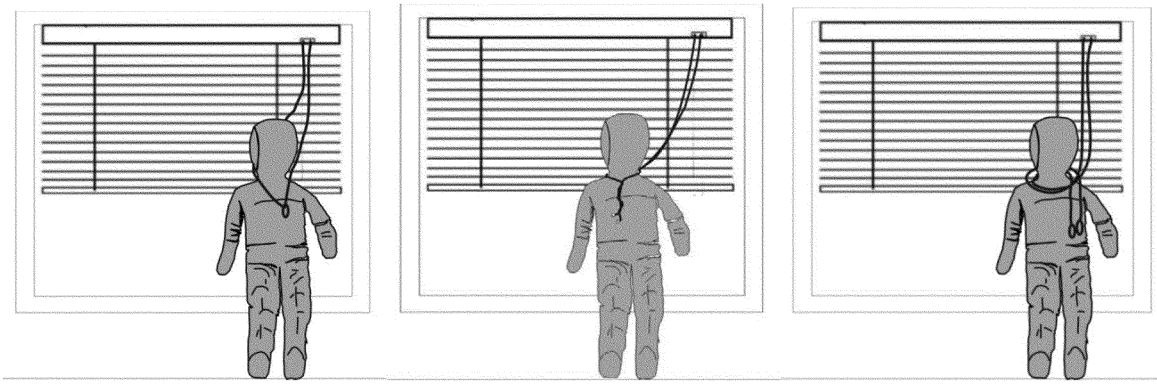


Figure 7. (a) Operating pull cords ending in one tassel (left); (b) operating cords tangled, creating a loop (middle); (c) operating cords wrapped around the neck (right)

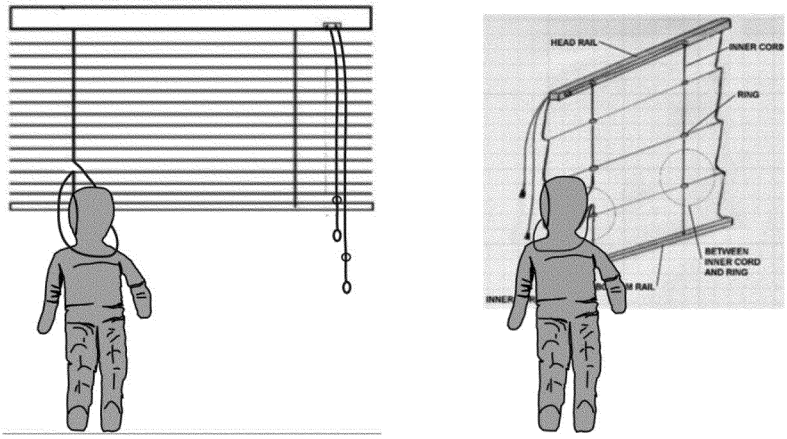


Figure 8. (a) Inner cords creating a loop (left), (b) Inner cords on the back side of Roman shade (right)

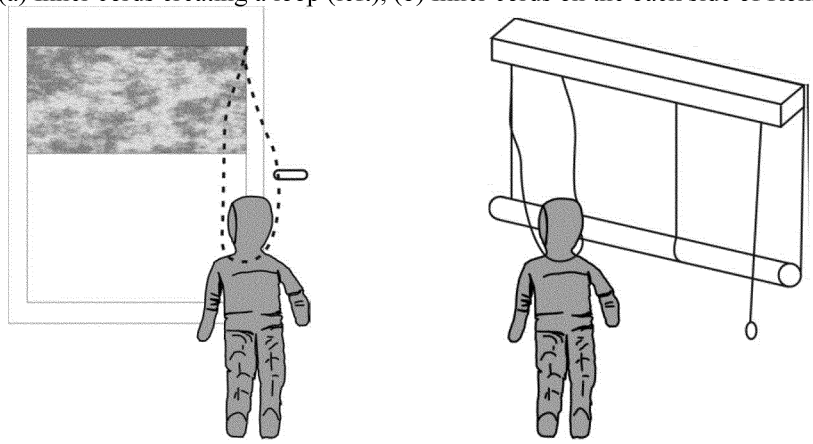


Figure 9. (a) Continuous loop cord (left), (b) Lifting loop on Roll-up Shade (right)

As reviewed in the NPR, children can strangle from mechanical compression of the neck when they place a window covering cord around their neck. 87 FR at 894–96. Strangulation can lead to serious injuries with permanent debilitating outcomes or death. If sustained lateral pressure occurs at a level resulting in vascular occlusion, strangulation can occur when a child's head or neck becomes entangled in any position, even in situations where the body is fully or partially supported.

Strangulation is a form of asphyxia that can be partial (hypoxia), when there is an inadequate oxygen supply to the lungs, or total, when there is complete impairment of oxygen transport to tissues. A reduction in the delivery of oxygen to tissues can result in permanent, irreversible damage. Experimental studies show that only 2 kg (4.4 lbs.) of pressure on the neck may occlude the jugular vein (Brouardel, 1897); and 3–5 kg (7–11 lbs.) may occlude the common carotid arteries (Brouardel, 1897 and Polson, 1973). Minimal compression of any of these vessels can lead to unconsciousness within 15 seconds and death in 2 to 3 minutes (Digeronimo and Mayes, 1994; Hoff, 1978; lserson, 1984; Polson, 1973).

The vagus nerve is also located in the neck near the jugular vein and carotid artery. The vagus nerve is responsible for maintaining a constant heart rate. Compression of the vagus nerve can result in cardiac arrest due to mechanical stimulation of the carotid sinus-vagal reflex. In addition, the functioning of the carotid sinuses may

be affected by compression of the blood vessels. Stimulation of the sinuses can result in a decrease in heart rate, myocardial contractility, cardiac output, and systemic arterial pressure in the absence of airway blockage.

Strangulation proceeding along one or more of these pathways can progress rapidly to anoxia, associated cardiac arrest, and death. As seen in the CPSC data (Wanna-Nakamura, 2014), and in the published literature, neurological damage may range from amnesia to a long-term vegetative state. Continued deterioration of the nervous system can lead to death (Howell and Gully, 1996; Medalia et al., 1991).

Because a loop acts as a noose when a child's neck is inserted, and death can occur within 2–3 minutes of a child losing footing, CPSC concludes that head insertion into a preexisting loop poses a higher risk of injury than when a cord that does not contain a pre-existing loop is wrapped around a child's neck; although both scenarios have been demonstrated to be hazardous and have led to fatal outcomes, according to CPSC data.

Based on the data, the Commission also concludes that reliance on parental supervision and warning labels are inadequate to address the risk of injury associated with window covering cords. A user research study found that caregivers lacked awareness regarding the potential for window covering cord entanglement, lacked awareness of the speed and mechanism of the strangulation injury; stated difficulty using and installing safety devices for window coverings, among the primary reasons for not using them; and caregivers were unable to recognize the purpose of the safety devices provided with window coverings (Levi et al., 2016).[4] According to Godfrey *et al.* (1983), consumers are less likely to look for and read safety information about the products that they frequently use and are familiar with. Consumers are very likely to be familiar with window coverings because they almost certainly have window coverings in their homes and probably use them daily. Therefore, even well-designed warning labels will have limited effectiveness in communicating the hazard on this type of product.

Based on the foregoing, the Commission finds that warning labels are unlikely to effectively reduce the strangulation risk from hazardous cords on window coverings, because consumers are not likely to read and follow warning labels on window covering products, and strangulation deaths among children occur quickly and silently, such that parental supervision is insufficient to address the incidents. Indeed, staff observed that most of the incident window covering units had the permanent warning label required by the ANSI/WCMA standard, applicable at the time of manufacture, affixed to the product. Even well-designed warning labels will have limited effectiveness in communicating the hazard on this type of product, because consumers are less likely to heed warnings for familiar products that they commonly interact with without incident.

In contrast, stock window covering requirements in the ANSI/WCMA standard adequately address the strangulation hazard, by not allowing hazardous cords on the product, by design, and do not rely on consumer action to address the risk. Accordingly, the Commission concludes that the risk of injury associated with window coverings must be addressed through performance requirements for window covering cords.

As discussed in section II of this preamble, ANSI/WCMA–2018 contains performance requirements that, when products conform, adequately and effectively address the risk of strangulation associated with operating cords on stock products, and inner cords on both stock and custom products.

E. Risk of Injury

The Commission's 2015 advance notice of proposed rulemaking (ANPR) on Window Coverings presented incident data covering the period from 1996 through 2012. 80 FR 2327, 2332 (Jan. 16, 2015). Since then, WCMA published the revised voluntary standard for window coverings, ANSI/WCMA–2018. For products that comply, the standard has removed from the market hazardous operating/pull cords and inner cords for stock window coverings, and removed hazardous inner cords for custom window coverings.

To study the effectiveness and any lack of compliance with the voluntary standard associated with window covering cords, for the NPR, CPSC staff reviewed the data related to these products from 2009 through 2020.[5] Since extracting data for the NPR, CPSC received 15 additional incidents. Tab A of Staff's Final Rule Briefing Package details this new incident data. For the final rule, we describe incidents received from 2009 through 2021. The following analysis distinguishes between stock and custom window coverings, whenever feasible.

1. Incident Data From CPSC Databases

Based on newspaper clippings, consumer complaints, death certificates purchased from states, medical examiners' reports, reports from hospital emergency department-treated injuries, and in-depth investigation reports, CPSC staff found a total of 209 reported fatal and near-miss strangulations on window covering cords that occurred among children 8 years old and younger from January 2009 through December 2021. These 209 incidents do not necessarily include all window covering cord-related strangulation incidents that occurred during that period. However, these 209 incidents do provide a minimum number for such incidents during that time frame.

Table 1a provides the breakdown of the incidents by year. Totals include new incidents received after the NPR data analysis and are noted in parentheticals below. Because reporting is ongoing and the number of incidents may grow, and because these reports are anecdotal and reporting is incomplete, CPSC strongly discourages drawing any inferences based on the year-to-year increases or decreases shown in the reported data.

[4] *https://cpsc.gov/s3fs-public/Window%20Coverings%20Safety%20Devices%20Contractor%20Reports.pdf.*

[5] CPSC's incident search focused on fatal and near-miss strangulations suffered by young children due to window covering cords. Whenever feasible, staff selected the time frame to be 2009 through 2021. CPSC staff searched three databases for identification of window covering cord incidents: the Consumer Product Safety Risk Management System (CPSRMS), the National Electronic Injury Surveillance System (NEISS), and the Multiple Cause of Deaths data file (further information can be found at *https://wonder.cdc.gov/mcd-icd10.html*). The first two sources are CPSC-maintained databases. The Multiple Cause of Deaths data file is available from the National Center for Health Statistics (NCHS).

TABLE 1a—REPORTED FATAL AND NEAR-MISS STRANGULATION INCIDENTS INVOLVING WINDOW COVERING CORDS AMONG CHILDREN EIGHT YEARS AND YOUNGER 2009–2021

Incident year	Number of reported incidents		
	Total	Fatal strangulations	Near-miss strangulations
2009	48	14	34
2010	31	11	20
2011	10	6	4
2012	17	8	9
2013	9	2	7
2014	17	12	5
2015	9	7	2
2016	17	13	4
2017	10 (1)	5	5 (1)
2018	8	4	4
2019	11	4	7
*2020**	13 (5)	8 (5)	5
*2021**	9 (9)	6 (6)	3 (3)
Total	209 (15)	100 (11)	109 (4)

Source: CPSC epidemiological databases CPSRMS and NEISS. Data in () indicate the number of new incidents received since the NPR data analysis.
Note: * indicates data collection is ongoing.

Among the 15 newly reported incidents, staff identified 11 fatalities (73 percent) and 4 non-hospitalized injuries (27 percent). The non-hospitalized injuries resulted in lacerations and abrasions.

Table 1b expands on Table 1a to display the distribution of the annual incidents by severity of incidents and type of window coverings involved. CPSC staff identified 50 of 209 incident window coverings (24 percent) to be stock products, and 36 of the 209 (17 percent) window coverings as custom products. CPSC staff could not identify the window covering type in the remaining 123 of the 209 (59 percent) incidents; 65 of the 123 (53 percent) incidents involving an uncategorized window covering resulted in a fatality.

TABLE 1b—REPORTED FATAL AND NEAR-MISS STRANGULATION INCIDENTS INVOLVING STOCK/CUSTOM/UNKNOWN TYPES OF WINDOW COVERING CORDS AMONG CHILDREN EIGHT YEARS AND YOUNGER 2009–2021

Incident year	Reported incidents by window covering type			
	Stock (fatal/nonfatal)	Custom (fatal/nonfatal)	Unknown (fatal/nonfatal)	All
2009	20 (4/16)	7 (2/5)	21 (8/13)	48
2010	10 (3/7)	7 (2/5)	14 (6/8)	31
2011	2 (1/1)	4 (3/1)	4 (2/2)	10
2012	1 (1/0)	5 (1/4)	11 (6/5)	17
2013	2 (1/1)	3 (1/2)	4 (0/4)	9
2014	3 (2/1)	2 (1/1)	12 (9/3)	17
2015	4 (4/0)	1 (1/0)	4 (2/2)	9
2016	5 (3/2)	4 (3/1)	8 (7/1)	17
2017	2 (1/1)	1 (0/1)	7 (4/3)	10
2018	.....	1 (0/1)	7 (4/3)	8
2019	1(0/1)	.....	10 (4/6)	11
*2020**	.....	1 (1/0)	12 (7/5)	13
*2021**	.....	.....	9 (6/3)	9
Total	50 (20/30)	36 (15/21)	123 (65/58)	209

Source: CPSC epidemiological databases CPSRMS and NEISS.
Note: * indicates data collection is ongoing.

One hundred of the 209 incidents (48 percent) reported a fatality. Among the nonfatal incidents, 16 involved hospitalizations (8 percent). The long-term outcomes of these 16 injuries varied from a scar around the neck, to quadriplegia, to permanent brain damage. One additional child was treated and transferred to another hospital; the final outcome of this patient is unknown. In addition, 79 incidents (38 percent) involved less-severe injuries, some requiring medical treatment, but not hospitalization. In the remaining 14 incidents (7 percent), a child became entangled in a window covering cord, but was able to disentangle from the cord and escape injury. For the NPR, among the incidents with gender information available, 66 percent of the children were males, and 34 percent were females. One incident did not report the child's gender. For the 15 new incidents staff found a similar trend regarding gender; 62 percent of the victims were male and 38 percent were females.

Table 1c provides a breakdown of the incidents by window covering type. Among the 11 newly reported deaths

since the NPR data analysis, staff definitively identified the cord type in 6 deaths. Three deaths (27 percent) involved a pull cord, two deaths (18 percent) involved a continuous loop, and one death (9 percent) involved inner cord(s); staff had insufficient information to determine the cord type involved for the remaining five fatal incidents.

TABLE 1c—DISTRIBUTION OF REPORTED INCIDENTS BY TYPES OF WINDOW COVERINGS AND ASSOCIATED CORDS 2009–2021

[Numbers in parentheses indicate new reports received since NPR]

Window covering type	Cord type						
	Pull cord	Continuous loop	Inner cord	Lifting loop	Tilt cord	Unknown	Total
Horizontal	68 (3)	2	4 (1)	0	5	10	89 (4)
Vertical	0	12 (1)	0	0	0	0	12 (1)
Drapery	0	4 (1)	0	0	0	0	4 (1)
Roman	2	2	19	0	0	1	24
Other *	2	5	0	0	0	0	7
Roll-Up	1	0	0	4	0	1	6
Roller	0	9	0	0	0	0	9
Unknown	1	1	0	0	0	56 (9)	58 (9)
Total	74 (3)	35 (2)	23 (1)	4	5	68 (9)	209 (15)

Source: CPSC epidemiological databases CPSRMS and NEISS.
Other *: This category includes cellular and pleated shades.
Subtotal †: This row shows the incidents that are relevant to the Section 7&9 rule.

2. Incident Data From National Estimates

(a) Estimates of Window Covering Cord-Related Strangulation Deaths Using National Center for Health Statistics Data

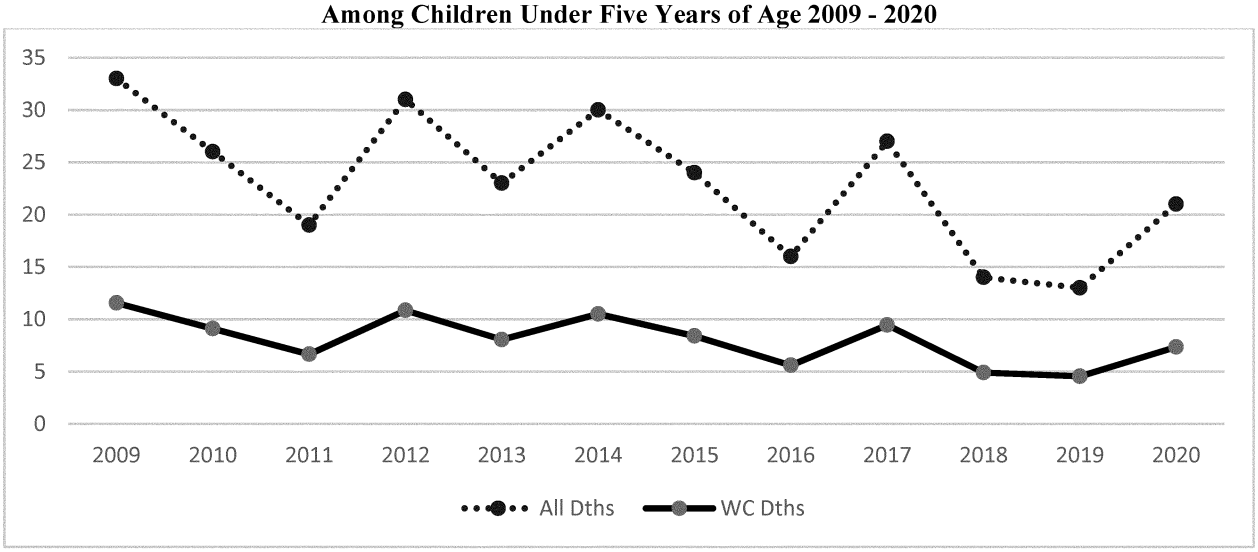
The National Center for Health Statistics (NCHS) compiles all death certificates filed in the United States into multiple-cause mortality data files. The mortality data files contain demographic information on the deceased, as well as codes to classify the underlying cause of death, and up to 20 contributing conditions. The NCHS compiles the data in accordance with the World Health Organization (WHO) instructions, which request member nations to classify causes of death by the current Manual of the International Statistical Classification of Diseases, Injuries, and Causes of Death. Death classifications use the tenth revision of the International Classification of Diseases (ICD), implemented in 1999. For the NPR, 2019 was the latest available year for NCHS data; since then, data for 2020 have become available.

Using the ICD10 code value of W76 (*Other accidental hanging and strangulation*), the code most likely to capture strangulation fatalities among children under 5 (based on empirical evidence from death certificates maintained in CPSC databases), CPSC staff derived fatality estimates for 2009 through 2020, presented in Figure 10 below. An unknown proportion of strangulation deaths is likely coded under ICD10=W75 (*Accidental suffocation and strangulation in bed*) as well as ICD10=W83 (*Other specified threats to breathing*), which staff cannot separate out from the non-strangulation deaths because of the unavailability of any narrative description in these data. Hence, CPSC's estimates of strangulation deaths are minimums.

A 2002 CPSC report by Marcy *et al.* [6] concluded that 35 percent of all strangulation fatalities among children less than 5 years old were associated with window covering cords. Assuming that the same proportion applied for the entire 12-year period 2009–2020, Figure 10 below presents the national estimates for all strangulation fatalities as well as strangulations involving window covering cords among children under 5.

[6] N. Marcy, G. Rutherford. ''Strangulations Involving Children Under 5 Years Old.'' U.S. Consumer Product Safety Commission, December 2002.

Figure 10: Estimated Annual Minimum for Fatal Strangulations Among Children Under Five Years of Age 2009 - 2020



Source: Multiple Cause of Death data, NCHS, 2009 – 2020.
Note: The estimates for the window covering cord fatalities are based on the assumptions that 35% of all strangulation fatalities are due to window covering cords and that this percentage remained unchanged over 2009-2020.

Based on the 2002 study, staff estimates the annual average number of deaths at 8.1 (or 9, if rounded up to the nearest integer).[7] We note that this estimate is consistent with CPSC's actual incident data over a 12-year period. For example, at the time of this final rule analysis, the incidents over the 12-year period 2009–2020 report an average of 7.8 (or 8, if rounded up to the nearest integer) annual deaths involving window covering cords among children under 8.

F. Applicable Voluntary Standard—ANSI/WCMA–2018

WCMA updated the 2018 version the standard in May 2018, to include missing balloted revisions. The standard went into effect on December 15, 2018. Since CPSC staff submitted the NPR Staff Briefing Package in October 2021, WCMA held multiple meetings with the intent of revising the ANSI/WCMA voluntary standard, balloting a revised version on July 15, 2022.[8] The balloted standard is not in effect and does not modify the provisions in the 2018 standard relevant to this rulemaking. Accordingly, the final rule to amend part 1120 is based on ANSI/WCMA–2018.

The 2018 voluntary standard segments the window covering market between ''stock'' and ''custom'' window coverings, as defined in section 3 of the standard, definitions 5.02 and 5.01. Per section 4.3.1 of the standard, stock window coverings are required to have:

(1) no operating cords (4.3.1.1),

(2) inaccessible operating cords (4.3.1.3), or

(3) short operating cords (equal to or less than 8 inches) (4.3.1.2).

As reviewed in section II of this preamble, the Commission finds that the requirements for operating cords on stock window coverings in ANSI/WCMA–2018 adequately address the risk of strangulation to children, by removing operating cords, ensuring that they are inaccessible to children, or by making them too short to wrap around a child's neck. Staff's review of the incident data found that if stock window coverings had complied with the requirements in sections 4.3.1 of ANSI/WCMA–2018 at the time of the incident, all operating cord incidents would have been prevented. *See* Tabs G and I of Staff's NPR Briefing Package; Briefing Memorandum of Staff's Final Rule Briefing Package (at page 36). However, as shown in Table 2, ANSI/WCMA–2018 does not adequately address the risk of injury associated with custom window coverings, because custom products can still be sold to consumers with hazardous operating cords longer than 8 inches, if manufacturers give consumers the option to custom order the products (sections 4.3.2.4 through 4.3.2.7 of ANSI/WCMA–2018).[9] A hazardous operating cord is one that a child can access, and that is long enough for a child to either wrap around their neck (longer than 8 inches), or to insert their head into a pre-formed loop.

The Commission also finds that section 4.5 of ANSI/WCMA adequately addresses the strangulation risk associated with inner cords on both stock and custom window coverings. ANSI/WCMA–2018 requires that if inner cords are present on the product, the inner cords must be (1) inaccessible, or (2) if cords are accessible, the loop created when pulling the cord (with a maximum force of 5 pounds) cannot allow a head probe to be inserted using a 10-pound force. Section II of this preamble provides an analysis of the inner cord strangulation hazard on stock and custom window coverings. Section 4.5 of the ANSI/WCMA–2018 standard adequately addresses the risk of injury associated with inner cords on stock

[7] We received a comment critical of CPSC's use of this 2002 study. At this point in time, we are unaware of other data sources that would provide information regarding a more current national trend in window covering cord-related strangulations and the commenter did not provide an alternate data source.

[8] CPSC staff participated in all meetings, and meeting logs have been placed on the rulemaking docket for custom window coverings (Docket No. CPSC–2013–0028).

[9] Although custom window coverings manufacturers can choose to meet the operating cord requirements for stock window coverings (sections 4.3.2.1 through 4.3.2.3), the standard does not require them to do so. Instead, the standard allows firms to continue manufacturing and selling custom window coverings that contain hazardous operating cords (sections 4.3.2.4 through 4.3.2.7). Because the ANSI/WCMA–2018 standard does not adequately address the risk of injury from operating cords on custom products, this final rule does not include them in the scope of the rule under section 15(j) of the CPSA. The Commission is addressing operating cords on custom window coverings in a separate rulemaking under sections 7 and 9 of the CPSA; CPSC Docket No. CPSC–2013–0028.

and custom window coverings because, similar to operating cords on stock products, inner cords must be not present, or must be inaccessible, or, if inner cords are accessible, the cords must be too short to create a loop large enough for a child to insert his or her head. Staff's review of the incident data found that if stock and custom window coverings had been in compliance with section 4.5 of ANSI/WCMA–2018, all inner cord incidents would have been prevented on a window covering that is unbroken and intact. *Id.*

Table 2 explains the requirements in in ANSI/WCMA–2018 for operating cords, inner cords, and the manufacturer label, on stock and custom window coverings. In the final rule, the Commission deems failure to follow the provisions in requirements 1 through 5 an SPH, while the Commission addresses the inadequate provisions in requirements 6 through 8 in the final rule for operating cords on custom window coverings under CPSC Docket No. CPSC–2013–0028.

TABLE 2—REQUIREMENTS FOR STOCK AND CUSTOM PRODUCTS IN ANSI/WCMA–2018

Performance requirements in ANSI/WCMA A100.1–2018	Assessment of the performance requirement	Stock products	Custom products
1. No operating cords OR	Adequate	Required to have one or more of these options.	Allowed/Not Required.
2. Short cord with a length equal to or less than 8 inches in any state (free or under tension) OR			
3. Inaccessible operating cords.			
4. Inner cords that meet Appendix C and D	Adequate	Required	Required.
5. Manufacturer Label that meets section 5.3	Adequate	Required	Required.
6. Single Retractable Cord Lift System (no limit on length of exposed cord when operating).	Inadequate	Prohibited.	Allowed/ Not Prohibited.
7. Continuous Loop Operating System.			
8. Accessible Operating Cords longer than 8 inches.			

G. Commission Efforts To Address Hazardous Window Covering Cords

1. Petition and Rulemaking

On October 8, 2014, the Commission granted a petition to initiate a rulemaking to develop a mandatory safety standard for window coverings.[10] The petition asked CPSC to prohibit window covering cords when a feasible cordless alternative exists. When a feasible cordless alternative does not exist, the petition requested that all window covering cords be made inaccessible by using passive guarding devices. The Commission granted the petition and directed staff to prepare an ANPR to seek information and comment on regulatory options for a mandatory rule to address the risk of strangulation to young children on window covering cords.

On January 9, 2015, the Commission voted to approve publication in the **Federal Register** of the ANPR for corded window coverings, with changes. The Commission published the ANPR for corded window covering products on January 16, 2015 (80 FR 2327). The ANPR initiated a rulemaking proceeding under the CPSA. CPSC invited comments concerning the risk of injury associated with corded window coverings, the regulatory alternatives discussed in the notice, the costs to achieve each regulatory alternative, the effect of each alternative on the safety, cost, utility, and availability of window coverings, and other possible ways to address the risk of strangulation posed to young children by window covering cords. CPSC also invited interested persons to submit an existing standard or a statement of intent to modify or develop a voluntary standard to address the risk of injury. The ANPR was based on the 2014 version of the ANSI/WCMA standard.

As described in section II.F of this preamble, the voluntary standard, ANSI/WCMA–2018, adequately addresses the risk of injury from operating and inner cords on stock window coverings, and the risk of inner cord strangulation on custom window coverings. Accordingly, the Commission is issuing two final rules: (1) this final rule under section 15(j) of the CPSA, to deem as SPHs, stock window coverings that do not comply with one or more of three readily observable characteristics, and custom window coverings that do not comply with one or more of two readily observable characteristics; and (2) in a separate rulemaking under sections 7 and 9 of the CPSA, a final rule that requires that custom window coverings manufactured for sale in the United States not contain hazardous operating cords, by complying with the same operating cord requirements as stock products in section 4.3.1 of ANSI/WCMA–2018, or by making an accessible cord non-hazardous, as described in the final rule.[11]

2. Window Covering Recalls

As reported in the NPR, during the period January 1, 2009 through December 31, 2020, CPSC conducted 42 consumer-level recalls, including two recall reannouncements. 87 FR at 901. Tab C of Staff's NPR Briefing Package provides the details of these 42 recalls, where strangulation was the primary hazard. Manufacturers recalled more than 28 million units,[12] including: Roman shades and blinds, roll-up blinds, roller shades, cellular shades, horizontal blinds, and vertical blinds. The recalled products also included stock products, which can be purchased by consumers off-the-shelf, and custom products, which are made-to-order window coverings based on a consumer's specifications, such as material, size, and color. Recalled units did not comply with the current voluntary standard, ANSI/WCMA–2018. CPSC has not conducted any window

[10] The petition, CP 13–2, was submitted by Parents for Window Blind Safety, Consumer Federation of America, Consumers Union, Kids In Danger, Public Citizen, U.S. PIRG, Independent Safety Consulting, Safety Behavior Analysis, Inc., and Onder, Shelton, O'Leary & Peterson, LLC. Staff's October 1, 2014 Petition Briefing Package, and a copy of the petition at Tab A, is available on CPSC's website at: *https://cpsc-d8-media-prod.s3.amazonaws.com/s3fs-public/pdfs/foia_PetitionRequestingMandatoryStandardforCordedWindowCoverings.pdf.*

[11] The custom window covering final rule provides several methods for window covering manufacturers to produce safe window covering options: cordless, short cords 8 inches or less, inaccessible cords (cord shrouds or retractable cords with a 12-inch stroke length), and continuous loops contained within a cord or bead restraining device that meets the requirements of the final rule.

[12] This estimate does not include the recalled units of Recall No. 10–073. This was an industry-wide recall conducted by members of the Window Covering Safety Council (WCSC). The recall announcement did not provide an exact number of recalled products.

covering recalls since December 31, 2020.

H. Comments on the NPR

CPSC received three comments on the section 15(j) rule during the comment period, and two comments before the comment period began. All comments generally supported the 15(j) rule and have been placed on the docket for this rule. Commenters include WCMA (two comments),[13] Consumer Federation of America, Consumer Reports, and Parents for Window Blind Safety. Based on staff's assessment of the ANSI/WCMA–2018 standard and all comments in support of the rule, the Commission finalizes this rule as proposed.

II. Commission Determination of a Substantial Product Hazard

Sections 4.3.1, 4.5, 5.3, 6.3, 6.7, and Appendices C and D of ANSI/WCMA–2018 set forth the performance requirements for the identified readily observable characteristics of stock and custom window coverings specified in the final rule. Table 3 summarizes these requirements. The final rule deems nonconformance to one or more of the identified readily observable characteristics of stock and custom window coverings in ANSI/WCMA–2018 to be an SPH under section 15(a)(2) of the CPSA.

TABLE 3—READILY OBSERVABLE CHARACTERISTICS IN ANSI/WCMA–2018 FOR STOCK AND CUSTOM WINDOW COVERINGS

Stock window coverings section of the standard	*Readily observable characteristics*	*Criterion*
A. Operating cord		
4.3.1.1 Cordless Operating System: "*The product shall have no operating cords*".	Presence of the operating cord	(a) Not present *or*
4.3.1.2 Short Static or Access Cords: "*The product shall have a Short Cord*".	If present, measure the length in any position of the window covering.	(b) 8 inches or shorter *or*
4.3.1.3 Inaccessible Operating Cords: "*The operating cords shall be inaccessible as determined per the test requirements in Appendix C: Test Procedure for Accessible Cords*".	If present and longer than 8 inches, observe whether accessible.	(c) Inaccessible using cord accessibility probe.
B. Inner cord		
4.5 Inner Cords: "*All products with inner cords must meet the requirements in Appendix C and Appendix D.*" *Appendix C. Test Procedure for Accessible Cords.*	If present, determine whether accessible.	(a) Inaccessible using cord accessibility probe *or*
Appendix D. Hazardous Loop Test Procedure	If present, determine whether a child's head can penetrate the opening.	(b) Pull inner cord and measure to determine whether the opening is less than 17 inches. For 15(j) purposes, this is comparable to inserting a head probe with a force of 10 pounds.
C. Manufacturer label		
5.3 Manufacturer Label: There shall be a permanent label(s) or marking on all finished window covering products.	Presence of a permanent label or marking within or on the headrail or on the roller tube.	Observe whether the label is present and contains the following: (a) The name, city, and state of the manufacturer/importer/fabricator. (b) Month and year of manufacture. (c) Designation of window covering as ''Custom'' or ''Stock.''

A. Defined Characteristics Are Readily Observable

1. Operating Cords on Stock Window Coverings

Section 4.3.1 of ANSI/WCMA–2018 requires the operating cords of stock window coverings to be: (1) not present (cordless) (section 4.3.1.1); (2) inaccessible (section 4.3.1.3); or (3) eight inches long or shorter in any position of the stock window covering (section 4.3.1.2). The Commission determines that these characteristics of operating cords on stock window coverings are ''readily observable'' because, as explained in the NPR, they require visual observation and measurement to assess conformance with sections 4.3.1.1 through 4.3.1.4 of ANSI/WCMA–2018. 87 FR at 902–04. Additionally, the Commission deems the presence of an accessible operating cord longer than 8 inches in any position an SPH, because a child can wrap a cord or looped cord longer than 8 inches around his or her neck, and the child could strangle on the long cord.

2. Inner Cords on Stock and Custom Window Coverings

If a stock window covering conforms to the readily observable operating cord requirements in section 4.3.1 of ANSI/WCMA–2018, a CPSC investigator would then observe whether the window covering has hazardous inner cords, as set forth in section 4.5, 6.3, 6.7, and Appendices C and D, of ANSI/WCMA–2018. Investigators would also assess whether a custom window product contains a hazardous inner cord. ANSI/WCMA–18 requires that inner cords on stock and custom window coverings be: (1) not present (cordless); (2) inaccessible; or (3) short enough not to create a loop large enough for a child to insert their head. The Commission determines that these characteristics of inner cords on stock and custom window coverings are ''readily observable'' because, as detailed in the NPR, they require visual observation and direct measurements of the product to assess conformance with sections 4.5, 6.3, 6.7, Appendix C, and Appendix D of ANSI/WCMA–2018. 87 FR at 904–08. The Commission deems the presence of an accessible inner cord on stock and custom window coverings that creates a loop large enough for a child to insert his or her head when tested per sections 4.5, 6.3, 6.7, and

[13] WCMA also submitted its comments on the proposed rule for operating cords on custom window coverings (Docket CPSC–2013–0028) on the docket for this final rule under section 15(j) of the CPSA. Those comments are not generally relevant to the determinations required for a section 15(j) final rule (readily observable product characteristics are adequately addressed in a voluntary standard, and products substantially comply with the voluntary standard), and so the Commission addresses WCMA's comments in the final rule for custom window coverings.

Appendices C and D of ANSI/WCM–2018 to be an SPH, because a child can strangle on a noncompliant inner cord loop.

3. Manufacturer Label on Stock and Custom Window Coverings

Section 5.3 of ANSI/WCMA–2018 requires that stock and custom window coverings display a permanent label on the headrail (or roller tube) of a window covering, with the following information:

- the readily distinguishable name, city, and state of the manufacturer/importer/fabricator;
- the month and year of manufacture;
- the designation of the window covering as ''Custom'' or ''Stock.''

The Commission determines, as proposed in the NPR, that the absence of a manufacturer label is readily observable with a visual observation of the window covering. 87 FR at 908. The Commission deems the absence of a manufacturer label on a window covering an SPH, because the window covering would not be in compliance with section 5.3 of ANSI/WCMA–2018. Additionally, the absence of this manufacturer label makes it difficult for staff, manufacturers, and consumers to identify the product and class of products subject to a recall, and to distinguish stock from custom window coverings. More than 28 million window covering units have been subject to a recall. Product information that aids a recall is necessary to affect and expedite recalls, especially in cases where a consumer, such as a renter, did not directly purchase the window coverings and is reliant on the manufacturer label for product information.

B. Window Coverings That Conform to ANSI/WCMA–2018 Are Effective at Reducing the Risk of Injury Associated With the Identified Readily Observable Characteristics

Based on CPSC staff's analysis, the Commission determines that stock window coverings that comply with section 4.3.1 of the 2018 version of the ANSI/WCMA standard effectively eliminate or significantly reduce the risk of strangulation from operating cords, by removing operating cords, making operating cords inaccessible to children, or by ensuring that operating cords are not long enough for a child to wrap around his or her neck. *See* Tabs G and I of Staff's NPR Briefing Package; Briefing Memorandum of Staff's Final Rule Briefing Package (at page 36). Staff's review of the incident data found that if stock window coverings had complied with the requirements in sections 4.3.1 of ANSI/WCMA–2018 at the time of the incident, all operating cord incidents would have been prevented. *Id.* Even though the requirements in the 2018 standard, when followed, should lead to safe stock window coverings, the Commission acknowledges that it will take approximately 2 decades, for existing window coverings in consumers' homes to be replaced.[14]

Based on staff's assessment, the Commission also determines that stock and custom window coverings that comply with the inner cord requirements in sections 4.5, 6.3, 6.7, and Appendices C and D of ANSI/WCMA–2018 effectively eliminate or reduce the strangulation risk to children from hazardous inner cords. *Id.* Like the operating cord requirements for stock window coverings, the inner cord requirements eliminate hazardous cords, by removing them from the product, shrouding inner cords to make them inaccessible to children, or ensuring that if a child pulls on an inner cord, the loop created is not large enough for a child to insert his or her head. Staff's review of the incident data found that if stock and custom window coverings had been in compliance with section 4.5 of ANSI/WCMA–2018, all inner cord incidents would have been prevented on a window covering that is unbroken and intact. *Id.*

Finally, the Commission determines that stock and custom window coverings that comply with section 5.3 of ANSI/WCMA–2018, by displaying the required manufacturer label, are effective at reducing the risk of injury, by identifying whether a product is stock or custom, and by identifying the manufacturer and the manufacture date of the products. This information allows CPSC, manufacturers, and consumers to differentiate stock products from custom products, and it also aids in expediting timely and effective recalls. *See* Tab D of Staff's NPR Briefing Package.

C. Window Coverings Substantially Comply With the Identified Readily Observable Characteristics of Window Coverings

The Commission has several bases to determine that stock window coverings substantially comply with the requirements for operating cords in ANSI/WCMA–2018. First, WCMA, the trade association for window coverings and the body that created the voluntary standard, stated in a comment on the ANPR (comment ID: CPSC_2013–0028–1555) that there has been substantial compliance with the voluntary standard since its first publication. WCMA also stated that the association's message to manufacturers is that, to sell window coverings in the United States, compliance with the standard is mandatory.

Additionally, the Commission instructed the staff to investigate the level of compliance of window coverings with the voluntary standard. CPSC contracted with D+R International, which interviewed window covering manufacturers and component manufacturers to collect anecdotal information on the distribution of stock and custom product sales and the impact of compliance with the voluntary standard (D+R International, 2021). Various manufacturers indicated retail customers would not stock noncompliant products. Manufacturers are also aware of their customers' procedures, and they would not ship to them, if there were concerns about the assembly and installation process. The D+R report indicates that the voluntary standard has caused U.S. window covering manufacturers to design and offer cordless lift operations for most stock window covering categories. All manufacturers interviewed were aware of the standard and had implemented compliance in all stages of their development process, from product design to fabrication.

CPSC field staff also confirmed compliance of the categorization for ''stock'' and ''custom'' window coverings, as defined in the ANSI/WCMA standard. CPSC field staff conducted unannounced in-store visits to 18 firms, comprising wholesalers, manufacturers, and retailers. Window coverings in 13 locations demonstrated compliance with the voluntary standard for operating cords for stock and custom products. However, in four locations, staff observed noncompliance of custom window coverings with the ANSI/WCMA standard, primarily for characteristics that are not subject to this rule, including: deviations from the default options with no specific customer request that justified the deviation (*e.g.,* length of operating cords 40 percent longer than the window covering length and use of a cord tilt, instead of a wand tilt,); lack of warning label; lack of manufacturer label; and lack of hang tag. Staff found one location with a noncomplying stock window covering. This stock window

[14] For window coverings manufactured before the effective date of the voluntary standard, the Window Covering Safety Council (WCSC) distributes safety devices through its website, and during October safety month, CPSC and WCSC have promoted safe window coverings, and offer guidance on what to do to reduce the strangulation hazard.

covering was being sold with long beaded-cord loops in various sizes. Tab E of Staff's NPR Briefing Package contains a more detailed description of staff's assessment of substantial compliance with the voluntary standard.

Finally, CPSC technical staff tested custom product samples, using test parameters defined in ANSI/WCMA–2018, with a cord accessibility probe and force gauge. The samples tested by staff also indicated a high level of conformance in custom products regarding inner cord accessibility.

Based on incident data, WCMA's statements, contractor report findings, and staff's examination and testing of window covering products, the Commission determines that a substantial majority of window coverings sold in the United States comply with the readily observable safety characteristics identified in ANSI/WCMA–2018, as described in Table 3.

III. Description of the Final Rule

The final rule adds several new paragraphs in part 1120. The final rule includes two new definitions in § 1120.2(f) and (g), which define ''stock window covering'' and ''custom window covering'' consistent with the definitions in section 3 of ANSI/WCMA–2018, definitions 5.02 and 5.01, respectively. The final rule defines a ''stock window covering'' as a product that is ''completely or substantially fabricated'' prior to being distributed in commerce and is a stock-keeping unit (SKU). The definition further explains that even when a seller, manufacturer, or distributor modifies a pre-assembled product by, for example, adjusting the size, attaching a top rail or bottom rail, or tying cords to secure the bottom rail, the product is still considered ''stock.'' Additionally, the definition clarifies that online sales of the product, or the quantity of an order, such as a large quantity for a multifamily housing unit, do not make the product a non-stock product. The final rule defines a ''custom window covering'' as any window covering that is not classified as a stock window covering.

Section 1120.3 of the final rule lists substantial product hazards by product, identifying the readily observable characteristics of each product, and the sections of the voluntary standards that address each hazard. The final rule modifies § 1120.3 by adding ''stock window coverings'' and ''custom window coverings'' as § 1120.3(e) and (f), respectively. Section 1120.3(e) of the final rule deems stock window coverings that fail to comply with one or more of three readily observable characteristics in ANSI/WCMA–2018 an SPH:

(1) Operating cord requirements in sections 4.3.1.1 (cordless operating system), 4.3.1.2 (short static or access cord), or 4.3.1.3 (inaccessible operating cord);

(2) Inner cord requirements in sections 4.5, 6.3, 6.7, Appendix C, and Appendix D; and

(3) On-product manufacturer label in section 5.3.

Additionally, § 1120.3(f) of the final rule deems custom window coverings that fail to comply with one or more of two readily observable characteristics in ANSI/WCMA–2018 an SPH:

(1) Inner cord requirements in section 4.5, 6.3, 6.7, Appendix C, and Appendix D; and

(2) On-product manufacturer label in section 5.3.

These characteristics and the ANSI/WCMA–2018 requirements are explained in more detail in section II, and Tables 2 and 3, of this preamble.

Finally, the final rule adds § 1120.4(d), which provides the incorporation by reference details for the ANSI/WCMA standard.

IV. Effect of the Final Rule Under Section 15(j) of the CPSA

Section 15(j) of the CPSA allows the Commission to issue a rule specifying that a consumer product or class of consumer products has characteristics whose presence or absence creates a substantial product hazard. A rule under section 15(j) of the CPSA is not a consumer product safety rule, and thus, would not trigger the statutory requirements of a consumer product safety rule. For example, a rule under section 15(j) of the CPSA does not trigger the testing or certification requirements under section 14(a) of the CPSA.

Although a rule issued under section 15(j) of the CPSA is not a consumer product safety rule, a product that is or has an SPH listed in 16 CFR part 1120 is subject to the reporting requirements of section 15(b) of the CPSA, 15 U.S.C. 2064(b). A manufacturer, importer, distributor, or retailer that fails to report an SPH to the Commission is subject to civil penalties under section 20 of the CPSA, 15 U.S.C. 2069, and is possibly subject to criminal penalties under section 21 of the CPSA, 15 U.S.C. 2070.

A product that is or contains an SPH may also be subject to voluntary corrective action or mandatory corrective action under sections 15(c) and (d) of the CPSA, 15 U.S.C. 2064(c) and (d). Thus, by issuing a final rule under section 15(j) for stock and custom window coverings, the Commission can order the manufacturer, importer, distributor, or retailer of window coverings that do not conform to one or more of the identified readily observable characteristics to offer to repair or replace the product or to refund the purchase price to the consumer.

A product that is offered for import into the United States and is or contains an SPH shall be refused admission into the United States under section 17(a) of the CPSA, 15 U.S.C. 2066(a). Additionally, Customs and Border Protection (CBP) has the authority to seize certain products offered for import under the Tariff Act of 1930 (19 U.S.C. 1595a)(Tariff Act), and to assess civil penalties that CBP, by law, is authorized to impose. Section 1595a(c)(2)(A) of the Tariff Act states that CBP may seize merchandise, and such merchandise may be forfeited if: ''its importation or entry is subject to any restriction or prohibition which is imposed by law relating to health, safety, or conservation and the merchandise is not in compliance with the applicable rule, regulation, or statute.'' Thus, pursuant to the final rule, stock and custom window coverings that violate the rule are subject to CBP seizure and forfeiture.

V. Regulatory Flexibility Act Analysis

The Regulatory Flexibility Act (RFA) requires that proposed and final rules be reviewed for the potential economic impact on small entities, including small businesses. 5 U.S.C. 601–612. In the NPR, the Commission stated that the economic effect of the rule on all entities will be minimal, and that absent public comment with relevant information and evidence to the contrary, the Commission intended to certify at the final rule stage that the rule will not have a significant economic impact on a substantial number of small entities. 87 FR at 910–11. The Commission received no comments on the RFA analysis presented in the NPR, and we have not found any data that would alter that analysis. *See* Tab E of Staff's Final Rule Briefing Package. Accordingly, for the final rule, the Commission certifies that the rule will not have a significant impact on a substantial number of small businesses.

VI. Environmental Considerations

Generally, the Commission's regulations are considered to have little or no potential for affecting the human environment, and environmental assessments and impact statements are not usually required. *See* 16 CFR 1021.5(a). The final rule to deem stock and custom window covering cords that do not comply with the identified

readily observable characteristics to be an SPH is not expected to have an adverse impact on the environment, and falls within the ''categorical exclusion'' for the purposes of the National Environmental Policy Act. 16 CFR 1021.5(c).

VII. Paperwork Reduction Act

Under the Office of Management and Budget's (OMB) regulations (5 CFR 1320.3(b)(2)), the time, effort, and financial resources necessary to comply with a collection of information that would be incurred by persons in the ''normal course of their activities'' are excluded from a burden estimate, where an agency demonstrates that the disclosure activities required to comply are ''usual and customary.'' In the NPR, CPSC explained staff's assessment that more than 90 percent of the window covering market already complies with the voluntary standard, including the requirement in section 5.3 of ANSI/WCMA–2018 to place a manufacturer label on each window covering. CPSC received no comments on the burden estimate. For the final rule, CPSC will not establish an information collection under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3521), because the cost and burden of the label required in section 5.3 of ANSI/WCMA–2018 is incurred by window covering manufacturers in the ''normal course of their activities'' and are thus excluded from the burden estimate because compliance is ''usual and customary.''

VIII. Preemption

The final rule under section 15(j) of the CPSA does not establish a consumer product safety rule. Accordingly, the preemption provisions in section 26(a) of the CPSA, 15 U.S.C. 2075(a), do not apply to this rule.

IX. Effective Date

The Administrative Procedure Act (APA) generally requires that the effective date of a rule be at least 30 days after publication of a final rule. 5 U.S.C. 553(d). In the NPR, the Commission proposed that any stock or custom window coverings that did not conform to the specified sections of ANSI/WCMA A100.1—2018 (summarized in Table 3), be deemed an SPH effective 30 days after publication of a final rule in the **Federal Register**. We received no comments on the effective date. Accordingly, the final rule will apply to all stock and custom window coverings that do not comply with the readily observable characteristics of ANSI/WCMA–2018, as specified in Table 3 of this preamble, that are distributed in commerce or imported on or after December 28, 2022.

X. Incorporation by Reference

The Commission incorporates by reference certain provisions of ANSI/WCMA A100.1—2018, American National Standard for Safety of Corded Window Covering Products. The Office of the Federal Register (OFR) has regulations concerning incorporation by reference. 1 CFR part 51. The OFR's regulations require that, for a final rule, agencies must discuss, in the preamble of the rule, ways that the materials the agency incorporates by reference are reasonably available to interested persons and how interested parties can obtain the materials. In addition, the preamble of the rule must summarize the material. 1 CFR 51.5(b).

In accordance with the OFR's requirements, sections I.F, II.A, and Table 3 of this preamble summarize the provisions of ANSI/WCMA A100.1—2018 that the Commission is incorporating by reference. ANSI/WCMA A100.1—2018 is copyrighted. You can view a read-only copy of ANSI/WCMA A100.1—2018 at: *https://wcmanet.com/wp-content/uploads/2021/07/WCMA-A100-2018_v2_websitePDF.pdf*. To download or print the standard, interested persons can purchase a copy of ANSI/WCMA A100.1—2018 from WCMA, through its website (*http://wcmanet.com*), or by mail from the Window Covering Manufacturers Association, Inc., 355 Lexington Avenue, New York, NY 10017; telephone: 212.297.2122. Alternatively, interested parties may inspect a copy of the standard free of charge by contacting Alberta E. Mills, Office of the Secretary, U.S. Consumer Product Safety Commission, 4330 East West Highway, Bethesda, MD 20814; telephone: 301–504–7479; email: *cpsc-os@cpsc.gov*.

XI. Congressional Review Act

The Congressional Review Act (CRA; 5 U.S.C. 801–808) states that, before a rule may take effect, the agency issuing the rule must submit the rule, and certain related information, to each House of Congress and the Comptroller General. 5 U.S.C. 801(a)(1). The submission must indicate whether the rule is a ''major rule.'' The CRA states that the Office of Information and Regulatory Affairs (''OIRA'') determines whether a rule qualifies as a ''major rule.'' Pursuant to the CRA, OIRA designated this rule as not a ''major rule,'' as defined in 5 U.S.C. 804(2). To comply with the CRA, CPSC will submit the required information to each House of Congress and the Comptroller General.

List of Subjects in 16 CFR Part 1120

Administrative practice and procedure, Clothing, Consumer protection, Cord sets, Extension cords, Household appliances, Lighting, Window Coverings, Cords, Infants and children, Imports, Incorporation by reference.

For the reasons stated above, and under the authority of 15 U.S.C. 2064(j), 5 U.S.C. 553, and section 3 of Public Law 110–314, 122 Stat. 3016 (August 14, 2008), the Consumer Product Safety Commission amends 16 CFR part 1120 as follows:

PART 1120—SUBSTANTIAL PRODUCT HAZARD LIST

■ 1. The authority citation for part 1120 continues to read as follows:

Authority: 15 U.S.C. 2064(j).

■ 2. In § 1120.2, add paragraphs (f) and (g) to read as follows:

§ 1120.2 Definitions.

* * * * *

(f) *Stock window covering* (also known as a stock blind, shade, or shading) has the same meaning as defined in section 3, definition 5.02, of ANSI/WCMA A100.1—2018 (incorporated by reference; see § 1120.4), as a window covering that is completely or substantially fabricated prior to being distributed in commerce and is a specific stock-keeping unit (SKU). Even when the seller, manufacturer, or distributor modifies a pre-assembled product by adjusting to size, attaching the top rail or bottom rail, or tying cords to secure the bottom rail, the product is still considered stock. Online sales of the product or the size of the order such as multi-family housing do not make the product a non-stock product. These examples are provided in ANSI/WCMA A100.1—2018 (incorporated by reference; *see* § 1120.4) to clarify that as long as the product is ''substantially fabricated'' prior to distribution in commerce, subsequent changes to the product do not change its categorization.

(g) *Custom window covering* (also known as a custom blind, shade, or shading) has the same meaning as defined in section 3, definition 5.01, of ANSI/WCMA A100.1—2018 (incorporated by reference; *see* § 1120.4), as a window covering that does not meet the definition of a stock window covering.

■ 3. In § 1120.3, add paragraphs (e) and (f) to read as follows:

§ 1120.3 Products deemed to be substantial product hazards.

* * * * *

(e) Stock window coverings that fail to comply with one or more of the following requirements of ANSI/WCMA A100.1—2018 (incorporated by reference; see § 1120.4):

(1) Operating cord requirements in section 4.3.1: section 4.3.1.1 (cordless operating system), 4.3.1.2 (short static or access cord), or 4.3.1.3 (inaccessible operating cord);

(2) Inner cord requirements in sections 4.5, 6.3, 6.7, and Appendices C and D; and

(3) On-product manufacturer label requirement in section 5.3.

(f) Custom window coverings that fail to comply with one or more of the following requirements of ANSI/WCMA A100.1—2018 (incorporated by reference; see § 1120.4):

(1) Inner cord requirements in sections 4.5, 6.3, 6.7, and Appendices C and D; and

(2) On-product manufacturer label in section 5.3.

■ 4. In § 1120.4, add paragraph (d) to read as follows:

§ 1120.4 Standards incorporated by reference.

* * * * *

(d) Window Covering Manufacturers Association, Inc., 355 Lexington Avenue, New York, New York 10017. Telephone: 212.297.2122. *http://wcmanet.com.*

(1) ANSI/WCMA A100.1—2018. American National Standard For Safety Of Corded Window Covering Products, approved January 8, 2018. IBR approved for §§ 1120.2 and 1120.3.

(2) [Reserved]

Alberta E. Mills,

Secretary, Consumer Product Safety Commission.

[FR Doc. 2022–25040 Filed 11–25–22; 8:45 am]

BILLING CODE 6355–01–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket No. USCG–2022–0934]

Safety Zone; City of Rockport, Rockport Tropical Christmas Festival Fireworks Display Show

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

ACTION: Notification of enforcement of regulation.

SUMMARY: The Coast Guard will enforce the safety zone for the Rockport Tropical Christmas Festival Fireworks Display Show on December 3, 2022, to provide for the safety of persons, vessels, and the marine environment on navigable waterways during this event. Our regulation for marine events within the Eighth Coast Guard District identifies the safety zone for this event in Rockport, TX. During the enforcement periods, entry into this zone is prohibited unless authorized by the Captain of the Port Sector Corpus Christi (COTP) or a designated representative.

DATES: The regulations in 33 CFR 165.801, Table 4, Line 11, will be enforced from 7 p.m. through 7:30 p.m. on December 3, 2022, unless the event is postponed because of adverse weather, in which case this rule will be enforced from 7 p.m. through 7:30 p.m. on December 9, 2022, or December 10, 2022.

FOR FURTHER INFORMATION CONTACT: If you have questions about this notification of enforcement, 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: The Coast Guard will enforce the safety zone in 33 CFR 165.801, Table 4, Line 11, for the Rockport Tropical Christmas Festival Fireworks Display Show from 7 p.m. through 7:30 p.m. on December 3, 2022, with a rain date set for December 9, 2022 and December 10, 2022. This action is being taken to provide for the safety of persons, vessels, and the marine environment on navigable waterways during this event. Our regulation for marine events within the Eighth Coast Guard District, § 165.801, specifies the location of the safety zone for the Wendell Family Fireworks, which encompasses portions of Little Bay in Rockport, TX. As reflected in §§ 165.23 and 165.801(a), if you are the operator of a vessel in the regulated area you must comply with directions from the Captain of the Port Sector Corpus Christi (COTP) or any designated representative. Persons or vessels desiring to enter the zone must request permission from the COTP or a designated representative. They can be reached on VHF FM channel 16 or by telephone at (361) 939–0450.

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

In addition to this notification of enforcement in the **Federal Register**, the COTP or a designated representative will inform the public through Broadcast Notice to Mariners (BNM), Local Notices to Mariners (LNM), Marine Safety Information Broadcasts (MSIBs), and/or through other means of public notice as appropriate at least 24 hours in advance of each enforcement.

Dated: November 18, 2022.

J.B. Gunning,

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

[FR Doc. 2022–25778 Filed 11–25–22; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket Number USCG–2022–0949]

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 without actual notice from November 28, 2022, through 3 p.m. on December 4, 2022. For the purposes of enforcement, actual notice will be used from November 21, 2022, until November 28, 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 8 p.m. on November 21, 2022, through 3 p.m. on December 4, 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 8 p.m. on November 21, 2022, through 3 p.m. on December 4, 2022, and will be subject to enforcement from 8 p.m. to 3 p.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 19 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(d) Appendix A, Table 1 of DHS Instruction Manual 023–01–001–01, Rev. 1. A Record of Environmental Consideration supporting this determination is available in the docket. For instructions on locating the docket, see the **ADDRESSES** section of this preamble.

G. Protest Activities

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

List of Subjects in 33 CFR Part 165

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

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

PART 165–REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

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

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

■ 2. Add § 165.T08–0949 to read as follows:

§ 165.T08–0949 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) *Enforcement period.* This section will be enforced from 8 p.m. on November 21, 2022, through 3 p.m. on December 4, 2022. This section is subject to enforcement from 8 p.m. to 3 p.m. of the next day, each day.

(c) *Regulations.* (1) According to the general regulations in § 165.23, entry into the temporary safety zone in paragraph (a) of this section 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 the safety zone through Broadcast Notices to Mariners, Local Notices to Mariners, and/or Safety Marine Information Broadcasts as appropriate.

Dated: November 18, 2022.

J.B. Gunning,

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

[FR Doc. 2022–25774 Filed 11–25–22; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket Number USCG–2022–0942]

RIN 1625–AA00

Safety Zone; Laguna Madre, South Padre Island, 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 Laguna Madre within a 700-foot radius of a fireworks barge launching fireworks in South Padre Island, Texas. The safety zone is needed to protect personnel, vessels, and the marine environment from potential hazards created by the fireworks display. Entry of vessels or persons into this temporary 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 7:15 p.m. through 8:15 p.m. on December 3, 2022.

ADDRESSES: To view documents mentioned in this preamble as being available in the docket, go to *https://www.regulations.gov,* type USCG–2022–0942 in the ''SEARCH'' box and click ''SEARCH.'' Click on Open Docket Folder on the line associated with this rule.

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 by December 3, 2022 and lack sufficient time to provide a reasonable comment period and then consider those comments before issuing the rule.

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

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 a fireworks display on December 3, 2022, will be a safety concern for anyone in the navigable waters of Laguna Madre within a 700-foot radius of a fireworks barge launching fireworks in South Padre Island, Texas. The purpose of this rule is to ensure safety of vessels and persons on these navigable waters in the safety zone during the fireworks show.

IV. Discussion of the Rule

This rule establishes a temporary safety zone from 7:15 p.m. through 8:15 p.m. on December 3, 2022. The fireworks barge will launch fireworks in position 26°6′9.89″ N, 097°10′15.33″ W. 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 Local Notices to Mariners, Safety Marine Information Broadcasts, and Broadcast Notice to Mariners via VHF–FM marine channel 16 about the zone.

V. Regulatory Analyses

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

A. Regulatory Planning and Review

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

This regulatory action determination is based on the size, location, and duration of the safety zone. This safety zone covers a 700-foot radius of a fireworks barge in South Padre Island, Texas. The temporary safety zone will be enforced for a short period of only one hour on December 3, 2022. 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 Laguna Madre within an 700-foot radius of a fireworks barge launching fireworks in position 26°6′9.89″ N, 097°10′15.33″ W, in South Padre Island, Texas. The safety zone is needed to protect personnel, vessels, and the marine environment from potential hazards created by a fireworks display. It is categorically excluded from further review under paragraph L60 Appendix A, Table 1 of DHS Instruction Manual 023–01–001–01, Rev. 1. A Record of Environmental Consideration supporting this determination is available in the docket where indicated under **ADDRESSES**.

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.T08–0942 to read as follows:

§ 165.T08–0942 Safety Zone; Laguna Madre, South Padre Island, TX.

(a) *Location.* The following area is a safety zone: all navigable waters of Laguna Madre within a 700-foot radius of a fireworks barge launching fireworks in position 26°6′9.89″ N, 097°10′15.33″ W, in South Padre Island, Texas.

(b) *Enforcement period.* This section will be enforced from 7:15 p.m. through 8:15 p.m. on December 3, 2022.

(c) *Regulations.* (1) According to the general regulations in § 165.23, entry into the temporary safety zone in paragraph (a) of this section is prohibited unless authorized by the Captain of the Port Sector Corpus Christi (COTP) or a designated representative.

(2) Persons or vessels seeking to enter the safety zone must request permission from the COTP on VHF–FM channel 16 (156.8 MHz) or by telephone at 361–939–0450.

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

(d) *Information broadcasts.* The COTP or a designated representative will inform the public 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: November 18, 2022.

J.B. Gunning,

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

[FR Doc. 2022–25777 Filed 11–25–22; 8:45 am]

BILLING CODE 9110–04–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 372

[EPA–HQ–OPPT–2022–0387; FRL–9529–02–OCSPP]

RIN 2070–AL09

Community Right-to-Know; Adopting 2022 North American Industry Classification System (NAICS) Codes for Toxics Release Inventory (TRI) Reporting

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: The Environmental Protection Agency (EPA) is finalizing updates to the list of North American Industry Classification System (NAICS) codes subject to reporting under the Toxics Release Inventory (TRI) to reflect the Office of Management and Budget (OMB) 2022 NAICS code revision. OMB updates the NAICS codes every five years. EPA is implementing the 2022 codes for TRI Reporting Year 2022 (*i.e.,* facilities reporting to TRI are required to use 2022 NAICS codes on reports that are due to the Agency by July 1, 2023). The actual data required by a TRI form does not change as a result of this rulemaking, nor does the rule affect the universe of TRI reporting facilities that are required to submit reports to the Agency under the Emergency Planning and Community Right-to-Know Act (EPCRA).

DATES: This final rule is effective on December 28, 2022.

ADDRESSES: The docket for this action, identified by docket identification (ID) number EPA–HQ–OPPT–2022–0387, is available online at *https://www.regulations.gov* or in-person at the Office of Pollution Prevention and Toxics (OPPT) Docket, Environmental Protection Agency Docket Center (EPA/DC), West William Jefferson Clinton Bldg., Rm. 3334, 1301 Constitution Ave. NW, Washington, DC. The Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room is (202) 566–1744, and the telephone number for the OPPT Docket is (202) 566–0280. Please review the visitor instructions and additional information about the docket available at *https://www.epa.gov/dockets.*

FOR FURTHER INFORMATION CONTACT:

For technical information contact: Rachel Dean, Data Collection Branch, Data Gathering and Analysis Division (Mail code: 7406M), Office of Pollution Prevention and Toxics, Environmental Protection Agency, 1200 Pennsylvania Ave. NW, Washington, DC 20460; telephone number: (202) 566–1303; email address: *dean.rachel@epa.gov.*

For general information contact: The Emergency Planning and Community Right-to-Know Information Center; telephone number: (800) 424–9346 or (703) 348–5070 in the Washington, DC Area and International; website: *https://www.epa.gov/aboutepa/epa-hotlines.*

SUPPLEMENTARY INFORMATION:

I. Executive Summary

A. Does this action apply to me?

You may be potentially affected by this action if you own or operate facilities that have 10 or more full-time employees or the equivalent of 20,000

employee hours per year that manufacture, process, or otherwise use toxic chemicals listed on the TRI, and that are required under section 313 of EPCRA or section 6607 of the Pollution Prevention Act (PPA) to report annually to EPA and States or Tribes their environmental releases or other waste management quantities of covered chemicals. (A rule was published on April 19, 2012 (77 FR 23409; FRL–9660–9), requiring facilities located in Indian country to report to the appropriate tribal government official and EPA instead of to the state and EPA.)

The following list of 2017 North American Industrial Classification System (NAICS) codes is not intended to be exhaustive, but rather provides a guide to help readers determine whether this document applies to them. Potentially affected entities may include:

- Facilities included in the following NAICS manufacturing codes (corresponding to Standard Industrial Classification (SIC) codes 20 through 39): 311*, 312*, 313*, 314*, 315*, 316, 321, 322, 323*, 324, 325*, 326*, 327, 331, 332, 333, 334*, 335*, 336, 337*, 339*, 111998*, 113310, 211130* (corresponds to SIC 2819), 212324*, 212325*, 212393*, 212399*, 488390*, 511110, 511120, 511130, 511140*, 511191, 511199, 512230*, 512250*, 519130*, 541713*, 541715*, or 811490*.

(*Exceptions and/or limitations exist for these NAICS codes.)

- Facilities included in the following NAICS manufacturing codes (corresponding to SIC codes other than 20–39): 211130 (corresponds to SIC code 1321); or 212111, 212112, 212113, (corresponds to SIC code 12, Coal Mining (except 1241)); 212221, 212222, 212230, 212299 (corresponds to SIC code 10, Metal Mining (except 1011, 1081, and 1094)); or 22111*, 221121, 221122, 221330 (limited to facilities that combust coal and/or oil for the purpose of generating power distribution in commerce) (corresponds to SIC codes 4911, 4931, and 4939, Electric Utilities); or 424690, 425110, 425120 (limited to facilities previously classified in SIC code 5169, Chemicals and Allied Products, Not Elsewhere Classified); or 424710 (corresponds to SIC code 5171, Petroleum Bulk Terminals and Plants); or 562112 (limited to facilities primarily engaged in solvent recovery services on a contract or fee basis (previously classified under SIC code 7389, Business Services, Not Elsewhere Classified)); or 562211, 562212, 562213, 562219, 562920 (limited to facilities regulated under the Resource Conservation and Recovery Act, subtitle C, 42 U.S.C. 6921 *et seq.*) (corresponds to SIC code 4953, Refuse Systems).

(*Exceptions and/or limitations exist for these NAICS codes.)

- Federal facilities.
- Facilities that the EPA Administrator has specifically required to report to TRI pursuant to a determination under EPCRA section 313(b)(2).

If you have any questions regarding the applicability of this action to a particular entity, consult the technical person listed in the **FOR FURTHER INFORMATION CONTACT** section.

B. What is the Agency's authority for taking this action?

EPA is taking this action under EPCRA sections 313(g)(1) and 328, 42 U.S.C. 11023(g)(1) and 11048. In general, EPCRA section 313 requires owners and operators of covered facilities in specified SIC codes that manufacture, process, or otherwise use listed toxic chemicals in amounts above specified threshold levels to report certain facility specific information about such chemicals, including the annual releases and other waste management quantities. EPCRA section 313(g)(1) requires EPA to publish a uniform toxic chemical release form for these reporting purposes, and it also prescribes, in general terms, the types of information that must be submitted on the form. Congress also granted EPA broad rulemaking authority to allow the Agency to fully implement the statute. EPCRA section 328 authorizes EPA to ''prescribe such regulations as may be necessary to carry out this chapter.'' 42 U.S.C. 11048.

C. Why is EPA taking this action?

In the **Federal Register** of April 9, 1997 (62 FR 17288), OMB published a final decision to adopt the NAICS economic classification system, replacing the Standard Industry Classification (SIC) system which had traditionally been used by the Federal Government for collecting and organizing industry-related statistics. Consistent with EPCRA section 313 and PPA section 6607, on June 6, 2006, EPA amended 40 CFR part 372 to change TRI reporting from requiring SIC codes to requiring NAICS codes (71 FR 32464; FRL–8180–2) (Ref. 1). This amendment to the regulation included the 2002 NAICS codes for TRI reporting. OMB revises the NAICS codes every five years. Therefore, EPA subsequently updated the NAICS codes in:

- June 9, 2008 (73 FR 32466; FRL–8577–1) to include the 2007 codes,
- July 18, 2013 (78 FR 42875; FRL–9825–8) (Ref. 2) to include the 2012 NAICS codes, and
- December 26, 2017 (82 FR 60906; FRL–9970–02) to include the 2017 NAICS codes.

In the **Federal Register** of December 21, 2021, OMB announced updated NAICS codes for 2022 (86 FR 72277). With this final rule, EPA is amending 40 CFR part 372 to reflect OMB's updated 2022 NAICS codes.

NAICS codes are used by EPA's TRI program, which provides the ability to track releases and other waste management activities (among other information) of chemicals by a sector and/or facility basis. This detailed information is made public so that community members, industrial facilities, research organizations, and federal government can make informed decisions that impact human health and the environment. Also, comparative analysis by sector or facility can demonstrate the volume of a specific chemical released to air, water, and land. In addition, NAICS codes help provide a snapshot of pollution prevention efforts at each facility by demonstrating results of toxic emissions reductions across industry sectors.

D. What action is the Agency taking?

Given OMB's revisions to the NAICS codes that became effective January 1, 2022, EPA is amending 40 CFR part 372 to update the 2022 NAICS codes for TRI reporting. In addition, EPA is including NAICS codes in 40 CFR part 372 for facilities that are covered under TRI's SIC codes but had been inadvertently excluded in past TRI NAICS rulemakings. EPA is also updating the CFR to account for the discretionary authority provision provided in EPCRA section 313(b)(2) (42 U.S.C. 11023(b)(2)). Lastly, EPA is updating 40 CFR part 372.22(b) to reflect the revised codes and TRI reporting years for which the 2022 NAICS codes are applicable.

E. What are the incremental impacts of this action?

EPA analyzed the potential costs and benefits associated with this action and determined that since this action will not add or remove any reporting requirements, there is no net increase in respondent burden or other economic impacts to consider.

II. Background

A. What did EPA propose?

In a proposed rule issued in July 2022 (Ref. 3), EPA proposed to update the list of NAICS codes subject to TRI reporting to reflect OMB 2022 NAICS code

revision. EPA did not propose changes to the TRI reporting requirements.

B. Did EPA receive any public comments?

The Agency received one comment on the proposed rule, which expressed general support for the updates.

III. Summary of the Final Rule

With this action, EPA is finalizing the proposed updates to the NAICS codes with a few corrections as discussed in this unit.

A. NAICS Codes Updated To Conform With the 2022 NAICS Code Modifications

Due to the 2022 NAICS code modifications, some facilities will need to modify their reported NAICS codes as outlined in Table 1, which identifies only the revised TRI NAICS reporting codes and is not an exhaustive list of all NAICS reporting codes subject to EPCRA section 313 and PPA section 6607. Table 1 also includes notes where a 2022 NAICS code is the result of merging 2017 NAICS codes. In those cases, EPA is clarifying which subset of the 2022 NAICS code is covered by TRI. (Note that non-TRI-covered NAICS codes are not listed in the table.) A complete listing of all TRI-covered facilities can be found in the regulations at 40 CFR 372.23.

TABLE 1—MODIFIED TRI REPORTING NAICS CODES

2017 NAICS code	2017 NAICS and U.S. description	2022 NAICS code	2022 NAICS and U.S. description
212111	Bituminous Coal and Lignite Surface Mining	212114	Surface Coal Mining.
212112	Bituminous Coal Underground Mining	212115	Underground Coal Mining.
212113	Anthracite Mining—*anthracite surface mining* activity.	212114	Surface Coal Mining.
212113	Anthracite Mining—*anthracite underground mining* activity.	212115	Underground Coal Mining.
212221	Gold Ore Mining	212220	Gold Ore and Silver Ore Mining.
212222	Silver Ore Mining	"	"
212299	All Other Metal Ore Mining	212290	Other Metal Ore Mining. *This merges both TRI-covered and non-TRI-covered NAICS codes. Only 212299: All Other Metal Ore Mining was covered by TRI. TRI notes that only "All Other Metal Ore Mining" facilities under NAICS code 212290 are required to report.*
212324	Kaolin and Ball Clay Mining	212323	Kaolin, Clay, and Ceramic and Refractory Minerals Mining.
212325	Clay and Ceramic and Refractory Minerals Mining	"	"
212393	Other Chemical and Fertilizer Mineral Mining	212390	Other Nonmetallic Mineral Mining and Quarrying.
212399	All Other Nonmetallic Mineral Mining	"	" *This merges both TRI-covered and non-TRI-covered NAICS codes. Only 212393 and 212399 were covered by TRI. TRI notes that only "Other Chemical and Fertilizer Mineral Mining" and "All Other Nonmetallic Mineral Mining" facilities under NAICS code 212390 are required to report.*
315110	Hosiery and Sock Mills	315120	Apparel Knitting Mills.
315190	Other Apparel Knitting Mills	"	"
315220	Men's and Boys' Cut and Sew Apparel Manufacturing.	315250	Cut and Sew Apparel Manufacturing (except Contractors).
315240	Women's, Girls', and Infants' Cut and Sew Apparel Manufacturing.	"	"
315280	Other Cut and Sew Apparel Manufacturing	"	"
316992	Women's Handbag and Purse Manufacturing	316990	Other Leather and Allied Product Manufacturing.
316998	All Other Leather Good and Allied Product Manufacturing.	"	"
321213	Engineered Wood Member (except Truss) Manufacturing.	321215	Engineered Wood Member Manufacturing.
321214	Truss Manufacturing	"	"
322121	Paper (except Newsprint) Mills	322120	Paper Mills.
322122	Newsprint Mills	"	"
325314	Fertilizer (Mixing Only) Manufacturing	325314	Fertilizer (Mixing Only) Manufacturing.
		325315	Compost Manufacturing.
333244	Printing Machinery Equipment Manufacturing	333248	All Other Industrial Machinery Manufacturing.
333249	Other Industrial Machinery Manufacturing	"	"
333314	Optical Instrument and Lens Manufacturing	333310	Commercial and Service Industry Machinery Manufacturing.
333316	Photographic and Photocopying Equipment Manufacturing.	"	"
333318	Other Commercial and Service Industry Machinery Manufacturing.	"	"
333997	Scale and Balance Manufacturing	333998	All Other Miscellaneous General Purpose Machinery Manufacturing.
333999	All Other Miscellaneous General Purpose Machinery Manufacturing.	"	"
334613	Blank Magnetic and Optical Recording Media Manufacturing.	334610	Manufacturing and Reproducing Magnetic and Optical Media.
334614	Software and Other Prerecorded Compact Disc, Tape, and Record Reproducing.	"	"
335110	Electric Lamp Bulb and Part Manufacturing	335139	Electric Lamp Bulb and Other Lighting Equipment Manufacturing.
335121	Residential Electric Lighting Fixture Manufacturing	335131	Residential Electric Lighting Fixture Manufacturing.
335122	Commercial, Industrial, and Institutional Electric Lighting Fixture Manufacturing.	335132	Commercial, Industrial, and Institutional Electric Lighting Fixture Manufacturing.
335129	Other Lighting Equipment Manufacturing	335139	Electric Lamp Bulb and Other Lighting Equipment Manufacturing.
335911	Storage Battery Manufacturing	335910	Battery Manufacturing.
335912	Primary Battery Manufacturing	"	"
336111	Automobile Manufacturing	336110	Automobile and Light Duty Motor Vehicle Manufacturing.
336112	Light Truck and Utility Vehicle Manufacturing	"	"
337124	Metal Household Furniture Manufacturing	337126	Household Furniture (except Wood and Upholstered) Manufacturing.
337125	Household Furniture (except Wood and Metal) Manufacturing.	"	"

TABLE 1—MODIFIED TRI REPORTING NAICS CODES—Continued

2017 NAICS code	2017 NAICS and U.S. description	2022 NAICS code	2022 NAICS and U.S. description
425110	Business to Business Electronic Markets	425120	Wholesale Trade Agents and Brokers.
511110	Newspaper Publishers	513110	Newspaper Publishers.
511120	Periodical Publishers	513120	Periodical Publishers.
511130	Book Publishers	513130	Book Publishers.
511140	Directory and Mailing List Publishers	513140	Directory and Mailing List Publishers.
511191	Greeting Card Publishers	513191	Greeting Card Publishers.
511199	All Other Publishers	513199	All Other Publishers.
519130	Internet Publishing and Broadcasting and Web Search Portals—*Internet Newspaper Publishers* activity.	513110	Newspaper Publishers.
519130	Internet Publishing and Broadcasting and Web Search Portals—*Internet Periodical Publishers* activity.	513120	Periodical Publishers.
519130	Internet Publishing and Broadcasting and Web Search Portals—*Internet Book Publishers* activity.	513130	Book Publishers.
519130	Internet Publishing and Broadcasting and Web Search Portals—*Internet Directory and Mailing List Publishers* activity.	513140	Directory and Mailing List Publishers.
519130	Internet Publishing and Broadcasting and Web Search Portals for *Internet Greeting Card Publishers* activity.	513191	Greeting Card Publishers.
519130	Internet Publishing and Broadcasting and Web Search Portals for *All other Internet Publishers* activity.	513199	All Other Publishers.
519130	Internet Publishing and Broadcasting and Web Search Portals—*Internet Broadcasting* activity.	516210	Media Streaming Distribution Services, Social Networks, and Other Media Networks and Content Providers. *This merges both TRI-covered and non-TRI-covered NAICS codes. Only 519130: Internet Publishing and Broadcasting and Web Search Portals was covered by TRI. TRI notes that only certain ''Internet Broadcasting'' facilities under NAICS code 516210 are required to report.*
519130	Internet Publishing and Broadcasting and Web Search Portals—*Web Search Portals* activity.	519290	Web Search Portals and All Other Information Services. *This merges both TRI-covered and non-TRI-covered NAICS codes. Only 519130: Internet Publishing and Broadcasting and Web Search Portals was covered by TRI. TRI notes that only certain ''Web Search Portals'' facilities under NAICS code 519290 are required to report.*

B. Listing of Certain NAICS Codes in the Utilities Industry Sector

Additionally, EPA is finalizing the listing of the following NAICS manufacturing codes at 40 CFR 372.23 that are subject to TRI reporting requirements: 221114—Solar Electric Power Generation; 221115—Wind Electric Power Generation; 221116—Geothermal Electric Power Generation; and 221117—Biomass Electric Power Generation). In 1997, when EPA added the electric utility industry sector to the scope of the TRI, the Agency qualified the addition to include all facilities which ''burn any quantity of coal or oil to generate power for distribution in commerce.'' (62 FR 23834, May 1, 1997; FRL–5578–3) (Ref. 4). Further, the Agency clearly stated that this addition includes any facility classified under SIC codes 4911, 4931, or 4939 that combusts coal and/or oil for the purpose of generating power for distribution in commerce. EPA clearly stated that this coverage includes a facility that burns ''any quantity'' of coal or oil to generate power for distribution in commerce, noting examples where a facility might burn coal or oil for purposes other than distribution in commerce and thus not fit the qualifier provided for the industry sector. (62 FR 23834, 23863) (Ref. 4).

The 2007 NAICS to 2012 NAICS revision split NAICS 221119 (a NAICS code at the time covered by TRI due to its crosswalk to SIC codes 4911, 4931, and 4939) into multiple codes (*i.e.,* 221114, 221115, 221116, 221117, and 221118). When EPA updated the set of 2007 NAICS codes used by TRI to conform to the 2012 NAICS revision, the Agency listed only 221118, neglecting to include 221114, 221115, 221116, and 221117. (78 FR 42875) (Ref. 2). However, as provided by the 1997 rule that included electricity generating facilities that combust coal and/or oil for the purpose of generating power for distribution in commerce, these NAICS codes should have been included in the CFR. Further, because the CFR lists SIC codes 4911, 4931, and 4939 as being regulated by TRI, facilities in NAICS codes 221114, 221115, 221116, and 221117 are regulated by TRI should they combust coal and/or oil for the purpose of generating power for distribution in commerce despite the Agency's oversight in terms of failing to list these NAICS codes in the CFR. Therefore, facilities identifying with these NAICS codes (*i.e.,* 221114, 221115, 22116, and 221117) are covered under TRI reporting regulation and EPA is addressing its previous oversight by adding these NAICS codes to 40 CFR 372.23.

Similarly, in the 2006 rule to include NAICS codes in the regulations for TRI, EPA neglected to include NAICS code 221210. SIC codes 4931 and 4939 are covered TRI reporting codes (40 CFR 372.23(b), 62 FR 23834). Both of these SIC codes crosswalk to multiple NAICS codes which are listed on the CFR, except for 221210. EPA acknowledges it was an oversight not to include 221210 in the 2006 rule adopting NAICS codes for TRI reporting (71 FR 32464) (Ref. 1) and is adding 221210 to 40 CFR 372.23 for this NAICS update rule.

Crosswalk tables between all 2017 NAICS codes and 2022 NAICS codes can be found on the internet at *https://www.census.gov//.*

C. Updates to 40 CFR Part 372 To Accommodate EPCRA Section 313(b)(2)

As authorized under EPCRA section 313(b)(2), the EPA Administrator may determine that a particular facility is subject to the requirements of EPCRA section 313(a) on the basis of the toxicity of a chemical, the facility's proximity to other facilities that release the chemical or to population centers, the history of releases of the chemical at

the facility, or other factors the Administrator deems appropriate. This authority has been codified previously in TRI regulations, describing the process for modifying the list of covered facilities (40 CFR 372.20(b)). EPA is codifying this discretionary authority at 40 CFR 372.22, which describes the criteria to determine whether a facility must report to TRI for a certain calendar year. This edit is a conforming edit to accommodate the longstanding discretionary authority under EPCRA section 313(b)(2), and this edit does not alter the universe of EPCRA section 313 reporters or any TRI reporting requirements. This additional criteria for facilities reporting to TRI will be added to 40 CFR 372.22.

D. Updates to 40 CFR 372.22(b)

EPA is finalizing conforming edits at 40 CFR 372.22(b), which identifies the NAICS code version to use for TRI reporting purposes. The finalized language reflects the updated version of NAICS codes and the TRI reporting years for which they are applicable. The proposed regulatory text that accompanied the notice of proposed rulemaking did not reflect this conforming edit which is needed to reflect the revised codes and TRI reporting years for which the 2022 NAICS codes are applicable. Accordingly, this final rule also updates the NAICS code versions and reporting years listed at 40 CFR 372.22(b).

IV. References

The following is a listing of the documents that are specifically referenced in this document. The docket includes these documents and other information considered by EPA, including documents that are referenced within the documents that are included in the docket, even if the referenced document is not physically located in the docket. For assistance in locating these other documents, please consult the technical person listed under **FOR FURTHER INFORMATION CONTACT**.

1. U.S. EPA. Community Right-to-Know; Toxic Chemical Release Reporting Using North American Industry Classification System (NAICS); Final Rule. **Federal Register**. 71 FR 32464, June 6, 2006 (FRL–8180–2).
2. U.S. EPA. Community Right-to-Know; Adoption of 2012 North American Industry Classification System (NAICS) Codes for Toxics Release Inventory (TRI) Reporting; Final Rule. **Federal Register**. 78 FR 42875, July 18, 2013 (FRL–9825–8).
3. U.S. EPA. Community Right-To-Know; Adopting 2022 North American Industry Classification System (NAICS) Codes for Toxics Release Inventory (TRI) Reporting; Proposed Rule. **Federal Register**. 87 FR 43772, July 22, 2022 (FRL–9529–01–OCSPP).
4. U.S. EPA. Addition of Facilities in Certain Industry Sectors; Revised Interpretation of Otherwise Use; Toxic Release Inventory Reporting; Community Right-to-Know; Final Rule. **Federal Register**. 62 FR 23834, May 1, 1997 (FRL–5578–3).

V. Statutory and Executive Order Reviews

Additional information about these statutes and Executive Orders can be found at *https://www.epa.gov/regulations/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 under Executive Order 12866 (58 FR 51735, October 4, 1993) and Executive Order 13563 (76 FR 3821, January 21, 2011).

B. Paperwork Reduction Act (PRA)

This action does not impose any new information collection burden under the PRA, 44 U.S.C. 3501 *et seq.* Facilities that are affected by the rule are already required to report their industrial classification codes on the approved reporting forms under EPCRA section 313 and PPA section 6607. In addition, OMB has previously approved the information collection activities involving Form R and Form A as contained in 40 CFR part 372 under OMB Control No. 20070–0212 (EPA ICR No. 2613.04).

Under the PRA, an agency may not conduct or sponsor, and a person is not required to respond to, a collection of information, unless it displays a currently valid OMB control number. The OMB control numbers are displayed either by publication in the **Federal Register** or by other appropriate means, such as on the related collection instrument or form, if applicable. The display of OMB control numbers for certain EPA regulations is consolidated in 40 CFR part 9.

C. Regulatory Flexibility Act (RFA)

I certify that this action will not have a significant economic impact on a substantial number of small entities under the RFA, 5 U.S.C. 601 *et seq.* In making this determination, EPA concludes that the impact of concern for this rule is any significant adverse economic impact on small entities and that the Agency is certifying that this rule will not have a significant economic impact on a substantial number of small entities because this rule has no net burden on the small entities subject to the rule. This rule adds no new reporting requirements and there is no net increase in respondent burden and costs. This rule only updates the NAICS codes already reported by respondents and makes other conforming edits to the existing regulation. As such, this action will not impose any new 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. The action imposes no enforceable duty on any state, local or tribal governments or the private sector.

E. Executive Order 13132: Federalism

This action does not have federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999). It will not have substantial direct effects on the states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government. Thus, Executive Order 13132 does not apply to this action.

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

This action does not have tribal implications as specified in Executive Order 13175 (65 FR 67249, November 9, 2000), because it does not impose substantial direct compliance costs on Indian tribal governments. Thus, Executive Order 13175 does not apply to this action.

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

EPA interprets Executive Order 13045 (62 FR 19885, April 23, 1997) as applying only to those regulatory actions that concern health or safety risks that the EPA has reason to believe may disproportionately affect children, per the definition of ''covered regulatory action'' in section 2–202 of the Executive Order. This action is not subject to Executive Order 13045 because it does not concern an environmental health risk or safety risk.

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

This action is not subject to Executive Order 13211 (66 FR 28355, May 22, 2001), because it is not a significant regulatory action under Executive Order 12866 and has not otherwise been designated as a significant energy action by the Administrator of the Office of Information and Regulatory Affairs.

I. National Technology Transfer and Advancement Act (NTTAA)

This rulemaking does not involve technical standards that would require Agency consideration under NTTAA section 12(d), 15 U.S.C. 272.

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

Executive Order 12898 (59 FR 7629, February 16, 1994) 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 (people of color) and low-income populations. EPA believes that updating the list of NAICS codes subject to TRI reporting does not concern human health or environmental conditions and therefore cannot be evaluated with respect to potentially disproportionate and adverse effects on people of color, low-income populations and/or indigenous peoples.

K. Congressional Review Act (CRA)

This action is subject to the CRA, 5 U.S.C. 801 *et seq.,* and the EPA will submit a rule report to each House of the Congress and to the Comptroller General of the United States. This action is not a ''major rule'' as defined by 5 U.S.C. 804(2).

List of Subjects in 40 CFR Part 372

Environmental protection, Community right-to-know, Reporting and recordkeeping requirements, Toxic chemicals.

Dated: November 15, 2022.

Michal Freedhoff,

Assistant Administrator, Office of Chemical Safety and Pollution Prevention.

Therefore, for the reasons set forth in the preamble, 40 CFR chapter I is amended as follows:

PART 372—TOXIC CHEMICAL RELEASE REPORTING: COMMUNITY RIGHT-TO-KNOW

■ 1. The authority citation for part 372 continues to read as follows:

Authority: 42 U.S.C. 11023 and 11048.

■ 2. Amend § 372.22 by revising the introductory text, paragraph (b), and adding paragraph (d) to read as follows:

§ 372.22 Covered facilities for toxic chemical release reporting.

A facility is a covered facility for a particular calendar year, and must report under § 372.30, if the facility meets either all of the criteria in paragraphs (a), (b), and (c) of this section, or all of the criteria in paragraphs (c) and (d) of this section, for that calendar year.

* * * * *

(b) The facility is in a Standard Industrial Classification (SIC) (as in effect on January 1, 1987) major group or industry code listed in § 372.23(a), for which the corresponding North American Industry Classification System (NAICS) (as in effect on January 1, 2022, for reporting year 2022 and thereafter) subsector and industry codes are listed in §§ 372.23(b) and 372.23(c) by virtue of the fact that it meets one of the following criteria:

* * * * *

(d) The Administrator determined that applying the 42 U.S.C. 11023 requirements to the facility was warranted, pursuant to 42 U.S.C. 11023(b)(2) and § 372.20(b).

■ 3. Amend § 372.23 by revising paragraphs (b) and (c) to read as follows:

§ 372.23 SIC and NAICS codes to which this Part applies.

* * * * *

(b) NAICS codes that correspond to SIC codes 20–39.

311—Food Manufacturing	Except 311119—Exception is limited to facilities previously classified under SIC 0723, Crop Preparation Services for Market, Except Cotton Ginning.
	Except 311340—Exception is limited to facilities previously classified under SIC 5441, Candy, Nut, and Confectionery Stores.
	Except 311352—Exception is limited to facilities previously classified under SIC 5441, Candy, Nut, and Confectionery Stores.
	Except 311611—Exception is limited to facilities previously classified under SIC 0751, Livestock Services, Except Veterinary.
	Except 311612—Exception is limited to facilities previously classified under SIC 5147, Meats and Meat Products.
	Except 311811—Exception is limited to facilities previously classified under SIC 5461, Retail Bakeries.
312—Beverage and Tobacco Product Manufacturing.	Except 312112—Exception is limited to facilities previously classified under SIC 5149, Groceries and Related Products, Not Elsewhere Classified.
	Except 312230—Exception is limited to facilities previously classified under SIC 7389, Business Services, Not Elsewhere Classified, except facilities primarily engaged in solvent recovery services on a contract or fee basis.
313—Textile Mills	Except 313310—Exception is limited to facilities previously classified under SIC 5131, Piece Goods, Notions, and Other Dry Goods; and facilities previously classified under SIC 7389, Business Services, Not Elsewhere Classified, except facilities primarily engaged in solvent recovery services on a contract or fee basis.
314—Textile Product Mills	Except 314120—Exception is limited to facilities previously classified under SIC 5714, Drapery, Curtain, and Upholstery Stores.
	Except 314999—Exception is limited to facilities previously classified under SIC 7389, Business Services, Not Elsewhere Classified, except facilities primarily engaged in solvent recovery services on a contract or fee basis.
315—Apparel Manufacturing	Except 315290—Exception is limited to facilities previously classified under SIC 5699, Miscellaneous Apparel and Accessory Stores.
316—Leather and Allied Product Manufacturing.	
321—Wood Product Manufacturing.	
322—Paper Manufacturing.	
323—Printing and Related Support Activities.	Except 323111—Exception is limited to facilities previously classified under SIC 7334, Photocopying and Duplicating Services.
324—Petroleum and Coal Products Manufacturing.	
325—Chemical Manufacturing	Except 325998—Exception is limited to facilities previously classified under SIC 7389, Business Services, Not Elsewhere Classified.
326—Plastics and Rubber Products Manufacturing.	Except 326212—Exception is limited to facilities previously classified under SIC 7534, Tire Retreading and Repair Shops.

327—Nonmetallic Mineral Product Manufacturing.	Except 327110—Exception is limited to facilities previously classified under SIC 5719, Miscellaneous Home Furnishings Stores.
331—Primary Metal Manufacturing.	
332—Fabricated Metal Product Manufacturing.	
333—Machinery Manufacturing	
334—Computer and Electronic Product Manufacturing.	Except 334610—Exception is limited to facilities previously classified under SIC 7372, Prepackaged Software; and to facilities previously classified under SIC 7819, Services Allied to Motion Picture Production.
335—Electrical Equipment, Appliance, and Component Manufacturing.	Except 335312—Exception is limited to facilities previously classified under SIC 7694, Armature Rewinding Shops.
336—Transportation Equipment Manufacturing.	
337—Furniture and Related Product Manufacturing.	Except 337110—Exception is limited to facilities previously classified under SIC 5712, Furniture Stores.
	Except 337121—Exception is limited to facilities previously classified under SIC 5712, Furniture Stores.
	Except 337122—Exception is limited to facilities previously classified under SIC 5712, Furniture Stores.
339—Miscellaneous Manufacturing	Except 339113—Exception is limited to facilities previously classified under SIC 5999, Miscellaneous Retail Stores, Not Elsewhere Classified.
	Except 339115—Exception is limited to lens grinding facilities previously classified under SIC 5995, Optical Goods Stores.
	Except 339116—Exception is limited to facilities previously classified under SIC 8072, Dental Laboratories.
111998—All Other Miscellaneous Crop Farming.	Limited to facilities previously classified under SIC 2099, Food Preparations, Not Elsewhere Classified.
113310—Logging.	
211130—Natural Gas Extraction	Limited to facilities that recover sulfur from natural gas and previously classified under SIC 2819, Industrial Inorganic Chemicals, Not Elsewhere Classified.
212323—Kaolin, Clay, and Ceramic and Refractory Minerals Mining.	Limited to facilities operating without a mine or quarry and previously classified under SIC 3295, Minerals and Earths, Ground or Otherwise Treated.
212390—Other Nonmetallic Mineral Mining and Quarrying.	Limited to facilities previously classified under SIC 3295, Minerals and Earths, Ground or Otherwise Treated.
488390—Other Support Activities for Water Transportation.	Limited to facilities previously classified under SIC 3731, Shipbuilding and Repairing.
512230—Music Publishers	Except facilities previously classified under SIC 8999, Services, Not Elsewhere Classified.
512250—Record Production and Distribution.	Limited to facilities previously classified under SIC 3652, Phonograph Records and Prerecorded Audio Tapes and Disks.
5131—Newspaper, Periodical, Book, and Directory Publishers.	Except for facilities primarily engaged in web search portals and except for facilities previously classified under SIC 7331, Direct Mail Advertising Services and SIC 8999, Services Not Elsewhere Classified.
516210—Media Streaming Distribution Services, Social Networks, and Other Media Networks and Content Providers.	Limited to Internet publishing facilities previously classified under SIC 2711, Newspapers: Publishing, or Publishing and Printing; facilities previously classified under SIC 2721, Periodicals: Publishing, or Publishing and Printing; facilities previously classified under SIC 2731, Books: Publishing, or Publishing and Printing; facilities previously classified under SIC 2741, Miscellaneous Publishing; facilities previously classified under SIC 2771, Greeting Cards; Except for facilities primarily engaged in web search portals.
519290—Web Search Portals and All Other Information Services.	Limited to Internet publishing facilities previously classified under SIC 2711, Newspapers: Publishing, or Publishing and Printing; facilities previously classified under SIC 2721, Periodicals: Publishing, or Publishing and Printing; facilities previously classified under SIC 2731, Books: Publishing, or Publishing and Printing; facilities previously classified under SIC 2741, Miscellaneous Publishing; facilities previously classified under SIC 2771, Greeting Cards; Except for facilities primarily engaged in web search portals.
541713—Research and Development in Nanotechnology.	Limited to facilities previously classified under SIC 3764, Guided Missile and Space Vehicle Propulsion Units and Propulsion Unit Parts; and facilities previously classified under SIC 3769, Guided Missile and Space Vehicle Parts and Auxiliary Equipment, Not Elsewhere Classified.
541715—Research and Development in the Physical, Engineering, and Life Sciences (except Nanotechnology and Biotechnology).	Limited to facilities previously classified under SIC 3764, Guided Missile and Space Vehicle Propulsion Units and Propulsion Unit Parts; and facilities previously classified under SIC 3769, Guided Missile and Space Vehicle Parts and Auxiliary Equipment, Not Elsewhere Classified.
811490—Other Personal and Household Goods Repair and Maintenance.	Limited to facilities previously classified under SIC 3732, Boat Building and Repairing.

(c) NAICS codes that correspond to SIC codes other than SIC codes 20–39.

211130—Natural Gas Extraction	Limited to facilities classified under SIC 1321, Natural Gas Liquids.
212114—Surface Coal Mining.	
212115—Underground Coal Mining.	
212220—Gold Ore and Silver Ore Mining.	
212230—Copper, Nickel, Lead and Zinc Mining.	
212290—Other Metal Ore Mining	Limited to facilities previously classified under SIC 1061, Ferroalloy Ores, Except Vanadium (nickel); and facilities previously classified under SIC 1099, Miscellaneous Metal Ores, Not Elsewhere Classified.
221111—Hydroelectric Power Generation.	Limited to facilities that combust coal and/or oil for the purpose of generating power for distribution in commerce.
221112—Fossil Fuel Electric Power Generation.	Limited to facilities that combust coal and/or oil for the purpose of generating power for distribution in commerce.
221113—Nuclear Electric Power Generation.	Limited to facilities that combust coal and/or oil for the purpose of generating power for distribution in commerce.
221114—Solar Electric Power Generation.	Limited to facilities that combust coal and/or oil for the purpose of generating power for distribution in commerce.
221115—Wind Electric Power Generation.	Limited to facilities that combust coal and/or oil for the purpose of generating power for distribution in commerce.
221116—Geothermal Electric Power Generation.	Limited to facilities that combust coal and/or oil for the purpose of generating power for distribution in commerce.
221117—Biomass Electric Power Generation.	Limited to facilities that combust coal and/or oil for the purpose of generating power for distribution in commerce.
221118—Other Electric Power Generation.	Limited to facilities that combust coal and/or oil for the purpose of generating power for distribution in commerce.

221121—Electric Bulk Power Transmission and Control.	Limited to facilities that combust coal and/or oil for the purpose of generating power for distribution in commerce.
221122—Electric Power Distribution	Limited to facilities that combust coal and/or oil for the purpose of generating power for distribution in commerce.
221210—Natural Gas Distribution	Limited to facilities previously classified under SIC 4931, Electric and Other Services Combined and facilities previously classified under SIC 4939, Combination Utilities, Not Elsewhere Classified.
221330—Steam and Air Conditioning Supply.	Limited to facilities previously classified under SIC 4939, Combination Utilities, Not Elsewhere Classified.
424690—Other Chemical and Allied Products Merchant Wholesalers.	
424710—Petroleum Bulk Stations and Terminals.	
425120—Wholesale Trade Agents and Brokers.	Limited to facilities previously classified in SIC 5169, Chemicals and Allied Products, Not Elsewhere Classified.
562112—Hazardous Waste Collection	Limited to facilities primarily engaged in solvent recovery services on a contract or fee basis and previously classified under SIC 7389, Business Services, Not Elsewhere Classified;
562211—Hazardous Waste Treatment and Disposal.	Limited to facilities regulated under the Resource Conservation and Recovery Act, subtitle C, 42 U.S.C. 6921 *et seq.*
562212—Solid Waste Landfill	Limited to facilities regulated under the Resource Conservation and Recovery Act, subtitle C, 42 U.S.C. 6921 *et seq.*
562213—Solid Waste Combustors and Incinerators.	Limited to facilities regulated under the Resource Conservation and Recovery Act, subtitle C, 42 U.S.C. 6921 *et seq.*
562219—Other Nonhazardous Waste Treatment and Disposal.	Limited to facilities regulated under the Resource Conservation and Recovery Act, subtitle C, 42 U.S.C. 6921 *et seq.*
562920—Materials Recovery Facilities ...	Limited to facilities regulated under the Resource Conservation and Recovery Act, subtitle C, 42 U.S.C. 6921 *et seq.*

* * * * *

[FR Doc. 2022–25375 Filed 11–25–22; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

49 CFR Parts 365, 387 and 390

[Docket No. FMCSA–2021–0188]

Applicability of the Registration, Financial Responsibility, and Safety Regulations to Motor Carriers of Passengers

AGENCY: Federal Motor Carrier Safety Administration (FMCSA), Department of Transportation (DOT).

ACTION: Interpretive rule; correction.

SUMMARY: In an interpretive rule published in the **Federal Register** on November 15, 2022, FMCSA added appendices to the Federal Motor Carrier Safety Regulations (FMCSRs) to explain existing statutes and regulations FMCSA administers related to: the applicability of the FMCSRs, including the financial responsibility regulations, to motor carriers of passengers operating in interstate commerce, including limitations on such applicability based on characteristics of the vehicle operated or the scope of operations conducted; and the applicability of commercial operating authority registration based on the Agency's jurisdiction over motor carriers of passengers, regardless of vehicle characteristics, when operating for-hire in interstate commerce. The interpretive rule contained an error in the docket number, errors in the address section, and errors in the **SUPPLEMENTARY INFORMATION** section.

DATES: This correction is effective November 28, 2022. Comments on the interpretive rule must still be received on or before January 17, 2023.

FOR FURTHER INFORMATION CONTACT: Mr. Peter Chandler, Team Leader, Passenger Carrier Safety Division, (202) 366–5763, *peter.chandler@dot.gov*.

SUPPLEMENTARY INFORMATION:

In FR Doc. 2022–24089 appearing on page 68367 in the **Federal Register** of November 15, 2022, the following corrections are made:

1. On page 68367, in the third column, remove the docket number which reads ''FMCSA–2020–0188'' and add in its place ''FMCSA–2021–0188''.

2. On page 68368, in the first column, under addresses, remove ''FMCSA–2016–0352'' and add in its place ''FMCSA–2021–0188'' in both places it appears.

3. On page 68368, in the second column, under submitting comments, remove ''FMCSA–2020–0188'' and add in its place ''FMCSA–2021–0188'' in both places it appears.

4. On page 68368, in the third column, under submitting comments, remove ''FMCSA–2020–0188'' and add in its place ''FMCSA–2021–0188''.

Issued under authority delegated in 49 CFR 1.87.

Larry W. Minor,

Associate Administrator for Policy.

[FR Doc. 2022–25443 Filed 11–25–22; 8:45 am]

BILLING CODE 4910–EX–P

Proposed Rules

Federal Register
Vol. 87, No. 227
Monday, November 28, 2022

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2022–1488; Project Identifier MCAI–2022–00788–R]

RIN 2120–AA64

Airworthiness Directives; Bell Textron Canada Limited Helicopters

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 Bell Textron Canada Limited Model 206A, 206A–1 (OH–58A), 206B, 206B–1, 206L, 206L–1, 206L–3, and 206L–4 helicopters. This proposed AD was prompted by a loss of tail rotor (TR) drive due to a failure of an adhesively bonded joint between an adapter and a tube on one of the segmented TR drive shaft (TRDS) assemblies. This proposed AD would require determining if an affected TRDS is installed; repetitively inspecting the bond line for damage; repetitively performing a proof load test of the TRDS assembly; and depending on the results of the inspections or the proof load tests, removing an affected TRDS from service and replacing it with a serviceable TRDS. This proposed AD would also prohibit installing a TRDS unless it meets certain requirements, as specified in a Transport Canada 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 January 12, 2023.

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–2022–1488; 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 Transport Canada AD, any comments received, and other information. The street address for Docket Operations is listed above.

Material Incorporated by Reference

- For Transport Canada material that is proposed for incorporation by reference (IBR) in this NPRM, contact Transport Canada, Transport Canada National Aircraft Certification, 159 Cleopatra Drive, Nepean, Ontario, K1A 0N5, CANADA; telephone 888–663–3639; email *TC.AirworthinessDirectives-Consignesdenavigabilite.TC@tc.gc.ca;* internet *tc.canada.ca/en/aviation.* You may find this IBR material on the Transport Canada website at *tc.canada.ca/en/aviation.*
- You may view this material at the FAA, Office of the Regional Counsel, Southwest Region, 10101 Hillwood Pkwy., Room 6N–321, Fort Worth, TX 76177. For information on the availability of this material at the FAA, call (817) 222–5110.

Other Related Service Information: For Bell service information identified in this NPRM, contact Bell Textron Canada Limited, 12,800 Rue de l'Avenir, Mirabel, Quebec J7J 1R4, Canada; telephone 1–450–437–2862 or 1–800–363–8023; fax 1–450–433–0272; email *productsupport@bellflight.com;* or at *bellflight.com/support/contact-support.* This service information is also available at the FAA contact information under *Material Incorporated by Reference* above.

FOR FURTHER INFORMATION CONTACT: Kristi Bradley, Program Manager, COS Program Management Section, Operational Safety Branch, Compliance & Airworthiness Division, FAA, 10101 Hillwood Pkwy., Fort Worth, TX 76177; telephone (817) 222–5110; email *kristin.bradley@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–2022–1488; Project Identifier MCAI–2022–00788–R'' 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 Kristi Bradley, Program Manager, COS Program Management Section, Operational Safety Branch, Compliance & Airworthiness Division, FAA, 10101 Hillwood Pkwy., Fort Worth, TX 76177; telephone (817) 222–5110; email *kristin.bradley@faa.gov.* Any commentary that the FAA receives that

is not specifically designated as CBI will be placed in the public docket for this rulemaking.

Background

Transport Canada, which is the aviation authority for Canada, has issued Transport Canada AD CF–2022–33, dated June 15, 2022 (Transport Canada AD CF–2022–33), to correct an unsafe condition for Bell Textron Canada Limited Model 206A, 206A–1, 206B, 206B–1, 206L, 206L–1, 206L–3 and 206L–4 helicopters, all serial numbers.

This proposed AD was prompted by a report in which a Bell Textron Canada Limited Model 206L–1 helicopter experienced loss of TR drive during a maintenance test flight, which was due to a failure of an adhesively bonded joint between an adapter and a tube on one of the segmented TRDS assemblies.

The FAA is proposing this AD to detect degradation of the adhesive bond of the TRDS assembly. The unsafe condition, if not addressed, could result in loss of TR drive and subsequent loss of control of the helicopter. See Transport Canada AD CF–2022–33 for additional background information.

Related Service Information Under 1 CFR Part 51

Transport Canada AD CF–2022–33 requires determining if a helicopter has an affected TRDS installed. If there is an affected TRDS installed, Transport Canada AD CF–2022–33 requires performing a repetitive detailed inspection of the bond line of the inboard end of the flange and, if there is damage, replacing the affected TRDS with a serviceable TRDS. Transport Canada AD CF–2022–33 also requires performing a repetitive proof load test of the TRDS assembly and replacing any TRDS that fails the proof load test. Transport Canada AD CF–2022–33 also prohibits installing a TRDS unless certain requirements are met.

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.

Other Related Service Information

The FAA also reviewed Bell Alert Service Bulletin (ASB) 206–20–139, Revision A, dated August 21, 2020 (ASB 206–20–139 Rev A) for Model 206A, 206B, and TH–67 helicopters, and Bell ASB 206L–20–184, Revision C, dated January 14, 2021 (ASB 206L–20–184 Rev C) for Model 206L, 206L–1, 206L–3, and 206L–4 helicopters. This service information specifies procedures for repetitive detailed visual inspections and proof load tests of installed bonded TRDSs, and replacement of an affected bonded TRDS that fails a visual inspection or proof load test with a serviceable segmented bonded TRDS or a riveted TRDS. This service information also specifies that replacing all the bonded TRDS assemblies with riveted TRDS assemblies is a terminating action for the repetitive visual inspections and proof load tests.

The FAA reviewed Bell Helicopter Technical Bulletin (TB) No. 206–06–186, Revision B, dated September 7, 2007, and Bell Helicopter Textron TB No. 206L–02–207, Revision A, dated January 22, 2003, which both specify procedures for installing a riveted TRDS and rotor break disc; inspecting the aft short shaft and driveshaft assemblies; and stripping and painting the aft short shaft and driveshaft assemblies.

FAA's Determination

These helicopters have been approved by the aviation authority of Canada and are approved for operation in the United States. Pursuant to the FAA's bilateral agreement with Canada, Transport Canada, its technical representative, has notified the FAA of the unsafe condition described in its AD. The FAA is proposing this AD after evaluating all known relevant information and determining that the unsafe condition described previously is likely to exist or develop on other helicopters of these same type designs.

Proposed AD Requirements in This NPRM

This proposed AD would require accomplishing the actions specified in Transport Canada AD CF–2022–33, described previously, as incorporated by reference, except for any differences identified as exceptions in the regulatory text of this proposed AD and except as discussed under ''Differences Between this Proposed AD, the Transport Canada AD, and the Service Information.''

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 Transport Canada AD CF–2022–33 by reference in the FAA final rule. This proposed AD would, therefore, require compliance with Transport Canada AD CF–2022–33 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 Transport Canada AD CF–2022–33 does not mean that operators need comply only with that section. For example, where the AD requirement refers to ''Corrective Actions,'' compliance with this AD requirement is not limited to the section titled ''Corrective Actions'' in Transport Canada AD CF–2022–33. Service information referenced in Transport Canada AD CF–2022–33 for compliance will be available at regulations.gov by searching for and locating Docket No. FAA–2022–1488 after the FAA final rule is published.

Differences Between This Proposed AD, the Transport Canada AD, and the Service Information

Where the service information referenced in Transport Canada AD CF–2022–33 specifies recording certain information in the event of a bond line failure and notifying Bell Product Support Engineering of the findings, this proposed AD would not require recording any information or reporting any information to Bell Product Support Engineering.

Costs of Compliance

The FAA estimates that this AD, if adopted as proposed, would affect 1,395 helicopters of U.S. Registry. Labor rates are estimated at $85 per work-hour. Based on these numbers, the FAA estimates the following costs to comply with this proposed AD.

Determining if an affected TRDS is installed would take about 0.5 work-hour for an estimated cost of $43 per helicopter and $59,985 for the U.S. fleet.

Inspecting the bond line and performing a proof load test would take about 1.5 work-hours for an estimated cost of $128 per helicopter per inspection cycle.

Replacing an affected TRDS assembly would take about 12 work-hours and parts would cost up to $32,708 for an estimated cost of up to $33,728 per helicopter.

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:

Bell Textron Canada Limited: Docket No. FAA–2022–1488; Project Identifier MCAI–2022–00788–R.

(a) Comments Due Date

The FAA must receive comments on this airworthiness directive (AD) by January 12, 2023.

(b) Affected ADs

None.

(c) Applicability

This AD applies to Bell Textron Canada Limited Model 206A, 206A–1 (OH–58A), 206B, 206B–1, 206L, 206L–1, 206L–3, and 206L–4 helicopters, all serial numbers, certificated in any category.

(d) Subject

Joint Aircraft Service Component (JASC) Code: 6510, Tail Rotor Drive Shaft.

(e) Unsafe Condition

This AD was prompted by a loss of tail rotor (TR) drive due to a failure of an adhesively bonded joint between an adapter and a tube on one of the segmented TR drive shaft (TRDS) assemblies. The FAA is issuing this AD to detect degradation of the adhesive bond of the TRDS assembly. The unsafe condition, if not addressed, could result in loss of TR drive and subsequent loss of control of the helicopter.

(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, Transport Canada AD CF–2022–33, dated June 15, 2022 (Transport Canada AD CF–2022–33).

(h) Exceptions to Transport Canada AD CF–2022–33

(1) Where Transport Canada AD CF–2022–33 requires compliance in terms of air time, this AD requires using hours time-in-service (TIS).

(2) Where Transport Canada AD CF–2022–33 refers to its effective date, this AD requires using the effective date of this AD.

(3) Where Transport Canada AD CF–2022–33 defines ''Affected TRDS,'' for this AD replace each instance of the text ''affected TRDS,'' with '' a TRDS with a part number (P/N) that is not one of the riveted TRDS P/Ns listed in the accomplishment instructions of Bell Alert Service Bulletin (ASB) 206–20–139, Revision A, dated August 21, 2020 (ASB 206–20–139 Rev A) or Bell ASB 206L–20–184, Revision C, dated January 14, 2021 (ASB 206L–20–184 Rev C) as applicable to your model helicopter.''

(4) Where Transport Canada AD CF–2022–33 defines ''Serviceable part,'' for this AD replace each instance of the text ''serviceable part,'' with ''a riveted TRDS with a P/N that is listed in the accomplishment instructions of ASB 206–20–139 Rev A or ASB 206L–20–184 Rev C as applicable to your model helicopter; or an affected TRDS that has been inspected and proof load tested in accordance with the requirements of this AD within the past 300 hours TIS or within the last 12 months, whichever occurs first.''

(5) Where the service information referenced in Transport Canada AD CF–2022–33 specifies scrapping or discarding a part, this AD requires removing that part from service.

(6) Where the service information referenced in Transport Canada AD CF–2022–33 specifies in the event of a bond line failure, recording the torque value at which it failed, the affected shaft position, part number, serial number, and which end failed, and notifying Bell Product Support Engineering of the findings, this AD does not require recording any discrepancies or reporting any information to Bell Product Support Engineering.

(i) No Reporting Requirement

Although the service information referenced in Transport Canada AD CF–2022–33 specifies to submit certain information to the manufacturer, this AD does not include that requirement.

(j) Special Flight Permit

Special flight permits are prohibited.

(k) Alternative Methods of Compliance (AMOCs)

(1) 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 local Flight Standards District Office, as appropriate. If sending information directly to the manager of the International Validation Branch, send it to the attention of the person identified in paragraph (l) of this AD. Information may be emailed to: *9-AVS-AIR-730-AMOC@faa.gov.*

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

(l) Additional Information

For more information about this AD, contact Kristi Bradley, Program Manager, COS Program Management Section, Operational Safety Branch, Compliance & Airworthiness Division, FAA, 10101 Hillwood Pkwy., Fort Worth, TX 76177; telephone (817) 222–5110; email *kristin.bradley@faa.gov.*

(m) 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 the AD specifies otherwise.

(i) Transport Canada AD CF–2022–33, dated June 15, 2022.

(ii) [Reserved]

(3) For Transport Canada service information identified in this AD, contact Transport Canada, Transport Canada National Aircraft Certification, 159 Cleopatra Drive, Nepean, Ontario, K1A 0N5, CANADA; telephone 888–663–3639; email *TC.AirworthinessDirectives-Consignesdenavigabilite.TC@tc.gc.ca.* You may find the Transport Canada material on the Transport Canada website at *tc.canada.ca/en/aviation.*

(4) You may view this service information at the FAA, Office of the Regional Counsel, Southwest Region, 10101 Hillwood Pkwy., Room 6N–321, Fort Worth, TX 76177. For information on the availability of this material at the FAA, call (817) 222–5110.

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

Issued on November 18, 2022.

Christina Underwood,

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

[FR Doc. 2022–25709 Filed 11–25–22; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2022–1063; Project Identifier AD–2021–01339–T]

RIN 2120–AA64

Airworthiness Directives; The Boeing Company Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: The FAA proposes to adopt a new airworthiness directive (AD) for certain The Boeing Company Model 737–8, 737–9, and 737–8200 airplanes. This proposed AD was prompted by a determination that a new airworthiness limitation is necessary to require periodic replacement of the oxygen sensor of the nitrogen generation system (NGS). This proposed AD would require revising the existing maintenance or inspection program, as applicable, to incorporate the new airworthiness limitation. 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 January 12, 2023.

ADDRESSES: You may send comments, using the procedures found in 14 CFR 11.43 and 11.45, by any of the following methods:

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

For service information identified in this NPRM, contact Boeing Commercial Airplanes, Attention: Contractual & Data Services (C&DS), 2600 Westminster Blvd., *myboeingfleet.com.* You may view this service information at the FAA, Airworthiness Products Section, Operational Safety Branch, 2200 South 216th St., Des Moines, WA. For information on the availability of this material at the FAA, call 206–231–3195.

Examining the AD Docket

You may examine the AD docket at *regulations.gov* by searching for and locating Docket No. FAA–2022–1063; or in person at Docket Operations between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this NPRM, any comments received, and other information. The street address for Docket Operations is listed above.

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

SUPPLEMENTARY INFORMATION:

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–2022–1063; Project Identifier AD–2021–01339–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 Chris Baker, Aerospace Engineer, Propulsion Section, FAA, Seattle ACO Branch, 2200 South 216th St., Des Moines, WA 98198; phone and fax: 206–231–3552; email: *christopher.r.baker@faa.gov.* Any commentary that the FAA receives that is not specifically designated as CBI will be placed in the public docket for this rulemaking.

Background

This proposed AD was prompted by the discovery of a safety issue related to the reliability of the oxygen sensor of the airplane's NGS.

The NGS is an onboard inert gas system that reduces the flammability of the airplane's center fuel tank. The NGS uses an air separation module (ASM) to separate oxygen and nitrogen from the air. The ASM uses input from an oxygen sensor. After the ASM separates the oxygen-enriched air from the nitrogen-enriched air, the NGS returns nitrogen-enriched air to the fuel tank, and vents the oxygen-enriched air overboard. These actions reduce the flammability of the fuel tank.

Boeing discovered that the oxygen sensor's reliability can degrade over time. Degraded performance by the sensor could result in the ASM failing to produce nitrogen-enriched air, and the fuel tank becoming more flammable due to excessive oxygen-enriched air. Such additional flammability, if coupled with an ignition source in the fuel tank, could lead to a fuel tank explosion. This proposed AD would require adding an airworthiness limitation to require periodic replacement of the oxygen sensor.

This proposed AD would apply to airplanes with an original airworthiness certificate or original export certificate of airworthiness issued on or before April 1, 2021, as well as airplanes with line numbers 7668, 7678, and 7915. Boeing did not start delivering airplanes with Boeing 737–7/8/8200/9/10 Special

Compliance Items/Airworthiness Limitations, D626A011–9–04, dated January 2019, which addresses this issue, until after April 1, 2021, and delivered airplanes with line numbers 7668, 7678, and 7915 with an earlier revision of that document. The applicability in this proposed AD is therefore limited to airplanes that were delivered with a version of Boeing 737–7/8/8200/9/10 Special Compliance Items/Airworthiness Limitations, D626A011–9–04 dated prior to January 2019.

FAA's Determination

The FAA is issuing this NPRM after determining that the unsafe condition described previously is likely to exist or develop on other products of the same type design.

Related Service Information Under 1 CFR Part 51

The FAA reviewed Boeing 737–7/8/8200/9/10 Special Compliance Items/Airworthiness Limitations, D626A011–9–04, dated January 2019. This service information describes, among other airworthiness limitations (AWLs), airworthiness limitation instruction (ALI) AWL No. 47–AWL–09, ''Nitrogen Generation System—Oxygen Sensor,'' for replacing oxygen sensors. This service information is reasonably available because the interested parties have access to it through their normal course of business or by the means identified in the **ADDRESSES** section.

Proposed AD Requirements in This NPRM

This proposed AD would require revising the existing maintenance or inspection program, as applicable, to incorporate a new airworthiness limitation.

This proposed AD would require revisions to certain operator maintenance documents to include new actions (replacements). 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 according to paragraph (i) of this proposed AD.

Costs of Compliance

The FAA estimates that this AD, if adopted as proposed, would affect 62 airplanes of U.S. registry. The FAA estimates the following costs to comply with this proposed AD:

The FAA has determined that revising the existing maintenance or inspection program takes an average of 90 work-hours per operator, although the agency recognizes that this number may vary from operator to operator. Since operators incorporate maintenance or inspection program changes for their affected fleet(s), the FAA has determined that a per-operator estimate is more accurate than a per-airplane estimate. Therefore, the FAA estimates the average total cost per operator to be $7,650 (90 work-hours × $85 per work-hour).

Authority for This Rulemaking

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

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

Regulatory Findings

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

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

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

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

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

List of Subjects in 14 CFR Part 39

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

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

The Boeing Company: Docket No. FAA–2022–1063; Project Identifier AD–2021–01339–T.

(a) Comments Due Date

The FAA must receive comments on this airworthiness directive (AD) by January 12, 2023.

(b) Affected ADs

None.

(c) Applicability

This AD applies to The Boeing Company Model 737–8, 737–9, and 737–8200 airplanes, certificated in any category, identified in paragraphs (c)(1) and (2) of this AD.

(1) Airplanes with an original airworthiness certificate or original export certificate of airworthiness issued on or before April 1, 2021.

(2) Airplanes with line numbers 7668, 7678, and 7915.

(d) Subject

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

(e) Unsafe Condition

This AD was prompted by significant changes made to an airworthiness limitation (AWL) related to the nitrogen generation system (NGS). The FAA is issuing this AD to prevent increasing the flammability exposure of the center fuel tank, which together with an ignition source in the fuel tank, could lead to a fuel tank explosion and consequent loss of the airplane.

(f) Compliance

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

(g) Maintenance or Inspection Program Revision

Within 60 days after the effective date of this AD, revise the existing maintenance or inspection program, as applicable, to incorporate the information specified in AWL No. 47–AWL–09, ''Nitrogen Generation System—Oxygen Sensor,'' of Boeing 737–7/8/8200/9/10 Special Compliance Items/Airworthiness Limitations, D626A011–9–04, dated January 2019. The initial compliance time for the airworthiness limitation instruction (ALI) task is: Within 18,000 flight

hours after the date of issuance of the original airworthiness certificate or the original export certificate of airworthiness, within 18,000 flight hours after the most recent replacement was performed as specified in AWL No. 47–AWL–09, or within 12 months after the effective date of this AD, whichever is latest.

(h) No Alternative Actions or Intervals

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

(i) Alternative Methods of Compliance (AMOCs)

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

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

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

(j) Related Information

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

(2) For service information identified in this AD, contact Boeing Commercial Airplanes, Attention: Contractual & Data Services (C&DS), 2600 Westminster Blvd., MC 110–SK57, Seal Beach, CA 90740–5600; telephone 562–797–1717; internet *myboeingfleet.com.* You may view this referenced service information at the FAA, Airworthiness Products Section, Operational Safety Branch, 2200 South 216th St., Des Moines, WA. For information on the availability of this material at the FAA, call 206–231–3195.

Issued on August 19, 2022.

Christina Underwood,

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

[FR Doc. 2022–25722 Filed 11–25–22; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2022–1424; Airspace Docket No. 22–AEA–11]

RIN 2120–AA66

Proposed Amendment of VOR Federal Airways V–268 and V–474, Revocation of Jet Route J–518 and VOR Federal Airway V–119, and Establishment of Area Navigation Route Q–178 in the Vicinity of Indian Head, PA

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This action proposes to amend VHF Omnidirectional Range (VOR) Federal airways V–268 and V–474, revoke Jet Route J–518 and VOR Federal airway V–119, and establish Area Navigation (RNAV) route Q–178. The FAA is proposing this action due to the planned decommissioning of the VOR portion of the Indian Head, PA, VOR/Tactical Air Navigation (VORTAC) navigational aid (NAVAID). The Indian Head VOR is being decommissioned in support of the FAA's VOR Minimum Operational Network (MON) program.

DATES: Comments must be received on or before January 12, 2023.

ADDRESSES: Send comments on this proposal to the U.S. Department of Transportation, Docket Operations, 1200 New Jersey Avenue SE, West Building Ground Floor, Room W12–140, Washington, DC 20590; telephone: 1(800) 647–5527, or (202) 366–9826. You must identify FAA Docket No. FAA–2022–1424; Airspace Docket No. 22–AEA–11 at the beginning of your comments. You may also submit comments through the internet at *www.regulations.gov.*

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 would modify the National Airspace System (NAS) as necessary to preserve the safe and efficient flow of air traffic.

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the proposal.

Communications should identify both docket numbers (FAA Docket No. FAA–2022–1424 Airspace; Docket No. 22–AEA–11) and be submitted in triplicate to the Docket Management Facility (see **ADDRESSES** section for address and phone number). You may also submit comments through the internet at *www.regulations.gov.*

Commenters wishing the FAA to acknowledge receipt of their comments on this action must submit with those comments a self-addressed, stamped postcard on which the following statement is made: ''Comments to FAA Docket No. FAA–2022–1424; Airspace Docket No. 22–AEA–11.'' The postcard will be date/time stamped and returned to the commenter.

All communications received on or before the specified comment closing date will be considered before taking action on the proposed rule. The proposal contained in this action may be changed in light of comments

received. All comments submitted will be available for examination in the public docket both before and after the comment closing date. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRMs

An electronic copy of this document may be downloaded through the internet at *www.regulations.gov.* Recently published rulemaking documents can also be accessed through the FAA's web page at *www.faa.gov/air_traffic/publications/airspace_amendments/.*

You may review the public docket containing the proposal, any comments received and any final disposition in person in the Dockets Office (see **ADDRESSES** section for address and phone number) between 9:00 a.m. and 5:00 p.m., Monday through Friday, except Federal holidays. An informal docket may also be examined during normal business hours at the office of the Operations Support Group, Central Service Center, Federal Aviation Administration, 10101 Hillwood Parkway, Fort Worth, TX 76177.

Availability and Summary of Documents for Incorporation by Reference

This document proposes to amend 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.

Background

The FAA is planning to decommission the Indian Head, PA, VOR in June 2023. The Indian Head VOR was one of the candidate VORs identified for discontinuance by the FAA's VOR MON program and listed in the Final policy statement notice, ''Provision of Navigation Services for the Next Generation Air Transportation System (NextGen) Transition to Performance-Based Navigation (PBN) (Plan for Establishing a VOR Minimum Operational Network),'' published in the **Federal Register** of July 26, 2016 (81 FR 48694), Docket No. FAA–2011–1082.

Although the VOR portion of the Indian Head, PA, VORTAC is planned for decommissioning, the co-located Distance Measuring Equipment (DME) portion of the NAVAID is being retained to support NextGen PBN flight procedure requirements.

The air traffic service (ATS) routes effected by the Indian Head VOR decommissioning are Jet Route J–518 and VOR Federal airways V–119, V–268, and V–474. With the planned decommissioning of the Indian Head VOR, the remaining ground-based NAVAID coverage in the area is insufficient to enable the continuity of the affected ATS routes. As such, proposed modifications to V–268 and V–474 would result in the affected airway segments being removed and the airways being shortened; and to J–518 and V–119 would result in the ATS routes being revoked.

To overcome the proposed modifications and revocations to the affected ATS routes, instrument flight rules (IFR) traffic could use portions of adjacent ATS routes, including Jet Routes J–60, J–162, and J–211 in the high altitude enroute structure and V–12, V–44, V–469, and V–501 in the low altitude enroute structure, or receive air traffic control (ATC) radar vectors to circumnavigate or fly through the affected area. Pilots equipped with RNAV capabilities could also navigate in the high altitude and low altitude enroute structures point to point using existing NAVAIDs and fixes that would remain in place to support continued operations through the affected area. Visual flight rules (VFR) pilots who elect to navigate via the affected ATS routes could also take advantage of the adjacent ATS routes or ATC services listed previously.

The FAA also proposes to establish RNAV route Q–178 between the Dryer, OH, VOR/Distance Measuring Equipment (VOR/DME) and the Baltimore, MD, VORTAC NAVAIDs. The new Q-route would mitigate the proposed revocation of J–518 due to the planned decommissioning of the Indian Head VOR, reduce ATC sector workload and complexity, and reduce pilot-to-controller communications. The new Q-route would also provide RNAV equipped aircraft an ATS route alternative and support the FAA's NextGen efforts to modernize the NAS navigation system from a ground-based system to a satellite-based system.

The Proposal

The FAA is proposing an amendment to 14 CFR part 71 to amend VOR Federal airways V–268 and V–474, revoke Jet Route J–518 and VOR Federal airway V–119, and establish RNAV route Q–178. The ATS route amendments, revocations, and establishment are due to the planned decommissioning of the Indian Head, PA, VOR. The proposed ATS route actions are described below.

J–518: J–518 currently extends between the Dryer, OH, VOR/DME and the Baltimore, MD, VORTAC via the Indian Head, PA, VORTAC. The FAA proposes to remove the route in its entirety.

Q–178: Q–178 is a new RNAV route proposed to extend between the Dryer, OH, VOR/DME and the Baltimore, MD, VORTAC via the LEJOY, PA, Fix located approximately 4 nautical miles (NM) northwest of the Indian Head VORTAC. This new Q-route would mitigate the proposed revocation of J–518 and provide RNAV routing between the Cleveland, OH, area and the Baltimore, MD, area. The new Q–178 would provide the high altitude enroute structure necessary to replace the loss of J–518 and maintain the connectivity to multiple instrument approach procedures for various airports.

V–119: V–119 currently extends between the Parkersburg, WV, VOR/DME and the Indian Head, PA, VORTAC. The FAA proposes to remove the airway in its entirety.

V–268: V–268 currently extends between the intersection of the Morgantown, WV, VOR/DME 010° and Johnstown, PA, VOR/DME 260° radials (NESTO Fix) and the Augusta, ME, VOR/DME. The airspace within restricted area R–4001B and the airspace below 2,000 feet mean sea level (MSL) outside the United States is excluded. The FAA proposes to remove the airway segment overlying the Indian Head VORTAC between the NESTO Fix and the Hagerstown, MD, VOR. As amended, the airway would extend between the Hagerstown VOR and the Augusta VOR/DME.

V–474: V–474 currently extends between the intersection of the Morgantown, WV, VOR/DME 010° and Johnstown, PA, VOR/DME 260° radials (NESTO Fix) and the Modena, PA, VORTAC. The FAA proposes to remove the airway segment overlying the Indian Head VORTAC between the NESTO Fix and the St. Thomas, PA, VORTAC. As amended, the airway would extend between the St. Thomas VORTAC and the Modena VORTAC.

The NAVAID radials listed in the ATS route descriptions below are unchanged and stated in True degrees.

Jet Routes are published in paragraph 2004, United States Area Navigation Routes (Q-routes) are published in paragraph 2006, and VOR Federal airways are published in paragraph 6010(a) of FAA Order JO 7400.11G, dated August 19, 2022, and effective September 15, 2022, which is incorporated by reference in 14 CFR

71.1. The ATS routes and reporting point listed in this document would be published subsequently in FAA Order JO 7400.11.

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 proposed 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 proposed 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

This proposal will be subject to an environmental analysis in accordance with FAA Order 1050.1F, ''Environmental Impacts: Policies and Procedures,'' prior to any FAA final regulatory action.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

The Proposed Amendment

In consideration of the foregoing, the Federal Aviation Administration proposes to amend 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–518 [Removed]

* * * * *

Paragraph 2006 United States Area Navigation Routes.

* * * * *

Q–178 DRYER, OH (DJB) TO BALTIMORE, MD (BAL) [NEW]

Dryer, OH (DJB)	VOR/DME	(Lat. 41°21′29.03″ N, long. 082°09′43.09″ W)
LEJOY, PA	FIX	(Lat. 40°00′12.22″ N, long. 079°24′53.61″ W)
Baltimore, MD (BAL)	VORTAC	(Lat. 39°10′15.83″ N, long. 076°39′40.52″ W)

* * * * *

Paragraph 6010(a) Domestic VOR Federal Airways.

* * * * *

V–119 [Removed]

* * * * *

V–268 [Amended]

From Hagerstown, MD; Westminster, MD; Baltimore, MD; INT Baltimore 093° and Smyrna, DE, 262° radials; Smyrna; INT Smyrna 086° and Sea Isle, NJ, 050° radials; INT Sea Isle 050° and Hampton, NY, 223° radials; Hampton; Sandy Point, RI; INT Sandy Point 031° and Kennebunk, ME, 180° radials; INT Kennebunk 180° and Boston, MA, 032° radials; INT Boston 032° and Augusta, ME, 195° radials; to Augusta. The airspace within R–4001B and the airspace below 2,000 feet MSL outside the United States is excluded.

* * * * *

V–474 [Amended]

From St. Thomas, PA; INT St. Thomas 088° and Modena, PA, 274° radials; to Modena.

* * * * *

Issued in Washington, DC, on November 21, 2022.

Scott M. Rosenbloom,

Manager, Airspace Rules and Regulations.

[FR Doc. 2022–25822 Filed 11–25–22; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

18 CFR Parts 153 and 380

[Docket No. RM22–8–000]

Updating Regulations for Engineering and Design Materials for Liquefied Natural Gas Facilities Related to Potential Impacts Caused by Natural Hazards

AGENCY: Federal Energy Regulatory Commission.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Federal Energy Regulatory Commission (Commission) proposes to revise its regulations governing liquefied natural gas (LNG) facilities subject to sections 3 and 7 of the Natural Gas Act (NGA) by removing outdated references for seismic hazard evaluations and seismic design criteria for LNG facilities. In their place, the Commission proposes to codify its existing practice of evaluating seismic and other natural hazards and design criteria for LNG facilities under its jurisdiction. These revisions are intended to reduce confusion about applicable technical requirements and clarify the information required in applications filed before the Commission to ensure the public is protected from potential catastrophic impacts caused by natural hazards.

DATES: Comments are due January 27, 2023.

ADDRESSES: Comments, identified by docket number, may be filed in the following ways. Electronic filing through *http://www.ferc.gov,* is preferred.

- *Electronic Filing:* Documents must be filed in acceptable native applications and print-to-PDF, but not in scanned or picture format.
- For those unable to file electronically, comments may be filed by U.S. Postal Service mail or by hand (including courier) delivery.

○ *Mail via U.S. Postal Service Only:* Addressed to: Federal Energy Regulatory Commission, Secretary of the Commission, 888 First Street NE, Washington, DC 20426.

○ *For delivery via any other carrier (including courier):* Deliver to: Federal Energy Regulatory Commission, Office of the Secretary, 12225 Wilkins Avenue, Rockville, MD 20852.

The Comment Procedures Section of this document contains more detailed filing procedures.

FOR FURTHER INFORMATION CONTACT:

Andrew Kohout (Technical Information), Office of Energy Projects, Federal Energy Regulatory Commission, 888 First Street NE, Washington, DC 20426, (202) 502–8053, *andrew.kohout@ferc.gov*

Kenneth Yu (Legal Information), Office of the General Counsel, Federal Energy Regulatory Commission, 888 First Street NE, Washington, DC 20426, (202) 502–8482, *kenneth.yu@ferc.gov*

SUPPLEMENTARY INFORMATION:

1. The Federal Energy Regulatory Commission (Commission or FERC) proposes to revise its regulations under 18 CFR parts 153 and 380 governing liquefied natural gas (LNG) facilities subject to sections 3 and 7 of the Natural Gas Act (NGA) by removing references to a legacy agency (the National Bureau of Standards) that has been renamed and two technical standards [1] related to seismic hazard evaluation and seismic design criteria for LNG facilities (Uniform Building Code's (UBC) Seismic Risk Map of the United States (Map) and National Bureau of Standards Information Report 84–2833, *Data Requirements for the Seismic Review of LNG Facilities* (NBSIR 84–2833)) that have become outdated. Consistent with the Commission's previous rulemakings to update outdated regulations,[2] this notice of proposed rulemaking (NOPR) proposes to codify the Commission's current practice for reviewing seismic and other natural hazard evaluation and design materials related to NGA section 3 and 7 applications for LNG facilities, as memorialized in the Commission's *Guidance Manual for Environmental Report Preparation for Applications Filed Under the Natural Gas Act, Volume II, Liquefied Natural Gas Project Resource Reports 11 and 13 Supplemental Guidance* (2017 Guidance).[3] The purpose of the rulemaking is to reduce confusion about the Commission's informational requirements under Parts 153, 157, and 380 of the Commission's regulations.

I. Background

A. The Commission's Authority and Requirements

2. Under section 3(e) of the NGA, the Commission exercises exclusive jurisdiction over authorizing the siting, construction, expansion, and operation of LNG terminals onshore and in state waters.[4] Additionally, section 3(a) of the NGA provides for federal jurisdiction over the authorization, with or without conditions or modifications, or denial of the siting, construction, and operation of facilities used to import or export gas.[5] The Commission also issues certificates of public convenience and necessity for LNG and other facilities used for the transportation of natural gas in interstate commerce under section 7 of the NGA.[6] When acting on applications filed pursuant to these sections of the NGA, the Commission serves as the lead federal agency for satisfying compliance with the National Environmental Policy Act (NEPA).[7] The Commission's regulations implementing these authorities are codified in 18 CFR parts 153, 157, and 380, and direct prospective applicants [8] and applicants to provide information necessary for the Commission to process their applications.[9]

3. In Part 153 of the Commission's regulations, which pertains to applications for authorization to site, construct, or operate facilities used to export or import natural gas under section 3 of the NGA, § 153.8(a) sets forth exhibits that must accompany an application. As pertinent to this rulemaking, paragraph (a)(5) requires applicants to file an Exhibit E, which includes a report containing detailed engineering and design information and references the Commission's *Guidance Manual for Environmental Report Preparation*.[10] Paragraph (a)(6) requires applicants of LNG import or export facilities to file an Exhibit E–1, which includes a report on earthquake hazards and engineering,[11] and paragraph (a)(7) requires applicants to file an Exhibit F, an environmental report that complies with §§ 380.3 and 380.12 of the Commission's regulations.[12]

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[1] The National Technology Transfer and Advancement Act of 1995 defines ''technical standards'' as ''performance-based or design-specific technical specifications and related management systems practices.'' 15 U.S.C. 272 note. The Office of Management and Budget clarifies that the definition of technical standard includes, among other things, the definition of terms; classification of components; delineation of procedures; specification of dimensions, materials, performance, designs, or operations; measurement of quality and quantity in describing materials, processes, products, systems, services, or practices; test methods and sampling procedures; formats for information and communication exchange; or descriptions of fit and measurements of size or strength. Office of Management and Budget, *Federal Participation in the Development and Use of Voluntary Consensus Standards and in Conformity Assessment Activities,* OMB Circular A–119, Revised (Jan. 27, 2016).

[2] *See, e.g., Revisions to Reguls. Governing Authorization for Constr. of Nat. Gas Pipeline Facilities,* Order No. 555, 56 FR 52330 (Oct. 18, 1991), FERC Stats. & Regs. ¶ 30,928 (1991) (cross-referenced at 56 FERC ¶ 61,414), *withdrawn,* 58 FR 15418 (Mar. 23, 1993), FERC Stats & Regs. ¶ 30,965 (cross-referenced 62 FERC ¶ 61,249) (before withdrawing the final rule, the Commission attempted to update and codify the Commission's practice of processing environmental data in Part 380 by formalizing the use of resource reports); *Applications for Authorization to Construct, Operate, or Modify Facilities Used for the Exp. or Imp. of Nat. Gas,* Order No. 595, 62 FR 30435 (Aug. 4, 1997), FERC Stats. & Regs. ¶ 31,054 (1997) (cross-referenced at 79 FERC ¶ 61,245) (codifying the Commission's practice of requiring engineering-related information and seismic information in NBSIR 84–2833); *Revision of Existing Reguls. Governing the Filing of Applications for the Constr. & Operation of Facilities to Provide Serv. or to Abandon or Serv. Under Section 7 of the Nat. Gas Act,* Order No. 603, 64 FR 37037 (July 9, 1999) FERC Stats. & Regs. ¶ 31,073 (1999) (cross-referenced at 87 FERC ¶ 61,125) (codifying the Commission's practice of allowing applicants to prepare environmental reports in the form of resource reports).

[3] *Notice of Availability of the Final Guidance Manual for Env'l Preparation,* 82 FR 12,088 (Feb. 28, 2017).

[4] 15 U.S.C. 717b(e)(1).

[5] 15 U.S.C. 717b(a). The 1977 Department of Energy (DOE) Organization Act (42 U.S.C. 7151(b)) placed all section 3 jurisdiction under DOE. The Secretary of Energy subsequently delegated authority to the Commission to ''[a]pprove or disapprove the construction and operation of particular facilities, the site at which such facilities shall be located, and with respect to natural gas that involves the construction of new domestic facilities, the place of entry for imports or exit for exports.'' DOE Delegation Order No. S1–DEL–FERC–2006, section 1.21A (May 16, 2006).

[6] 15 U.S.C. 717f(c).

[7] 42 U.S.C. 4321 *et seq;* 15 U.S.C. 717n(b)(1).

[8] Applicants to construct LNG terminals are required to comply with the Commission's pre-filing process prior to filing an application with the Commission. 15 U.S.C. 717b–1(a); 18 CFR 157.21.

[9] *See* 18 CFR 153.8(a)(5), 153.8(a)(6), 153.8(a)(7)(i), 157.14(a)(7), 157.21, 380.3, 380.12. 18 CFR 153.8(a)(7) contains an errant subparagraph (i), which this NOPR proposes to remove.

[10] 18 CFR 153.8(a)(5).

[11] 18 CFR 153.8(a)(6).

[12] 18 CFR 153.8(a)(7)(i). *See also* 18 CFR 157.14(a)(7) (containing the same requirement as section 153.8(a)(7)(i) to file an environmental report (Exhibit F–1) that complies with sections 380.3 and 380.12); 18 CFR 157.21 (requiring a prospective applicants of LNG import or export facilities to prepare an application that contain the environmental information prescribed in Part 380).

4. Similarly, in Part 157 of the Commission's regulations, which pertains to applications for certificates of public convenience and necessity for the construction and operation of facilities to provide interstate natural gas transportation service under section 7 of the NGA, § 157.14(a) sets forth the exhibits that must accompany an application. As pertinent to this rulemaking, paragraph (a)(7) requires the applicant to file an Exhibit F–1, an environmental report that complies with §§ 380.3 and 380.12 of the Commission's regulations.[13]

5. Section 380.3 establishes the information that an applicant must file, including information identified in § 380.12 and Appendix A to Part 380.[14] Section 380.12 identifies the content requirements for the environmental report outlined in 13 resource reports.[15] Specifically, § 380.12(h)(5) requires a report, in Resource Report 6 (Geological Resources), on earthquake hazards and engineering that conforms to NBSIR 84–2833 if the applicant proposes to construct and operate LNG facilities located in zones 2, 3, or 4 of the UBC map, or where there is potential for surface faulting or liquefaction.[16]

6. Under § 380.12(o), applicants must also prepare a report, Resource Report 13, that contains engineering and design material for the proposed LNG facility.[17] Section 380.12(o)(14) requires an applicant to identify how it will comply with the applicable U.S. Department of Transportation (DOT) regulations,[18] including its siting requirements, the National Fire Protection Association 59A LNG Standards (NFPA 59A), and, if applicable, U.S. Coast Guard's regulations [19] pertaining to vapor dispersion calculations from LNG spills over water.[20] Like for Resource Report 6, applicants must provide seismic information specified in NBSIR 84–2833 for LNG facilities that would be located in zone 2, 3, or 4 of the UBC map when preparing Resource Report 13.[21] Appendix A to Part 380 summarizes the minimum filing requirements for these resource reports.[22] Failure to comply with these minimum filing requirements would result in the issuance of a data request by Commission staff to obtain the information or rejection of the application.[23]

7. As described above, both Resource Reports 6 and 13 require information based on the UBC map and NBSIR 84–2833. The UBC map groups the country into seismic risk classifications and formalizes construction standards based on those classifications. The last version of the UBC was published in 1997 [24] and was subsequently replaced by the International Code Council (ICC)'s International Building Code (IBC), which was first published in 2000.[25] The IBC incorporates the Structural Engineering Institute (SEI) of the American Society of Civil Engineers (ASCE) 7, *Minimum Design Loads and Associated Criteria for Buildings and Other Structures* (ASCE/SEI 7),[26] which provides a Seismic Risk Map of Ground Motions for the United States and seismic design categories.[27] ASCE/SEI 7 also provides additional maps for other natural hazard load considerations.

8. Published in 1984, NBSIR 84–2833 provides guidance for applicants requesting authorization to construct LNG facilities on how to investigate a site to obtain geologic and seismic data for the Commission's seismic review of proposed LNG facilities.[28] It also standardizes the format for reporting this data to the Commission.[29]

9. The Commission has long recognized that both the UBC map and NBSIR 84–2833 have become outdated and are no longer widely used in the engineering and design of LNG facilities despite still being referenced in the Commission's regulations. On January 23, 2007, the Commission attempted to address the confusion caused by these two outdated standards by issuing a draft *Seismic Design Guidelines and Data Submittal Requirements for LNG Facilities* to update and replace the information in NBSIR 84–2833.[30] The Commission, however, never issued those finalized guidelines.

10. On February 22, 2017, as part of its larger effort to update its environmental reporting guidance, the Commission issued the 2017 Guidance, which provides information to assist applicants in preparing their seismic evaluation and design materials. The 2017 Guidance updates and clarifies the level of detail and format of the information needed for the Commission's evaluation of hazards associated with proposed LNG facilities.[31] For example, the guidance identifies the types of natural hazards that should be analyzed, the natural hazard design investigations and design forces that should be referenced, the types of structures, systems, and components that should be described, and the types of diagrams and maps that should be included. The 2017 Guidance also recommends that applicants design certain LNG structures, systems, and components to be consistent with the seismic requirements of the 2005 version of ASCE/SEI 7 to demonstrate that their proposed project would not have a significant impact on public safety.[32] The 2017 Guidance recommends other evaluation and design measures for other natural hazards based on the regulatory requirements in § 380.12, DOT's regulations in Part 193, and other best practices.[33]

B. Governmental Accountability Office's Report

11. On August 6, 2020, the U.S. Government Accountability Office (GAO) issued a report recommending that the Commission update part 153 of its regulations because it incorporates the outdated technical standard NBSIR 84–2833.[34] The GAO noted that the

[13] 18 CFR 157.14(a)(7).

[14] 18 CFR 380.3(c)(2). Section 380.3(b) also requires applicants to provide all necessary or relevant information to the Commission and conduct studies that the Commission staff has considered necessary or relevant to determine the impact of the proposal on the environment. 18 CFR 380.3(b)(1), (b)(2).

[15] 18 CFR 380.12.

[16] 18 CFR 380.12(h)(5).

[17] 18 CFR 380.12(o).

[18] 49 CFR pt. 193.

[19] 33 CFR pt. 127.

[20] 18 CFR 380.12(o)(14).

[21] 18 CFR 380.12(o)(15).

[22] 18 CFR pt 380, app. A.

[23] 18 CFR 153.21, 157.8.

[24] International Conference of Building Officials, Dwelling Construction Under the Uniform Building Code (1997 ed.).

[25] The IBC was most recently revised in 2021 and various editions are in use or have been adopted by states, territories, and municipalities. *See* International Code Council, International Codes, *https://codes.iccsafe.org/codes/i-codes*; International Code Council, International Building Code Adoption Map, *https://www.iccsafe.org/wp-content/uploads/Code_Adoption_Maps.pdf* (published Oct. 19, 2000); *see also* Rossberg, J., Leon, R.T., Evolution of Codes in the USA, *https://www.nehrp.gov/pdf/UJNR_2013_Rossberg_Manuscript.pdf*.

[26] American Society of Civil Engineers, *Release of ASCE/SEI 7–22 brings important changes to structural loading standard,* Building Safety Journal, International Code Council (Dec. 9, 2021), *https://www.iccsafe.org/building-safety-journal/bsj-technical/release-of-asce-sei-7-22-brings-important-changes-to-structural-loading-standard/*.

[27] Additionally, we note that the National Earthquake Hazards Reduction Program (NEHRP), a Congressionally-mandated, multi-agency partnership, is actively engaged in revisions to ASCE/SEI 7 and the IBC. NEHRP's *Recommended Seismic Provisions for New Buildings and Other Structures* often serves as the basis for changes to ASCE/SEI 7 and the IBC.

[28] National Bureau of Standards, NBSIR 84–2833: Data Requirements for the Seismic Review of LNG Facilities 1 (June 1984), *https://nvlpubs.nist.gov/nistpubs/Legacy/IR/nbsir84-2833.pdf*.

[29] *Id.*

[30] *Seismic Design Guidelines & Data Submittal Requirements for LNG Facilities* at ii (Jan. 23, 2007).

[31] *See* Background Section of the 2017 Guidance.

[32] *Id.*

[33] *Id.*

[34] *See* U.S. Gov't Accountability Office, Natural Gas Exports: Updated Guidance and Regulations Could Improve Facility Permitting Processes 28 and Appendix II (Aug. 2020) (GAO Report), *https://www.gao.gov/products/gao-20-619*.

Commission issued the 2017 Guidance and the draft 2007 Guidelines to address applicants' confusion about the applicability of the outdated NBSIR 84–2833 and the UBC.[35] However, because guidance documents are not binding, it recommended that the Commission review its regulations for outdated technical standards and update its regulations accordingly so as to avoid confusing the public about current regulatory requirements.[36]

II. Discussion

12. In accordance with GAO's recommendation, the Commission reviewed its regulations for outdated technical standards and identified an outdated reference to a legacy federal agency, the National Bureau of Standards, in addition to the two standards that the Commission has historically known as being outdated: NBSIR .84–2833 and the UBC map. Accordingly, as discussed below, this NOPR proposes to revise the Commission's regulations to remove references to the National Bureau of Standards and the two outdated technical standards to avoid confusion about the information that the Commission reviews when processing applications to construct and operate LNG facilities. To replace the engineering and design information that NBSIR 84–2833 provides, the NOPR proposes to codify a substantial amount of the engineering and design informational materials identified in the 2017 Guidance regarding seismic and other natural hazards.

13. Specifically, the references to the National Bureau of Standards, NBSIR 84–2833, and the UBC map contained in §§ 153.2(b), 153.8(a)(6), and 380.12(h)(5) will be removed, and §§ 380.12(o)(14) and 380.12(o)(15) will be revised by adding new regulatory text. First, with regard to § 153.2(b), the National Bureau of Standards has been renamed the National Institute of Standards and Technology (NIST). Because National Bureau of Standards no longer exists, the definition of NBSIR or the National Bureau of Standards Information Report in § 153.2(b) is outdated and will be deleted from the Commission's regulations pending issuance of the final rule.[37]

14. Second, §§ 153.8(a)(6), 380.12(h)(5), and 380.12(o)(15) reference the UBC map, which, as noted above, was last published in 1997, and has been replaced by the IBC, which incorporates ASCE/SEI 7, and NEHRP's *Recommended Seismic Provisions for New Buildings and Other Structures.*[38]

15. Sections 153.8(a)(6), 380.12(h)(5), and 380.12(o)(15) also refer to NBSIR 84–2833. In light of multiple revisions to DOT's minimum safety standards and NFPA 59A since the publication of the NBSIR 84–2833 in 1984, NBSIR 84–2833 no longer serves as the most appropriate guidance to help applicants prepare resource reports for the Commission's review. Instead, applicants have generally disregarded the references in the Commission's regulations and prepared their resource reports in accordance with the Commission's practice, as memorialized in the 2017 Guidance.

16. Therefore, to eliminate confusion caused by codified references to the UBC map and NBSIR 84–2833, the Commission proposes to replace the existing language in § 380.12(o)(15) with new regulatory text that requires applicants to provide the engineering and design information that they have typically provided in accordance with the 2017 Guidance. In addition, the NOPR proposes to codify the Commission's practice of reviewing engineering and design materials related to other natural hazards, as recommended in 2017 Guidance.

17. Specifically, § 380.12(o)(15)(i) would require applicants to provide general site-specific engineering information used in the geotechnical and structural design of all structures, systems, and components. This information would: (1) address occupancy and risk categorization; (2) clarify applicants' interpretation of risk and reliability tolerances; (3) ensure an application discusses how the project design would withstand load combinations; and (4) ensure that an applicant's selection of risk categorizations and associated mean recurrence intervals to withstand natural hazards adequately address public safety impacts. Similarly, § 380.12(o)(15)(ii) would require applicants to provide geotechnical information needed to address the subsurface behavior from loads induced by structures, systems, and components for LNG projects. This section addresses the scope of investigations needed to identify safety concerns and mitigative measures, and replaces the scope of information that was previously required by the now outdated standards. Finally, § 380.12(o)(15)(iii) would require applicants to provide information related to the facility's ability to withstand certain natural hazards, such as seismic events, floods, and hurricanes, and would align with Commission staff's current guidance to applicants as well as those adopted in certain federal regulations, and applicable codes and standards such as NFPA 59A, ASCE/SEI 7, and the IBC. Together, these sections will allow Commission staff to evaluate whether a facility is appropriately designed to withstand natural hazards commensurate with the public safety and reliability.

18. Because the revised § 380.12(o)(15) will make §§ 153.8(a)(6) and 380(h)(5) obsolete, the NOPR proposes to delete these sections. Paragraph 4 of the section entitled Resource Report 6—Geological Resources in Appendix A to Part 380—Minimum Filing Requirements for Environmental Reports Under the NGA, which references obsolete § 153.8(a)(6) will also be deleted.

19. With respect to § 380.12(o)(14), it currently requires applicants to identify how they would comply with an unspecified edition of NFPA 59A, Part 193 of the DOT's regulations, and Part 127 of the Coast Guard's regulations. However, not all LNG facilities under the Commission's jurisdiction will be required to meet the design criteria specified in NFPA 59A, 49 CFR part 193, or 33 CFR part 127 and may fall under other federal regulations, such as the Environmental Protection Agency's regulations pertaining to its chemical accidental prevention program (40 CFR part 68) or the Occupational Safety and Health Administration's regulations regarding the safe management of highly hazardous chemicals (29 CFR 1910.119). To prevent confusion about the informational requirements that the Commission applies to its review of applications for the construction and operation of LNG facilities, the NOPR proposes to modify § 380.12(o)(14) and require applicants to identify all federal, state, and local regulations and requirements that apply to the siting, design, construction, testing, monitoring, operation, and maintenance of the proposed project and demonstrate how the proposed project will at a minimum comply with all applicable federal requirements and applicable codes and standards.[39]

[35] *Id.*

[36] *Id.* at 28–29, n.47.

[37] NIST did not publish an update to NBSIR 84–2833. For this reason, the NOPR proposes a deletion rather than an update.

[38] The Commission has previously noted the importance of referencing the IBC and ASCE/SEI 7 because engineers must be knowledgeable of both the IBC and ASCE/SEI 7 to qualify as an engineer of record under state professional engineering requirements. *See* Background Section of the 2017 Guidance.

[39] Additionally, we note that sections 380.12(o)(12) and (13) require applicants to: (1)

Continued

20. This proposal is consistent with the Commission's practice of clarifying and updating the informational requirements in its regulations by codifying its current practice of processing applications under the NGA.[40] As the Commission has previously explained, applications that followed the same format would result in a more expeditious Commission review and processing of applications.[41] When an application lacks the information necessary for the Commission to review a proposal's potential impacts on the environment or public safety, the Commission customarily issues data requests to obtain the missing information or rejects the application, both of which cause unnecessary delays.[42] However, when applicants are uncertain about what information is necessary because the Commission's regulations are outdated or have been replaced by a current practice that has not been codified, the Commission takes steps to clarify its regulations to reduce the uncertainty, as in this proposed rulemaking.[43] Consistent with its previous rulemaking, the purpose of codifying an existing practice is ''to provide better guidance to the regulated industry on what the Commission needs for its environmental analysis'' and ''when the information should be provided.'' [44] As a result, the Commission would be able ''to quickly process applications in a way that protects the environment and ensures the procedural requirements of NEPA are met.'' [45]

III. Regulatory Requirements

A. Information Collection Statement

21. The information collection requirements contained in this NOPR are subject to review by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995.[46] OMB's regulations require approval of certain information collection requirements imposed by agency rules.[47] Upon approval of a collection of information, OMB will assign an OMB control number and an expiration date. Respondents subject to the filing requirements of a rule will not be penalized for failing to respond to the collection of information unless the collection of information displays a valid OMB control number.

22. This NOPR would remove references to a legacy agency and two outdated technical standards for seismic hazard evaluations and seismic design criteria for LNG facilities and codify certain existing practices concerning natural hazard evaluations and design for LNG facilities contained in the Commission's 2017 guidance document. The proposed rule would modify certain reporting and recordkeeping requirements included in FERC–537 (OMB Control No. 0060), FERC–539A (OMB Control No. 1902–NEW), and FERC–577A (OMB Control No. 1902–NEW).[48]

23. Interested persons may obtain information on the reporting requirements by contacting Ellen Brown, Office of the Executive Director, Federal Energy Regulatory Commission, 888 First Street NE, Washington, DC 20426 by email (*DataClearance@ferc.gov*) or phone ((202) 502–8663).

24. The Commission solicits comments on this collection of information within 60 days of the publication of this NOPR in the **Federal Register**. Public comments may include, but are not limited to, following topics: the Commission's need for this information, whether the information will have practical utility, the accuracy of the burden estimates, ways to enhance the quality, utility, and clarity of the information to be collected or retained, and any suggested methods for minimizing respondents' burden, including the use of automated information techniques.

25. Please send comments concerning the collection of information and the associated burden estimates to: OMB through *www.reginfo.gov/public/do/PRAMain,* Attention: Federal Energy Regulatory Commission Desk Officer. Please identify FERC–537 (OMB Control No. 0060), FERC–539A (OMB Control No. 1902–NEW), and FERC–577A (OMB Control No 1902–NEW) in the subject line.

26. *Instructions:* OMB submissions must be formatted and filed in accordance with submission guidelines at: *www.reginfo.gov/public/do/PRAMain;* using the search function under the ''Currently Under Review field,'' select Federal Energy Regulatory Commission, click ''submit,'' and select ''comment'' to the right of the subject collection.

27. *Title:* FERC–537 (Gas Pipeline Certificates: Construction, Acquisition, and Abandonment).

28. *Action:* Proposed revisions to information collection FERC–537.

29. *OMB Control No.:* 1902–0060.

30. *Respondents:* Natural gas companies.

31. *Frequency of Information Collection:* Ongoing.

32. *Abstract:* The NOPR would require prospective applicants and applicants to provide engineering and design materials related to natural hazards to comport with the Commission's current practice of processing section 7 applications related to LNG facilities.

33. *Necessity of Information:* The revisions are intended to update the currency of the Commission's regulations and reduce confusion related the preparation and filing of applications to site, design, construct, operate, or modify LNG facilities used in interstate commerce. The revised regulations would affect only entities that file applications with the Commission for LNG facilities and would not increase or decrease the recently approved burden on respondents since the NOPR would codify the Commission's existing practices.[49]

identify all codes and standards under which the plant (and marine terminal, if applicable) will be designed, and any special considerations or safety provisions that were applied to the design of plant components; and (2) provide a list of all permits or approvals from local, state, federal, or Native American groups or Indian agencies required prior to and during construction of the plant, and the status of each, including the date filed, the date issued, and any known obstacles to approval. 18 CFR 380.12(o)(12), (13).

[40] *See supra* n.2.

[41] *See Revision of the Commission's Reguls. Under the Nat. Gas Act,* 63 FR 55682 (Oct.16, 1998), FERC Stats. & Regs. ¶ 32,535, at 33,524 (1998) (cross-referenced at 84 FERC ¶ 61,345) (Order No. 603 NOPR) 55,685–86. Although Order No. 603 focused on NGA section 7 applications, the order changed the informational requirements for environmental reports in Part 153 so that they comport with the requirements in Part 157. *Id.* at 33,527–28.

[42] *See id.* at 33,525 (stating ''[a]n incomplete filing necessitates time consuming staff data requests. However, the more complete the environmental information is at the time of filing, the more expeditiously the Commission can process the application.''). *See also* 18 CFR 153.21(b) (rejection of applications filed under Part 153); 18 CFR 157.8 (rejection of applications filed under Part 157).

[43] *See id.* (explaining that ''conducting the environmental review is the most time consuming part of the certificate process. The Commission believes this is the result of several factors. First, too often pipelines are filing minimal information with the intention of filing the missing information at some later date . . . Further, applicants may be unsure of what is needed because many of the Commission's environmental regulations dealing with pipeline projects are either outdated, found in several parts of the CFR, or, in the case of the environmental report, as stated, replaced in current practice by a preferred format that does not appear anywhere in the regulations.'').

[44] *Id.*

[45] *Id.*

[46] 44 U.S.C. 3507(d).

[47] 5 CFR 1320.11.

[48] FERC–539A & FERC–577A are temporary placeholder designations for the purposes of this rulemaking. The permanent designations (*i.e.,* FERC–539 and FERC–577) are pending renewal at OMB, and no more than one information collection may be pending at OMB at one time.

[49] *See* Order No. 603 NOPR, FERC Stats. & Regs. ¶ 32,535 at 33,526 (in a similar rulemaking in which the Commission codified existing practice for reviewing environmental reports, the Commission

34. *Title:* FERC–539A (Gas Pipeline Certificate: Import/Export of LNG).

35. *Action:* New information collection.

36. *OMB Control No.:* 1902–NEW.

37. *Respondents:* Natural gas companies seeking to import and/or export LNG.

38. *Frequency of Information Collection:* Ongoing.

39. *Abstract:* The NOPR would require prospective applicants and applicants to provide engineering and design materials related to natural hazards to comport with the Commission's current practice of processing section 3 applications related to LNG facilities.

40. *Necessity of Information:* The revisions are intended to update the currency of the Commission's regulations and reduce confusion related the preparation and filing of applications to site, design, construct, operate, or modify facilities for the import or export of LNG. The revised regulations would affect only entities that file applications with the Commission for LNG facilities.

41. The estimated burdens for FERC–539A, as a result of the NOPR in RM22–8–000, would be as follows:

Number of respondents	Number of responses per respondent	Total number of responses	Average burden hours & average cost [50] per response ($)	Total annual burden hours & total annual cost ($)	Cost per respondent ($)
(1)	(2)	(1) * (2) = (3)	(4)	(3) * (4) = (5)	(5) ÷ (1) = (6)
6	2	12	15 hours; $1,305	180 hours; $28,800	$2,610

42. *Title:* FERC–577A (LNG Facilities: Environmental Review and Compliance).

43. *Action:* New information collection.

44. *OMB Control No.:* 1902–NEW.

45. *Respondents:* Natural gas companies seeking authorization to site, design, construct, operate, or modify LNG facilities.

46. *Frequency of Information:* Ongoing.

47. *Abstract:* The NOPR would require prospective applicants and applicants, filing an application pursuant to sections 3 or 7 of the NGA, to provide engineering and design materials related to natural hazards to comport with the Commission's current practice of processing environmental reports filed pursuant to Part 380 of the Commission's regulations.

48. *Necessity of Information:* The revisions are intended to update the currency of the Commission's regulations and reduce confusion related the preparation and filing of applications to site, design, construct, operate, or modify LNG facilities. To facilitate the Commission's review of these applications, applicants are required to also file resource reports detailing engineering and design materials to assist the Commission's understanding of the LNG facility's impact on the environment, safety, security, and reliability. The revised regulations would affect only entities that would file applications with the Commission for LNG facilities.

49. The estimated burdens for FERC–577A, as a result of the NOPR in RM22–8–000, would be as follows:

Number of respondents	Number of responses per respondent	Total number of responses	Average burden hours & average cost per response ($) (rounded)	Total annual burden hours & total annual cost ($) (rounded)	Cost per respondent ($) (rounded)
(1)	(2)	(1) * (2) = (3)	(4)	(3) * (4) = (5)	(5) ÷ (1) = (6)
6	16	96	193.52 hours; $17,610.32	18,578 hours; $1,690,591	$281,765

50. *Internal Review:* The Commission has reviewed the proposed revisions and has determined that they are necessary. These requirements conform to the Commission's need to ensure public safety, secure jurisdictional infrastructure, and enhance efficient information collection, communication, and management within the energy industry. The Commission has assured itself, by means of internal review, that there is specific, objective support for the burden estimates associated with the information collection requirements for FERC–537, FERC–539A, and FERC–577A.

B. Environmental Analysis

51. The Commission is required to prepare an Environmental Assessment or an Environmental Impact Statement for any action that may have a significant effect on the human environment.[51] Excluded from this requirement are rules that are clarifying, corrective, or procedural, or that do not substantially change the effect of legislation or the regulations being amended.[52] This proposed rule proposes to revise the filing requirements for LNG facilities by deleting references to a legacy agency and two outdated technical standards. Because this proposed rule is corrective, aligns the Commission's regulations with the Commission's current practice, and does not substantially change the effect of the regulations being amended, preparation of an Environmental Assessment or Environmental Impact Statement is not required.

C. Regulatory Flexibility Act Certification

52. The Regulatory Flexibility Act of 1980 (RFA) [53] generally requires a description and analysis of proposed rules that will have significant economic impact on a substantial

noted ''that the proposed changes to the environmental regulations discussed above do not change the filing requirements burden on the pipeline. They simply codify existing standard practice to help expedite the environmental review process.'').

[50] The Commission staff estimates that industry is similarly situated in terms of hourly cost (for wages plus benefits). Based on the Commission's FY (Fiscal Year) 2021 average cost (for wages plus benefits), $87.00/hour is used.

[51] *Reguls. Implementing the Nat'l Env'l Policy Act of 1969,* Order No. 486, 52 FR 47897 (Dec. 17, 1987), FERC Stats. & Regs. ¶ 30,783 (1987) (cross-referenced at 41 FERC ¶ 61,284).

[52] 18 CFR 380.4(a)(2)(ii).

[53] 5 U.S.C. 601–612.

number of small entities. The RFA mandates consideration of regulatory alternatives that accomplish the stated objectives of a proposed rule and minimize any significant economic impact on a substantial number of small entities.[54] In lieu of preparing a regulatory flexibility analysis, an agency may certify that a proposed rule will not have a significant economic impact on a substantial number of small entities.[55]

53. The Small Business Administration's (SBA) Office of Size Standards develops the numerical definition of a small business.[56] SBA regulations designate natural gas pipelines (*i.e.,* NAICS 4865210) as small entities if they do not exceed the size standard of $36.5 million.[57] For the past five years, one company not affiliated with larger companies had annual revenues in combination with its affiliates of $36.5 million or less and therefore could be considered a small entity under the RFA. This represents about five percent of the total potential respondents that may have a significant burden imposed on them.

54. As noted earlier, the proposed rule, as currently contemplated, will only affect entities filing new applications to site, construct, operate, or expand an LNG facility pursuant to sections 3 or 7 of the NGA once the final rule becomes effective. If enacted, the proposed revisions would remove references to a legacy agency and two outdated technical standards, and codify the Commission's current environmental information practices, thereby aligning the Commission's regulations with the Commission's current process of reviewing applications to construct and operate LNG facilities. As a result, the NOPR would reduce confusion about the Commission's requirements, which would necessitate the issuance of fewer data requests to obtain a complete application that better reflects safe design, construction, maintenance, and operation of proposed LNG facilities.

55. Accordingly, pursuant to section 605(b) of the RFA, the Commission certifies that this proposed rule would not have a significant economic impact on a substantial number of small entities.

D. Comment Procedures

56. The Commission invites interested persons to submit comments on the matters and issues proposed in this notice to be adopted, including any related matters or alternative proposals that commenters may wish to discuss. Comments are due January 27, 2023. Comments must refer to Docket No. RM22–8–000, and must include the commenter's name, the organization they represent, if applicable, and their address in their comments. All comments will be placed in the Commission's public files and may be viewed, printed, or downloaded remotely as described in the Document Availability section below. Commenters on this proposal are not required to serve copies of their comments on other commenters.

57. The Commission encourages comments to be filed electronically via the eFiling link on the Commission's website at *http://www.ferc.gov.* The Commission accepts most standard word processing formats. Documents created electronically using word processing software must be filed in native applications or print-to-PDF format and not in a scanned format. Commenters filing electronically do not need to make a paper filing.

58. Commenters that are not able to file comments electronically may file an original of their comment by USPS mail or by courier-or other delivery services. For submission sent via USPS only, filings should be mailed to: Federal Energy Regulatory Commission, Office of the Secretary, 888 First Street NE, Washington, DC 20426. Submission of filings other than by USPS should be delivered to: Federal Energy Regulatory Commission, 12225 Wilkins Avenue, Rockville, MD 20852.

E. Document Availability

59. 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*).

60. From the Commission's Home Page on the internet, this information is available on eLibrary. The full text of this document is available on eLibrary in PDF and Microsoft Word format for viewing, printing, and/or downloading. To access this document in eLibrary, type the docket number excluding the last three digits of this document in the docket number field.

61. User assistance is available for eLibrary and the Commission's website during normal business hours from the Commission's Online Support at (202) 502–6652 (toll free at 1–866–208–3676) or email at *ferconlinesupport@ferc.gov,* or the Public Reference Room at (202) 502–8371, TTY (202) 502–8659. Email the Public Reference Room at *public.referenceroom@ferc.gov*.

List of Subjects

18 CFR Part 153

Exports, Imports, Natural gas, Reporting and recordkeeping requirements.

18 CFR Part 380

Environmental impact statements, Reporting and recordkeeping requirements.

By direction of the Commission.

Issued: November 17, 2022.

Debbie-Anne A. Reese,

Deputy Secretary.

In consideration of the foregoing, the Commission proposes to amend parts 153 and 380, chapter I, title 18, Code of Federal Regulations, as follows.

PART 153—APPLICATIONS FOR AUTHORIZATION TO CONSTRUCT, OPERATE, OR MODIFY FACILITIES USED FOR THE EXPORT OR IMPORT OF NATURAL GAS

■ 1. The authority citation for part 153 is revised to read as follows:

Authority: 15 U.S.C. 717b, 717o; E.O. 10485, 3 CFR, 1949–1953 Comp., p. 970, as amended by E.O. 12038, 3 CFR, 1978 Comp., p. 136, DOE Delegation Order No. S1–DEL–FERC–206 (May 16, 2006).

§ 153.2 [Amended]

■ 2. Amend § 153.2 by:
■ a. Removing paragraph (b); and
■ b. Redesignating paragraphs (c) through (f) as paragraphs (b) through (e).

§ 153.8 [Amended]

■ 3. Amend § 153.8 by:
■ a. Redesignating paragraph (a)(7)(i) as paragraph (a)(7);
■ b. Removing paragraph (a)(6); and
■ c. Redesignating paragraphs (a)(7) through (a)(9) as paragraphs (a)(6) through (a)(8).

PART 380—REGULATIONS IMPLEMENTING THE NATIONAL ENVIRONMENTAL POLICY ACT

■ 4. The authority citation for part 380 continues to read as follows:

Authority: 42 U.S.C. 4321–4370h, 7101–7352, E.O. 12009, 3 CFR 1978 Comp., p.142.

■ 5. Amend § 380.12 by:
■ a. Removing paragraph (h)(5);
■ b. Redesignating paragraph (h)(6) as paragraph (h)(5); and
■ c. Revising paragraph (o) to read as follows:

§ 380.12 Environmental reports for Natural Gas Act applications.

* * * * *

[54] *Id.* 603(c).
[55] *Id.* 605(b).
[56] 13 CFR 121.101.
[57] *Id.*

(o) * * *

(14) Identify all federal, state, and local regulations and requirements that apply to the siting, design, construction, testing, monitoring, operation, and maintenance of the proposed project and explain how the proposed project will comply with the applicable federal regulations, including codes and standards incorporated by reference into federal regulations.

(15) Provide information to demonstrate that the proposed LNG facilities are sited, designed, constructed, and operated to maintain reliability and not significantly impact public safety given geotechnical conditions and the occurrence of a natural hazard identified below. Site information must provide geotechnical studies and natural hazard studies based on the site location, which must provide impacts and magnitude of historical events and projected impacts and magnitude of events based on projected prescriptive/deterministic events and projected probabilistic events corresponding to mean recurrence intervals. Design information must provide the basis of design supported by site information, including design parameters and criteria and preliminary resultant design loads used in the geotechnical and structural design of LNG facilities. Construction and operation information must also include discussion of quality assurance and quality control plans, monitoring programs, and action programs developed in preparation of and response to geotechnical and natural hazards. All information provided must at a minimum demonstrate compliance with all applicable federal requirements and applicable codes and standards, and identify any applicable state and local requirements for the siting, design, construction, testing, monitoring, operation, and maintenance used to safeguard against significant impacts caused by geotechnical conditions and natural hazards.

(i) *General Information.* Provide site information that includes:

(A) A description of all structures, systems, and components, including at a minimum the layout of all proposed above ground and below ground structures, systems, and components including temporary access roads during construction and permanent roads.

(B) The design classification for each structure, system, and component in accordance with at a minimum all applicable federal requirements and applicable codes and standards.

(C) The derivation and values for risk category and mean recurrence intervals that are at a minimum in accordance with all applicable federal requirements and applicable codes and standards.

(D) A description of all load combinations for each design classification for all structures, systems, and components that are at a minimum in accordance with design methods and all applicable federal requirements and applicable codes and standards.

(E) A description of all preliminary dead loads that are at a minimum in accordance with all applicable federal requirements, and applicable codes and standards, and at a minimum include weight of materials of construction of structures, systems, and components; weight of any hydrostatic test fluid service within structures, systems, and components during commissioning; weight of fluid services within structures, systems, and components during startup, normal operation, abnormal operation, and shutdown; and soil and hydrostatic pressure loads and potential uplift of below ground structures, systems, and components.

(F) A description of all preliminary live loads that are at a minimum in accordance with all applicable federal requirements and applicable codes and standards and include at a minimum dynamic loads from movement during transportation of structures, systems, and components; induced loads from construction equipment atop of below ground structures, systems, and components; uniform and concentrated loads from construction and operation personnel and equipment on structures, systems, and components; and crane loads for structures, systems, and components.

(G) A description of all preliminary loads induced from natural hazards for all structures, systems, and components that are at a minimum in accordance with all applicable federal requirements, and applicable codes and standards as described in paragraph 18 CFR 380.12(o)(15)(iii).

(H) A description of all mitigation measures to protect against natural hazards including at a minimum a discussion of the proposed site elevation and design of any storm walls or barriers relative to information described in paragraphs 18 CFR 380.12(o)(15)(ii) and (iii).

(I) A description of a natural hazard preparedness and action program, which includes facilitating timely decisions concerning the present or future state of the LNG facility that address at a minimum the natural hazards described in 18 CFR 380.12(o)(15)(iii).

(ii) *Geotechnical Information.* Provide a geotechnical investigation that includes:

(A) A summary of the site investigation that lists the applicant's exploratory program for the site and the types of subsurface investigations performed and planned to be performed for the site.

(B) A list and description of all in situ tests performed, standards used for tests, and their results including all standard penetration tests, cone penetration tests (static and dynamic), test pits, trenches, borings, rock coring, soil sampling, plate load tests, and in situ shear strength tests.

(C) A plot plan that identifies the number, location, spacing, cross-sections, and depths of each in situ test.

(D) A description of completed surveys, standards used for surveys, and their results that were conducted to obtain continuous lateral and depth information for the evaluation of subsurface conditions including all seismic refraction and reflection surveys.

(E) A description of the applicant's laboratory testing program that includes the treatment of samples, the preparation of the soil specimen for testing, the techniques to detect sample disturbance, and the laboratory testing specifications.

(F) A list and description of all laboratory tests performed, standards used for tests, and their results including all soil classification tests, index tests, strength and compressibility tests, permeability tests, and soil corrosivity tests.

(G) A description of proposed mitigation measures for soil improvement or other mitigation.

(H) A discussion of subsurface conditions and profiles based on the result of the subsurface exploration and field test results conducted at the site. Subsurface profiles must identify groundwater conditions and the physicochemical properties of the groundwater, soil/rock layers and parameters, and various soil strata in various cross-section drawings spanning across the site including the LNG storage tank areas.

(I) A description of soil conditions that indicate compressible or expansive soils, corrosive soils, collapsible soils, erodible soils, liquefaction-susceptible soils, frost-heave susceptible soils, frozen soils, sanitary landfill, or contaminated soils.

(J) An analysis of actual or potential hazards (*e.g.,* landslides, subsidence, uplift, capable faults, or collapse resulting from natural features such as

tectonic depressions and cavernous or karst terrains) to the site.

(K) A discussion of the relationship between the regional and local geology and the site location.

(L) An evaluation and discussion of surface displacement caused by faulting or seismically induced lateral spreading or lateral flow, regional subsidence, local subsidence, and heave.

(M) Drawings of existing and proposed site elevation contours.

(N) A slope-stability analysis, including slope stabilization methods, sloping topography for the site, recommendations for slope stability, static and seismic stability, and factor of safety.

(O) Recommendations for site improvement to increase bearing capacity, reduce the potential of liquefaction and lateral spreading, and mitigate poor or unusual soil conditions.

(P) Recommendations for site improvement to mitigate soil contaminants and shoreline erosion control.

(Q) An evaluation and discussion of the expected total settlement over the design life of the facilities that considers soil conditions, regional subsidence, and local subsidence.

(R) Recommendations for shallow foundations, including at a minimum ultimate bearing capacity, factor of safety, allowable bearing capacity, total and differential settlement criteria, liquefaction settlements, settlement monitoring, and lateral resistance.

(S) Recommendations for deep foundations, including at a minimum acceptable foundation type, bearing capacity, total pile capacities, axial capacity, lateral capacity, group effects, down-drag, factor of safety, settlement of single pile and pile groups, lateral movement of pile groups, pile installation, pile cap, indicator piles and pile load test programs, static axial pile load test, lateral load test, and dynamic pile load test.

(T) A summary of information needed to establish broad design parameters and conclusions used to determine the proposed layout and design of buildings, structures, and support facilities.

(U) A description of the implementation of the geotechnical monitoring system for the site and structures, including inclinometer, extensometers, piezometer, tiltmeter, settlement monuments or cells, pressure and load cells, and crack monitoring devices.

(iii) *Natural Hazard Information.* Provide studies, basis of design, and plans for all natural hazards, including for each natural hazard below:

(A) *Seismic Information.* Provide a discussion of seismic design and hazards analysis that includes:

(1) The seismic design basis and criteria that are at a minimum in accordance with all applicable federal requirements, and applicable codes, standards, and specifications used as basis of design.

(2) A description of seismic setting and seismic hazard investigation.

(3) A description of seismological characteristics of the geographical region within 100 miles of the site.

(4) A description of capable faults, including any part of a fault within 5 miles of the site, the fault characteristics in the site vicinity, the methods and techniques used for fault analysis and investigations, and the potential effect of fault displacement on structures, systems, and components.

(5) Derivation of the site class describing the soil conditions and supportive geotechnical studies that are at a minimum in accordance with all applicable federal requirements and applicable codes and standards.

(6) Criteria used to determine potential soil liquefaction, subsidence, fault rupture, seismic slope stability, and lateral spreading.

(7) A historical ground motion analysis, including a description of past seismic events of Modified Mercalli Intensity greater than IV or magnitude greater than 3.0 within 100 miles of the site, including date of seismic events, magnitude of seismic events, distance from site to epicenter of seismic events, depth of seismic events, and resultant ground motions recorded or estimated at site location.

(8) A site-specific ground motion analysis, based ground motions projected from the U.S. Geological Survey national seismic maps and any deterministic seismic hazard analyses (DSHA) and probabilistic seismic hazard analyses (PSHA).

(9) Derivation of all ground motions used for the Operating Basis Earthquake (OBE), Safe Shutdown Earthquake (SSE), site-specific design earthquake (DE), site-specific peak ground motion (PGA), and aftershock level earthquake (ALE) that are at a minimum in accordance with all applicable federal requirements regulations and applicable codes and standards.

(10) A list of OBE, SSE, and ALE site-specific ground motion spectral values for 0.5%, 1%, 2%, 5%, 7%, 10%, 15%, and 20% damping during all periods range.

(11) The DE seismic coefficients and seismic design parameters, including the spectral response acceleration, 5% damped design spectral response acceleration parameters at a short-period and at a period of 1 second, and at other periods, short-period site coefficient and long-period site coefficient, importance factor, component importance factor, fundamental period of the structure, long-period transition period, response modification coefficient that are at a minimum in accordance with all applicable federal requirements regulations and applicable codes and standards.

(12) A description of site-specific response spectrum analysis method, time history analysis method, or equivalent static load analysis.

(13) A seismic analysis for soil-structure interaction that are at a minimum in accordance with all applicable federal requirements regulations and applicable codes and standards, and at a minimum includes a discussion of the modeling methods, the factors considered in the modeling methods, including the extent of embedment, the layering of the soil/rock strata, and the boundary of soil-structure model.

(14) A comparison of seismic responses used for each design classification for all structures, systems, and components.

(15) A list of seismic hazard curves of spectral accelerations for all periods for the site.

(16) Vertical response spectra for seismic design and ratio to horizontal response spectra.

(17) Natural frequencies and responses for each LNG tank system and associated safety systems and associated structures, systems, and components.

(18) A description of procedures used for structural analyses, including consideration of incorporating the stiffness, mass, and damping characteristics of the structural systems into the analytical models.

(19) A description of determination of seismic overturning moments and sliding forces for each LNG tank system and associated safety related structures, systems, and components, including consideration of three components of input motion and the simultaneous action of vertical and horizontal seismic forces.

(20) A description of design procedure for seismically isolated structures, systems, and components.

(21) A description of seismic design basis and criteria for the LNG storage tank and foundation. The seismic design basis and criteria must include the flexibility of the tank shell and its influence on the natural frequencies of

the tank, liquid level, effects of liquid motion or pressure changes; minimum design freeboard; sloshing and impulsive loads; seismic coefficients; importance factor; reduction factor; slosh height; sloshing periods of LNG storage tank; global stability of the tank in terms of the potential for overturning and sliding; differential displacement between the tank and the first support; and total settlement monitoring program for the tank foundation.

(22) A description of seismic monitoring system in accordance with at a minimum all applicable federal requirements and applicable codes and standards, including a minimum of one triaxial ground motion recorder installed to register the free-field ground motion and additional triaxial ground motion recorders on each LNG tank system foundation, LNG tank roof, and associated safety related structures, systems, and components. The proposed seismic monitoring must include the installation locations on a plot plan; description of the triaxial strong motion recorders or other seismic instrumentation; the proposed alarm set points, and operating procedures (including emergency operating procedures) for control room operators in response to such alarms/data obtained from seismic instrumentation; and maintenance procedures.

(23) A cross reference to potential for earthquake generated tsunamis and seiches provided in 18 CFR 380.12(o)(15)(iii)(B), earthquake generated floods in 18 CFR 380.12(o)(15)(iii)(C), earthquake generated landslides in 18 CFR 380.12(o)(15)(iii)(G), and earthquake generated releases and fires in 18 CFR 380.12(m).

(B) *Tsunami and Seiche Information.* Provide a discussion of tsunami and seiche design and hazards that includes:

(1) The tsunami and seismic design basis and criteria with a description of the applicable regulations and guidelines, and generally accepted codes, standards, and specifications used as basis of design.

(2) The seiche design inundation and run-up elevations and corresponding return periods for all structures, systems, and components.

(3) The maximum considered tsunami (MCT) inundation and run-up elevation for the site, including the maximum considered earthquake (MCE) level ground motions at the site if the MCE is the triggering source of the MCT.

(4) A comparison of design loads of seiche water inundation elevations with inundation elevation corresponding to return periods of MCE and MCT for all structures, systems, and components.

(5) The Tsunami Risk Category for the site and a description of potential tsunami generation by seismic sources, and the prevention and mitigation plan for potential tsunami and seiche hazards.

(6) A cross reference to potential tsunami and seiche generated floods in 18 CFR 380.12(o)(15)(iii)(C), tsunami and seiche generated landslides in 18 CFR 380.12(o)(15)(iii)(G), and tsunami and seiche generated releases and fires in 18 CFR 380.12(m).

(C) *Flood Information.* Provide a discussion of flood design criteria and hazards that includes:

(1) The floods design basis and criteria with references to applicable regulations and guidelines, and generally accepted codes, standards, and specifications used as basis of design.

(2) A description of flooding potential in the region surrounding the site due to one or more natural causes such as storm surge, tides, wind generated waves, meteorological tsunamis or seiches, extreme precipitation, or other natural hazard events that have a common cause.

(3) A comparison of flood design loads corresponding to return periods of 10,000-year, 5,000-year, 1,000-year, 500-year, and 100-year for all structures, systems, and components.

(4) A discussion of final designed site elevations and storm surge walls or floodwalls for the site that includes tsunami considerations, flood design considerations, site total settlements, sea level rise, subsidence.

(D) *Hurricane Information.* Provide a discussion of hurricanes and other meteorological events design criteria and hazards that includes

(1) The wind and storm surge design basis and criteria that are at a minimum in accordance with all applicable federal requirements, and applicable codes, standards, and specifications used as basis of design.

(2) A comparison of design wind loads for both sustained and 3-second gusts and storm surge elevations, including consideration for still water, wind/wave run-up effects, and crest elevations, with hurricanes, and other meteorological events at the site location corresponding to return periods of 10,000-year, 5,000-year, 1,000-year, 500-year, and 100-year for all structures, systems, and components.

(3) A discussion of historic hurricane frequencies and hurricane categories equivalent on the Saffir-Simpson Hurricane Wind Scale at the site and associated wind speeds and storm surge.

(4) The design regional subsidence that includes a discussion of the elevation change used to account for regional subsidence for the design life of the facilities at the site.

(E) *Tornado Information.* Provide a discussion of tornado design criteria and hazards that includes:

(1) The tornadoes design basis and criteria that are at a minimum in accordance with all applicable federal requirements, and applicable codes, standards, and specifications used as basis of design.

(2) A comparison of tornado design loads corresponding to return periods of 10,000-year, 5,000-year, 1,000-year, 500-year, and 100-year for all structures, systems, and components.

(3) A discussion of historic tornado frequencies and tornado categories as classified on the Enhanced Fujita (EF) Scale at the site and associated wind speeds.

(4) A discussion of tornado loads determination and design procedure.

(5) A comparison of impact between wind loads and tornado loads for the site.

(F) *Rain, Ice, Snow, and Related Precipitation Information.* Provide a discussion of rain, ice, snow, and related precipitation design criteria and hazards that includes:

(1) The rain, ice, and snow design basis and criteria that are at a minimum in accordance with all applicable federal requirements, and applicable codes, standards, and specifications used as basis of design.

(2) The identification of stormwater flows, outfalls, and stormwater management systems for all surfaces, including spill containment system with sump pumps or other water removal systems.

(3) The comparison of rain, ice, and snow design loads with rainfall rates, snow loads, and ice loads corresponding to return periods of 10,000-year, 5,000-year, 1,000-year, 500-year, and 100-year for all structures, systems, and components.

(4) A discussion of historic ice and blizzard events and frequencies and other ice and snow events at the site and associated loads.

(G) *Landslides, Wildfires, Volcanic Activity, and Geomagnetism Information.* Provide a discussion of landslides, wildfires, volcanic activity, and geomagnetism design criteria and hazards that includes

(1) The landslides, wildfires, volcanic activity, and geomagnetism design basis and criteria that are at a minimum in accordance with all applicable federal requirements, and applicable codes, standards, and specifications used as basis of design.

(2) A discussion of historic landslide, wildfire, volcano activity, and geomagnetic disturbance risks and intensities at the site.

(3) A description of capable volcanoes, volcanic characteristics of the region, and a discussion of potentially hazardous volcanic phenomena considerations.

* * * * *

Appendix A to Part 380 [Amended]

■ 6. Amend Appendix A to Part 380, in the section entitled ''Resource Report 6—Geological Resources,'' by removing paragraph 4 and redesignating paragraph 5 as paragraph 4.

[FR Doc. 2022–25600 Filed 11–25–22; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF COMMERCE

International Trade Administration

19 CFR Part 351

[Docket No. 221102–0229]

RIN 0625–AB15

Administrative Protective Order, Service, and Other Procedures in Antidumping and Countervailing Duty Proceedings

AGENCY: Enforcement and Compliance, International Trade Administration, Department of Commerce.

ACTION: Proposed rule; request for comments.

SUMMARY: Pursuant to its authority under title VII of the Tariff Act of 1930, as amended (the Act), the Department of Commerce (Commerce) proposes to modify its regulations governing procedures related to administrative protective orders (APO) and service of documents submitted in antidumping (AD) and countervailing duty (CVD) proceedings. Commerce proposes to make permanent certain changes to its service procedures that have been adopted on a temporary basis due to COVID–19. Commerce also proposes additional clarifications and corrections to other procedural aspects of its AD/CVD regulations, including updates to the scope, circumvention, and covered merchandise referral regulations. Lastly, Commerce proposes to delete from its regulations two provisions that have been invalidated by the United States Court of Appeals for the Federal Circuit (Federal Circuit).

DATES: To be assured of consideration, written comments must be received no later than December 28, 2022.

ADDRESSES: Submit electronic comments only through the Federal eRulemaking Portal at *http://www.Regulations.gov,* Docket No. ITA–2022–0013. Comments may also be submitted by mail or hand delivery/courier, addressed to Lisa W. Wang, Assistant Secretary for Enforcement and Compliance, Room 18022, Department of Commerce, 1401 Constitution Ave. NW, Washington, DC 20230. An appointment must be made in advance with the APO/Dockets Unit at (202) 482–4920 to submit comments in person by hand delivery or courier. All comments submitted during the comment period permitted by this document will be a matter of public record and will generally be available on the Federal eRulemaking Portal at *http://www.Regulations.gov.* Commerce will not accept comments accompanied by a request that part or all of the material be treated confidentially because of its business proprietary nature or for any other reason. Therefore, do not submit confidential business information or otherwise sensitive or protected information.

Any questions concerning the process for submitting comments should be submitted to Enforcement & Compliance Communications office at (202) 482–0063 or *ECCommunications@trade.gov.*

FOR FURTHER INFORMATION CONTACT: Nikki Kalbing at (202) 482–4343, Elio Gonzalez at (202) 482–3765, or Scott McBride at (202) 482–6292.

SUPPLEMENTARY INFORMATION:

General Background

Title VII of the Act vests Commerce with authority to administer the AD/CVD laws. In particular, section 731 of the Act directs Commerce to impose an AD order on merchandise entering the United States when it determines that a producer or exporter is selling a class or kind of foreign merchandise into the United States at less than fair value (*i.e.,* dumping), and material injury or threat of material injury to that industry in the United States is found by the International Trade Commission (ITC). Section 701 of the Act directs Commerce to impose a CVD order when it determines that a government of a country or any public entity within the territory of a country is providing, directly or indirectly, a countervailable subsidy with respect to the manufacture, production, or export of a class or kind of merchandise that is imported into the United States, and material injury or threat of material injury to that industry in the United States is found by the ITC.[1]

In conducting its AD/CVD proceedings, the statute directs Commerce to make certain information generally available on a public record.[2] Because of the nature of Commerce's proceedings, which frequently require Commerce to rely on non-public information such as business proprietary information in issuing its determinations, the statute also provides a framework for Commerce to receive such information and maintain its proprietary nature by exempting it from disclosure on the public record. Specifically, pursuant to section 777(c)(1)(A) of the Act, Commerce must make available to interested parties, under an APO, business proprietary information submitted to it during the course of an AD/CVD proceeding. Additionally, section 777(d) of the Act requires that parties submitting to Commerce business proprietary information which is covered by an APO must serve such information on all interested parties who are parties to the proceeding that are subject to the protective order.[3] Section 777(d) of the Act also requires that the submitter serve a nonconfidential summary of the business proprietary information to all interested parties who are parties to the proceeding. Further, section 777(d) of the Act states that Commerce shall not accept information which is not accompanied by a certificate of service or otherwise does not comply with the statutory requirements. Section 777(c)(1)(B) of the Act authorizes Commerce to issue regulations governing the APO process. Commerce's current regulations are codified at 19 CFR part 351.

Section 351.303 of Commerce's regulations provides procedural rules governing the filing of documents (including public documents containing only public information, business

[1] A countervailable subsidy is further defined under section 771(5)(B) of the Act as existing when: A government or any public entity within the territory of a country provides a financial contribution; provides any form of income or price support; or makes a payment to a funding mechanism to provide a financial contribution, or entrusts or directs a private entity to make a financial contribution, if providing the contribution would normally be vested in the government and the practice does not differ in substance from practices normally followed by governments; and a benefit is thereby conferred. To be countervailable, a subsidy must be specific within the meaning of section 771(5A) of the Act.

[2] *See generally* section 777(a) of the Act. *See also* 19 CFR 351.104 (describing the official record of AD/CVD proceedings).

[3] ''Interested party'' is defined under section 771(9) of the Act and 19 CFR 351.102(b)(29); ''party to the proceeding'' is defined under 19 CFR 351.102(b)(36).

proprietary documents containing business proprietary information, and public versions of business proprietary documents),[4] as well as service of documents. In particular, § 351.303(b) generally requires that all parties submitting documents to Commerce must file electronically through Commerce's Antidumping and Countervailing Duty Centralized Electronic Service System (ACCESS). Additionally, § 351.303(f)(1)(i) generally requires that all documents filed with Commerce must be served simultaneously on all parties on the relevant public or APO service lists.[5] Section 351.303 also contains special rules for specific types of documents. For example, § 351.303(c) allows for a one-day lag in the filing of the final version of business proprietary documents and public versions of proprietary documents (known as the ''one-day lag rule''). Commerce has adopted a number of temporary changes to its service rules due to COVID–19.[6] These changes are codified at § 351.303(f)(4).

The purpose of the regulatory changes proposed in this rulemaking is to assist in making the administration of Commerce's AD/CVD proceedings more efficient by allowing parties to utilize available electronic or other efficient means of service. In addition, the proposed changes also update certain outdated cross-references and citations, remove two paragraphs (§§ 351.204(d)(3) and 351.408(c)(3)) invalidated by the Federal Circuit, and make other revisions intended to clarify certain regulatory provisions, including the scope, circumvention, and covered merchandise referral regulations.

[4] *See* 19 CFR 351.105 (defining the various categories of information in AD/CVD proceedings).

[5] *See* 19 CFR 351.103(d) (describing service lists in AD/CVD proceedings). Under Commerce's regulations, only those parties that have filed their application for APO access and been approved in accordance with 19 CFR 351.103(d)(1) and 19 CFR 351.305 will be included on the APO service list. Additionally, those parties that have filed a letter of appearance in accordance with 19 CFR 351.103(d)(1) will be included on the public service list.

[6] *See Temporary Rule Modifying AD/CVD Service Requirements Due to COVID–19,* 85 FR 17006 (March 26, 2020) (*Temporary Rule*) (temporarily modifying certain requirements for serving documents containing business proprietary information in AD/CVD cases to facilitate the effectuation of service through electronic means for purposes of promoting public health and slowing the spread of COVID–19). The *Temporary Rule* was extended on May 18, 2020, and then again indefinitely on July 10, 2020. *See Extension of Effective Period,* 85 FR 29615 (May 18, 2020); *Extension of Effective Period,* 85 FR 41363 (July 10, 2020).

Explanation of the Proposed Rule

1. Service of Documents via ACCESS—Section 351.303(f)

Current § 351.303(f)(1)(i) provides that service of documents filed with Commerce on the record of a segment of a proceeding[7] must be done simultaneously *via* personal service or first-class mail on all parties on the relevant APO or public service lists, with certain exceptions.[8] Of importance, § 351.303(f)(1)(ii) provides that service of public documents, public versions of business proprietary documents, or a business proprietary document containing only the server's own business proprietary information may be made by facsimile transmission or other electronic transmission process, with the consent of the person to be served. Additionally, § 351.303(f)(3)(i) provides special rules for expediting service of case and rebuttal briefs upon designated agents located within and outside the United States.

In a prior rulemaking in which Commerce first established its electronic filing procedures under ACCESS, Commerce also announced the future implementation of its now-existing procedures related to the electronic release of Commerce-generated documents using ACCESS.[9] Pursuant to these procedures, Commerce currently releases both public and business proprietary documents (and public versions of business proprietary documents) which it has self-generated using ACCESS. Upon release, Commerce notifies the lead attorney for service and any other designated authorized individuals on the relevant APO and public service lists via email that a new document has been posted to a particular segment of a proceeding.[10] The authorized user is then able to securely access the business proprietary document for 14 days from the date of filing,[11] before its access to the document expires (access to public documents and public version documents does not expire; these documents remain available on ACCESS). At the time Commerce announced these procedures, it received comments requesting that Commerce adopt similar procedures to effectuate service of documents filed by interested parties on one another.[12] Commerce considered these comments, but ultimately determined to focus its attention on establishing electronic filing procedures, rather than electronic service.[13]

In the years since the *2011 Final Rule,* the establishment of ACCESS, and the *Temporary Rule,* Commerce has gained significant experience with its electronic filing and service procedures and is now proposing new regulations to formally effectuate service *via* ACCESS. Since the *Temporary Rule* went into effect on March 24, 2020, Commerce received comments from the Committee to Support U.S. Trade Laws (CSUSTL)[14] and the Customs and International Trade Bar Association (CITBA)[15] expressing support for the *Temporary Rule* and requesting that Commerce promulgate regulations to make service of business proprietary documents *via* ACCESS permanent.

Under the *Temporary Rule,* § 351.303(f)(4) provides that, with limited exceptions, service of business proprietary documents are deemed to have been served on persons on the APO service list upon filing of the business proprietary document in ACCESS. Those APO-authorized persons receive an ACCESS email notification called a ''BPI Release Digest'' at approximately noon and 5:00 p.m. on business days, which notifies them of the availability of business proprietary documents for download. Those documents remain available for 14 days after filing. This method of

[7] *See* 19 CFR 351.102(b)(40) (defining AD/CVD proceeding) and 19 CFR 351.102(b)(47) (defining segment of a proceeding).

[8] For instance, the filing of AD/CVD petitions under 19 CFR 351.202(c) is exempted from simultaneous service under 19 CFR 351.303(f)(1)(i). However, service of the business proprietary documents would be required after the establishment of an APO for parties who join the APO service list. *See* 19 CFR 351.305(a) and (b)(3) through (4). The filing of proposed suspension agreements under 19 CFR 351.208(f)(1) is exempted from service altogether, as 19 CFR 351.208(f)(2) requires Commerce to provide a copy of the proposed agreement to the petitioner.

[9] *See Antidumping and Countervailing Duty Proceedings: Electronic Filing Procedures; Administrative Protective Order Procedures,* 76 FR 39263, 39273 (July 6, 2011) (*2011 Final Rule*).

[10] *See ACCESS Handbook on Electronic Filing Procedures* at 19–21 *available at https://access.trade.gov/help/Handbook_on_Electronic_Filing_Procedures.pdf.*

[11] *Id.* at 20–21.

[12] *2011 Final Rule,* 76 FR at 39270.

[13] *Id.* (''The Department agrees that changes affecting service of business proprietary information should be introduced gradually and be subject to comment . . . {T}he Department has not changed any of the service requirements in the regulations . . .{because} {t}he Department has decided to focus on electronic filing, rather than electronic service, at this time.'').

[14] Letter to the Hon. Wilbur L. Ross, Jr. from Mark B. Benedict and Timothy C. Brightbill on behalf of CSUSTL re Potential Responses to COVID–19/Workload Issues Affecting AD/CVD Cases (July 9, 2020) at 2 (''We believe the system has worked well, and Commerce should strongly consider making it permanent.'').

[15] Letter to the Hon. Wilbur Ross from Deanna Tanner Okun and Elizabeth Drake, on behalf of CITBA re Petition for Rulemaking to Promulgate Temporary Rule Modifying AD/CVD Service Requirements Due to COVID–19 as Final Rules.

service does not apply to requests for administrative review, new shipper review, changed circumstances review and expedited review. Because service lists for these segments are not yet established in ACCESS at the time of filing the relevant request, parties must serve them by personal service or first-class mail.[16] In addition, requests for a scope ruling or circumvention inquiry are served in accordance with §§ 351.225(n) and 351.226(n), respectively. The *Temporary Rule* also does not apply to the service of public documents and public versions of business proprietary documents. However, Commerce proposes effectuating service *via* ACCESS for public documents and public versions of business proprietary documents with revised § 351.303(f)(1), as discussed below.

Commerce proposes to continue requiring a person filing a document with Commerce to simultaneously serve a copy of the document on all other persons on the service list, with the exception of a petition and proposed suspension agreement (which are addressed under §§ 351.202(c) and 351.208(f)(1), respectively) and requests for an expedited antidumping review, an administrative review, a new shipper review, or a changed circumstances review (which have specific service requirements under current paragraph (f)(3) and revised paragraph (f)(2) of this section). Revised paragraph (f)(1)(i) addresses service of public documents and public versions of business proprietary documents. Revised paragraph (f)(1)(ii) addresses service of business proprietary documents, and revised paragraph (f)(1)(iii) provides acceptable alternative methods of service when ACCESS cannot effectuate service.

Under revised paragraph (f)(1)(i), service of a public document or public version of a business proprietary document is effectuated on the persons on the public service list upon filing of the submission in ACCESS, unless ACCESS is unavailable, in which case paragraph (f)(1)(iii) is applicable. This is an expansion of the *Temporary Rule,* which only applies to business proprietary documents. Commerce has determined that effectuating service *via* ACCESS will make the method of service consistent between business proprietary documents, public documents and public versions of business proprietary documents. It will also reduce the burden on the parties, while also reducing the risk of error associated with serving incorrect documents or incorrect parties. Similar to what is done with business proprietary documents, ACCESS will email a ''Public Release Digest'' that notifies parties to the proceeding when a public document or public version of a business proprietary document submitted by parties to the proceeding is available for download. This digest will be emailed to individuals on Commerce's public service lists at approximately noon and 5:00pm on business days.

Under new paragraph (f)(1)(ii)(A), service of a business proprietary document is effectuated on the persons on the APO service list upon filing of the submission in ACCESS, unless ACCESS is unavailable, in which case paragraph (f)(1)(iii) is applicable. In addition, new paragraph (f)(1)(ii)(A) provides that a business proprietary document submitted under the one-day lag rule that contains bracketing[17] that is not final under paragraph (c)(2)(i) must be served using an acceptable alternative method under paragraph (f)(1)(iii), as discussed below. Because bracketing is not final until one business day after filing these documents, Commerce does not make them available in ACCESS. Therefore, they require an alternative method of service.

Under new paragraph (f)(1)(ii)(B), if a document contains business proprietary information of a person who is not included on the APO service list, then service of such document on that person cannot be effectuated on ACCESS. Instead, the submitter must serve that person its own business proprietary information using an acceptable alternative method under new paragraph (f)(1)(iii) and in accordance with § 351.306(c)(2) as applicable.

Under new paragraph (f)(1)(iii), Commerce will provide that if service of a public document, a public version of a business proprietary document, or a business proprietary document cannot be effectuated on ACCESS for any reason, an acceptable alternative method of service must be used, such as first class mail, hand delivery or electronic transmission.

With regard to service by electronic transmission, Commerce's current regulations provide that service of a public document, a public version of a business proprietary document, or a business proprietary document containing the submitter's own business proprietary information, may be made by facsimile or other electronic transmission process, with the consent of the person being served. This provision was first introduced in 1997 (including only service of a submitter's own business proprietary document and service of public versions),[18] and later amended in 2011 to include service of public documents and make specific reference to APO and public service lists.[19]

Commerce has since received several informal suggestions and comments from *pro se* parties and non-APO-authorized representatives located outside the United States requesting that other parties be allowed to serve them their own business proprietary information by email or other electronic process. Commerce has generally discouraged the emailing of third-party business proprietary information, but recognized that allowing it with the consent of the recipient, when the business proprietary information belongs to the recipient, would result in efficiencies and allow those parties who could not be served through ACCESS (such as *pro se* parties and non-APO-authorized representatives) to receive service in a more expeditious manner than first class mail or other means specified in the regulations. As such, in the *Temporary Rule* at paragraph (f)(4)(iv), Commerce allowed an interested party to serve by electronic transmission a *pro se* party or a non-APO-authorized representative of a party, a document containing the business proprietary information of either the *pro se* party or the party represented by the non-APO-authorized representative.

In this proposed rule, Commerce has created a new paragraph (f)(1)(iii) that expands the scope of paragraph (f)(4)(iv) of the *Temporary Rule* to allow service by electronic transmission if the business proprietary document being served contains the business proprietary information of either the submitter or the recipient, with the consent of the recipient. By referring to the submitter and recipient rather than *pro se* party and non-APO-authorized representative as in the *Temporary Rule,* Commerce is proposing to expand the eligible group to also include APO-authorized representatives, such that APO-authorized representatives will also be permitted to serve one another by electronic transmission, provided that the business proprietary information in the document belongs to the client of

[16] *See* 19 CFR 351.303(f)(3)(ii).

[17] The term ''bracketing'' refers to the placement of square brackets (''[]'') around certain information to indicate that the submitter of the information requests business proprietary treatment for that item of information. *See* 19 CFR 351.304(b).

[18] *Antidumping Duties; Countervailing Duties: Final Rule,* 62 FR 27296, 27337 (May 19, 1997) (*1997 Antidumping and Countervailing Duties Final Rule*).

[19] *2011 Final Rule,* 76 FR at 39270.

either the representative submitting the document or receiving service, and that the receiving representative gives its consent. Documents containing third-party business proprietary information belonging to a party other than the submitter or the recipient may not be served by electronic transmission under this paragraph.

Current paragraphs (f)(2) and (f)(3) involve certificates of service and service requirements for certain documents, respectively. Revised paragraphs (f)(2) and (f)(3) reverse the order in which each topic is addressed. Current paragraph (f)(3)(i) requires the person filing a case or rebuttal brief to simultaneously serve on all persons on the service list and on any U.S. Government agency that has submitted a case or rebuttal brief by either personal service on the same day the brief is filed or by overnight mail or courier on the next day. Further, if the person has designated an agent to receive service that is located outside the United States, service on that person must be by first class airmail. This requirement has been negated by the *Temporary Rule,* which allows service of case and rebuttal briefs *via* ACCESS on the date they are filed.

In this proposed rule, Commerce will remove the special requirements for service of case and rebuttal briefs from paragraph (f)(3)(i). Instead, service of case and rebuttal briefs will occur under the general service provision in revised paragraph (f)(1). Current paragraph (f)(3)(ii), which requires a request for expedited antidumping review, an administrative review, a new shipper review, or a changed circumstances review to be served by personal service or first class mail on each exporter or producer specified in the request and on the petitioner by the end of the anniversary month or within ten days of filing the request for review, whichever is later, will then be renumbered as paragraph (f)(2)(i). Commerce will also revise the citation contained in revised paragraph (f)(2)(i), from paragraph (f)(2) to paragraph (f)(3), which is the renumbered paragraph involving certificate of service requirements.

Commerce proposes creating a new paragraph (f)(2)(ii) to require an interested party that files a scope ruling application or request for circumvention inquiry to serve a copy of the request on all persons included in the annual inquiry service list in accordance with §§ 351.225(n) and 351.226(n), respectively. Commerce added this paragraph to bring the service regulations in conformity with the September 20, 2021, final rule modifying various provisions of Commerce's AD and CVD regulations.[20]

Revised paragraph (f)(3) will contain the same language that appears in current paragraph (f)(2), which requires that each document filed with Commerce include a certificate of service listing each person served (including agents), the type of document served, and the date and method of service on each person. It continues to state that Commerce may refuse to accept any document that is not accompanied by a certificate of service. No changes are made to this paragraph besides the numbering. Commerce believes it is useful for a submitter to document the parties who it understands will be served at the time of filing the document. A certificate of service is also essential to determining the method of service when an acceptable alternative method of service (besides ACCESS) is used.

In light of the changes discussed in this proposed rule, Commerce finds that it is no longer necessary to continue the service rules set forth in the *Temporary Rule* and codified at § 351.303(f). Commerce therefore proposes to terminate and remove § 351.303(f)(4). If this proposal is adopted, § 351.303(f) will be terminated.

2. Service on Pro Se Parties and Non-APO-Authorized Representatives—Section 351.306(c)(2)

Section 351.306(c)(2) of Commerce's current regulations requires a party submitting a document containing the business proprietary information of a *pro se* party to serve that *pro se* party with a version of the document containing only the *pro se* party's business proprietary information. The current regulations do not contain any similar requirement that a party submitting a document containing the business proprietary information of a party with a non-APO-authorized representative must also serve that non-APO-authorized representative with a version of the document containing only the business proprietary information of the party with the non-APO-authorized representative. However, the *Temporary Rule* at § 351.303(f)(4)(iv) contained such a provision. Commerce thus proposes making it permanent by adding to § 351.306(c)(2) the requirement that the submitting party must also serve a party's non-APO-authorized representative with a version of the document that contains only that non-APO-represented party's business proprietary information.

3. Service Requirement for Earlier-Filed Business Proprietary Submissions Upon New Authorized Applicants—Section 351.305

Commerce's current regulations at § 351.303(f) require a submitter to serve a document on all persons on the APO and public service lists simultaneously at the time of filing. Because the service lists are updated on an ongoing basis, Commerce requires submitters to serve earlier-filed business proprietary documents upon representatives who are added to the APO service lists after a document has been filed. Specifically, § 351.305(b)(3) and (4) require service of such documents already on the record upon a representative within two business days after they are added to the APO service list for a submission filed before the first questionnaire response is filed, and within five business days for submissions filed after the first questionnaire response is filed.[21] Parties or their representatives are currently responsible for monitoring who is added to the APO service list and serving those parties as the segment of the proceeding progresses. There is no service requirement for parties added to the public service list after a document is filed, because these documents can be retrieved on ACCESS.

In this proposed rule, Commerce is requiring those representatives who are granted APO access after a business proprietary document has already been filed, but is no longer available in ACCESS, to contact the party that filed the business proprietary document to request service of that document by any acceptable means agreed upon by the parties (*i.e.,* electronic service or otherwise). Commerce proposes to remove the requirement of service of earlier-filed business proprietary documents to new authorized applicants from current paragraphs (b)(3) and (4) and address it in a new paragraph (c)(2). Current paragraph (b)(3) is removed and current paragraph (b)(4) is renumbered (b)(3). The proposed regulation removes the responsibility of the submitter to monitor the newly added authorized

[20] *See Regulations to Improve Administration and Enforcement of Antidumping and Countervailing Duty Laws,* 86 FR 52300 (September 20, 2021) (*2021 Final Rule*).

[21] *See Antidumping and Countervailing Duty Proceedings: Documents Submission Procedures; APO Procedures: Final Rule,* 73 FR 3634, 3637 (January 22, 2008). In 2008, Commerce re-established the requirement to serve a new authorized applicant within two business days of the approval of the APO application for submissions filed before the first questionnaire response is submitted. Commerce noted that this requirement was previously in place before the *1998 Final Rule* but it was inadvertently deleted from it. *Id.*

applicants to identify who needs to be served, and places the responsibility on the authorized applicant to request service. This requirement is addressed in new paragraph (c)(2).

In addition, revised paragraph (b)(3) and new paragraphs (c)(2)(i) and (ii) specify the timeframe in which service must be made, by considering whether the authorized applicant's APO application was approved before or after the first questionnaire response is submitted. Commerce proposes replacing ''first questionnaire response'' with ''first response to the initial questionnaire'' so it is not mistaken with other questionnaire responses such as Quantity and Value questionnaire responses. Commerce proposes specifying that the submitting party must serve the authorized applicant within two business days of the request if the APO application is approved before the first response to the initial questionnaire was submitted under paragraph new (c)(2)(i). If the APO application was approved after the first response to the initial questionnaire was submitted, revised paragraph (c)(2)(ii) requires the submitting party to serve the authorized applicant within five business days of the request.

4. One-Day Lag Rule—Section 351.303

In 1997, Commerce codified its practice of allowing a party to file only one copy of a business proprietary document on the deadline, and then take additional time to review the bracketing of business proprietary information, and make the necessary changes to the bracketing before filing the required number of copies of the final business proprietary document and the public version on the next business day.[22] The one-day lag rule was intended to provide an additional safeguard by giving more time to interested parties to ensure that both their own business proprietary information as well as APO-protected information of third parties is not inadvertently disclosed. In 2011, with the introduction of electronic filing via ACCESS, Commerce continued to allow filing under the one-day lag rule under § 351.303(c)(2)(i), which requires a person to file a business proprietary document within the applicable deadline.[23] Notably, petitions, supplements to a petition, or any other document filed prior to the initiation of an investigation are excluded from the one-day lag rule.[24]

Normally, the business proprietary document filed on the due date must be served in accordance with current § 351.303(f)(i), but under the *Temporary Rule,* Commerce waived this service requirement.[25] A business proprietary document filed under the one-day lag rule contains non-final bracketing and is therefore not treated as an official record document in ACCESS. As such, business proprietary documents filed under the one-day lag rule and containing non-final bracketing cannot be served via ACCESS using the same technology used for serving official record documents. During Commerce's temporary waiver of this service requirement during the past two years, Commerce became aware of uncertainties that resulted from waiving service. For example, both Commerce staff and parties to the proceeding were sometimes unaware that other interested parties were filing their submissions under the one-day lag rule. At times, it was not clear whether an interested party had missed the filing deadline or had opted to use the one-day lag rule.

In this proposed rule, Commerce proposes reinstating the requirement that a business proprietary document filed on the due date under the one-day lag rule must also be served on the persons on the APO service list and those non-APO authorized parties whose business proprietary information is contained in the document using one of the acceptable alternative methods of service under new § 351.303(f)(1)(iii). This way, APO-authorized counsel and non-APO-authorized parties whose business proprietary information is in the document will receive service of the business proprietary document. In addition, Commerce proposes requiring the submitter to also file the certificate of service that would be included in the submission (pursuant to § 351.303(f)(3)), as a standalone public document in ACCESS under revised § 351.303(c)(2)(i). Filing the certificate of service separately will document for the record the date and alternative method of service used by the submitter when it filed the business proprietary document under the one-day lag rule. This would provide an ACCESS notification to Commerce staff and the parties to the proceeding that the document was filed under the one-day lag rule.

Under current § 351.303(c)(2)(ii), a submitter who used the one-day lag rule must then file the complete final business proprietary document by the close of business one business day after the applicable deadline. The final business proprietary document must be identical, in all respects, to the business proprietary document filed on the previous day, except for any bracketing corrections. In addition, the submitter must file the public version at the same time.[26]

Under Commerce's current service regulations, a submitter must serve on persons on the APO service list the complete final business proprietary document, if there are bracketing corrections. If there are no bracketing corrections, a person need not serve a copy of the final business proprietary document.[27] A submitter must also serve the public version on persons on the public service list.[28] Because ACCESS will generally effectuate service under the proposed amendments to the regulations, it is no longer necessary for § 351.303(c)(2)(ii) to state that service of the final business proprietary document with bracketing corrections is required in all circumstances. The service rules for the final business proprietary document and the public version will default to the proposed general rules regarding service outlined elsewhere in the proposed rule. To the extent the final business proprietary document contains business proprietary information of a party not on the APO service list, service of the final business proprietary document must be made using an acceptable alternative means of service, with that party's consent.

5. Filing of Public Versions of Business Proprietary Documents—Section 351.304

Current § 351.304(c)(1) provides that parties filing documents containing business proprietary information must file a public version of the document on the first business day after the filing deadline for the business proprietary version. In some instances, parties have interpreted § 351.304(c)(1) to mean that the deadline for the public version of a business proprietary document *not* filed under the one-day lag rule is the first business day after the filing deadline for the business proprietary document. Commerce proposes to revise § 351.304(c)(1) to clarify that the public

[22] *See 1997 Antidumping and Countervailing Duties Final Rule,* 62 FR 27337; *see also Antidumping and Countervailing Duty Proceedings: Administrative Protective Order Procedures; Procedures for Imposing Sanctions for Violation of a Protective Order,* 63 FR 24391, 24393 (May 4, 1998) (*1998 Final Rule*) (stating that *1997 Antidumping and Countervailing Duties Final Rule's* procedural regulations codified Commerce practice of one-day lag rule).

[23] *2011 Final Rule,* 76 FR 39268.

[24] *Id.; see also* 19 CFR 351.303(c)(2)(i).

[25] *Temporary Rule,* 85 FR 17006.

[26] *See* 19 CFR 351.303(c)(2)(iii).

[27] *See* 19 CFR 351.303(c)(2)(ii).

[28] *See* 19 CFR 351.303(c)(2)(iii).

version of a business proprietary document is due on the filing deadline of the business proprietary document. Thus, the public version of a business proprietary document *not* filed under the one-day lag rule is due the same day as the business proprietary document is filed. However, if the business proprietary document is filed under the one-day lag rule, the deadline for the public version of the business proprietary document is the first business day after the filing deadline for the business proprietary document (the same deadline as the final business proprietary document filed under the one-day lag rule). Finally, current § 351.304(c)(1) incorrectly references § 351.303(b), which sets forth general filing requirements. The correct citation is to § 351.303(c)(2), which details filing requirements under the one-day lag rule. Commerce proposes to correct this citation.

Current § 351.304(c)(2) provides that under the one-day lag rule, a submitter may make corrections to the bracketing of a business proprietary document, and file a corrected final business proprietary document and public version on the next business day. However, § 351.304(c)(2) incorrectly references § 351.303(b), which sets forth general filing requirements. The correct citation is to § 351.303(c)(2)(ii) and (iii), which detail filing requirements under the one-day lag rule for the final business proprietary document and public version. In addition, § 351.304(c)(2) incorrectly references ''paragraph (c)(2)'' (*i.e.,* § 351.304(c)(2)) which is the very same paragraph). The correct citation is to the preceding paragraph, § 351.304(c)(1), which sets forth the date in which the public version should be filed under the one-day lag rule. Commerce proposes corrections to these citations.

6. APO Applications—Section 351.305(b)(2)

Section 351.305(b)(2) describes the process in which a representative of a party to the proceeding may obtain access to proprietary information under an APO by submitting Form ITA–367 to the Secretary, allowing for the use of an applicant's own word processing equipment to create the application, and requiring it to be served using the most expeditious means possible. Commerce proposes to revise this provision to require an applicant to use electronic Form ITA–367, which is available in ACCESS at *https://access.trade.gov.* The electronic application will then be filed and served in ACCESS upon submission. As such, Commerce also proposes revising this provision to remove the separate requirement that the application be served using the most expeditious means possible because service will be effectuated via ACCESS.

7. Central Records Unit and Administrative Protective Order and Dockets Unit—Section 351.103

Commerce proposes updating certain information pertaining to the Central Records Unit (CRU) and Administrative Protective Order and Dockets (APO/Dockets) Unit in § 351.103(a) and (b), including an update of the CRU's room number in paragraph (a) and the deletion of an extraneous period in Commerce's street address in paragraphs (a) and (b). In addition, Commerce proposes adding a statement that visitors to the CRU and the APO/Dockets Unit should consult the ACCESS website for information regarding in-person visits and in-person manual filings, respectively. By posting such information on the ACCESS website, Commerce can provide updates to the public as to the operating status of the CRU and the APO/Dockets Unit. This will be helpful in light of limited operations or restrictions on visitor access to the Commerce building, such as those related to COVID–19.

8. Other Corrections and Updates

Commerce proposes to make certain additional revisions to the regulations, as described below.

A. Sections 351.404(d) and 351.104(a)(2)(ii)(A)

Commerce's current regulations contain certain outdated cross-references to other regulatory provisions. Commerce proposes to correct the following cross-references.

First, § 351.404(d) states that allegations concerning market viability or exceptions to calculating price-based normal value in viable markets must be filed within the time limits set forth under § 351.301(d)(1). However, based on the 2013 amendments to the regulations, the current regulations do not contain a § 351.301(d), and the correct cross-reference is § 351.301(c)(2)(i).[29]

Second, § 351.104(a)(2)(ii)(A), regarding the rejection of material from the record of a proceeding, currently refers to § 351.301(b) for the definition of untimely filed new factual information. However, based on the 2013 amendments to the regulations, the correct cross-reference for time limits for submitting new factual information is § 351.301(c).[30]

B. Sections 351.301(c)(2)(vi) and (3)(iv)

Commerce also proposes to revise certain provisions in § 351.301. Commerce's regulations at § 351.301 set forth the time limits for submitting factual information during the course of AD and CVD proceedings. Many of the time limits specified in § 351.301(c) are based off the date a submission is filed with Commerce. However, the time limits specified in § 351.301(c)(2)(vi) and (c)(3)(iv) are based off the date the submission of factual information is served on interested parties. For clarity and to provide consistency in the time limits that apply to the submission of factual information, Commerce proposes to revise § 351.301(c)(2)(vi) and (c)(3)(iv) so that the time limits for submitting factual information under these provisions are based off the date a submission is filed with Commerce.

C. Sections 351.225(f)(1), 351.225(f)(2), 351.226(f)(1), 351.226(f)(2) and 351.227(d)

In the *2021 Final Rule,* Commerce revised § 351.225, which describes the applicable procedures and standards concerning scope inquiries, created § 351.226, which describes the applicable procedures and standards concerning circumvention inquiries, and created § 351.227, which applies to covered merchandise inquiries. Current § 351.225(f)(2) states that within 30 days of the initiation of a scope inquiry under § 351.225(d)(2), an interested party other than the applicant is permitted one opportunity to submit comments and factual information to rebut, clarify, or correct factual information contained in the scope ruling application. However, the cross-reference to § 351.225(d)(2) is incorrect and the correct reference is § 351.225(d)(1), which governs the initiation of scope inquiries. Therefore, Commerce proposes to correct this cross-reference.

In addition, §§ 351.225(f)(1) and (2), 351.226(f)(1) and (2), and 351.227(d)(1) all use the terminology ''within 30 days of'' and ''within 14 days of,'' which has

[29] The 2013 amendments to the regulations amended § 351.301 to only include subsections (a)-(c). Under those amendments, § 351.301(c)(2)(i) became the new provision setting forth the time limits for allegations concerning market viability or exceptions to calculating price-based normal value in viable markets. *See Definition of Factual Information and Time Limits for Submission of Factual Information,* 78 FR 21246, 21255 (April 10, 2013) (*2013 Final Rule*). However, the amendments did not also update § 351.404(d) to cross-reference § 351.301(c)(2)(i). *Id.*

[30] Under the 2013 amendments to the regulations, the provision on time limits for the submission of new factual information was moved to § 351.301(c). *2013 Final Rule,* 78 FR 21255. However, the amendments did not also update § 351.104(a)(2)(ii)(A) to cross-reference § 351.301(c). *Id.*

led to some unnecessary confusion if that phrase refers to time period before and after 30 and 14 days, or only after 30 and 14 days. The intention of those regulatory provisions was always just to pertain to periods ''after'' the triggering event, so Commerce proposes in each incidence to replace the word ''of'' in those provisions with ''after.'' Thus, each phrase would now say ''within 30 days after'' and ''within 14 days after'' to make the deadlines for filing submissions clearer.

D. Sections 351.225(b), 351.226(b), 351.225(d) and 351.226(d)(1)

As we have explained, in the *2021 Final Rule* Commerce revised its scope inquiry regulations and created new regulations to address circumvention inquiries. One of those changes was to require that if Commerce self-initiates a scope inquiry or circumvention inquiry, it will publish a notice in the **Federal Register** initiating that inquiry. The language currently in §§ 351.225(b) and 351.226(b) says that Commerce will ''initiate'' ''and publish a notice,'' but in fact, Commerce intended for the initiation to be effective in both cases upon the date of publication of those notice in the **Federal Register**. Accordingly, for clarification, we are proposing modifying the language to say that self-initiation of both inquiries will be ''by publishing a notice of initiation in the **Federal Register**.''

As part of the new procedures set forth in both sets of regulations, Commerce explained that it must make determinations to accept or reject a scope application or circumvention inquiry request within 30 days. Commerce also explained that if it does accept the scope application or circumvention inquiry request, it must also decide within that period of time to initiate or not initiate an inquiry. For scope inquiries, if Commerce makes no determination in 30 days, then the regulations under § 351.225(d)(1)(ii) provides that the scope ruling application will be deemed accepted and the scope inquiry will be deemed initiated. We believe that the language in §§ 351.225(d) and 351.226(d)(1) could be clarified with respect to both the acceptance/rejection and initiation/no-initiation status in those provisions, including a reference to the deemed initiation alternative in § 351.225(d)(1)(ii), so we have proposed the addition of language in both provisions to avoid future misunderstandings.

E. Section 351.225(e)(2)

Section 225(e)(2) allows Commerce to extend a scope ruling for good cause from its initial 120 days by no more than another 180 days. The intention of the 180 day extension was to allow for a total of no more than 300 days from initiation of the scope inquiry in which to issue a scope ruling if the case were fully extended. However, some individuals, both within Commerce and outside of Commerce, have asked if the text in the regulation was intended to only allow extension of the scope ruling up to 180 days following initiation. Accordingly, we believe that § 225(e)(2) should be clarified to add language following the 180 day language to read as follows: ''by no more than 180 days, for a final scope ruling to be issued no later than 300 days after initiation, if the Secretary determines that good cause exists to warrant an extension.''

F. Section 351.226(l)(2)(ii)

Commerce proposes to add the word ''circumvention'' before the word ''inquiry'' in the phrase ''after the date of the publication of the notice of initiation of the inquiry'' in § 351.226(l)(2)(ii). This is to provide clarification that this provision applies to the initiation of a circumvention inquiry, and not another inquiry. Similar language is found in the parallel provisions applicable to §§ 351.225(l) (scope) and 351.227(l) (covered merchandise) inquiries, so providing this clarifying word would assist in providing consistency among these different inquiry regulations.

G. Section 351.227(b)

As we have explained, in the *2021 Final Rule,* Commerce also created new § 351.227, which addresses procedures and standards specific to Commerce's consideration of covered merchandise referrals from U.S. Customs and Border Protection (CBP) under section 517(b)(4)(A) of the Act. This regulation governs Commerce's receipt of a covered merchandise referral from CBP, Commerce's initiation and conduct of a covered merchandise inquiry, and Commerce's covered merchandise determination. Commerce has identified certain aspects of § 351.227(b) that need to be clarified and revised. Under current § 351.227(b), within 20 days after receiving a covered merchandise referral from CBP that Commerce determines to be sufficient, Commerce will take one of two actions. Commerce will either initiate a covered merchandise inquiry and publish a notice of initiation in the **Federal Register**, or, if Commerce determines upon review of the covered merchandise referral that the issue can be addressed in an ongoing segment of the proceeding, such as a scope or circumvention inquiry, Commerce will publish in the **Federal Register** a notice of its intent to address the covered merchandise referral in such other segment.

Commerce intends to revise § 351.227(b) in two ways. First, Commerce clarifies that, within 20 days of receiving a covered merchandise referral from CBP that Commerce determines to be sufficient, Commerce will issue its decision whether to initiate a covered merchandise inquiry or to address the covered merchandise referral in an ongoing segment of the proceeding. It was not Commerce's intent in drafting this regulation, and Commerce does not interpret this regulation, to mean that Commerce will publish notice of its decision in the **Federal Register** within 20 days of receipt its decision to initiate a covered merchandise inquiry or to address a covered merchandise referral in an ongoing segment of the proceeding. Thus, Commerce intends to revise § 351.227(b) to clarify this issue. Second, Commerce intends to revise § 351.227(b) to clarify that Commerce will take one of the two actions described above within 20 days of acknowledging receipt of a sufficient covered merchandise referral from CBP. This revision is necessary to preserve flexibility and to allow Commerce the full 20 days provided in the regulation to take one of the two actions described above after making a determination that the covered merchandise referral is sufficient.[31]

H. Section 351.305(a)

Commerce proposes to revise § 351.305(a) to add a reference to requests for a circumvention inquiry filed under § 351.226. In the *2021 Final Rule,* Commerce created new § 351.226, which covers the procedures for Commerce to address potential circumvention of AD/CVD orders. Prior to the *2021 Final Rule,* circumvention

[31] Commerce has described that in determining whether a covered merchandise referral is sufficient, Commerce may consider, among other things, whether the referral has provided the name and contact information of the parties to CBP's investigation, including the name and contact information of any known representative acting on behalf of such parties; an adequate description of the alleged covered merchandise; identification of the applicable AD or CVD orders; and any necessary information reasonably available to CBP regarding whether the merchandise at issue is covered merchandise. *See Regulations to Improve Administration and Enforcement of Antidumping and Countervailing Duty Laws, Proposed Rule,* 85 FR 49472, 49490 (August 13, 2020). Additionally, Commerce reviews the covered merchandise referral and any accompanying documentation to ensure any business proprietary information is properly redacted in accordance with Commerce's statutory and regulatory requirements. *Id.*

inquiries were governed under Commerce's scope inquiries regulation at § 351.225. Section 351.305(a) of Commerce's current regulations discusses the timing of when Commerce places an administrative protective order on the record of its proceedings. This paragraph indicates that within five business days after the day on which an application for a scope ruling is properly filed under § 351.225, Commerce will place an administrative protective order on the record of the segment of the proceeding. Thus, Commerce proposes to revise § 351.305(a) to add a reference to requests for a circumvention inquiry filed under § 351.226.

I. Sections 351.204(d)(3) and 351.408(c)(3)

Two of Commerce's regulations have been invalidated by the Federal Circuit, and Commerce proposes to remove the invalidated paragraphs from the CFR.

On June 3, 2014, the Federal Circuit invalidated § 351.204(d)(3) of Commerce's regulations in *MacLean-Fogg Co.* v. *United States,* 753 F. 3d 1237 (Fed. Cir. 2014) (*MacLean-Fogg*). The regulatory language at issue is as follows: ''*Exclusion of voluntary respondents' rates from all-others rate.* In calculating an all-others rate under section 705(c)(5) or section 735(c)(5) of the Act, the Secretary will exclude weighted-average dumping margins or countervailable subsidy rates calculated for voluntary respondents.'' Section 705(c)(5)(A) of the Act states that the ''all-others rate shall be an amount equal to the weighted average countervailable subsidy rates established for exporters and producers individually investigated.'' The Federal Circuit held that there is no ambiguity in the statutory words ''individually'' and ''investigated,'' and that a voluntary respondent who receives an individual rate has undergone ''individual investigation.'' The Federal Circuit therefore concluded that § 351.204(d)(3) was invalid, and Commerce is proposing removing that paragraph and replacing it with the language found in current § 351.204(d)(4).

Furthermore, on May 14, 2010, the Federal Circuit in *Dorbest Ltd.* v. *United States,* 604 F. 3d 1363, 1372 (Fed. Cir. 2010) (*Dorbest*), invalidated § 351.408(c)(3) of Commerce's regulations. Section 733(c) of the Act provides that Commerce will value the factors of production (FOPs) in non-market economy cases using the best available information regarding the value of such factors in a market economy country or countries considered to be appropriate by the administering authority. The Act requires that when valuing the FOPs, Commerce utilize, to the extent possible, the prices or costs of factors of production in one or more market-economy countries that are at a level of comparable economic development and significant producers of comparable merchandise.[32]

However, it was Commerce's practice to calculate wages using a regression analysis that captured the worldwide relationship between *per capita* Gross National Income and hourly wage rates in manufacturing.[33] The language of § 351.408(c)(3) reflected this use of a regression analysis: ''*Labor.* For Labor, the Secretary will use regression-based wage rates reflective of the observed relationship between wages and national income in market economy countries. The Secretary will calculate the wage rate to be applied in nonmarket economy proceedings each year. The calculation will be based on current data and will be made available to the public.''

The Federal Circuit in *Dorbest* held that because the regulation required Commerce to use wage data in a regression analysis from countries that did not meet the statutory criteria, the regulation was invalid. Thus, Commerce is proposing removing § 351.408(c)(3) and replacing it with the language found in current § 351.408(c)(4).

Classification

Executive Order 12866

OMB has determined that this proposed rule is not significant for purposes of Executive Order 12866.

Executive Order 13132

This proposed rule does not contain policies with federalism implications as that term is defined in section 1(a) of Executive Order 13132, dated August 4, 1999 (64 FR 43255 (August 10, 1999)).

Paperwork Reduction Act

This proposed rule does not contain a collection of information subject to the Paperwork Reduction Act, 44 U.S.C. chapter 35.

Regulatory Flexibility Act

The Chief Counsel for Regulation has certified to the Chief Counsel for Advocacy of the Small Business Administration under the provisions of the Regulatory Flexibility Act, 5 U.S.C. 605(b), that the proposed rule would not have a significant economic impact on a substantial number of small business entities. A summary of the need for, objectives of, and legal basis for this proposed rule is provided in the preamble, and is not repeated here.

The entities upon which this rulemaking could have an impact include foreign governments, foreign exporters and producers, some of whom are affiliated with U.S. companies, U.S. importers, and domestic producers of the domestic like product. However, the proposed modifications will not have a significant economic impact on these entities. Rather, they would make the administration of Commerce's AD/CVD proceedings more efficient by allowing parties to utilize available electronic or other expedient means of service, and by clarifying and updating certain regulatory provisions.

Enforcement & Compliance currently does not have information on the number of entities that would be considered small under the Small Business Administration's size standards for small businesses in the relevant industries. However, some of these entities may be considered small entities under the appropriate industry size standards. Although this proposed rule may indirectly impact small entities that are parties to individual AD and CVD proceedings, it will not have a significant economic impact on any such entities because the proposed rule applies to administrative enforcement actions, only clarifying and establishing streamlined procedures; it does not impose any significant costs on regulated entities. Therefore, the proposed rule would not have a significant economic impact on a substantial number of small business entities. For this reason, an Initial Regulatory Flexibility Analysis is not required and one has not been prepared.

List of Subjects in 19 CFR Part 351

Administrative practice and procedure, Antidumping, Business and industry, Cheese, Confidential business information, Countervailing duties, Freedom of information, Investigations, Reporting and recordkeeping requirements.

Dated: November 18, 2022.

Lisa W. Wang,

Assistant Secretary for Enforcement and Compliance.

For the reasons stated in the preamble, the Department of Commerce is proposing to amend 19 CFR part 351 as follows:

[32] *See* section 733(c)(4) of the Act.

[33] *See Antidumping Methodologies: Market Economy Inputs, Expected Non-Market Economy Wages, Duty Drawback; and Request for Comments* (''*Antidumping Methodologies Notice*''), 71 FR 61716 (October 19, 2006).

PART 351—ANTIDUMPING AND COUNTERVAILING DUTIES

■ 1. The authority citation for 19 CFR part 351 continues to read as follows:

Authority: 5 U.S.C. 301; 19 U.S.C. 1202 note; 19 U.S.C. 1303 note; 19 U.S.C. 1671 *et seq.;* and 19 U.S.C. 3538.

■ 2. In § 351.103, revise paragraphs (a) and (b) to read as follows:

§ 351.103 Central Records Unit and Administrative Protective Order and Dockets Unit.

(a) Enforcement and Compliance's Central Records Unit maintains a Public File Room in Room B8024, U.S. Department of Commerce, 14th Street and Constitution Avenue NW, Washington, DC 20230. The office hours of the Public File Room are between 8:30 a.m. and 5 p.m. Eastern Time on business days. Visitors to the Public File Room should consult the ACCESS website at *https://access.trade.gov* for information regarding in-person visits. Among other things, the Central Records Unit is responsible for maintaining an official and public record for each antidumping and countervailing duty proceeding (*see* § 351.104).

(b) Enforcement and Compliance's Administrative Protective Order and Dockets Unit (APO/Dockets Unit) is located in Room 18022, U.S. Department of Commerce, 14th Street and Constitution Avenue NW, Washington, DC 20230. The office hours of the APO/Dockets Unit are between 8:30 a.m. and 5 p.m. Eastern Time on business days. Visitors to the APO/Dockets Unit should consult the ACCESS website at *https://access.trade.gov* for information regarding in-person manual filings. Among other things, the APO/Dockets Unit is responsible for receiving submissions from interested parties, issuing administrative protective orders (APOs), maintaining the APO service list and the public service list as provided for in paragraph (d) of this section, releasing business proprietary information under APO, and conducting APO violation investigations. The APO/Dockets Unit also is the contact point for questions and concerns regarding claims for business proprietary treatment of information and proper public versions of submissions under §§ 351.105 and 351.304.

* * * * *

■ 3. In § 351.104, revise paragraph (a)(2)(ii)(A) to read as follows:

§ 351.104 Record of proceedings.

(a) * * *

(2) * * *

(ii) * * *

(A) The document, although otherwise timely, contains untimely filed new factual information (see § 351.301(c));

* * * * *

§ 351.204 [Amended]

■ 4. In § 351.204, remove paragraph (d)(3) and redesignate paragraph (d)(4) as paragraph (d)(3).

■ 5. In § 351.225, revise paragraphs (b), (d)(1), (e)(2), and (f)(1) and (2) to read as follows:

§ 351.225 Scope rulings.

* * * * *

(b) *Self-initiation of a scope inquiry.* If the Secretary determines from available information that an inquiry is warranted to determine whether a product is covered by the scope of an order, the Secretary may initiate a scope inquiry by publishing a notice of initiation in the **Federal Register**.

* * * * *

(d) *Initiation of a scope inquiry and other actions based on a scope application*—(1) *Acceptance and Initiation of a scope inquiry ruling application.* Except as provided under paragraph (d)(2) of this section, within 30 days after the filing of a scope application, the Secretary will determine whether to accept or reject the scope ruling application and to initiate or not initiate a scope inquiry, or, in the alternative, paragraph (d)(1)(ii) will apply.

* * * * *

(e) * * *

(2) *Extension.* The Secretary may extend the deadline in paragraph (e)(1) of this section by no more than 180 days, for a final scope ruling to be issued no later than 300 days after initiation, if the Secretary determines that good cause exists to warrant an extension. Situations in which good cause has been demonstrated may include:

* * * * *

(f) * * *

(1) Within 30 days after the Secretary's self-initiation of a scope inquiry under paragraph (b) of this section, interested parties are permitted one opportunity to submit comments and factual information addressing the self-initiation. Within 14 days after the filing of such comments, any interested party is permitted one opportunity to submit comments and factual information submitted by the other interested parties.

(2) Within 30 days after the initiation of a scope inquiry under paragraph (d)(1) of this section, an interested party other than the applicant is permitted one opportunity to submit comments and factual information to rebut, clarify, or correct factual information contained in the scope ruling application. Within 14 days after the filing of such rebuttal, clarification, or correction, the applicant is permitted one opportunity to submit comments and factual information to rebut, clarify, or correct factual information submitted in the interested party's rebuttal, clarification or correction.

* * * * *

■ 6. In § 351.226, revise paragraphs (b), (d)(1), (f)(1) and (2), and (l)(2)(ii) to read as follows:

§ 351.226 Circumvention Inquiries

* * * * *

(b) *Self-initiation of a circumvention inquiry.* If the Secretary determines from available information that an inquiry is warranted into the question of whether the elements necessary for a circumvention determination under section 781 of the Act exist, the Secretary may initiate a circumvention inquiry by publishing a notice of initiation in the **Federal Register**.

* * * * *

(d) * * *

(1) *Initiation of circumvention inquiry.* Except as provided under paragraph (d)(2) of this section, within 30 days after the filing of a request for a circumvention inquiry, the Secretary will determine whether to accept or reject the request and whether to initiate or not initiate a circumvention inquiry. If it is not practicable to determine whether to accept or reject a request or initiate or not initiate within 30 days, the Secretary may extend that deadline by an additional 15 days.

* * * * *

(f) * * *

(1) Within 30 days after the Secretary's self-initiation of a circumvention inquiry under paragraph (b) of this section, interested parties are permitted one opportunity to submit comments and factual information addressing the self-initiation. Within 14 days after the filing of such comments, any interested party is permitted one opportunity to submit comments and factual information submitted by the other interested parties.

(2) Within 30 days after the initiation of a circumvention inquiry under paragraph (d)(1) of this section, an interested party other than the applicant is permitted one opportunity to submit comments and factual information to rebut, clarify, or correct factual information contained in the scope ruling application. Within 14 days after the filing of such rebuttal, clarification,

or correction, the applicant is permitted one opportunity to submit comments and factual information to rebut, clarify, or correct factual information submitted in the interested party's rebuttal, clarification or correction.

* * * * *

(l) * * *

(2) * * *

(ii) The Secretary will direct the Customs Service to begin the suspension of liquidation and require a cash deposit of estimated duties, at the applicable rate, for each unliquidated entry of the product not yet suspended, entered, or withdrawn from warehouse, for consumption on or after the date of the publication of the notice of initiation of the circumvention inquiry; and

* * * * *

■ 7. In § 351.227, revise paragraphs (b) and (d)(1) to read as follows:

§ 351.227 Covered merchandise referrals.

* * * * *

(b) *Actions with respect to covered merchandise referral.* (1) Within 20 days after acknowledging receipt of a covered merchandise referral from the Customs Service pursuant to section 517(b)(4)(A)(i) of the Act that the Secretary determines to be sufficient, the Secretary will take one of the following actions.

(i) Initiate a covered merchandise inquiry; or

(ii) If the Secretary determines upon review of the covered merchandise referral that the issue can be addressed in an ongoing segment of the proceeding, such as a scope inquiry under § 351.225 or a circumvention inquiry under § 351.226, rather than initiating the covered merchandise inquiry, the Secretary will address the covered merchandise referral in such other segment.

(2) The Secretary will publish a notice of its action taken with respect to a covered merchandise referral under paragraph (b)(1) of this section in the **Federal Register**.

* * * * *

(d) * * *

(1) Within 30 days after the date of publication of the notice of an initiation of a covered merchandise inquiry under paragraph (b)(1) of this section, interested parties are permitted one opportunity to submit comment and factual information addressing the initiation. Within 14 days after the filing of such comments, any interested party is permitted one opportunity to submit comment and factual information to rebut, clarify, or correct factual information submitted by the other interested parties.

* * * * *

■ 8. In § 351.301, revise paragraphs (c)(2)(vi) and (c)(3)(iv) to read as follows:

§ 351.301 Time limits for submission of factual information.

* * * * *

(c) * * *

(2) * * *

(vi) *Rebuttal, clarification or correction of factual information submitted in support of allegations.* An interested party is permitted one opportunity to submit factual information to rebut, clarify, or correct factual information submitted in support of allegations 10 days after the date such factual information is filed with the Department.

(3) * * *

(iv) *Rebuttal, clarification, or correction of factual information submitted to value factors under § 351.408(c) or to measure the adequacy of remuneration under § 351.511(a)(2).* An interested party is permitted one opportunity to submit publicly available information to rebut, clarify, or correct such factual information submitted pursuant to § 351.408(c) or § 351.511(a)(2) 10 days after the date such factual information is filed with the Department. An interested party may not submit additional, previously absent-from-the-record alternative surrogate value information under this paragraph (c)(3)(iv). Additionally, all factual information submitted under this paragraph (c)(3)(iv) must be accompanied by a written explanation identifying what information already on the record of the ongoing proceeding the factual information is rebutting, clarifying, or correcting. Information submitted to rebut, clarify, or correct factual information submitted pursuant to § 351.408(c) will not be used to value factors under § 351.408(c).

* * * * *

■ 9. In § 351.303, revise paragraphs (c)(2)(i) and (ii), and (f)(1) through (3) to read as follows:

§ 351.303 Filing, document identification, format, translation, service, and certification of documents.

* * * * *

(c) * * *

(2) * * *

(i) *Filing the business proprietary document.* A person must file a business proprietary document with the Department within the applicable time limit. The submitter must also file the certificate of service (a public document) included with its submission under this section as a separate, stand-alone submission on ACCESS.

(ii) *Filing of final business proprietary document; bracketing corrections.* By the close of business one business day after the date the business proprietary document is filed under paragraph (c)(2)(i) of this section, a person must file the complete final business proprietary document with the Department. The final business proprietary document must be identical in all respects to the business proprietary document filed on the previous day except for any bracketing corrections and the omission of the warning ''Bracketing of Business Proprietary Information Is Not Final for One Business Day After Date of Filing'' in accordance with paragraph (d)(2)(v) of this section.

* * * * *

(f) *Service of copies on other persons*—(1) *In general.* Generally, a person filing a document with the Department simultaneously must serve a copy of the document on all other persons on the service list. Except as provided in § 351.202(c) (filing of petition), § 351.208(f)(1) (submission of proposed suspension agreement), and paragraph (f)(2) of this section:

(i) Service of a public document or public version of a business proprietary document is effectuated on the persons on the public service list upon filing of the submission in ACCESS, unless ACCESS is unavailable, in which case, paragraph (f)(1)(iii) of this section is applicable.

(ii)(A) Service of a business proprietary document is effectuated on the persons on the APO service list upon filing of the submission in ACCESS unless ACCESS is unavailable, in which case, paragraph (f)(1)(iii) of this section is applicable. In addition, a business proprietary document submitted under the one-day lag rule under paragraph (c)(2)(i) of this section must be served using an acceptable alternative method under paragraph (f)(1)(iii) of this section.

(B) If the document contains the business proprietary information of a person who is not included on the APO service list, then service of such documents on that person cannot be effectuated on ACCESS and the submitter must serve that person its own business proprietary information using an acceptable alternative method under paragraph (f)(1)(iii) of this section. In addition, specific service requirements under § 351.306(c)(2) are applicable.

(iii) If service of a public document, public version of a business proprietary

document, or a business proprietary document cannot be effectuated on ACCESS (for any reason), an alternative method of service must be used. Acceptable alternative methods may include: first class mail, hand delivery, or electronic transmission. Electronic transmission may only be used as an acceptable alternative method of service for business proprietary documents under paragraph (f)(1)(ii) of this section if the business proprietary document contains the business proprietary information of either the submitter or the recipient, with the consent of the recipient.

(2) *Service requirements for certain documents*—(i) *Request for review.* In addition to the certificate of service requirements under paragraph (f)(3) of this section, an interested party that files with the Department a request for an expedited antidumping review, an administrative review, a new shipper review, or a changed circumstances review must serve a copy of the request by personal service or first class mail on each exporter or producer specified in the request and on the petitioner by the end of the anniversary month or within ten days of filing the request for review, whichever is later. If the interested party that files the request is unable to locate a particular exporter or producer, or the petitioner, the Secretary may accept the request for review if the Secretary is satisfied that the party made a reasonable attempt to serve a copy of the request on such person.

(ii) *Scope and circumvention.* In addition to the certificate of service requirements under paragraph (f)(3) of this section, an interested party that files with the Department a scope ruling application or a request for a circumvention inquiry must serve a copy of the request on all persons included in the annual inquiry service list in accordance with §§ 351.225(n) and 351.226(n), respectively.

(3) *Certificate of service.* Each document filed with the Department must include a certificate of service listing each person served (including agents), the type of document served, and the date and method of service on each person. The Secretary may refuse to accept any document that is not accompanied by a certificate of service.

* * * * *

■ 10. In § 351.304, revise paragraphs (c)(1) and (2) to read as follows:

§ 351.304 Establishing business proprietary treatment of information.

* * * * *

(c) * * *

(1) A person filing a submission that contains information for which business proprietary treatment is claimed must also file a public version of the submission. The public version must be filed on the filing deadline for the business proprietary document. If the business proprietary document was filed under the one-day lag rule (*see* § 351.303(c)(2)), the public version and the final business proprietary document must be filed on the first business day after the filing deadline. The public version must contain a summary of the bracketed information in sufficient detail to permit a reasonable understanding of the substance of the information. If the submitting person claims that summarization is not possible, the claim must be accompanied by a full explanation of the reasons supporting that claim. Generally, numerical data will be considered adequately summarized if grouped or presented in terms of indices or figures within 10 percent of the actual figure. If an individual portion of the numerical data is voluminous, at least one percent representative of that portion must be summarized. A submitter should not create a public summary of business proprietary information of another person.

(2) If a submitting party discovers that it has failed to bracket information correctly, the submitter may file a complete, corrected business proprietary document along with the public version (*see* § 351.303(c)(2)(ii) through (iii)). At the close of business on the day on which the public version of a submission is due under paragraph (c)(1) of this section, however, the bracketing of business proprietary information in the original business proprietary document or, if a corrected version is timely filed, the corrected business proprietary document will become final. Once bracketing has become final, the Secretary will not accept any further corrections to the bracketing of information in a submission, and the Secretary will treat non-bracketed information as public information.

* * * * *

■ 11. In § 351.305:

■ a. Revise the introductory text of paragraph (a);

■ b. Revise paragraph (b)(2) and (3), and remove paragraph (b)(4); and

■ c. Revise paragraph (c).

The revisions read as follows:

§ 351.305 Access to business proprietary information.

* * * * *

(a) *The administrative protective order.* The Secretary will place an administrative protective order on the record as follows: within two business days after the day on which a petition is filed or an investigation is self-initiated; within five business days after the day on which a request for a new shipper review is properly filed in accordance with §§ 351.214 and 351.303, an application for a scope ruling is properly filed in accordance with §§ 351.225 and 351.303, or a request for a circumvention inquiry is properly filed in accordance with §§ 351.226 and 351.303; within five business days after the day on which a request for a changed circumstances review is properly filed in accordance with §§ 351.216 and 351.303 or a changed circumstances review is self-initiated; or within five business days after initiating any other segment of a proceeding. The administrative protective order will require the authorized applicant to:

* * * * *

(b) * * *

(2) A representative of a party to the proceeding may apply for access to business proprietary information under the administrative protective order by submitting an electronic application available in ACCESS at *https://access.trade.gov* (Form ITA–367) to the Secretary. The electronic application will be filed and served in ACCESS upon submission. Form ITA–367 must identify the applicant and the segment of the proceeding involved, state the basis for eligibility of the applicant for access to business proprietary information, and state the agreement of the applicant to be bound by the administrative protective order. Form ITA–367 must be accompanied by a certification that the application is consistent with Form ITA–367 and an acknowledgment that any discrepancies will be interpreted in a manner consistent with Form ITA–367. An applicant must apply to receive all business proprietary information on the record of the segment of a proceeding in question, but may waive service of business proprietary information it does not wish to receive from other parties to the proceeding.

(3) To minimize the disruption caused by late applications, an application should be filed before the first response to the initial questionnaire has been submitted. Where justified, however, applications may be filed up to the date on which the case briefs are due.

* * * * *

(c) *Approval of access under administrative protective order; administrative protective order service list; service of earlier-filed business proprietary submissions.* (1) The Secretary will grant access to a qualified

applicant by including the name of the applicant on an administrative protective order service list. Access normally will be granted within five days of receipt of the application unless there is a question regarding the eligibility of the applicant to receive access. In that case, the Secretary will decide whether to grant the applicant access within 30 days of receipt of the application. The Secretary will provide by the most expeditious means available the administrative protective order service list to parties to the proceeding on the day the service list is issued or amended.

(2) After the Secretary approves an application, the authorized applicant may request service of earlier-filed business proprietary submissions of the other parties that are no longer available in ACCESS.

(i) For an application that is approved before the first response to the initial questionnaire is submitted, the submitting party must serve the authorized applicant those submissions within two business days of the request.

(ii) For an application that is approved after the first response to the initial questionnaire is submitted, the submitting party must serve the authorized applicant those submissions within five business days of the request. Any authorized applicant who filed the application after the first response to the initial questionnaire is submitted will be liable for costs associated with the additional production and service of business proprietary information already on the record.

* * * * *

■ 12. In § 351.306, revise paragraph (c)(2) to read as follows:

§ 351.306 Use of business proprietary information.

* * * * *

(c) * * *

(2) If a party to a proceeding is not represented, or its representative is not an authorized applicant, the submitter of a document containing that party's business proprietary information must serve that party or its representative, if applicable, with a version of the document that contains only that party's business proprietary information consistent with § 351.303(f)(1)(iii). The document must not contain the business proprietary information of other parties.

* * * * *

■ 13. In § 351.404, revise paragraph (d) to read as follows:

§ 351.404 Selection of the market to be used as the basis for normal value.

* * * * *

(d) Allegations concerning market viability and the basis for determining a price-based normal value. In an antidumping investigation or review, allegations regarding market viability or the exceptions in paragraph (c)(2) of this section, must be filed, with all supporting factual information, in accordance with § 351.301(c)(2)(i).

§ 351.408 [Amended]

■ 14. In § 351.408, remove paragraph (c)(3) and redesignate paragraph (c)(4) as paragraph (c)(3).

[FR Doc. 2022–25675 Filed 11–25–22; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF THE TREASURY

Alcohol and Tobacco Tax and Trade Bureau

27 CFR Part 9

[Docket No. TTB–2022–0014; Notice No. 219]

RIN 1513–AC84

Proposed Establishment of the Wanapum Village Viticultural Area

AGENCY: Alcohol and Tobacco Tax and Trade Bureau, Treasury.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Alcohol and Tobacco Tax and Trade Bureau (TTB) proposes to establish the 2,415-acre ''Wanapum Village'' American viticultural area (AVA) in Grant County, Washington. The proposed AVA area is located entirely within the existing Columbia Valley AVA. TTB designates viticultural areas to allow vintners to better describe the origin of their wines and to allow consumers to better identify wines they may purchase. TTB invites comments on these proposals.

DATES: TTB must receive your comments on or before January 27, 2023.

ADDRESSES: You may electronically submit comments to TTB on this proposal and view copies of this document, its supporting materials, and any comments TTB receives on it within Docket No. TTB–2022–0014 as posted on *Regulations.gov* (*https://www.regulations.gov*), the Federal e-rulemaking portal. Please see the ''Public Participation'' section of this document below for full details on how to comment on this proposal via *Regulations.gov* or U.S. mail, and for full details on how to obtain copies of this document, its supporting materials, and any comments related to this proposal.

FOR FURTHER INFORMATION CONTACT: Karen A. Thornton, Regulations and Rulings Division, Alcohol and Tobacco Tax and Trade Bureau, 1310 G Street NW, Box 12, Washington, DC 20005; phone 202–453–1039, ext. 175.

SUPPLEMENTARY INFORMATION:

Background on Viticultural Areas

TTB Authority

Section 105(e) of the Federal Alcohol Administration Act (FAA Act), 27 U.S.C. 205(e), authorizes the Secretary of the Treasury to prescribe regulations for the labeling of wine, distilled spirits, and malt beverages. The FAA Act provides that these regulations should, among other things, prohibit consumer deception and the use of misleading statements on labels and ensure that labels provide the consumer with adequate information as to the identity and quality of the product. The Alcohol and Tobacco Tax and Trade Bureau (TTB) administers the FAA Act provisions pursuant to section 1111(d) of the Homeland Security Act of 2002, as codified at 6 U.S.C. 531(d). In addition, the Secretary of the Treasury has delegated certain administrative and enforcement authorities to TTB through Treasury Order 120–01.

Part 4 of the TTB regulations (27 CFR part 4) authorizes TTB to establish definitive viticultural areas and regulate the use of their names as appellations of origin on wine labels and in wine advertisements. Part 9 of the TTB regulations (27 CFR part 9) sets forth standards for the preparation and submission of petitions for the establishment or modification of American viticultural areas (AVAs) and lists the approved AVAs.

Definition

Section 4.25(e)(1)(i) of the TTB regulations (27 CFR 4.25(e)(1)(i)) defines a viticultural area for American wine as a delimited grape-growing region having distinguishing features as described in part 9 of the regulations and, once approved, a name and a delineated boundary codified in part 9 of the regulations. These designations allow vintners and consumers to attribute a given quality, reputation, or other characteristic of a wine made from grapes grown in an area to the wine's geographic origin. The establishment of AVAs allows vintners to describe more accurately the origin of their wines to consumers and helps consumers to identify wines they may purchase. Establishment of an AVA is neither an approval nor an endorsement by TTB of the wine produced in that area.

Requirements

Section 4.25(e)(2) of the TTB regulations (27 CFR 4.25(e)(2)) outlines the procedure for proposing an AVA and allows any interested party to petition TTB to establish a grape-growing region as an AVA. Section 9.12 of the TTB regulations (27 CFR 9.12) prescribes standards for petitions to establish or modify AVAs. Petitions to establish an AVA must include the following:

- Evidence that the area within the proposed AVA boundary is nationally or locally known by the AVA name specified in the petition;
- An explanation of the basis for defining the boundary of the proposed AVA;
- A narrative description of the features of the proposed AVA that affect viticulture, such as climate, geology, soils, physical features, and elevation, that make the proposed AVA distinctive and distinguish it from adjacent areas outside the proposed AVA boundary;
- The appropriate United States Geological Survey (USGS) map(s) showing the location of the proposed AVA, with the boundary of the proposed AVA clearly drawn thereon;
- If the proposed AVA is to be established within, or overlapping, an existing AVA, an explanation that both identifies the attributes of the proposed AVA that are consistent with the existing AVA and explains how the proposed AVA is sufficiently distinct from the existing AVA and therefore appropriate for separate recognition; and
- A detailed narrative description of the proposed AVA boundary based on USGS map markings.

Petition To Establish the Wanapum Village AVA

TTB received a petition from Dr. Kevin Pogue, a professor of geology at Whitman College, proposing to establish the ''Wanapum Village'' AVA. Dr. Pogue submitted the petition on behalf of local vineyard owners and winemakers. The proposed AVA is located in Grant County, Washington, and is entirely within the existing Columbia Valley AVA (27 CFR 9.74). Within the proposed AVA, there are 2 commercial vineyards which cover a total of 538 acres. The distinguishing features of the proposed Wanapum Village AVA are its topography, soils, and climate.

Proposed Wanapum Village AVA

Name Evidence

The proposed Wanapum Village AVA takes its name from a small community constructed in the early 1960s to house personnel associated with the construction and operation of the nearby Wanapum Dam on the Columbia River. The mid-century style buildings of ''Wanapum Village * * * [are] eligible for listing in the National Register of Historic Places.'' [1] Wanapum Village appears as the name of the community on the 2017 USGS 1:24,000-scale Beverly quadrangle map and the 1979 1:100,000-scale Priest Rapids map. In 2010, the Grant County Public Utility District, owners of the buildings and land comprising Wanapum Village, declared the property surplus and offered it for sale. The Zirkle Fruit Company, owners of one of the vineyards in the proposed AVA, purchased the property in 2016, as noted in an article included in the petition titled ''Zirkle buying Wanapum Village.'' [2] As additional evidence that the region of the proposed AVA is known as ''Wanapum Village,'' the petition included an article about a 2019 wildfire in the region of the proposed AVA titled ''Level 1 Evacuation for Wanapum Village due to wildfire.'' [3] A 2021 wildfire that ''burned about two acres south of Wanapum Village'' [4] was named the ''Wanapum Village Fire.'' [5] Finally, two streets within the proposed AVA are named Wanapum Village Lane and Wanapum Village Loop.

Boundary Evidence

The proposed Wanapum Village AVA is located along the gentle to moderately sloping hillsides and low rolling hills where the south- and west-facing slopes of the Frenchman Hills meet the Columbia River at its confluence with Crab Creek. The proposed northern boundary primarily follows a series of roads which separate the proposed AVA from steeper, rockier terrain and federally-owned lands that are unavailable for commercial viticulture. The proposed eastern boundary follows a series of section lines on the USGS maps and largely corresponds with the western and southern boundaries of the neighboring Royal Slope AVA (27 CFR 9.271). The proposed southern boundary follows section lines on the USGS maps and separates the proposed AVA from the small town of Schwana, as well as from federally-owned lands that are not available for commercial viticulture. The proposed western boundary follows State Highway 243 and separates the proposed AVA from federally-owned lands along the eastern bank of the Columbia River.

Distinguishing Features

According to the petition, the distinguishing features of the proposed Wanapum Village AVA are its topography, soils, and climate.

Topography

Low, rolling hills with gentle to moderate slopes characterize the topography of the proposed Wanapum Village AVA. Elevations within the proposed AVA range from 515 to 950 feet, and the average elevation is approximately 600 feet. By contrast, to the north and northeast of the proposed AVA, the terrain of the established Royal Slope AVA consists of a single gentle incline that rises to the summit of the Frenchman Hills. Elevations are higher in the Royal Slope AVA than in the proposed Wanapum Village AVA, rising to a maximum of 1,756 feet. To the south of the proposed AVA is Sentinel Gap, a 1,500-foot deep, 1.5-mile wide, rugged, cliff-walled canyon carved by the Columbia River. The gap forms a natural geographic barrier between the proposed Wanapum Village AVA and the gently-sloping terrain of the established Wahluke Slope AVA (27 CFR 9.192). To the immediate west of the proposed AVA is the relatively narrow floodplain of the Columbia River, which, according to the USGS maps included in the petition, has elevations between 500 and 530 feet.

According to the petition, the topography of the proposed AVA affects viticulture. The proximity of the proposed AVA to Sentinel Gap increases wind speeds within the proposed AVA, as the canyon funnels wind into the proposed AVA. High winds can reduce mildew pressure on the vines and also promote the development of smaller grapes with thicker skins than are found on the same varietals grown in less windy conditions. Additionally, because the proposed AVA has lower elevations than the neighboring Wahluke Slope and Royal Slope AVAs, the entire proposed Wanapum Village AVA was repeatedly inundated by ice-age floodwaters that reached a maximum depth of 1,250 feet. The water flowed at a relatively high velocity, depositing coarse-grained sediments that formed the basis for the soils in the proposed AVA, compared to the finer clays and silts that were deposited at higher elevations outside the proposed AVA.

[1] *legalease.net/uploads/ferris/2/2/14396222.pdf.*

[2] *https://www.capitalpress.com/state/washington/zirkle-buying-wanapum-village/article_0a3451e8-2b06-57b7-bc62-3338c5ee234a.html.*

[3] *https://fox28spokane.com/level-1-evacuation-for-wanapum-village-due-to-wildfire.*

[4] *https://www.kpq.com/multiple-fires-in-wanapum-area-may-be-intentional/.*

[5] *https://www.fireweatheravalanche.org/wildfire/incident/194680/washington/wanapum-village-fire.*

Soils

As previously noted, the coarse-grained soils of the proposed Wanapum Village AVA are developed from sand and gravel deposited by ice-age floods mixed with wind-deposited sand. The four main soil series dominating the proposed AVA are the Burbank, Winchester, Schwana, and Quincy series. All of those soil series are described as excessively or somewhat excessively well-drained.

The petition states that the proposed AVA soils are much coarser than the soils in the neighboring Royal Slope AVA, which is located to the north and east of the proposed AVA. In soil samples taken from both the proposed AVA and the established Royal Slope AVA, only one percent of the weight of the soil sample from the Royal Slope AVA consisted of medium to coarse grains, compared to 46 percent of the sample from the proposed Wanapum Village AVA. The petition also notes that soils in the established Royal Slope AVA formed primarily in fine-grained slackwater sediments overlain by wind-deposited silt, and less than 2 percent of the soils derived from ''outburst sands and gravels'' such as those found in the proposed AVA.

To the immediate south of the proposed AVA, in Sentinel Gap, the soils are defined as ''rubble land-rock outcrop complex.'' These soils are generally considered unsuitable for agriculture. Farther south of the proposed AVA, within the established Wahluke Slope AVA, the soils are similar to those of the proposed Wanapum Village AVA. The petition did not include information on soils to the west of the proposed AVA.

The soils of the proposed Wanapum Village AVA have an effect on viticulture. Coarse-grained, excessively well-drained soils require more irrigation water and more easily promote vine stress than finer-grained soils. Vines planted in coarse-textured soils often have deeper roots since water has a greater tendency to move vertically through the profile. Coarse soils are less susceptible to erosion than soils formed in silt and fine sand, so cover crops are not critical and are not currently used in the vineyards of the proposed AVA. Finally, the petition notes that coarse-textured soils without cover crops warm faster than fine-grained soils that use cover crops. The warmer soils promote earlier onset of phenological stages in grapes, such as bud break and veraison.

Climate

According to the petition, the climate of the proposed Wanapum Village AVA is warm and windy. The petition included data on the average growing season temperature,[6] average maximum temperature, growing degree day (GDD)[7] accumulation, average wind speed, and maximum wind speed for one location in the proposed AVA, three locations in the established Royal Slope AVA (north and east of the proposed AVA), and three locations in the established Wahluke Slope AVA (south of the proposed AVA). The petition did not include data for the region to the west of the proposed AVA.

TABLE 1—2015–2018 TEMPERATURE DATA

[Degrees fahrenheit]

Location[8]	Average growing season temperature	Average maximum temperature	Growing degree day accumulations									
			2015	2016	2017	2018	2015	2016	2017	2018	2015	2016
Beverly	71.8	66.7	66.1	65.8	85.9	80.6	78.6	78.2	2816	3593	3514	3415
Royal City East	67.0	62.8	62.5	62.8	80.4	75.1	75.4	75.8	2194	2784	2777	2817
Royal City West	69.0	64.0	63.6	64.0	81.4	76.2	76.3	76.6	2461	3034	3022	3079
Royal Slope East	68.5	64.0	64.0	64.2	79.3	74.2	74.5	74.5	2396	3041	3092	3099
Desert Aire	71.3	67.1	66.2	66.6	84.7	79.7	79.8	79.9	2750	3669	3519	3569
Mattawa	69.2	65.0	64.3	64.8	83.2	78.0	78.4	78.3	2406	3229	3148	3226
Wahluke Slope	72.4	66.9	66.9	67.0	81.7	76.4	76.5	76.6	2885	3637	3667	3675

TABLE 2—2015–2018 WIND SPEEDS

[Miles per hour]

Location	Average wind speed				Maximum wind speed			
	2015	2016	2017	2018	2015	2016	2017	2018
Beverly	7.1	7.6	7.6	7.8	27.3	28.2	26.8	16.0
Royal City East	3.6	4.0	2.7	2.8	12.3	14.5	13.7	13.4
Royal City West	5.5	5.4	5.1	5.2	16.1	16.1	15.5	15.6
Royal Slope East	5.5	6.3	6.2	6.2	16.0	17.5	17.6	17.1
Desert Aire	4.7	5.2	4.9	5.0	16.6	17.5	16.8	17.0
Mattawa	4.5	5.6	5.0	5.5	16.1	18.2	16.7	18.0
Wahluke Slope	7.6	7.9	7.4	8.0	22.7	22.9	22.1	22.8

According to the data in the tables, the proposed Wanapum Village AVA has a higher average growing season temperature and accumulates more GDDs than any of the weather station locations within the established Royal Slope AVA. The weather station in the proposed AVA also had higher average and maximum wind speeds than any station in the Royal Slope AVA. The data suggests that temperatures in the established Wahluke Slope AVA are more varied than in the proposed AVA, with one station reporting very similar temperatures and GDD accumulations (Desert Aire), one reporting slightly lower temperatures and GDD accumulations (Mattawa), and one

[6] The petition defines the growing season as April 1 through October 31.

[7] *See* Albert J. Winkler, *General Viticulture* (Berkeley: University of California Press, 1974), pages 61–64. In the Winkler climate classification system, annual heat accumulation during the growing season, measured in annual GDDs, defines climatic regions. One GDD accumulates for each degree Fahrenheit that a day's mean temperature is above 50 degrees F, the minimum temperature required for grapevine growth.

[8] The Beverly weather station is located within the proposed AVA. The Royal City East, Royal City West, and Royal Slope East stations are located within the Royal Slope AVA. The Desert Aire, Mattawa, and Wahluke Slope stations are located within the Wahluke Slope AVA.

reporting slightly warmer temperatures and GDD accumulations (Wahluke Slope). However, the average and maximum wind speeds in the proposed AVA are consistently higher than in the Wahluke Slope AVA, with the exception of the 2015, 2016, and 2018 average wind speeds for the Wahluke Slope station.

According to the petition, the warm temperatures and high GDD accumulations within the proposed Wanapum Village AVA mean that vineyard owners are able to plant warmer-climate cultivars that require more heat to ripen. Additionally, cooler climate grape varietals planted in the proposed AVA will ripen faster and accumulate more sugars than the same varietals planted in the cooler Royal Slope AVA.

Summary of Distinguishing Features

The following table summarizes the distinguishing features of the proposed Wanapum Village AVA and the surrounding regions.

TABLE 3—SUMMARY OF DISTINGUISHING FEATURES

Region	Description
Proposed Wanapum Village AVA	Low, rolling hills with gentle to moderate slopes; elevations between 515 and 950 feet; soils derived from ice-age flood deposits of sand and gravel mixed with wind-deposited sand; coarse-grained soils that are excessively to somewhat excessively well-drained; warm temperatures and high GDD accumulations; high average and maximum wind speeds due to proximity to Sentinel Gap.
North and East (established Royal Slope AVA)	Single gentle incline with elevations up to 1,756 feet; finer-grained soils formed from slackwater sediments overlain by wind-deposited silt; lower temperatures and GDD accumulations; less windy.
Immediate South (Sentinel Gap)	Rugged, steep-walled canyon; rubble land–rock outcrop complex unsuitable for viticulture.
South (established Wahluke Slope AVA)	Gently sloping incline; soils similar to those of proposed AVA; some regions have similar wind speeds and temperatures, while other locations have higher or lower temperatures, GDD accumulations, and wind speeds.
West	Columbia River floodplain; elevations between 500 and 530 feet.

Comparison of the Proposed Wanapum Village AVA to the Existing Columbia Valley AVA

The Columbia Valley AVA was established by T.D. ATF–190, which published in the **Federal Register** on November 13, 1984 (49 FR 44895). T.D. ATF–190 describes the Columbia Valley AVA as a large, treeless basin surrounding the Yakima, Snake, and Columbia Rivers. Growing season lengths within the Columbia Valley AVA are over 150 days, and GDD accumulations exceed 2,000. Annual precipitation amounts are less than 15 inches. Elevations within the Columbia Valley AVA are below 2,000 feet.

The proposed Wanapum Village AVA shares some of the general viticultural features of the larger Columbia Valley AVA. For instance, elevations within the proposed AVA are below 2,000 feet, and annual GDD accumulations from 2015 to 2018 did not fall below 2,800. However, the proposed AVA does have some distinctive features, namely the soils. Within the proposed AVA, soils are primarily formed from sand and gravel deposited by water and are classified as sand and stony loamy sand. By contrast, T.D. ATF–190 described the soils of the Columbia Valley AVA as fine-grained soils derived from wind-deposited silts and fine sand.

TTB Determination

TTB concludes that the petition to establish the 2,415-acre ''Wanapum Village'' AVA merits consideration and public comment, as invited in this document.

Boundary Description

See the narrative boundary descriptions of the petitioned-for AVA in the proposed regulatory text published at the end of this document.

Maps

The petitioner provided the required maps, and they are listed below in the proposed regulatory text. You may also view the proposed Wanapum Village AVA boundary on the AVA Map Explorer on the TTB website, at *https://www.ttb.gov/wine/ava-map-explorer.*

Impact on Current Wine Labels

Part 4 of the TTB regulations prohibits any label reference on a wine that indicates or implies an origin other than the wine's true place of origin. For a wine to be labeled with an AVA name or with a brand name that includes an AVA name, at least 85 percent of the wine must be derived from grapes grown within the area represented by that name, and the wine must meet the other conditions listed in 27 CFR 4.25(e)(3). If the wine is not eligible for labeling with an AVA name and that name appears in the brand name, then the label is not in compliance and the bottler must change the brand name and obtain approval of a new label. Similarly, if the AVA name appears in another reference on the label in a misleading manner, the bottler would have to obtain approval of a new label. Different rules apply if a wine has a brand name containing an AVA name that was used as a brand name on a label approved before July 7, 1986. See 27 CFR 4.39(i)(2) for details.

If TTB establishes this proposed AVA, its name, ''Wanapum Village,'' will be recognized as a name of viticultural significance under § 4.39(i)(3) of the TTB regulations (27 CFR 4.39(i)(3)). The text of the proposed regulation clarifies this point. Consequently, wine bottlers using ''Wanapum Village'' in a brand name, including a trademark, or in another label reference as to the origin of the wine, would have to ensure that the product is eligible to use the viticultural area's name, ''Wanapum Village.'' The approval of the proposed Wanapum Village AVA would not affect any existing AVA, and any bottlers using ''Columbia Valley'' as an appellation of origin or in a brand name for wines made from grapes grown within the Wanapum Village AVA would not be affected by the establishment of this new AVA. If approved, the establishment of the proposed Wanapum Village AVA would allow vintners to use ''Wanapum Village'' or ''Columbia Valley'' as appellations of origin for wines made from grapes grown within the proposed AVA, if the wines meet the eligibility requirements for the appellation.

Public Participation

Comments Invited

TTB invites comments from interested members of the public on whether TTB should establish the proposed

Wanapum Village AVA. TTB is interested in receiving comments on the sufficiency and accuracy of the name, boundary, topography, and other required information submitted in support of the AVA petition. In addition, because the proposed Wanapum Village AVA would be within the existing Columbia Valley AVA, TTB is interested in comments on whether the evidence submitted in the petition regarding the distinguishing features of the proposed AVA sufficiently differentiates it from the existing AVA. TTB is also interested in comments on whether the geographic features of the proposed AVA are so distinguishable from the Columbia Valley AVA that the proposed Wanapum Village AVA should not be part of the established AVA. Please provide any available specific information in support of your comments.

Because of the potential impact of the establishment of the proposed Wanapum Village AVA on wine labels that include the term ''Wanapum Village'' as discussed above under Impact on Current Wine Labels, TTB is particularly interested in comments regarding whether there will be a conflict between the proposed area names and currently used brand names. If a commenter believes that a conflict will arise, the comment should describe the nature of that conflict, including any anticipated negative economic impact that approval of the proposed AVA will have on an existing viticultural enterprise. TTB is also interested in receiving suggestions for ways to avoid conflicts, for example, by adopting a modified or different name for the proposed AVA.

Submitting Comments

You may submit comments on this proposal by using one of the following methods:

- *Federal e-Rulemaking Portal:* You may send comments via the online comment form posted with this proposal within Docket No. TTB–2022–0014 on ''*Regulations.gov*,'' the Federal e-rulemaking portal, at *https://www.regulations.gov.* A direct link to that docket is available under Notice No. 219 on the TTB website at *https://www.ttb.gov/wine/notices-of-proposed-rulemaking.* Supplemental files may be attached to comments submitted via *Regulations.gov*. For complete instructions on how to use *Regulations.gov*, visit the site and click on the ''Help'' tab.
- *U.S. Mail:* You may send comments via postal mail to the Director, Regulations and Rulings Division, Alcohol and Tobacco Tax and Trade Bureau, 1310 G Street NW, Box 12, Washington, DC 20005.

Please submit your comments by the closing date shown above in this proposal. Your comments must reference Notice No. 219 and include your name and mailing address. Your comments also must be made in English, be legible, and be written in language acceptable for public disclosure. TTB does not acknowledge receipt of comments, and TTB considers all comments as originals.

In your comment, please clearly state if you are commenting for yourself or on behalf of an association, business, or other entity. If you are commenting on behalf of an entity, your comment must include the entity's name, as well as your name and position title. If you comment via *Regulations.gov*, please enter the entity's name in the ''Organization'' blank of the online comment form. If you comment via postal mail or hand delivery/courier, please submit your entity's comment on letterhead.

You may also write to the TTB Administrator before the comment closing date to ask for a public hearing. The TTB Administrator reserves the right to determine whether to hold a public hearing.

Confidentiality and Disclosure of Comments

All submitted comments and attachments are part of the rulemaking record and are subject to public disclosure. Do not enclose any material in your comments that you consider confidential or that is inappropriate for disclosure.

TTB will post, and you may view, copies of this document, the related petition and selected supporting materials, and any comments TTB receives about this proposal within the related *Regulations.gov* docket. In general, TTB will post comments as submitted, and it will not redact any identifying or contact information from the body of a comment or attachment.

Please contact TTB's Regulations and Rulings division by email using the web form available at *https://www.ttb.gov/contact-rrd,* or by telephone at 202–453–2265, if you have any questions about commenting on this proposal or to request copies of this document, the related petition and its supporting materials, or any comments received.

Regulatory Flexibility Act

TTB certifies that this proposed regulation, if adopted, would not have a significant economic impact on a substantial number of small entities. The proposed regulation imposes no new reporting, recordkeeping, or other administrative requirement. Any benefit derived from the use of a viticultural area name would be the result of a proprietor's efforts and consumer acceptance of wines from that area. Therefore, no regulatory flexibility analysis is required.

Executive Order 12866

This proposed rule is not a significant regulatory action as defined by Executive Order 12866. Therefore, it requires no regulatory assessment.

List of Subjects in 27 CFR Part 9

Wine.

Proposed Regulatory Amendment

For the reasons discussed in the preamble, we propose to amend title 27, chapter I, part 9, Code of Federal Regulations, as follows:

PART 9—AMERICAN VITICULTURAL AREAS

■ 1. The authority citation for part 9 continues to read as follows:

Authority: 27 U.S.C. 205.

Subpart C—Approved American Viticultural Areas

■ 2. Add § 9._____to read as follows:

§ 9.____ Wanapum Village.

(a) *Name.* The name of the viticultural area described in this section is ''Wanapum Village''. For purposes of part 4 of this chapter, ''Wanapum Village'' is a term of viticultural significance.

(b) *Approved maps.* The one United States Geological Survey (USGS) 1:24,000 scale topographic map used to determine the boundary of the viticultural area is titled Beverly, Washington (2017).

(c) *Boundary.* The Wanapum Village viticultural area is located in Grant County, Washington. The boundary of the Wanapum Village viticultural area is described as follows:

(1) The beginning point is on the Beverly map at the intersection of State Highway 243 and southern boundary of section 34 just north of the town of Schwana. From the beginning point, proceed northwest along Highway 243 to its intersection with an unnamed local road on the north side of Wanapum Village, near the center of section 21; then

(2) Proceed east in a straight line for 2,450 feet to the 600-foot elevation contour; then

(3) Proceed southeasterly along the 600-foot elevation contour for approximately 1,500 feet to its

intersection with an unnamed local road in section 22; then

(4) Proceed northeasterly along the unnamed local road for approximately 3,000 feet to its intersection with another unnamed local road; then

(5) Proceed north-northeast in a straight line for approximately 500 feet to the intersection of Beverly Burke Road and an unnamed local road; then

(6) Proceed northeasterly along Beverly Burke Road to the point where it becomes concurrent with the northern boundary of section 22, and continue east along Beverly Burke Road to its intersection with the eastern boundary of section 22; then

(7) Proceed south along the eastern boundary of section 22 for one mile to its intersection with the northern boundary of section 26; then

(8) Proceed east along the northern boundary of section 26 for one mile to its intersection with the eastern boundary of section 26; then

(9) Proceed south along the eastern boundary of section 26 to its intersection with the 540-foot elevation contour; then

(10) Proceed southwesterly along the 540-foot elevation contour to its intersection with the southern boundary of section 26; then

(11) Proceed west along the southern boundary of section 26 to its intersection with the eastern boundary of section 34; then

(12) Proceed south along the eastern boundary of section 34 for 1 mile to its intersection with the southern boundary of section 34; then

(13) Proceed west along the southern boundary of section 34 for 0.5 mile to the beginning point.

Signed: November 15, 2022.

Mary G. Ryan,

Administrator.

Approved: November 16, 2022.

Thomas C. West, Jr.,

Deputy Assistant Secretary (Tax Policy).

[FR Doc. 2022–25272 Filed 11–25–22; 8:45 am]

BILLING CODE 4810–31–P

DEPARTMENT OF THE TREASURY

Alcohol and Tobacco Tax and Trade Bureau

27 CFR Part 9

[Docket No. TTB–2022–0013; Notice No. 218]

RIN 1513–AC91

Proposed Establishment of the Winters Highlands Viticultural Area

AGENCY: Alcohol and Tobacco Tax and Trade Bureau, Treasury.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Alcohol and Tobacco Tax and Trade Bureau (TTB) proposes to establish the 7,296-acre ''Winters Highlands'' viticultural area in portions of Solano and Yolo Counties, in California. The proposed viticultural area is not within any other established viticultural area. TTB designates viticultural areas to allow vintners to better describe the origin of their wines and to allow consumers to better identify wines they may purchase. TTB invites comments on this proposed addition to its regulations.

DATES: Comments must be received by January 27, 2023.

ADDRESSES: You may electronically submit comments to TTB on this proposal using the comment form for this document posted within Docket No. TTB–2022–0013 on the *Regulations.gov* website at *https://www.regulations.gov.* At the same location, you also may view copies of this document, the related petition and selected supporting materials, and any comments TTB receives on this proposal. A direct link to that docket is available on the TTB website at *https://www.ttb.gov/wine/notices-of-proposed-rulemaking* under Notice No. 218. Alternatively, you may submit comments via postal mail to the Director, Regulations and Ruling Division, Alcohol and Tobacco Tax and Trade Bureau, 1310 G Street NW, Box 12, Washington, DC 20005. Please see the Public Participation section of this document for further information on the comments requested on this proposal and on the submission, confidentiality, and public disclosure of comments.

FOR FURTHER INFORMATION CONTACT: Karen A. Thornton, Regulations and Rulings Division, Alcohol and Tobacco Tax and Trade Bureau, 1310 G Street NW, Box 12, Washington, DC 20005; phone 202–453–1039, ext. 175.

SUPPLEMENTARY INFORMATION:

Background on Viticultural Areas

TTB Authority

Section 105(e) of the Federal Alcohol Administration Act (FAA Act), 27 U.S.C. 205(e), authorizes the Secretary of the Treasury to prescribe regulations for the labeling of wine, distilled spirits, and malt beverages. The FAA Act provides that these regulations should, among other things, prohibit consumer deception and the use of misleading statements on labels and ensure that labels provide the consumer with adequate information as to the identity and quality of the product. The Alcohol and Tobacco Tax and Trade Bureau (TTB) administers the FAA Act pursuant to section 1111(d) of the Homeland Security Act of 2002, codified at 6 U.S.C. 531(d). In addition, the Secretary of the Treasury has delegated certain administrative and enforcement authorities to TTB through Treasury Order 120–01.

Part 4 of the TTB regulations (27 CFR part 4) authorizes TTB to establish definitive viticultural areas and regulate the use of their names as appellations of origin on wine labels and in wine advertisements. Part 9 of the TTB regulations (27 CFR part 9) sets forth standards for the preparation and submission of petitions for the establishment or modification of American viticultural areas (AVAs) and lists the approved AVAs.

Definition

Section 4.25(e)(1)(i) of the TTB regulations (27 CFR 4.25(e)(1)(i)) defines a viticultural area for American wine as a delimited grape-growing region having distinguishing features as described in part 9 of the regulations and, once approved, a name and a delineated boundary codified in part 9 of the regulations. These designations allow vintners and consumers to attribute a given quality, reputation, or other characteristic of a wine made from grapes grown in an area to the wine's geographic origin. The establishment of AVAs allows vintners to describe more accurately the origin of their wines to consumers and helps consumers to identify wines they may purchase. Establishment of an AVA is neither an approval nor an endorsement by TTB of the wine produced in that area.

Requirements

Section 4.25(e)(2) of the TTB regulations (27 CFR 4.25(e)(2)) outlines the procedure for proposing an AVA and allows any interested party to petition TTB to establish a grape-growing region as an AVA. Section 9.12 of the TTB regulations (27 CFR 9.12)

prescribes standards for petitions to establish or modify AVAs. Petitions to establish an AVA must include the following:

- Evidence that the area within the proposed AVA boundary is nationally or locally known by the AVA name specified in the petition;
- An explanation of the basis for defining the boundary of the proposed AVA;
- A narrative description of the features of the proposed AVA affecting viticulture, such as climate, geology, soils, physical features, and elevation, that make the proposed AVA distinctive and distinguish it from adjacent areas outside the proposed AVA;
- The appropriate United States Geological Survey (USGS) map(s) showing the location of the proposed AVA, with the boundary of the proposed AVA clearly drawn thereon; and
- A detailed narrative description of the proposed AVA boundary based on USGS map markings.

Winters Highlands Petition

TTB received a petition from Berryessa Gap Vineyards proposing the establishment of the ''Winters Highlands'' AVA. The proposed Winters Highlands AVA is located in portions of Solano and Yolo Counties, California. The proposed AVA contains 7,296 acres, with 134 acres of planted vineyards and an additional 60 acres planned for future planting at the time the petition was submitted. There are also three wineries within the proposed AVA. Grape varietals grown in the proposed AVA include Petite Syrah, Tempranillo, Malbec, and Chardonnay.

According to the petition, the distinguishing features of the proposed Winters Highlands AVA are its climate and soils. Unless otherwise noted, all information and data pertaining to the proposed AVA contained in this document are from the petition for the proposed Winters Highlands AVA and its supporting exhibits.

Name Evidence

The petition states that the proposed Winters Highlands AVA is located in the easternmost foothills of the northern Coast Range, where the Coast Range adjoins the Sacramento Valley. The city of Winters is adjacent to the eastern boundary of the proposed AVA but is not located within the proposed AVA; however, the Winters ZIP code is used for both the city and the region within the proposed AVA. The Winters Community Center and Winters Community Library both serve the region of the proposed AVA, as does the Winters Unified School District and the Winters Parent Nursery School. Other businesses and organizations serving the region include the Winters Post Office, Winters Laundromat, Winters Theater Company, Winters Concrete, Winters Eyecare, Winters Healthcare, Winters Printing, and Winters Self Storage. The Winters Highlands subdivision lies along the western boundary of the city limits, and the Highlands Canal flows along the eastern boundary of the proposed AVA.

Boundary Evidence

The proposed Winters Highlands AVA is a region of steep to gentle slopes along the eastern edge of the Coast Range and encompasses the alluvial deposits of Putah Creek, which flows through the southern portion of the proposed AVA. The proposed northern boundary follows Chickahominy Slough to separate the higher, rolling terrain of the proposed AVA from the flatter, lower terrain of the Sacramento Valley. The proposed eastern boundary follows the 170-foot elevation contour, the Highland Canal, and County Road 88 and also separates the proposed AVA from the Sacramento Valley floor. The proposed southern boundary follows a series of roads to approximate the extent of the alluvial deposits of Putah Creek. The proposed western boundary follows a series of straight lines drawn between points and separates the proposed AVA from the higher, steeper elevations of the Coast Range.

Distinguishing Features

The distinguishing features of the proposed Winters Highlands AVA are its climate—temperature, precipitation, and relative air humidity—and soils.

Temperatures

According to the petition, the location of the proposed Winters Highlands AVA influences its temperatures. The proposed AVA is located on the eastern side of the Coast Ranges, which shelter the proposed AVA from much of the cool air blowing eastward from the Pacific Ocean. However, the Berryessa Gap, a break in the Coast Ranges where Putah Creek flows into the manmade Lake Berryessa, does allow some cool air from the Pacific Ocean directly into the proposed AVA, particularly in the evenings. The petition states that, as a result, the proposed AVA tends to have cooler evenings than the more inland regions to the east of the proposed AVA. The petition goes on to say that the proposed AVA has a greater number of growing degree days (GDDs) [1] than surrounding areas, with a wide difference between daily high and low temperatures, a set of conditions that promotes the growing of Mediterranean-type grapes.

The petition included GDD information for the proposed Winters Highlands AVA and the surrounding regions. The data is included in the following table.

TABLE 1—CUMULATIVE GROWING SEASON GDDS [2]

Location (direction from proposed AVA)	2012	2013	2014	2015	2016	2017	Average
Davis (east)	2,000	2,193	2,330	2,286	2,170	2,297	2,232
Oakville (west)	1,455	1,633	1,728	N/A	1,343	1,756	1,597
Carneros (southwest)	1,157	1,323	1,461	1,455	1,292	1,366	1,342
Dixon (southeast)	1,801	1,869	1,959	1,959	1,853	1,989	1,914
Proposed Winters Highlands AVA	2,224	2,377	2,434	2,396	2,293	2,357	2,347
Woodland (northeast)	2,236	2,301	2,462	2,392	2,304	2,474	2,361

[1] *See* Albert J. Winkler, *General Viticulture* (Berkeley: University of California Press, 1974), pages 61–64. In the Winkler climate classification system, annual heat accumulation during the growing season, measured in annual Growing Degree Days (GDDs), defines climatic regions. One GDD accumulates for each degree Fahrenheit that a day's mean temperature is above 50 degrees F, the minimum temperature required for grapevine growth. The Winkler scale regions are as follows: Region Ia: 1,500–2,000 GDDs; Region Ib: 2,000–2,500 GDDs; Region II: 2,500–3,000 GDDs; Region III: 3,000–3,500 GDDs; Region IV: 3,500–4,000 GDDs; Region V: 4,000–4,900 GDDs.

The data in the table indicate that the proposed Winters Highlands AVA has an average GDD accumulation that is greater than accumulations in each of the surrounding locations except the Woodland location, located northeast of the proposed AVA.

The petition also discussed the average monthly minimum and maximum temperatures for the same locations and range of dates included in the GDD information section. According to the petition, regional differences in the average monthly maximum temperature are most noticeable between May and September. During those months, the average monthly maximum temperature in the proposed Winters Highlands AVA is greater than in all other regions except the Woodland region. The petition states that from March to September, the average monthly minimum temperature in the proposed AVA is similar to that of the Davis and Woodland locations, to the east and northeast of the proposed AVA, and higher than temperatures in the other surrounding locations.

The petition states that frost-free days are the criterion for the length of the growing season for wine grape production regions, as spring frost can damage the newly-emerged shoots and fall frost can lead to leaf senescence and berry damage. The petition included frost-free day data [3] from the Western Regional Climate Center, which was based on the weather record of more than 60 years. The data, summarized in the following table, shows that the proposed Winters Highlands has more frost-free days than any of the other locations except the Davis location, to the east of the proposed AVA.

TABLE 2—FROST-FREE DAYS

Location (direction from proposed AVA)	Number of frost-free days
Davis (east)	310
Oakville (west)	150
Carneros (southwest)	230
Dixon (southeast)	230
Woodland (northeast)	280
Proposed Winters Highlands AVA	290

Precipitation and Relative Air Humidity

The petition included information on the average monthly precipitation amounts for the proposed Winters Highlands AVA and the surrounding locations. The data was collected from the same locations and during the same time period as the previously-discussed GDD and temperature data. The petition states that the proposed AVA and surrounding regions are all dry during the summer months (May to August), and precipitation takes place mainly during the winter months (January to March). From January to March, precipitation amounts in the proposed AVA were similar to amounts in Dixon, to the southeast of the proposed AVA; greater than the amounts in the regions to the southwest, east, and northeast; and lower than the amounts to the west. From September to December, the proposed AVA has similar average monthly precipitation as the regions to the east and southeast but is dryer than the regions to the west and southwest and wetter than the region to the northeast. According to the petition, precipitation amounts influence the amount of water retained in the soil and vineyard irrigation decisions during the growing season.

The petition also included average relative air humidity for the same locations and time period as used in the precipitation data. The data suggests that the proposed AVA has lower humidity than all the surrounding regions throughout the year, with the exception of October and November, when the humidity in the proposed AVA rises slightly and becomes similar to that of the region to the northeast. According to the petition, air humidity during the growing season has a profound influence on pest and disease control in vineyards.

Soils

The petition states that soils are important to viticulture because the soil profile can play a significant role in vine growth, fruit composition, and wine characteristics. The soils within the proposed Winters Highlands AVA are dominated by fine clay or loamy alfisols and inceptisols with gentle to steep slopes. All the soils are in the thermic soil temperature regime, meaning the mean annual soil temperature is between 15 and 22 degrees C. The soils are also described as belonging to the xeric soil moisture regime, meaning they are warm and rather dry in the summer and cool and wet in the winter. Soils within the proposed AVA are mostly well or moderately well drained, which is critical for root growth and respiration.

The petition also states that soils within the proposed Winters Highlands AVA generally have a lower soil pH due to the low levels of precipitation the area receives. The petition claims that soils in wetter regions, such as the regions west of the proposed AVA, are subject to a greater level of cation leaching, which can increase the pH of soils and lead to a difference in available soil nutrients. As a result, different fertilization and irrigation practices may be necessary in vineyards with high pH soils.

The petition states that although the soil texture and temperature and moisture regimes of the soils within the proposed Winters Highlands AVA are similar, the parent materials of the soils differ. The proposed AVA is located in an area where two geomorphic provinces, the Central Valley and the Coast Range, meet. The Central Valley is an alluvial plain with continuous deposits. The northern Coast Range is dominated by Franciscan rock (composed of sedimentary rock mixed with igneous rock) and metamorphic rock. As a result, soils closer to the Central Valley, such as the Yolo and Sycamore series found in the northeastern portion of the proposed AVA, are very deep and derived from mixed sources on the alluvial fan. Soils closer to the Coast Range, such as the Balcom and Diablo soils found in the western and southeastern portions of the proposed AVA, are relatively shallow and formed on the terraces from sedimentary rocks.

To the north and south of the proposed AVA, the soils have a similar profile to those of the proposed AVA. However, the petition states that soils with poor or somewhat poor drainage, such as the Clear Lake series, are more prevalent in the region to the north, and soils derived from sedimentary rocks, rather than alluvium, are more common in the region to the south. To the east and southeast of the proposed AVA, the soils are dominated by clay, loamy clay, and loam soils formed from the alluvium of mixed sources on nearly-level to gentle slopes. To the southwest of the proposed AVA, soils are mainly loamy clay mollisols, vertisols, ultisols, and alfisols on alluvial fans and terraces.

Summary of Distinguishing Features

The following table shows the characteristics of the proposed AVA compared to the features of surrounding regions.

[2] The petition defines the growing season as April 1 through October 1.

[3] The frost-free period was estimated based on the number of days between the last spring and first fall occurrence of 0 degrees C at the probability of 60 percent.

TABLE 3—FEATURES OF PROPOSED AVA AND SURROUNDING REGIONS

Region (location)	Features		
	Temperatures	Precipitation/humidity	Soils
Proposed Winters Highlands AVA.	Affected by some Pacific air entering through the Berryessa Gap; annual average of 2,347 GDDs; warm summer and relatively warm winter temperatures; average frost-free period is 290 days.	Very low year-round humidity; little precipitation in summer; most rainfall occurs in fall and winter.	Fine clay or loamy alfisols and inceptisols with gentle to steep slopes; thermic soil temperature regime; xeric soil moisture regime; parent materials primarily alluvial plains or Franciscan and metamorphic rock.
East (Davis) ...	Annual average of 2,232 GDDs; average frost-free period is 310 days; lower average monthly maximum temperature from May to September; similar average monthly minimum temperatures from March to September.	Higher relative air humidity; lower January to March precipitation amounts; similar September to December precipitation amounts.	Clay, loamy clay, or loams; formed from alluvium of mixed sources; nearly-level to gentle slopes.
West (Oakville).	Annual average of 1,597 GDDs; average frost-free period is 150 days; lower average monthly maximum temperature from May to September; lower average monthly minimum temperature from March to September.	Higher relative air humidity; higher year-round precipitation amounts.	Soils have higher pH levels.
Southwest (Carneros).	Annual average of 1,342 GDDs; average frost-free period is 230 days; lower average maximum temperature from May to September; lower average monthly minimum temperature from March to September.	Lower January to March precipitation amounts; higher September to December precipitation amounts; higher year-round relative air humidity.	Loamy or clay mollisols, vertisols, ultisols, and alfisols on alluvial fans and terraces.
Southeast (Dixon).	Annual average of 1,914 GDDs; average frost-free period is 230 days; lower average monthly maximum temperature from May to September; lower average monthly minimum temperature from March to September.	Similar year-round precipitation amounts; higher year-round relative humidity.	Clay, loamy clay, or loams; formed from alluvium of mixed sources; nearly-level to gentle slopes.
North and Northeast.	Annual average of 2,361 GDDs (northeast); average frost-free period is 280 days (northeast); higher average monthly maximum temperatures from May to September (northeast); similar average monthly minimum temperatures from March to September (northeast).	Lower year-round precipitation amounts (northeast); higher relative air humidity, except similar to proposed AVA in October and November (northeast).	Similar soil profile to that of the proposed AVA, but soils with poor or somewhat poor drainage are more common (north).

TTB Determination

TTB concludes that the petition to establish the proposed Winters Highlands AVA merits consideration and public comment, as invited in this notice of proposed rulemaking.

Boundary Description

See the narrative description of the boundary of the petitioned-for AVA in the proposed regulatory text published at the end of this proposed rule.

Maps

The petitioner provided the required maps, and TTB lists them below in the proposed regulatory text. You may also view the proposed Winters Highlands AVA boundary on the AVA Map Explorer on the TTB website, at *https://www.ttb.gov/wine/ava-map-explorer.*

Impact on Current Wine Labels

Part 4 of the TTB regulations prohibits any label reference on a wine that indicates or implies an origin other than the wine's true place of origin. For a wine to be labeled with an AVA name, at least 85 percent of the wine must be derived from grapes grown within the area represented by that name, and the wine must meet the other conditions listed in § 4.25(e)(3) of the TTB regulations (27 CFR 4.25(e)(3)). If the wine is not eligible for labeling with an AVA name and that name appears in the brand name, then the label is not in compliance and the bottler must change the brand name and obtain approval of a new label. Similarly, if the AVA name appears in another reference on the label in a misleading manner, the bottler would have to obtain approval of a new label. Different rules apply if a wine has a brand name containing an AVA name that was used as a brand name on a label approved before July 7, 1986. See § 4.39(i)(2) of the TTB regulations (27 CFR 4.39(i)(2)) for details.

If TTB establishes this proposed AVA, its name, ''Winters Highlands,'' will be recognized as a name of viticultural significance under § 4.39(i)(3) of the TTB regulations (27 CFR 4.39(i)(3)). The text of the proposed regulation clarifies this point. Consequently, wine bottlers using the name ''Winters Highlands'' in a brand name, including a trademark, or in another label reference as to the origin of the wine, would have to ensure that the product is eligible to use the AVA name as an appellation of origin if TTB adopts this proposed rule as a final rule.

Public Participation

Comments Invited

TTB invites comments from interested members of the public on whether it should establish the proposed Winters Highlands AVA. TTB is also interested in receiving comments on the sufficiency and accuracy of required information submitted in support of the petition. Please provide specific information in support of your comments.

Because of the potential impact of the establishment of the proposed Winters Highlands AVA on wine labels that include the term ''Winters Highlands'' as discussed above under Impact on Current Wine Labels, TTB is particularly interested in comments regarding whether there will be a conflict between the proposed AVA name and currently used brand names. If a commenter believes that a conflict will arise, the comment should describe the nature of that conflict, including any anticipated negative economic impact that approval of the proposed AVA will have on an existing viticultural enterprise. TTB is also interested in receiving suggestions for ways to avoid conflicts, for example, by adopting a modified or different name for the proposed AVA.

Submitting Comments

You may submit comments on this proposal as an individual or on behalf of a business or other organization via the *Regulations.gov* website or via postal mail, as described in the **ADDRESSES** section of this document. Your comment must reference Notice No. 218 and must be submitted or postmarked by the closing date shown in the **DATES** section of this document. You may upload or include attachments with your comment. You also may request a public hearing on this proposal. The TTB Administrator reserves the right to determine whether to hold a public hearing.

Confidentiality and Disclosure of Comments

All submitted comments and attachments are part of the rulemaking record and are subject to public disclosure. Do not enclose any material in your comments that you consider confidential or that is inappropriate for disclosure.

TTB will post, and you may view, copies of this document, the related petition and selected supporting materials, and any comments TTB receives about this proposal within the related *Regulations.gov* docket. In general, TTB will post comments as submitted, and it will not redact any identifying or contact information from the body of a comment or attachment.

Please contact TTB's Regulations and Rulings division by email using the web form available at *https://www.ttb.gov/contact-rrd,* or by telephone at 202–453–2265, if you have any questions about commenting on this proposal or to request copies of this document, the related petition and its supporting materials, or any comments received.

Regulatory Flexibility Act

TTB certifies that this proposed regulation, if adopted, would not have a significant economic impact on a substantial number of small entities. The proposed regulation imposes no new reporting, recordkeeping, or other administrative requirement. Any benefit derived from the use of a viticultural area name would be the result of a proprietor's efforts and consumer acceptance of wines from that area. Therefore, no regulatory flexibility analysis is required.

Executive Order 12866

It has been determined that this proposed rule is not a significant regulatory action as defined by Executive Order 12866 of September 30, 1993. Therefore, no regulatory assessment is required.

List of Subjects in 27 CFR Part 9

Wine.

Proposed Regulatory Amendment

For the reasons discussed in the preamble, TTB proposes to amend title 27, chapter I, part 9, Code of Federal Regulations, as follows:

PART 9—AMERICAN VITICULTURAL AREAS

■ 1. The authority citation for part 9 continues to read as follows:

Authority: 27 U.S.C. 205.

Subpart C—Approved American Viticultural Areas

■ 2. Add § 9.____ to read as follows:

§ 9.____ Winters Highlands.

(a) *Name.* The name of the viticultural area described in this section is ''Winters Highlands''. For purposes of part 4 of this chapter, ''Winters Highlands'' is a term of viticultural significance.

(b) *Approved maps.* The four United States Geological Survey (USGS) 1:24,000 scale topographic maps used to determine the boundary of the Winters Highlands viticultural area are:

(1) Winters, CA, 2018;

(2) Allendale, CA, 2018;

(3) Mount Vaca, CA, 2018; and

(4) Monticello Dam, CA, 2018.

(c) *Boundary.* The Winters Highlands viticultural area is located in portions of Solano and Yolo Counties, California. The boundary of the Winters Highlands viticultural area is as described as follows:

(1) The boundary begins on the Winters map at the intersection of Putah Creek Road and Wintu Way. From the beginning point, proceed southeasterly along Wintu Way, crossing onto the Allendale map, to the terminus of Wintu Way; then

(2) Proceed south-southwest in a straight line for 1.05 miles to the eastern terminus of Morse Lane; then

(3) Proceed westerly along Morse Lane to its intersection with Olive School Lane; then

(4) Proceed north-northwest in a straight line for 2.52 miles, crossing over the northeastern corner of the Mount Vaca map and onto the Monticello Dam map, to the line's intersection with Highway 128, approximately 2.78 miles west of the intersection of Highway 128 and County Road 89; then

(5) Proceed north in a straight line to the intersection of the line with the Chickahominy Slough; then

(6) Proceed east-southeast along the Chickahominy Slough, crossing onto the Winters map, to its intersection with the 170-foot elevation contour; then

(7) Proceed south-southeasterly along the 170-foot elevation contour to its intersection with the Winters Canal; then

(8) Proceed south along the Winters Canal to its intersection with the terminus of an unnamed local road; then

(9) Proceed due west in a straight line to the 200-foot elevation contour; then

(10) Proceed south in a straight line to the northern terminus of County Road 88; then

(11) Proceed south along County Road 88 to its southern terminus and continue south in a straight line to Valley Oak Drive; then

(12) Proceed southerly along Valley Oak Drive to its intersection with Highway 128; then

(13) Proceed southeasterly in a straight line for 1.04 miles, returning to the beginning point.

Signed: November 15, 2022.

Mary G. Ryan,

Administrator.

Approved: November 16, 2022.

Thomas C. West, Jr.,

Deputy Assistant Secretary (Tax Policy).

[FR Doc. 2022–25271 Filed 11–25–22; 8:45 am]

BILLING CODE 4810–31–P

DEPARTMENT OF THE TREASURY

Alcohol and Tobacco Tax and Trade Bureau

27 CFR Part 9

[Docket No. TTB–2022–0012; Notice No. 217]

RIN 1513–AC82

Proposed Expansion of the Red Hills Lake County Viticultural Area

AGENCY: Alcohol and Tobacco Tax and Trade Bureau, Treasury.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Alcohol and Tobacco Tax and Trade Bureau (TTB) proposes to expand the ''Red Hills Lake County'' viticultural area by approximately 679 acres. The Red Hills Lake County viticultural area and the proposed expansion area are both located in Lake County, California, and are located within the established Clear Lake and North Coast viticultural areas. TTB designates viticultural areas to allow vintners to better describe the origin of their wines and to allow consumers to better identify wines they may purchase. TTB invites comments on this proposed amendment to its regulations.

DATES: TTB must receive your comments by January 27, 2023.

ADDRESSES: You may electronically submit comments to TTB on this proposal using the comment form for this document posted within Docket No. TTB–2022–0012 on the *Regulations.gov* website at *https://www.regulations.gov.* At the same location, you also may view copies of this document, the related petition and selected supporting materials, and any comments TTB receives on this proposal. A direct link to that docket is available on the TTB website at *https://www.ttb.gov/wine/notices-of-proposed-rulemaking* under Notice No. 217. Alternatively, you may submit comments via postal mail to the Director, Regulations and Ruling Division, Alcohol and Tobacco Tax and Trade Bureau, 1310 G Street NW, Box 12, Washington, DC 20005. Please see the Public Participation section of this document for further information on the comments requested on this proposal and on the submission, confidentiality, and public disclosure of comments.

FOR FURTHER INFORMATION CONTACT: Karen A. Thornton, Regulations and Rulings Division, Alcohol and Tobacco Tax and Trade Bureau, 1310 G Street NW, Box 12, Washington, DC 20005; phone 202–453–1039, ext. 175.

SUPPLEMENTARY INFORMATION:

Background on Viticultural Areas

TTB Authority

Section 105(e) of the Federal Alcohol Administration Act (FAA Act), 27 U.S.C. 205(e), authorizes the Secretary of the Treasury to prescribe regulations for the labeling of wine, distilled spirits, and malt beverages. The FAA Act provides that these regulations should, among other things, prohibit consumer deception and the use of misleading statements on labels and ensure that labels provide the consumer with adequate information as to the identity and quality of the product. The Alcohol and Tobacco Tax and Trade Bureau (TTB) administers the FAA Act pursuant to section 1111(d) of the Homeland Security Act of 2002, codified at 6 U.S.C. 531(d). The Secretary has delegated the functions and duties in the administration and enforcement of these provisions to the TTB Administrator through Treasury Order 120–01.

Part 4 of the TTB regulations (27 CFR part 4) authorizes TTB to establish definitive viticultural areas and regulate the use of their names as appellations of origin on wine labels and in wine advertisements. Part 9 of the TTB regulations (27 CFR part 9) sets forth standards for the preparation and submission of petitions for the establishment or modification of American viticultural areas (AVAs) and lists the approved AVAs.

Definition

Section 4.25(e)(1)(i) of the TTB regulations (27 CFR 4.25(e)(1)(i)) defines a viticultural area for American wine as a delimited grape-growing region having distinguishing features as described in part 9 of the regulations and, once approved, a name and a delineated boundary codified in part 9 of the regulations. These designations allow vintners and consumers to attribute a given quality, reputation, or other characteristic of a wine made from grapes grown in an area to the wine's geographic origin. The establishment of AVAs allows vintners to describe more accurately the origin of their wines to consumers and helps consumers to identify wines they may purchase. Establishment of an AVA is neither an approval nor an endorsement by TTB of the wine produced in that area.

Requirements

Section 4.25(e)(2) of the TTB regulations (27 CFR 4.25(e)(2)) outlines the procedure for proposing an AVA and allows any interested party to petition TTB to establish a grape-growing region as an AVA. Section 9.12 of the TTB regulations (27 CFR 9.12) prescribes standards for petitions to establish or modify AVAs. Petitions to establish or expand an AVA must include the following:

- Evidence that the region within the proposed expansion area is nationally or locally known by the name of the established AVA;
- An explanation of the basis for defining the boundary of the proposed expansion area;
- A narrative description of the features of the proposed expansion area affecting viticulture, including climate, geology, soils, physical features, and elevation, that make the proposed expansion area similar to the established AVA and distinguish it from adjacent areas outside the established AVA boundary;
- The appropriate United States Geological Survey (USGS) map(s) showing the location of the proposed expansion area, with the boundary of the proposed expansion area clearly drawn thereon; and
- A detailed narrative description of the proposed expansion area boundary based on USGS map markings.

Petition To Expand the Red Hills Lake County AVA

TTB received a petition from Terry Dereniuk of Terry Dereniuk Consulting, submitted on behalf of local vineyard owners, proposing to expand the established Red Hills Lake County AVA. T.D. TTB–15, which published in the **Federal Register** on July 12, 2004 (69 FR 41754), established the Red Hills Lake County AVA (27 CFR 9.169). The Red Hills Lake County AVA is located in Lake County, California, and is within the established Clear Lake (27 CFR 9.99) and North Coast AVAs (27 CFR 9.30). Although the proposed expansion area is also within the established Clear Lake and North Coast AVAs, the proposed expansion would not affect the boundaries of those AVAs.

The proposed expansion area is adjacent to the western portion of the established Red Hills Lake County AVA and covers approximately 679 acres. The petition states that the proposed expansion area consists of three separately-owned parcels of land. One of the parcels, owned by Jim and Diane Fore, is currently planted with vines. The second parcel, owned by Prince Vineyard, LLC, is planned for planting in the near future. The third parcel, owned by Roland and Nell Shaul, is adjacent to the Prince Vineyard property. The Shaul parcel does not have any vineyards planted or planned for the near future but does contain a number of sites that are suitable for

viticultural activity, so the petitioner requests its inclusion in the proposed expansion area. Unless otherwise noted, all information and data pertaining to the proposed expansion area contained in this document come from the petition and its supporting exhibits.

Name Evidence

The expansion petition notes that the original petition to establish the Red Hills Lake County AVA contained the following quote: ''The proposed Red Hills [sic] AVA takes its name from a road, contained entirely within the proposed viticultural area, which runs through the heart of the area. * * * Red Hills Road was itself named for the most striking and unifying features of the area–its prevalent red soils and gently hilly terrain.'' The expansion petition goes on to state that T.D. TTB–15, which established the Red Hills Lake County AVA, describes the AVA's boundary as being based on ''a combination of geography, terrain, soil, and climate factors[.]''

According to the proposed expansion petition, the description of the Red Hills Lake County AVA boundary in T.D. TTB–15 suggests that the AVA is defined by ''this combination of features rather than an officially named geographic feature.'' The proposed expansion petition asserts that, due to the lack of a defined geographic feature known as ''Red Hills,'' adjacent regions that share the red volcanic soils and hilly terrain that are characteristic of the Red Hills Lake County AVA could also reasonably be referred to as the ''Red Hills.'' The petition states that the proposed expansion area shares the same red volcanic soils and hilly terrain of the established AVA. As a result, the petition believes that the name ''Red Hills'' is as applicable to the proposed expansion area as it is to the established Red Hills Lake County AVA.

Boundary Evidence

The established Red Hills Lake County AVA is located just south of Clear Lake, at the base of Mount Konocti. According to T.D. TTB–15, the northern boundary of the AVA excludes elevations on Mt. Konocti above 2,600 feet. The eastern boundary follows a series of ridgelines to exclude regions with different soils, including Anderson Flat and the town of Lower Lake, as well as a steep ridge. The AVA's southern boundary generally coincides with the Clear Lake AVA's southern boundary and separates both AVAs from the Mayacamas Mountains, whose elevations are generally unsuitable for commercial viticulture. The Red Hills Lake County AVA's southwestern corner skirts Boggs Lake, while the western boundary excludes Camel Back Ridge and some lower elevations south and southeast of Kelseyville.

The proposed expansion area is adjacent to Bottle Rock Road, which forms a portion of the southwestern boundary of the Red Hills Lake County AVA. The proposed boundary expansion would begin on the current boundary at the intersection of Bottle Rock Road and Harrington Road. Instead of continuing north-northwesterly along Bottle Rock Road to its intersection with Cole Creek Road, as the current boundary does, the proposed boundary expansion would proceed south along Bottle Rock Road for a short distance before proceeding west to the 2,800-foot elevation contour. The boundary would then follow the elevation contour north-northeasterly before rejoining the current AVA boundary at Bottle Rock Road. This portion of the proposed expansion area would encompass the parcel of land with the vineyard owned by Jim and Diane Fore. The proposed expansion boundary would then follow the current AVA boundary north along Bottle Rock Road to its intersection with an unnamed trail. At that point, the proposed expansion would divert from the current boundary and proceed west and north in a series of straight lines along the low, eastern slopes of Camel Back Ridge. This boundary modification would encompass the parcels of land owned by Prince Vineyard LLC and Roland and Nell Shaul. The proposed expansion boundary would then proceed east and rejoin the current AVA boundary at the point where the 2,000-foot elevation contour intersects Bottle Rock Road.

Distinguishing Features

The expansion petition states that the topography, soils, and climate of the proposed expansion area are similar to those of the established Red Hills Lake County AVA.

Topography

The original petition to establish the Red Hills Lake County AVA described the topography as ''an area of gently sloping, rolling terrain, contained entirely within the Clear Lake volcanic field.'' The original petition noted that within the Red Hills Lake County AVA, slopes range from 0 to greater than 30 percent, but that ''[n]o one group clearly predominates.'' When describing the region west of Bottle Rock Road, which is the location of the proposed expansion area, the original petition stated, ''almost all of the terrain shown has slopes of 15% and above.''

The expansion petition includes a section of a map of the Clear Lake volcanic field (Figure 1).[1] The image shows not only that the region of the proposed expansion area is within the Clear Lake volcanic field but also that it shares the same underlying geology as the established Red Hills Lake County AVA.

The expansion petition also includes an image of a slope and terrain map of the proposed expansion area and the adjacent portion of the Red Hills Lake County AVA (Figure 2).[2] The expansion petition notes that, while the original AVA petition was correct that a large part of the region to the west of Bottle Rock Road does contain steep slopes, it also contains areas with gentler slopes. Figure 2 indicates that the proposed expansion area contains regions with slopes from 0 to 20 percent, as well as slopes from 20 to over 30 percent. Additionally, the expansion petition includes a wider view of the slope and terrain map (Figure 6). Both figures show that the slope angles of the proposed expansion area are similar to those within the Red Hills Lake County AVA, as described in T.D. TTB–15.

Finally, the expansion petition includes an image of the slope and terrain of the Benson Ridge region of Lake County (Figure 7), which was not within the original Red Hills Lake County AVA boundary. The expansion petition notes that during the public comment period for Notice No. 961, which proposed the Red Hills Lake County AVA, a vineyard owner provided evidence to include the Benson Ridge region in the AVA. TTB determined that the evidence supported the region's inclusion and modified the final Red Hills Lake County AVA boundary in T.D. TTB–15. The expansion petition notes that the topography of the proposed expansion area is similar to that of the Benson Ridge region, which has regions with slope angles ranging from 0 to 10 percent, as well as regions with slope angles over 30 percent.

Soils

The original Red Hills Lake County petition stated that the AVA ''encompasses the largest contiguous body of red volcanic soils in Lake County.'' The major soil groups within the AVA are Glenview–Bottlerock–Arrowhead, Konocti–Benridge, and

[1] All figures of the petition are included in Docket TTB–2022–0012 at *https://www.regulations.gov.* You may view a digital version of the same map in Figure 1 at *https://pubs.usgs.gov/imap/2362/i2362_sheet1.pdf.*

[2] You may view a digital version of the same map in Figure 2 at *gispublic.co.lake.ca.us/portal/home.*

Collayomi–Aiken–Whispering. The original petition described these soils as containing ''a high content of rock fragments or gravel in their structure.'' The original petition excluded the region west of Bottle Rock Road from the AVA because the soils ''developed from parent materials of the Franciscan assemblage, which result in poorly drained and often steep soil conditions.'' The original petition also noted that soils west of the AVA contain high levels of serpentine, which offers ''poor soil quality and nutrition.''

The proposed boundary expansion petition states that, while the original petition's description of the soils west of Bottle Rock Road is generally true, the original petition's use of a man-made feature to define the boundary resulted in the omission of acreage that had similar soil characteristics to the Red Hills Lake County AVA. The expansion petition claims that 90 percent of the acreage within the proposed expansion area contains soils of the same soil units described in the original petition and which are of volcanic origin. According to Figure 12 of the expansion petition, the most prominent soil unit in the proposed expansion area is the Glenview–Bottlerock–Arrowhead unit, which comprises approximately 401 acres of the 679-acre proposed expansion area. The Konocti–Benridge, Collayomi, and Collayomi–Aiken–Whispering soil series cover an additional 211 acres of the proposed expansion area. The expansion petition includes an image of a soil map of the proposed expansion area and the adjacent region within the Red Hills Lake County AVA (Figure 13) which shows that, while serpentine soils are found west of Bottle Rock Road as the original petition stated, they are not found within the proposed expansion area.

Finally, the expansion petition includes several photographs of the soils within the proposed expansion area (Figures 8–10) showing pebbles, gravel, and cobbles within the soil, including large quantities of obsidian, a naturally-occurring volcanic glass. The photographs suggest that the proposed expansion area's soils have a rocky, gravelly nature similar to the soils of the Red Hills Lake County AVA.

Climate

According to the brief description of the Red Hills Lake County AVA's climate provided in T.D. TTB–15, the AVA has a climate that is more influenced by Clear Lake than by the Pacific Ocean. The temperature contrasts between the lake and the land create winds that are credited for reducing the risk of frost within the AVA. T.D. TTB–15 states that, by contrast, ''other Lake County viticultural areas require frost protection measures.''

The proposed expansion petition explains that, today, some growers within the Red Hills Lake County AVA have frost protection measures in place, although those may not be needed every year. For example, the expansion petition states that vineyard owner Gregory Graham, whose vineyards are in the lower elevations of the northeastern portion of the AVA, has frost curtains and a movable wind machine. The Fore's vineyard, within the proposed expansion area, also has two wind machines as well as vineyard heaters, but only uses them ''about 2 out of every 5 years.'' By contrast, the expansion petition states that vineyards within the Big Valley District–Lake County AVA (27 CFR 9.232), which is to the northwest of both the Red Hills Lake County AVA and the proposed expansion area, require frost protection every year. TTB notes that Notice No. 134, which proposed the Big Valley District–Lake County AVA, described the low number of frost-free days as a distinguishing feature of the AVA.

The proposed expansion petition also compares the harvest dates within the proposed expansion area to those within the Red Hills Lake County AVA. T.D. TTB–115 did not consider harvest dates as a distinguishing feature of the AVA; however the expansion petition notes that several articles submitted during the public comment period for Notice No. 961 discuss harvest dates as an example of how the climate of the AVA affects viticulture. For example, one article quotes a vineyard manager for Kendall-Jackson as saying they never harvest their Red Hills Lake County AVA vineyards before the first of October.[3] Another article states that within the Red Hills Lake County AVA, ''[g]rowers there don't usually begin harvest before October.'' [4]

The expansion petition states that cabernet sauvignon has become the ''signature'' winegrape for the Red Hills Lake County AVA, which it also notes is grown within the proposed expansion area. The expansion petition provides harvest dates from 2005–2018 for this grape varietal grown within the proposed expansion area. During that timeframe, harvest dates within the proposed expansion area occurred before October 1 only three times, suggesting a similar climate to that described for the Red Hills Lake County AVA.

Finally, T.D. TTB–15 also stated that rainfall amounts within the Red Hills Lake County AVA average between 25 and 40 inches a year. The expansion petition documents rainfall amounts from a weather station in the proposed expansion area. However, because the petitioner collected that data for less than a year, TTB is unable to determine if the rainfall amounts within the proposed expansion area are similar to those of the Red Hills Lake County AVA.

TTB Determination

TTB concludes that the petition to expand the boundaries of the established Red Hills Lake County AVA merits consideration and public comment, as invited in this notice of proposed rulemaking.

Boundary Description

See the narrative description of the boundary of the petitioned-for expansion area in the proposed regulatory text published at the end of this proposed rule.

Maps

The proposed boundary change to the Red Hills Lake County AVA would affect the portion of the current AVA boundary shown on the 1:24,000 scale Kelseyville quadrangle map in the list of maps in the regulatory text of 27 CFR 9.169. The petitioner included a copy of this map in the expansion petition. You also may view a map of the proposed expansion of the Red Hills Lake County AVA boundary on the AVA Map Explorer on the TTB website, at *https://www.ttb.gov/wine/ava-map-explorer.*

Impact on Current Wine Labels

Part 4 of the TTB regulations prohibits any label reference on a wine that indicates or implies an origin other than the wine's true place of origin. For a wine to be labeled with an AVA name, at least 85 percent of the wine must be derived from grapes grown within the area represented by that name, and the wine must meet the other conditions listed in § 4.25(e)(3) of the TTB regulations (27 CFR 4.25(e)(3)). If the wine is not eligible for labeling with an AVA name and that name appears in the brand name, then the label is not in compliance and the bottler must change the brand name and obtain approval of

[3] Ferguson, Scott. ''Lake County Bears Fruit: California's Lesser-Known North Coast County Gets Respect.'' *Wine Business Monthly*. May 2000, Vol. VII, No. 5. This article was included in Comment 12 to Notice No. 961, which you may view in TTB's online AVA Reading Room at *https://www.ttb.gov/images/pdfs/Red_Hills_Lake_County_comments.pdf.*

[4] Ferguson, Scott. ''More vineyards, four new wineries slated for Lake County.'' *St. Helena Star,* July 5, 2001. This article was also included in Comment 12 to Notice No. 961.

a new label. Similarly, if the AVA name appears in another reference on the label in a misleading manner, the bottler would have to obtain approval of a new label. Different rules apply if a wine has a brand name containing an AVA name that was used as a brand name on a label approved before July 7, 1986. See § 4.39(i)(2) of the TTB regulations (27 CFR 4.39(i)(2)) for details.

The approval of the proposed expansion of the Red Hills Lake County AVA would not affect any other existing viticultural area. The proposed expansion of the Red Hills Lake County AVA would allow vintners to use ''Red Hills Lake County,'' ''Clear Lake,'' and ''North Coast'' as appellations of origin for wines made primarily from grapes grown within the proposed expansion area if the wines meet the eligibility requirements for the appellation.

Public Participation

Comments Invited

TTB invites comments from interested members of the public on whether it should expand the Red Hills Lake County AVA as proposed. TTB is specifically interested in receiving comments on the similarity of the proposed expansion area to the established Red Hills Lake County AVA, as well as the differences between the proposed expansion area and the areas outside the established AVA. Please provide specific information in support of your comments.

Submitting Comments

You may submit comments on this proposal as an individual or on behalf of a business or other organization via the *Regulations.gov* website or via postal mail, as described in the **ADDRESSES** section of this document. Your comment must reference Notice No. 217 and must be submitted or postmarked by the closing date shown in the **DATES** section of this document. You may upload or include attachments with your comment. You also may request a public hearing on this proposal. The TTB Administrator reserves the right to determine whether to hold a public hearing.

Confidentiality and Disclosure of Comments

All submitted comments and attachments are part of the rulemaking record and are subject to public disclosure. Do not enclose any material in your comments that you consider confidential or that is inappropriate for disclosure.

TTB will post, and you may view, copies of this document, the related petition and selected supporting materials, and any comments TTB receives about this proposal within the related *Regulations.gov* docket. In general, TTB will post comments as submitted, and it will not redact any identifying or contact information from the body of a comment or attachment.

Please contact TTB's Regulations and Rulings division by email using the web form available at *https://www.ttb.gov/contact-rrd,* or by telephone at 202–453–2265, if you have any questions about commenting on this proposal or to request copies of this document, the related petition and its supporting materials, or any comments received.

Regulatory Flexibility Act

TTB certifies that this proposed regulation, if adopted, would not have a significant economic impact on a substantial number of small entities. The proposed regulation imposes no new reporting, recordkeeping, or other administrative requirement. Any benefit derived from the use of an AVA name would be the result of a proprietor's efforts and consumer acceptance of wines from that area. Therefore, no regulatory flexibility analysis is required.

Executive Order 12866

It has been determined that this proposed rule is not a significant regulatory action as defined by Executive Order 12866 of September 30, 1993. Therefore, no regulatory assessment is required.

List of Subjects in 27 CFR Part 9

Wine.

Proposed Regulatory Amendment

For the reasons discussed in the preamble, TTB proposes to amend title 27, chapter I, part 9, Code of Federal Regulations, as follows:

PART 9—AMERICAN VITICULTURAL AREAS

■ 1. The authority citation for part 9 continues to read as follows:

Authority: 27 U.S.C. 205.

Subpart C—Approved American Viticultural Areas

■ 2. Section 9.169 is amended by:
■ a. Revising paragraph (c)(14);
■ b. Redesignating paragraphs (c)(15) through (22) as paragraphs (c)(31) through (38); and
■ c. Adding new paragraphs (c)(15) through (22) and paragraphs (c)(23) through (30).

The revision and additions read as follows:

§ 9.169 Red Hills Lake County.

* * * * *

(c) * * *

(14) Proceed about 0.4 mile northwesterly along Harrington Flat Road to its intersection with Bottle Rock Road in section 18, T21N, R8W; then

(15) Proceed southerly along Bottle Rock Road approximately 2,500 feet to its intersection with an unnamed, unimproved dirt road near the marked 2,928-foot elevation; then

(16) Proceed west along the unimproved dirt road to its intersection with the 2,800-foot elevation contour; then

(17) Proceed northwesterly, then northerly along the meandering 2,800-foot elevation contour to its intersection with the northern boundary of section 18, T12N, R8W; then

(18) Proceed easterly along the northern boundary of section 18 to its intersection with Bottle Rock Road; then

(19) Proceed north along Bottle Rock Road to its intersection with an unnamed trail in section 7, T12N, R8W; then

(20) Proceed west in a straight line to the western boundary of section 7, T12N, R8W; then

(21) Proceed north along the western boundary of section 7 to the southeastern corner of section 1, T12N, R9W; then

(22) Proceed west along the southern boundary of section 1 to its intersection with the 2,600-foor elevation contour; then

(23) Proceed north in a straight line to the intersection with an unnamed, unimproved dirt road known locally as Helen Road; then

(24) Proceed west in a straight line to the fourth intersection with the 2,560-foot elevation contour in section 1, T12N, R9W; then

(25) Proceed south in a straight line to the southern boundary of section 1; then

(26) Proceed west along the southern boundary of section 1 to its intersection with the western boundary of section 1; then

(27) Proceed north along the western boundary of section 1 to its intersection with the northern boundary of section 1; then

(28) Proceed east along the northern boundary of section 1 to its intersection with the 2,000-foot elevation contour; then

(29) Proceed southeasterly along the 2,000-foot elevation contour to its intersection with Bottle Rock Road; then

(30) Proceed northwesterly along Bottle Rock Road to its intersection with Cole Creek Road to the west and an

unnamed, unimproved road to the east in section 25, T13N, R9W; then

* * * * *

Signed: November 15, 2022.

Mary G. Ryan,

Administrator.

Approved: November 16, 2022.

Thomas C. West, Jr.,

Deputy Assistant Secretary (Tax Policy).

[FR Doc. 2022–25270 Filed 11–25–22; 8:45 am]

BILLING CODE 4810–31–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R4–OAR–2022–0294; FRL–10440–01–R4]

Disapproval of Air Quality Implementation Plans; Georgia; Proposed Revisions to Georgia's Rules for Air Quality Control Pertaining to Startup, Shutdown and Malfunction

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The Environmental Protection Agency (EPA) is proposing to disapprove a State Implementation Plan (SIP) revision submitted by the State of Georgia through the Georgia Environmental Protection Division (GA EPD) on November 17, 2016. The revision was submitted by Georgia in response to a finding of substantial inadequacy and SIP call published on June 12, 2015, for a provision in the Georgia SIP related to excess emissions during startup, shutdown, and malfunction (SSM) events. EPA is proposing to disapprove the SIP revision and to determine that the SIP revision fails to correct the deficiencies identified in the June 12, 2015, SIP call in accordance with the requirements for SIP provisions under the Clean Air Act (CAA or Act).

DATES: Comments must be received on or before December 28, 2022.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–R4–OAR–2022–0294 at *https://www.regulations.gov.* Follow the online instructions for submitting comments. Once submitted, comments cannot be edited or removed from *regulations.gov*. EPA may publish any comment received to its public docket. Do not electronically submit any information you consider to be Confidential Business Information (CBI) or other information, the disclosure of which is restricted by statute. Multimedia submissions (audio, video, etc.) must be accompanied by a written comment. The written comment is considered the official comment and should include discussion of all points you wish to make. EPA will generally not consider comments or comment contents located outside of the primary submission (*i.e.,* on the web, cloud, or other file sharing system). For additional submission methods, the full EPA public comment policy, information about CBI or multimedia submissions, and general guidance on making effective comments, please visit *https://www.epa.gov/dockets/commenting-epa-dockets.*

FOR FURTHER INFORMATION CONTACT: D. Brad Akers, Air Planning and Implementation Branch, Air and Radiation Division, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street SW, Atlanta, Georgia 30303–8960. Mr. Akers can be reached by telephone at (404) 562–9089 or via electronic mail at *akers.brad@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. Background

On February 22, 2013, EPA published in the **Federal Register** a notice of proposed rulemaking that outlined EPA's policy at the time with respect to SIP provisions related to periods of SSM.[1] In that notice, EPA analyzed specific SSM SIP provisions and explained how each one either did or did not comply with the CAA with regard to excess emission events. For each SIP provision that EPA determined to be inconsistent with the CAA, EPA proposed to find that the existing SIP provision was substantially inadequate to meet CAA requirements and thus proposed to issue a SIP call under CAA section 110(k)(5). On September 17, 2014, EPA issued a document supplementing and revising what the Agency had previously proposed on February 22, 2013, in light of a United States Court of Appeals for the District of Columbia Circuit (D.C. Circuit) decision [2] that determined the CAA precludes authority of EPA to create affirmative defense provisions applicable to private civil suits. EPA outlined its updated policy that affirmative defense SIP provisions are not consistent with CAA requirements. EPA proposed in the supplemental proposal document to apply its revised interpretation of the CAA to specific affirmative defense SIP provisions and proposed SIP calls for those provisions where appropriate. *See* 79 FR 55920 (September 17, 2014).

On June 12, 2015, pursuant to CAA section 110(k)(5), EPA finalized ''State Implementation Plans: Response to Petition for Rulemaking; Restatement and Update of EPA's SSM Policy Applicable to SIPs; Findings of Substantial Inadequacy; and SIP Calls To Amend Provisions Applying to Excess Emissions During Periods of Startup, Shutdown and Malfunction,'' hereinafter referred to as the ''2015 SSM SIP Action.'' *See* 80 FR 33839 (June 12, 2015). The 2015 SSM SIP Action clarified, restated, and updated EPA's interpretation that SSM exemption and affirmative defense SIP provisions are inconsistent with CAA requirements. The 2015 SSM SIP Action found that certain SIP provisions in 36 states were substantially inadequate to meet CAA requirements and issued a SIP call to those states to submit SIP revisions to address the inadequacies. EPA established an 18-month deadline by which the affected states had to submit such SIP revisions. States were required to submit corrective revisions to their SIPs in response to the SIP calls by November 22, 2016.

Georgia submitted a SIP revision to EPA on November 17, 2016, in response to the SIP call issued in the 2015 SSM SIP Action. In its submission, the State is requesting that EPA approve two new paragraphs into Ga. Comp. R. & Regs. (hereinafter Rule) 391–3–1–.02(2)(a) of the Georgia SIP that would allow sources to comply with certain work practice standards as alternative emission limitations (AELs) during periods of SSM and would describe requirements for minimizing excess emissions during periods of SSM.

EPA issued a memorandum in October 2020 (2020 Memorandum), which stated that certain provisions governing SSM periods in SIPs could be viewed as consistent with CAA requirements.[3] Importantly, the 2020 Memorandum stated that it ''did not alter in any way the determinations made in the 2015 SSM SIP Action that identified specific state SIP provisions that were substantially inadequate to meet the requirements of the Act.'' Accordingly, the 2020 Memorandum had no direct impact on the SIP call issued to Georgia in 2015. The 2020 Memorandum did, however, indicate

[1] State Implementation Plans: Response to Petition for Rulemaking; Findings of Substantial Inadequacy; and SIP Calls To Amend Provisions Applying to Excess Emissions During Periods of Startup, Shutdown, and Malfunction, 78 FR 12460 (February 22, 2013).

[2] *NRDC* v. *EPA,* 749 F.3d 1055 (D.C. Cir. 2014).

[3] October 9, 2020, memorandum ''Inclusion of Provisions Governing Periods of Startup, Shutdown, and Malfunctions in State Implementation Plans,'' from Andrew R. Wheeler, Administrator.

EPA's intent at the time to review SIP calls that were issued in the 2015 SSM SIP Action to determine whether EPA should maintain, modify, or withdraw particular SIP calls through future agency actions.

On September 30, 2021, EPA's Deputy Administrator withdrew the 2020 Memorandum and announced EPA's return to the policy articulated in the 2015 SSM SIP Action (2021 Memorandum).[4] As articulated in the 2021 Memorandum, SIP provisions that contain exemptions or affirmative defense provisions are not consistent with CAA requirements and, therefore, generally are not approvable if contained in a SIP submission. This policy approach is intended to ensure that all communities and populations, including minority, low-income, and indigenous populations overburdened by air pollution, receive the full health and environmental protections provided by the CAA.[5] The 2021 Memorandum also retracted the prior statement from the 2020 Memorandum of EPA's plans to review and potentially modify or withdraw particular SIP calls. That statement no longer reflects EPA's intent. EPA intends to implement the principles laid out in the 2015 SSM SIP Action as the Agency acts on SIP submissions, including Georgia's SIP submittal provided in response to the 2015 SIP call.

Regarding the Georgia SIP, in the 2015 SSM SIP Action, EPA determined that paragraph 7, ''Excess Emissions,'' of Rule 391–3–1–.02(2)(a) (paragraph 391–3–1–.02(2)(a)7) (hereinafter referred to as paragraph 7), is substantially inadequate to meet CAA requirements. *See* 80 FR 33962. Paragraph 7, which has three parts, provides, first, that excess emissions which occur during periods of SSM despite ordinary diligence by the source are allowed provided that best operational practices to minimize emissions are adhered to, all associated air pollution control equipment is operated in a manner consistent with good air pollution control practice for minimizing emissions, and the duration of excess emissions is minimized. Second, paragraph 7 provides that excess emissions which are caused entirely or in part by poor maintenance, poor operation, or any other equipment or process failure which may reasonably be prevented during periods of SSM are prohibited and are violations of Georgia's Air Quality Control rules. Third, paragraph 7 specifies that the provisions therein apply only to those sources which are not subject to any requirement of 40 CFR part 60, as amended, concerning New Source Performance Standards. The rationale underlying EPA's determination that paragraph 7 of section 391–3–1–.02(2)(a) is substantially inadequate to meet CAA requirements, and therefore to issue a SIP call to Georgia to remedy the provision, is detailed in the 2015 SSM SIP Action and the accompanying proposals. EPA is not soliciting comment on its rationale for issuing the 2015 SIP call to Georgia.

II. Analysis of Georgia's SIP Submission

As noted above, Georgia's November 17, 2016, SIP revision requests that EPA approve two new paragraphs into Rule 391–3–1–.02(2)(a) of the Georgia SIP at 391–3–1–.02(2)(a)11, ''Startup and Shutdown Emissions for SIP-Approved Rules'' (paragraph 11) and at 391–3–1–.02(2)(a)12, ''Malfunction Emissions'' (paragraph 12).

A. Rule 391–3–1–.02(2)(a)11, ''Startup and Shutdown Emissions for SIP-Approved Rules''

For periods of startup and shutdown, new paragraph 11 would apply in lieu of the existing SIP-called paragraph 7 upon the effective date of EPA's final approval of the rule. Paragraph 11 would require sources to comply with applicable SIP emission limitations and standards by either: (1) complying with the applicable emission limitations and standards at all times, including periods of startup and shutdown, or (2) complying with the applicable emission limitations and standards during ''normal operations'' and complying with AELs in the form of certain work practice standards during periods of startup and shutdown. Thus, owners and operators of sources that elect not to comply with the numeric emission limitations during periods of startup and shutdown would be allowed to comply with certain alternative work practice standards.[6]

EPA previously identified several deficiencies in paragraph 11, as outlined in EPA Region 4's August 1, 2016, and September 30, 2016, comment letters to GA EPD regarding Georgia's July 1, 2016, and August 31, 2016, prehearing submissions transmitting the State's proposed response to the 2015 SSM SIP Action for public review.[7] In this notice of proposed rulemaking (NPRM), EPA proposes to find that paragraph 11, which generally was not changed from the version in the pre-hearing submissions except for renumbering, does not adequately address the 2015 SSM SIP Action and does not comport with EPA's SSM policy, as outlined in that action.

As submitted, subparagraph (ii)(I)I.B of paragraph 11 provides that, during periods of startup and shutdown, sources subject to any of the SIP emission limitations identified in subparagraph 11.(ii) may choose to comply with ''general alternative work practice standards'' identified at 11.(ii)(I)IV; work practice standards which are in federal rules as noted at 11.(ii)(I)V; or source-specific work practice standards established in permits at 11.(ii)(I)VI. Subparagraph (ii)(I)IV.B of paragraph 11 provides that sources may choose to comply with generally available work practice standards at provisions (ii)(I)IV.B.(A)–(M), as applicable, for fuel burning sources and pollution control devices installed to meet applicable emission limitations, as applicable. The Georgia rules, which would function as AELs to otherwise applicable numeric emission limits in the SIP during periods of startup and shutdown, do not reflect consideration of the seven specific criteria that EPA recommends, per Agency guidance, for developing AELs that apply during startup and shutdown. *See* 80 FR 33980–82.[8] For example, and as discussed in more detail below, the generally available work practice standards apply to a general type of source, *i.e.,* ''fuel burning sources,'' and are not limited to specific, narrowly

[4] September 30, 2021, memorandum ''Withdrawal of the October 9, 2020, Memorandum Addressing Startup, Shutdown, and Malfunctions in State Implementation Plans and Implementation of the Prior Policy,'' from Janet McCabe, Deputy Administrator.

[5] *See* 80 FR 33985.

[6] New paragraph 391–3–1–.02(2)(a)11 also includes language at paragraph 11.(iii) that would void 391–3–1–.02(2)(a)11.(ii), which provide for compliance options during periods of SSM, if EPA's 2015 SSM Action is (1) ''Declared or adjudged to be invalid or unconstitutional or stayed by the United States Court of Appeals for the Eleventh Circuit, the District of Columbia Circuit, or the United States Supreme Court,'' or (2) ''Withdrawn, repealed, revoked, or otherwise rendered of no force and effect by the United States Environmental Protection Agency, Congress, or Presidential Executive Order.'' EPA notes, however, that Georgia's SIP submission does not ask EPA to approve this automatic rescission language into the SIP. See the submittal at pages 15/63, 22/63, and 23/63, where Georgia indicates that these provisions are not intended for incorporation into the Georgia SIP.

[7] EPA's comment letters are part of Georgia's complete November 17, 2016, submittal, available in the docket for this proposed action.

[8] *See also* EPA's 1999 SSM Guidance (Memorandum to EPA Regional Administrators, Regions I–X from Steven A. Herman and Robert Perciasepe, USEPA, Subject: State Implementation Plans: Policy Regarding Excess Emissions During Malfunctions, Startup, and Shutdown, dated September 20, 1999), available as Document ID EPA–HQ–OAR–2012–0322–0007 at *https://www.regulations.gov.*

defined source categories (*e.g.,* cogeneration facilities burning natural gas, steam generating units burning fossil fuel, stationary gas turbines, etc.) using specific control strategies.

The Georgia rules also seem to have been developed without consideration of whether sources are capable of complying with otherwise applicable numeric emission limitations. EPA does not recommend establishing AELs for sources that are capable of meeting their existing emission limitations at all times. *See id.* at 33913. As part of the November 17, 2016, SIP revision, GA EPD responded to EPA's comments on the draft regulatory changes. GA EPD notes in its response that sources that are capable of meeting their numeric emission limitations at all times have the option to comply with those limits at all times in lieu of the additional burden of complying with work practice standards during periods of startup and shutdown. Specifically, paragraph 11 at 11.(ii)(I)I. allows compliance with emission limitations to be achieved by either complying with the applicable emission limitations at all times or by complying with the AELs during periods of startup and shutdown as outlined in the remainder of subparagraph 11(ii). This means that sources which are capable of meeting the original emission limitations and standards at all times, even during periods of startup and shutdown, have the option of complying with AELs such as work practice standards in lieu of meeting those original limitations. Accordingly, EPA views this option as inconsistent with the 2015 SSM SIP Action.

Moreover, the requirements at 11.(ii)(I)IV.B.(A)–(M) have not been sufficiently tailored for specific sources or source categories. Control requirements that apply during startup and shutdown must be clearly stated as components of the emission limitation and must meet the applicable level of control required for the type of SIP provision (*e.g.,* must be reasonably available control technology (RACT) for sources subject to a RACT requirement). *See* 80 FR 33890, 33912–13. Alternative requirements applicable to a source during startup and shutdown should be narrowly tailored and take into account considerations such as the technological limitations of the specific source category and the control technology that is feasible during startup and shutdown. *See id.* at 33912–13, 33980.

The November 17, 2016, submittal indicates that the State made use of EPA's work practice standards at 40 CFR part 63, subpart DDDDD, known as the boiler Maximum Achievable Control Technology (MACT) rule (Boiler MACT Rule), and other federal regulations in developing its work practice standards (*e.g.,* the general work practice standard at 11.(ii)(I)IV.B.(H)). EPA acknowledges that certain federal rules may provide useful examples of approaches for appropriate and feasible AELs for states to apply during startup and shutdown in a SIP provision (in particular those federal rules that have been revised or newly promulgated since 2008).[9] However, it should not be assumed that emission limitation requirements in recent National Emission Standards for Hazardous Air Pollutants (NESHAP) and New Source Performance Standards (NSPS) are appropriate for all sources regulated by the SIP. The universe of sources regulated by the federal NSPS and NESHAP programs is not identical to the universe of sources regulated by states for purposes of the national ambient air quality standards (NAAQS). Moreover, the pollutants regulated under the NESHAP program (*i.e.,* hazardous air pollutants) are in many cases different than those that would be regulated for purposes of attaining and maintaining the NAAQS, protecting prevention of significant deterioration (PSD) increments, improving visibility, and meeting other CAA requirements. *See* 80 FR 33916. Therefore, the work practice standards which the State wants to include as components of a continuously applicable emission limitation would need to be evaluated on a case-by-case basis as to their appropriateness as AELs for SIP purposes.

Regarding the example included in GA EPD's response in its November 17, 2016, submittal, the general work practice standard at 11.(ii)(I)IV.B.(H) is available to all fuel burning equipment and requires sources to burn a ''clean fuel'' as defined in the Boiler MACT Rule or to burn ''the cleanest fuel the unit is permitted to burn, as practicable.'' The submittal does not explain why startup and shutdown work practice standards that were developed for boilers are necessarily appropriate as AELs for all types of fuel-burning sources. This general work practice standard is not sufficiently specific in its applicability, nor is it sufficiently specific as to which fuels are acceptable to burn during startup to be considered an appropriate AEL. *See* 80 FR 33912–13, 33916. Additionally, if certain sources can meet their existing numeric emission limitations and standards, then those sources do not need AELs. In those cases, there should be a distinction between which sources are required to comply with their existing numeric emission limitations or standards and which sources need AELs for periods of startup or shutdown.

Additionally, EPA notes that many of the work practice standards listed in 11.(ii)(I)IV.B. appear to contain exempt periods, presumably due to technological limitations of the control equipment. Some of the standards also require operation ''as specified by the manufacturer,'' which makes these standards difficult or impractical to enforce and may also result in exempt periods. For example, for units using baghouses, no emission limitation would apply whenever ''the inlet gas temperature is below the dew point, outside the manufacturer's recommended operating temperature range, or if the pressure differential across the baghouse exceeds the manufacturer's recommended maximum pressure differential.'' Rule 391–3–1–.02(2)(a)11.(ii)(I)IV.B.(A). While EPA agrees that emission control devices should be utilized to the maximum extent practicable, the Agency disagrees that sources should be exempt from any sort of emission limitation during times in which full use of control devices might not be possible. As discussed in the 2015 SSM SIP Action, in accordance with the CAA, some emission limitation must apply at all times. Examples of potential AELs that may be applied include the use of additional emission controls, use of cleaner burning fuels, and establishment of higher numeric emission limitations that are still protective of the NAAQS and otherwise meet the requirements of the CAA. Thus, for the reasons discussed above, EPA is proposing to disapprove the AEL approach established at 11.(ii)(I)IV.

Next, paragraph 11 at 11.(ii)(I)V provides that, in lieu of the general alternative work practice standards option at 11.(ii)(I)IV, the owner or operator of a source may follow the startup and shutdown work practice standards in federal rules included in 40 CFR part 60 (NSPS) or 40 CFR part 63 (NESHAP) so long as the rule contains specific work practice standards for startup and shutdown periods. The provision also notes that those federal rules are adopted by Georgia as Rules 391–3–1–.02(8) and (9). As discussed above, while EPA acknowledges that certain federal rules may provide good examples of approaches for appropriate and feasible AELs for states to apply during startup and shutdown in a SIP provision (in particular, those federal

[9] Specifically, EPA is referring to federal rules for the New Source Performance Standards and National Emission Standards for Hazardous Air Pollutants that have been issued since the D.C. Circuit's decision of December 19, 2008, *Sierra Club* v. *Johnson,* 551 F.3d 1019 (D.C. Cir. 2008).

rules that have been revised or newly promulgated since 2008),[10] the SIP must be clear as to what the applicable limitations are for each source at all times. Therefore, this provision does not constitute a component of an emission limitation for a specific source or source category, as it does not specify which sources or source categories will comply with the startup and shutdown procedures contained in federal rules and which provisions from those federal rules are applicable.

As noted above, control requirements that apply during startup and shutdown must be clearly stated as components of the emission limitation and must meet the applicable level of control required for the type of SIP provision. Since the purpose of the NSPS and NESHAP programs is not identical to that of the SIPs, the provisions intended to apply to specific source categories should be evaluated on a case-by-case basis to ensure their appropriateness for the purposes of the SIP. *See* 80 FR 33916. EPA also recommends giving consideration to the seven specific criteria delineated in the 2015 SSM SIP Action for developing AELs in SIP provisions that apply during startup and shutdown. *See id.* at 33980. Therefore, EPA is proposing to disapprove the AEL approach established in 11.(ii)(I)V.

Rule 11.(ii)(I)VI provides that in lieu of options 11.(ii)(l)IV or 11.(ii)(l)V discussed above, the owner or operator of a source may choose to comply with a source-specific alternative work practice standard for startup and shutdown periods that has been incorporated into a federally enforceable permit. EPA notes, however, that emission limitations that are specified only in a permit are not part of the SIP unless and until they are submitted to EPA and federally approved into the SIP. The fact that EPA has approved the permitting program itself into the SIP does not mean that EPA has approved the actual contents of each permit issued or has made such contents an approved part of the SIP. *See* 80 FR 33915–16, 33922. In the context of emission limitations contained in a SIP, EPA views the approach of establishing AELs through a permit that does not involve submitting the relevant permit requirements to the EPA for inclusion in the SIP as a form of ''director's discretion,'' a type of provision that, as explained in the 2015 SSM SIP Action, is inconsistent with CAA requirements because it would allow the state to create alternatives to SIP emission limitations without complying with the CAA's SIP revision requirements.

Among other things, a permit-based approach to establishing an AEL (that does not involve submitting the relevant permit requirements to the EPA for inclusion in the SIP) would bypass EPA's role in reviewing and approving the AEL to ensure that it is enforceable pursuant to CAA section 110(a)(2)(A) (*i.e.,* that emission limitations are sufficiently specific regarding the source's obligations and include adequate monitoring, recordkeeping, and reporting requirements). Accordingly, a permitting process cannot be used to create alternatives to SIP emission limitations for sources during startup and shutdown in lieu of a SIP revision. The State may use the permit development process as a means to evaluate and establish AELs for periods of startup and shutdown for a specific source, but such permit conditions would not negate or replace applicable SIP limits without being approved as a source-specific SIP revision.

Georgia's November 17, 2016, submittal suggests that the ''director's discretion'' issue is not implicated in the approach delineated in 11.(ii)(I)VI because EPA and the public would have an opportunity to comment on the permit. This opportunity for public comment is not a substitute for a source-specific SIP revision, which is needed to alter otherwise applicable SIP emission limitations. As noted above, treating conditions in a permit as AELs that apply instead of SIP-approved emission limitations effectively revises otherwise applicable SIP requirements without going through a SIP revision. Therefore, EPA is proposing to disapprove the AEL approach established in paragraph 11.(ii)(I)VI.

Subparagraph 11.(ii) also states that ''[t]he provisions of this subparagraph 11.(ii) shall also apply to emission limitations established in accordance with the new source review requirements in 391–3–1–.02(7)(b) and/or 391–3–1–.03(8) unless startup and shutdown emissions have already been specifically addressed via a federally enforceable permit.'' Paragraph 11 at 11.(ii)(I)I.B provides that compliance with those emission limitations may be achieved by one of the alternative work practice standards during startup and shutdown. In addition to the other concerns noted previously regarding subparagraph 11.(ii), allowing the alternative compliance options for startup and shutdown to be available for limitations established for a source through the State's new source review (NSR) program may result in emission limitations that do not comply with that program. A fully approvable SIP emission limitation, including periods of startup and shutdown, must meet all substantive requirements of the CAA applicable to such a SIP provision. For purposes of nonattainment NSR (NNSR) and PSD permitting, any AEL applicable to startup and shutdown periods must constitute the lowest achievable emissions rate (LAER) for NNSR or must reflect the use of best available control technology (BACT) for PSD. *See* 80 FR 33893. To satisfy CAA requirements, such AELs must be established on a source-specific basis through the NNSR and PSD permitting process rather than in a static rule. The process identified in 11.(ii) is also open-ended and not sufficiently specific to determine what applies to specific permitted sources during periods of startup and shutdown.

EPA understands from GA EPD's response to comments in the November 17, 2016, submittal that this provision is specifically intended to apply to sources with existing permits issued pursuant to Rules 391–3–1–.02(7)(b) (PSD) and 391–3–1–.03(8) (NNSR), which did not include emission limitations for periods of startup and shutdown at the time the permits were issued, while permits issued pursuant to the PSD and NNSR program today would consider startup and shutdown in the permitting process. However, the same issues remain with this approach even for the more limited universe of existing permits. Furthermore, for the reasons described previously, EPA is proposing to disapprove the underlying regulations at paragraph 11. Therefore, EPA is also proposing to disapprove this provision at 11.(ii) establishing the AEL ''options'' approaches for existing PSD and NNSR permits.

B. Rule 391–3–1–.02(2)(a)12, ''Malfunction Emissions''

For periods of malfunction, new paragraph 12 would allow compliance with source-specific AELs in the form of work practice standards. Owners and operators of sources that elect not to comply with the numeric emission limitations during periods of malfunction may choose to propose source-specific alternative work practice standards. As with new paragraph 391–3–1–.02(2)(a)11 discussed above, this provision would apply in lieu of the existing SIP-called paragraph 391–3–1–.02(2)(a)7 upon EPA's approval into the SIP, and it also includes automatic rescission language regarding the effectiveness of subparagraph 12.(ii) in the event that legal challenges to the 2015 SSM SIP Action are successful.[11]

[10] *See supra* n.9.

[11] The rescission language at Rule 391–3–1–.02(2)(a)12.(iii) is not submitted for approval into

As with new subparagraph 11, EPA identified several deficiencies in new subparagraph 12 previously, as outlined in EPA Region 4's August 1, 2016, and September 30, 2016, comment letters to GA EPD regarding Georgia's July 1, 2016, and August 31, 2016, prehearing submissions transmitting GA EPD's proposed response to the 2015 SSM SIP Action for public review.[12] In this NPRM, EPA proposes to find that paragraph 12, which generally was not changed from the pre-hearing submission except for renumbering, contains deficiencies such that the rule does not adequately address the 2015 SSM SIP Action and does not comport with EPA's SSM policy, as outlined in that action.

The SIP must require sources to comply with applicable emission limitations, which may include AELs approved into the SIP for certain periods of operation. As submitted, subparagraph 12.(ii)(I)II. provides that, during periods of malfunction, sources subject to any of the SIP emission limitations and standards identified in paragraph 12.(i) may choose to comply with a ''source specific malfunction work practice standard approved into a federally enforceable air quality operating permit,'' and this process is outlined further at 12.(ii)(IV). Subparagraph 12.(ii) does not require the AELs to be approved into the SIP, and likewise does not specify that such AELs are not effective for SIP purposes until they are approved by the EPA as part of the SIP. As discussed above in relation to paragraph 11, a permitting process cannot be used to create alternatives to SIP emission limitations unless such alternative limitations are incorporated into the SIP.

EPA further notes that, unlike AELs specific to periods of startup and/or shutdown, it is likely not feasible for the State to develop approvable AELs that apply specifically to malfunctions. As EPA explained in the 2015 SSM SIP Action, a malfunction is unpredictable as to the timing of the start of the malfunction event, its duration, and its exact nature. The effect of a malfunction on emissions is therefore unpredictable and variable, making the development of AELs for malfunctions problematic. There may be rare instances in which certain types of malfunctions at certain types of sources are foreseeable and foreseen and thus are an expected mode of source operation. In such circumstances, EPA believes that sources should be expected to meet the otherwise applicable emission limitation to encourage sources to be properly designed, maintained, and operated to prevent or minimize any such malfunctions. To the extent that a given type of malfunction is so foreseeable and foreseen that a state considers it a normal mode of operation that is appropriate for a specifically designed AEL, then such alternative should be developed in accordance with EPA's recommended criteria for AELs. *See* 80 FR 33979. However, should there be a demonstrated need for source-specific AELs for malfunctions, such AELs would not negate otherwise applicable SIP emission limitations unless submitted to EPA and approved into the SIP. For these reasons, EPA is proposing to disapprove the AEL approach for malfunctions established at 12.(ii)(I)II.

Paragraph 12 at 12.(ii)(V) provides that ''[m]alfunctions that are not specifically included in an approved source specific work practice, or are the result of poor maintenance, poor operation, or otherwise reasonably preventable control equipment or process failure, are prohibited and shall be considered violations . . . if the malfunction continues for 4 hours or more.'' EPA notes that a standard duration for determining whether a malfunction is a violation across the wide array of rules and sources listed in subparagraph 12.(i) does not appropriately consider source-specific requirements, such as the averaging time of applicable emission limitations or the total amount of pollutants released in that time. Thus, EPA believes that the 4-hour period can serve as an improper exempt period for malfunctions in certain circumstances. As discussed above, an emission limitation must apply at all times. Therefore, EPA is proposing to disapprove 12.(ii)(V).

Additionally, subparagraph 12.(i) provides that ''[t]his paragraph 12. also applies to emission limitations established in accordance with the new source review requirements in 391–3–1–.02(7)(b) and/or 391–3–1–.03(8) unless malfunction emissions have already been specifically addressed via a federally enforceable permit.'' EPA acknowledges that there are not open-ended, generally available work practice standards for malfunctions in paragraph 12 as in 11.(ii)(I)IV.B. for startup and shutdown, and 12.(ii)(IV) requires a permit application and for any sources without source-specific work practice standards approved in a permit to comply with the applicable emission limitation (*i.e.,* existing BACT or LAER, as issued) during malfunctions. However, EPA also notes that, as discussed above, it may not be feasible to establish AELs that are specifically applicable to malfunctions and that are consistent with EPA's SSM policy. Additionally, because EPA is proposing to disapprove the underlying regulations at paragraph 12, the Agency is likewise proposing to disapprove this provision related to existing PSD and NNSR permits at 12.(i).[13]

C. Summary of EPA's Analysis

For the reasons discussed above, EPA is proposing to disapprove Georgia's November 17, 2016, SIP submission, which would establish options for complying with existing SIP emission limitations and standards or alternatives for periods of SSM. Specifically, during periods of startup and shutdown, the SIP revision would allow sources to either comply with existing numeric emission limitations or elect to comply with AELs generally available, comply with AELs listed in federal rules, or to establish source-specific AELs in permits which are not incorporated in the SIP. Further, the SIP revision would also allow sources, during periods of malfunction, to either comply with existing numeric emission limitations or elect to comply with source-specific AELs established in permits which are not incorporated in the SIP. EPA proposes to find that the State's November 17, 2016, SIP revision is not consistent with CAA requirements and does not adequately address the specific deficiencies EPA identified in the 2015 SSM SIP Action with respect to the Georgia SIP.

III. Proposed Action

Under the CAA, the Administrator is required to approve a SIP submission that complies with the provisions of the CAA and applicable Federal regulations. *See* 42 U.S.C. 7410(k); 40 CFR 52.02(a). EPA is proposing to disapprove Georgia's November 17, 2016, SIP submission requesting approval of new paragraphs 391–3–1–.02(2)(a)11.(i) and (ii) and 391–3–1–.02(2)(a)12.(i) and (ii) into the SIP. EPA is proposing disapproval of the SIP revision because

the SIP in the November 17, 2016, SIP revision. See the submittal at pages 15/63, 22/63, and 23/63.

[12] *See supra* n.6.

[13] New paragraph 391–3–1–.02(2)(a)13, ''Startup, Shutdown, and Malfunction Emissions for Certain Rules'' (paragraph 13), would describe requirements for minimizing excess emissions during periods of startup, shutdown and malfunction for rules adopted by Georgia but that are not in the State's SIP. The rule would provide that emissions in excess of an applicable standard resulting from SSM events are allowed under certain conditions if appropriate actions are taken to minimize those emissions. Paragraph 13 is not submitted for EPA approval into the SIP. See the cover letter of the November 16, 2017, SIP submittal, and pages 20/63, 37/63, 41/63, and 43/63 in the submittal, available in the docket for this proposed action.

the Agency has preliminarily determined that it is not consistent with the requirements for SIP provisions under the CAA. EPA is further proposing to determine that the SIP revision does not correct the deficiencies identified in the June 12, 2015, SIP call. EPA is not reopening the 2015 SSM SIP Action and is only taking comment on whether this SIP revision is consistent with CAA requirements and whether it addresses the substantial inadequacy in the specific Georgia SIP provision identified in the 2015 SSM SIP Action.

If the Agency finalizes this disapproval, CAA section 110(c) would require EPA to promulgate a federal implementation plan within 24 months of the effective date of the final action unless EPA first approves a SIP revision that corrects the deficiencies identified in Section II of this NPRM within such time.[14]

IV. Statutory and Executive Order Reviews

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

The Proposed action is not a significant regulatory action and was therefore not submitted to the Office of Management and Budget for review.

B. Paperwork Reduction Act (PRA)

The proposed action does not impose an information collection burden under the PRA because it does not contain any information collection activities.

C. Regulatory Flexibility Act (RFA)

I certify that this action will not have a significant economic impact on a substantial number of small entities under the RFA (5 U.S.C. 601 *et seq.*). This action merely proposes to disapprove a SIP submission as not meeting the CAA.

D. Unfunded Mandates Reform Act (UMRA)

The proposed 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 proposed action imposes no enforceable duty on any State, local, or tribal governments or the private sector.

E. Executive Order 13132: Federalism

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

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

The proposed action does not have tribal implications as specified in Executive Order 13175. The proposed action does not apply on any Indian reservation land, any other area where EPA or an Indian tribe has demonstrated that a tribe has jurisdiction, or non-reservation areas of Indian country. Thus, Executive Order 13175 does not apply in this action.

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

EPA interprets Executive Order 13045 as applying only to those regulatory actions that concern environmental health or safety risks that EPA has reason to believe may disproportionately affect children, per the definitions of ''covered regulatory action'' in section 2–202 of the Executive Order. This proposed action is not subject to Executive Order 13045 because it merely proposes to disapprove a SIP submission from Georgia as not meeting the CAA.

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

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

I. National Technology Transfer and Advancement Act

This proposed rulemaking does not involve technical standards.

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

EPA believes the human health or environmental risk address by this proposed action will not have potential disproportionately high and adverse human health or environmental effects on minority, low-income or indigenous populations. This proposed action merely proposes to disapprove a SIP submission as not meeting the CAA.

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Intergovernmental relations, Particulate matter, Reporting and recordkeeping requirements, Sulfur oxides.

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

Dated: November 21, 2022.

Daniel Blackman,

Regional Administrator, Region 4.

[FR Doc. 2022–25917 Filed 11–25–22; 8:45 am]

BILLING CODE 6560–50–P

[14] In addition to a requirement for EPA to promulgate a federal implementation plan, a final disapproval would trigger the offset sanction in CAA section 179(b)(2) 18 months after the effective date of a final disapproval, and the highway funding sanction in CAA section 179(b)(1) 24 months after the effective date of a final disapproval. Although the sanctions clock would begin to run from the effective date of a final disapproval, mandatory sanctions under CAA section 179 generally apply only in designated nonattainment areas. This includes areas designated as nonattainment after the effective date of a final disapproval. As discussed in the 2015 SSM SIP Action, EPA will evaluate the geographic scope of potential sanctions at the time it makes a determination that the air agency has failed to make a complete SIP submission in response to the 2015 SIP call, or at the time it disapproves such a SIP submission. The appropriate geographic scope for sanctions may vary depending upon the SIP provisions at issue. *See* 80 FR 33839, 33930. At this time, there are no nonattainment areas in Georgia.

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R04–OAR–2022–0436; FRL–10401–01–R4]

Air Plan Approval; Georgia; Atlanta Area Limited Maintenance Plan for the 1997 8-Hour Ozone NAAQS

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The Environmental Protection Agency (EPA) is proposing to approve a state implementation plan (SIP) revision submitted by the State of Georgia, through the Georgia Environmental Protection Division (EPD), via a letter dated December 17, 2021. The SIP revision includes the 1997 8-hour ozone national ambient air quality standards (NAAQS) Limited Maintenance Plan (LMP) for the Atlanta, Georgia Area (hereinafter referred to as the Atlanta Area or Area). The Area consists of 20 counties in Georgia: Barrow, Bartow, Carroll, Cherokee, Clayton, Cobb, Coweta, DeKalb, Douglas, Fayette, Forsyth, Fulton, Gwinnett, Hall, Henry, Newton, Paulding, Rockdale, Spalding, and Walton County. EPA is proposing to approve the LMP for the Area because the LMP provides for the maintenance of the 1997 8-hour ozone NAAQS within the Area through the end of the second 10-year portion of the

maintenance period. The effect of this action would be to make certain commitments related to maintenance of the 1997 8-hour ozone NAAQS in the Area federally enforceable as part of the Georgia SIP.

DATES: Comments must be received on or before December 28, 2022.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–R04–OAR–2022–0436 at *https://www.regulations.gov.* Follow the online instructions for submitting comments. Once submitted, comments cannot be edited or removed from *Regulations.gov*. 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. EPA will generally not consider comments or comment contents located outside of the primary submission (*i.e.,* on the web, cloud, or other file sharing system). For additional submission methods, the full EPA public comment policy, information about CBI or multimedia submissions, and general guidance on making effective comments, please visit *https://www.epa.gov/dockets/commenting-epa-dockets.*

FOR FURTHER INFORMATION CONTACT: Sarah LaRocca, Air Regulatory Management Section, Air Planning and Implementation Branch, Air and Radiation Division, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street SW, Atlanta, Georgia 30303–8960. The telephone number is (404) 562–8994. Ms. LaRocca can also be reached via electronic mail at *larocca.sarah@epa.gov.*

SUPPLEMENTARY INFORMATION:

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I. Summary of EPA's Proposed Action

In accordance with the Clean Air Act (CAA or Act), EPA is proposing to approve the Atlanta Area LMP for the 1997 8-hour ozone NAAQS that was submitted by Georgia EPD as a revision to the Georgia SIP on December 17, 2021. On April 15, 2004, the EPA Administrator signed a final rule announcing designations under the 8-hour ozone NAAQS. That action included the designation of the Atlanta Area as nonattainment for the 1997 8-hour ozone NAAQS. It was published April 30, 2004 and became effective June 15, 2004. *See* 69 FR 23857 (April 30, 2004). Subsequently, EPA approved a maintenance plan and redesignated the Atlanta Area attainment for the 1997 8-hour Ozone NAAQS. *See* 78 FR 72040 (December 2, 2013).

The Area LMP submitted by Georgia EPD on December 17, 2021, is designed to maintain the 1997 8-hour ozone NAAQS within the Atlanta Area through the end of the second 10-year portion of the maintenance period beyond redesignation. EPA is proposing to approve the LMP because it meets all applicable requirements under CAA sections 110 and 175A.

As a general matter, the Atlanta Area LMP builds upon controls and contingency provisions to maintain the 1997 8-hour ozone NAAQS during the second 10-year portion of the Area's maintenance period as the maintenance plan submitted by Georgia EPD for the first 10-year period.

II. Background

Ground-level ozone is formed when oxides of nitrogen (NO_X) and volatile organic compounds (VOC) react in the presence of sunlight. These two pollutants, referred to as ozone precursors, are emitted by many types of pollution sources, including on- and off-road motor vehicles and engines, power plants and industrial facilities, and smaller area sources such as lawn and garden equipment and paints. Scientific evidence indicates that adverse public health effects occur following exposure to ozone, particularly in children and in adults with lung disease. Breathing air containing ozone can reduce lung function and inflame airways, which can increase respiratory symptoms and aggravate asthma and other lung diseases.

Ozone exposure also has been associated with increased susceptibility to respiratory infections, medication use, doctor visits, and emergency department visits and hospital admissions for individuals with lung disease. Children are at increased risk from exposure to ozone because their lungs are still developing and they are more likely to be active outdoors, which increases their exposure.[1]

In 1979, under section 109 of the CAA, EPA established primary and secondary NAAQS for ozone at 0.12 parts per million (ppm), averaged over a 1-hour period. *See* 44 FR 8202 (February 8, 1979). On July 18, 1997, EPA revised the primary and secondary NAAQS for ozone to set the acceptable level of ozone in the ambient air at 0.08 ppm, averaged over an 8-hour period. *See* 62 FR 38856 (July 18, 1997).[2] EPA set the 8-hour ozone NAAQS based on scientific evidence demonstrating that ozone causes adverse health effects at lower concentrations and over longer periods of time than was understood when the pre-existing 1-hour ozone NAAQS was set. EPA determined that the 8-hour ozone NAAQS would be more protective of human health, especially for children and adults who are active outdoors, and individuals with a pre-existing respiratory disease, such as asthma.

Following promulgation of a new or revised NAAQS, EPA is required by the CAA to designate areas throughout the nation as attaining or not attaining the NAAQS. Effective June 15, 2004, EPA designated the Atlanta Area as nonattainment for the 1997 8-hour ozone NAAQS. *See* 69 FR 23858 (April 30, 2004). Similarly, on May 21, 2012, EPA designated areas as unclassifiable/attainment or nonattainment for the 2008 8-hour ozone NAAQS. Fifteen metro Atlanta counties were designated nonattainment for the 2008 ozone NAAQS: Bartow, Cherokee, Clayton, Cobb, Coweta, DeKalb, Douglas, Fayette, Forsyth, Fulton, Gwinnett, Henry, Newton, Paulding, and Rockdale. *See* 77 FR 30088 (May 21, 2012). EPA designated five other metro Atlanta counties as unclassifiable/attainment for the 2008 8-hour ozone NAAQS: Barrow, Carroll, Hall, Spalding, and Walton. These designations became effective on July 20, 2012. In addition, on June 4, 2018, EPA designated areas for the 2015 8-hour ozone NAAQS. Effective August 3, 2018, seven metro Atlanta counties were designated as nonattainment for the 2015 8-hour ozone NAAQS: Bartow,

[1] *See* ''Fact Sheet, Proposal to Revise the National Ambient Air Quality Standards for Ozone,'' January 6, 2010, and 75 FR 2938 (January 19, 2010).

[2] In March 2008, EPA completed another review of the primary and secondary ozone NAAQS and tightened them further by lowering the level for both to 0.075 ppm. *See* 73 FR 16436 (March 27, 2008). Additionally, in October 2015, EPA completed a review of the primary and secondary ozone NAAQS and tightened them by lowering the level for both to 0.070 ppm. *See* 80 FR 65292 (October 26, 2015).

Clayton, Cobb, DeKalb, Fulton, Gwinnett and Henry. *See* 83 FR 25776 (June 4, 2018) *and* 40 CFR 81.311.

A state may submit a request that EPA redesignate a nonattainment area that is attaining a NAAQS, and, if the area has met other required criteria described in section 107(d)(3)(E) of the CAA, EPA may approve the area's redesignation to attainment.[3] One of the criteria for redesignation is to have an approved maintenance plan under CAA section 175A. The maintenance plan must demonstrate that the area will continue to maintain the NAAQS for the period extending 10 years after redesignation, and it must contain such additional measures as necessary to ensure maintenance and such contingency provisions as necessary to assure that violations of the NAAQS will be promptly corrected. Eight years after the effective date of redesignation, the state must also submit a second maintenance plan to ensure ongoing maintenance of the NAAQS for an additional ten years pursuant to CAA section 175A(b) (*i.e.,* ensuring maintenance for 20 years after redesignation).

EPA has published long-standing guidance for states on developing maintenance plans, beginning with a 1992 memo referred to as the Calcagni memo.[4] The Calcagni memo provides that states may generally demonstrate maintenance by either performing air quality modeling to show that the future mix of sources and emission rates will not cause a violation of the NAAQS or by showing that projected future emissions of a pollutant and its precursors will not exceed the level of emissions generated during a year when the area was attaining the NAAQS (*i.e.,* attainment year inventory). *See* Calcagni memo at page 9. EPA clarified in three subsequent guidance memos that certain areas could meet the CAA section 175A requirement to provide for maintenance by showing that the area was unlikely to violate the NAAQS in the future, using information such as the area's design value[5] being well below the standard and the area having a historically stable design value.[6] EPA refers to a maintenance plan containing this streamlined demonstration as an LMP.

EPA has interpreted CAA section 175A as permitting the LMP option because section 175A of the Act does not define how areas may demonstrate maintenance, and in EPA's experience implementing the various NAAQS, areas that qualify for an LMP and have approved LMPs have rarely, if ever, experienced subsequent violations of the NAAQS. As noted in the LMP guidance memoranda, states seeking an LMP must still submit the other maintenance plan elements outlined in the Calcagni memo, including: an attainment emissions inventory, provisions for the continued operation of the ambient air quality monitoring network, verification of continued attainment, and a contingency plan in the event of a future violation of the NAAQS. Moreover, a state seeking an LMP must still submit its section 175A maintenance plan as a revision to its SIP, with all attendant notice and comment procedures. While the LMP guidance memoranda were originally written with respect to certain NAAQS,[7] EPA has extended the LMP interpretation of section 175A to other NAAQS and pollutants not specifically covered by the previous guidance memos. *See, e.g.,* 79 FR 41900 (July 18, 2014) (approval of the second ten-year LMP for the Grant County 1971 SO_2 maintenance area).

In this case, EPA is proposing to approve the Area's LMP for the 1997 8-hour ozone NAAQS because the State has made a showing, consistent with EPA's prior LMP guidance, that the Area's ozone concentrations are well below the 1997 8-hour ozone NAAQS and have been historically stable, and that it has met the other maintenance plan requirements. Georgia EPD has submitted the LMP for the Atlanta Area to fulfill the second maintenance plan requirement in the Act. EPA's evaluation of the Area's LMP for the 1997 8-hour ozone NAAQS is presented below.

On April 4, 2012, Georgia EPD submitted to EPA a request to redesignate the Atlanta Area to attainment for the 1997 8-hour ozone NAAQS. This submittal included a plan to provide for maintenance of the 1997 8-hour ozone NAAQS in the Atlanta Area through 2024 as a revision to the Georgia SIP. EPA approved the Atlanta Area Maintenance Plan and the State's request to redesignate the Atlanta Area to attainment for the 1997 8-hour ozone NAAQS effective January 2, 2014. *See* 78 FR 72040 (December 2, 2013).

Under CAA section 175A(b), states must submit a revision to the first maintenance plan eight years after redesignation to provide for maintenance of the NAAQS for ten additional years following the end of the first 10-year period. EPA's final implementation rule for the 2008 8-hour ozone NAAQS revoked the 1997 8-hour ozone NAAQS and stated that one consequence of revocation was that areas that had been redesignated to attainment (*i.e.,* maintenance areas) for the 1997 NAAQS no longer needed to submit second 10-year maintenance plans under CAA section 175A(b). *See* 80 FR 12315 (March 6, 2015). On June 2, 2017, EPA redesignated 15 counties in metro Atlanta as attainment for the 2008 8-hour ozone NAAQS.[8] *See* 82 FR 25523 (June 2, 2017).

In *South Coast Air Quality Management District* v. *EPA,* the United States Court of Appeals for the District of Columbia Circuit (D.C. Circuit) vacated EPA's interpretation that, because of the revocation of the 1997 8-hour ozone NAAQS, second maintenance plans were not required for ''orphan maintenance areas,'' *i.e.,* areas that had been redesignated to attainment for the 1997 8-hour ozone NAAQS maintenance areas and were designated attainment for the 2008 ozone NAAQS. *South Coast,* 882 F.3d 1138 (D.C. Cir. 2018). Thus, states with these ''orphan maintenance areas'' under the 1997 8-hour ozone NAAQS must submit maintenance plans for the second maintenance period. Accordingly, on December 17, 2021,

[3] Section 107(d)(3)(E) of the CAA sets out the requirements for redesignating a nonattainment area to attainment. They include attainment of the NAAQS, full approval of the applicable SIP pursuant to CAA section 110(k), determination that improvement in air quality is a result of permanent and enforceable reductions in emissions, demonstration that the state has met all applicable section 110 and part D requirements, and a fully approved maintenance plan under CAA section 175A.

[4] *See* John Calcagni, Director, Air Quality Management Division, EPA Office of Air Quality Planning and Standards, ''Procedures for Processing Requests to Redesignate Areas to Attainment,'' September 4, 1992 (Calcagni memo, *available at https://www.epa.gov/ground-level-ozone-pollution/procedures-processing-requests-redesignate-areas-attainment*).

[5] The ozone design value for a monitoring site is the 3-year average of the annual fourth-highest daily maximum 8-hour average ozone concentrations. The design value for an ozone area is the highest design value of any monitoring site in the area.

[6] *See* ''Limited Maintenance Plan Option for Nonclassifiable Ozone Nonattainment Areas'' from Sally L. Shaver, Office of Air Quality Planning and Standards (OAQPS), dated November 16, 1994; ''Limited Maintenance Plan Option for Nonclassifiable CO Nonattainment Areas'' from Joseph Paisie, OAQPS, dated October 6, 1995; and ''Limited Maintenance Plan Option for Moderate PM_{10} Nonattainment Areas'' from Lydia Wegman, OAQPS, dated August 9, 2001. Copies of these guidance memoranda can be found in the docket for this proposed rulemaking.

[7] The prior memos addressed: unclassifiable areas under the 1-hour ozone NAAQS, nonattainment areas for the PM_{10} (particulate matter with an aerodynamic diameter less than 10 microns) NAAQS, and nonattainment for the carbon monoxide (CO) NAAQS.

[8] The 15-county metro Atlanta region identified for the 2008 8-hour ozone NAAQS is comprised of Bartow, Cherokee, Clayton, Cobb, Coweta, DeKalb, Douglas, Fayette, Forsyth, Fulton, Gwinnett, Henry, Newton, Paulding, and Rockdale counties in Georgia.

Georgia submitted a second maintenance plan for the Atlanta Area that shows that the Area is expected to remain in attainment of the 1997 8-hour ozone NAAQS through January 2, 2034.

In recognition of the continuing record of air quality monitoring data showing ambient 8-hour ozone concentrations in the Area are below the 1997 8-hour ozone NAAQS, Georgia EPD chose the LMP option for the development of the Area's second 1997 8-hour ozone NAAQS maintenance plan. On December 17, 2021, Georgia EPD submitted the second 10-year 1997 8-hour ozone maintenance plan to EPA as a revision to the Georgia SIP.

III. Georgia's SIP Submittal

Georgia's December 17, 2021, submittal includes the LMP, air quality data, emissions inventory information, and an appendix. The submission also includes comments and responses between EPA and Georgia EPD and documentation of notice, hearing, and public participation prior to submission of the plan by Georgia EPD on December 17, 2021. It also includes an explanation that Georgia's LMP submittal for the remainder of the 20-year maintenance period for the Atlanta Area is in response to the D.C. Circuit Court's decision overturning aspects of EPA's Implementation Plan rule. In addition, the LMP went through interagency consultation to ensure transportation conformity.

The Atlanta LMP for the 1997 8-Hour ozone NAAQS includes same or similar emission reduction strategies as the first 10-year Maintenance Plan, as well as additional emissions reduction measures to provide for the maintenance of the 1997 8-hour ozone NAAQS through January 2, 2034. Specifically, the measures upon which the second 10-year LMP for the Area rely include the following SIP-approved Georgia Rules: 391–3–1–.02(2)(yy)—Emissions of Nitrogen Oxides from Major Sources; 391–3–1–.02(2)(jjj)—NO_X Emissions from Electric Utility Steam Generating Units; 391–3–1–.02(2)(lll)—NO_X Emissions from Fuel-Burning Equipment; 391–3–1–.02(2)(rrr)—NO_X from Small Fuel-Burning Equipment; 391–3–20—Vehicle Emissions Inspection and Maintenance Program; and 391–3–1–.02(12)—Cross-State Air Pollution Rule (CSAPR) NO_X Annual Trading Program. The Area's LMP also relies on continued implementation of Federal measures (*e.g.,* Onboard Refueling Vapor Recovery for Light Duty Vehicles; Architectural and Industrial Maintenance Coatings; Automobile Refinishing; National Emission Standards for Hazardous Air Pollutants (the majority of which are for VOC); Phase II Acid Rain Program for NO_X; Tier 2 Motor Vehicle Emissions Standards and Gasoline Sulfur Control Requirements (65 FR 6697); Tier 3 Motor Vehicle Emissions Standards and Gasoline Sulfur Control Requirements (79 FR 23414); and CSAPR).

IV. EPA's Evaluation of Georgia's SIP Submittal

EPA has reviewed the Area's LMP which is designed to maintain the 1997 8-hour ozone NAAQS within the Area through the end of the 20-year period beyond redesignation, as required under CAA section 175A(b). The following is a summary of EPA's interpretation of the section 175A requirements [9] and EPA's evaluation of how each requirement is met.

A. Attainment Emissions Inventory

For maintenance plans, a state should develop a comprehensive, accurate inventory of actual emissions for an attainment year to identify the level of emissions which is sufficient to maintain the NAAQS. A state should develop this inventory consistent with EPA's most recent guidance on emissions inventory development. For ozone, the inventory should be based on typical summer day emissions of VOC and NO_X, as these pollutants are precursors to ozone formation. The Atlanta LMP includes an ozone attainment inventory for the Area generated from the data EPA made available from the 2014 National Emissions Inventory (NEI) and that Georgia represents as 2014 summer tons.[10] Table 1 presents a summary of the inventory for 2014 contained in the LMP.

TABLE 1—2014 NO_X AND VOC EMISSIONS BY SECTOR (SUMMER TONS) IN THE ATLANTA AREA

Sector	2014	
	NO_X	VOC
Fire	1	4
Nonpoint	3,228	22,991
Nonroad	6,502	8,478
Onroad	27,684	13,868
Point	7,189	2,582
Total [11]	44,604	47,923

[9] *See* Calcagni memo, pages 7–13.

[10] Georgia defines summer tons as the total cumulative emissions from May through September.

[11] The totals represented in the table may be slightly different than the inventories in the LMP based on rounding convention.

The Emissions Inventory section of the LMP for the Atlanta Area describes the methods, models, and assumptions used to develop the attainment inventory. These estimates were derived from emission values provided by EPA for use in developing maintenance plans for the 1997 8-hour ozone NAAQS.[12] For the Atlanta Area, Georgia EPD used the emissions summaries generated by EPA from the 2014 NEI, version 2 (2014NEIv2).[13]

Based on review of the methods, models, and assumptions used by Georgia EPD to develop the VOC and NO_X estimates, EPA proposes to find that the Area's LMP includes a comprehensive, reasonably accurate inventory of actual ozone precursor emissions in attainment year 2014, and proposes to conclude that the plan's inventories are acceptable for the purposes of a subsequent maintenance plan under CAA section 175A(b).

B. Maintenance Demonstration

The maintenance demonstration requirement is considered to be satisfied in an LMP if the state can provide sufficient weight of evidence indicating that air quality in the area is well below the level of the NAAQS, that past air quality trends have been shown to be stable, and that the probability of the area experiencing a violation over the second 10-year maintenance period is low.[14] These criteria are evaluated below with regard to the Atlanta Area.

1. Evaluation of Ozone Air Quality Levels

To attain the 1997 8-hour ozone NAAQS, the three-year average of the fourth-highest daily maximum 8-hour average ozone concentrations (design value) at each monitor within an area must not exceed 0.08 ppm. Based on the rounding convention described in 40 CFR part 50, appendix I, the NAAQS is attained if the design value is 0.084 ppm (84 parts per billion or ''ppb'') [15] or below. EPA has evaluated the quality assured and certified 2018–2020

[12] U.S. EPA, ''1997 Ozone NAAQS Air Quality Monitoring and Modeling Data'' downloaded from *https://www.epa.gov/sites/production/files/2018-11/ozone_1997_naaqs_air_qual_monitoring_and_modeling_data_nov_19_2018_1.xlsx*, accessed April 2020.

[13] U.S. EPA, ''Air Emissions Modeling, 2014 Version 7.1 Platform,'' is available from *https://www.epa.gov/air-emissions-modeling/2014-version-71-platform*, accessed April 2020 (note that the version 7 platform, which included 2028 projections is not available on EPA's website).

[14] *See* footnote 6.

[15] EPA set the 1997 8-hour ozone NAAQS in ppm. To convert ppm to ppb the decimal is moved three places to the right (*i.e.,* 0.084 ppm is equal to 84 ppb). Georgia EPD provided the values in ppb for easy reference.

monitoring data (which was the most recent quality assured and certified data at the time of submission) and determined that the 2018–2020 design value for the Area is 70 ppb, or 83 percent of the level of the 1997 8-hour ozone NAAQS. In addition, EPA evaluated the quality assured and certified 2019–2021 monitoring data (which is the most recent quality assured and certified monitoring data) and determined that the 2019–2021 design value for the Area is 68 ppb, or 81 percent of the level of the 1997 8-hour ozone NAAQS. Consistent with prior guidance, EPA believes that if the most recent air quality design value for the area is at a level that is well below the NAAQS (*e.g.,* below 85 percent of the NAAQS, or in this case below 71 ppb), then EPA considers the state to have met the section 175A requirement for a demonstration that the area will maintain the NAAQS for the requisite period. Such a demonstration assumes continued applicability of prevention of significant deterioration requirements and any control measures already in the SIP, and that Federal measures will remain in place through the end of the second 10-year maintenance period, absent a showing consistent with section 110(l) that such measures are not necessary to assure maintenance.

Table 2 presents the design values for each monitor in the Atlanta Area over the 2009–2021 period.[16] As shown in Table 2, all sites have been below the level of the 1997 8-hour ozone NAAQS since the 2008–2010 design value, and the most current design value for each monitoring site is below 85 percent of the NAAQS, consistent with prior LMP guidance.

TABLE 2—1997 8-HOUR OZONE NAAQS DESIGN VALUES (ppb) AT MONITORING SITES IN THE ATLANTA AREA FOR THE 2009–2021 TIME PERIOD

Location	County	AQS site ID	2007–2009 DV	2008–2010 DV	2009–2011 DV	2010–2012 DV	2011–2013 DV	2012–2014 DV	2013–2015 DV	2014–2016 DV	2015–2017 DV	2016–2018 DV	2017–2019 DV	2018–2020 DV	2019–2021 DV
Kennesaw	Cobb	13–067–0003	80	76	78	77	73	I	I	I	67	66	65	62	61
Newnan (Discontinued)	Coweta	13–077–0002	77	68	67	66	62	60	62	66	63	D	D	D	D
Dawsonville	Dawson	13–085–0001	73	71	68	67	64	64	64	65	65	65	64	61	60
South DeKalb	DeKalb	13–089–0002	86	79	77	80	75	72	67	71	71	69	69	67	67
Douglasville	Douglas	13–097–0004	79	75	74	75	71	67	66	68	69	67	67	64	66
United Avenue	Fulton	13–121–0055	86	80	80	83	80	76	73	75	75	73	73	70	68
Gwinnett	Gwinnett	13–135–0002	81	74	75	78	77	72	69	72	71	69	66	66	66
McDonough	Henry	13–151–0002	87	79	78	82	80	77	71	74	71	70	69	67	66
Yorkville (Discontinued)	Polk	13–223–0003	74	70	71	72	69	64	62	63	D	D	D	D	D
Georgia Station CASTNET.	Pike	13–231–9991	ND	ND	ND	ND	72	69	66	68	67	I	I	I	61
Conyers	Rockdale	13–247–0001	85	78	75	79	77	77	72	74	69	70	68	67	65

I: Indicates that a monitor did not collect a valid three-year design value due to incomplete data.
D: Indicates that a monitor was approved by EPA to discontinue operation in the Georgia ambient air monitoring network plan.
ND: Prior to 2011, CASTNET sites did not provide regulatory ozone data for comparisons to the NAAQS. Starting in 2011, CASTNET sites were upgraded to meet all requirements of 40 CFR part 58 and provide ozone data for NAAQS comparisons.
The bolded numbers are the design values for the Atlanta Area for the three-year time periods.

Therefore, the Atlanta Area is eligible for the LMP option, and EPA proposes to find that the long record of monitored ozone concentrations that attain the NAAQS, together with the continuation of existing VOC and NO_X emissions control programs, adequately provide for the maintenance of the 1997 8-hour ozone NAAQS in the Area through the second 10-year maintenance period and beyond.

2. Stability of Ozone Levels

As discussed above, the Atlanta Area has maintained air quality below the 1997 8-hour ozone NAAQS over the past twelve design values. Additionally, the design value data shown within Table 2 of this document illustrates that ozone levels have been relatively stable over this timeframe, with an overall downward trend. For example, the data within Table 2 of this document indicates that the largest, year over year change in design value presented was 8 ppb for the Atlanta Area, which occurred between the 2009 design value and 2010 design value at monitor 13–151–0002 (McDonough), representing approximately a 9 percent decrease.

Furthermore, overall trend in design values for the Area between 2009–2021 indicates decreases in the monitored ozone concentrations. See, *e.g.,* Table 2, of this document. The Atlanta Area monitor that most frequently measured the highest design value in the area, monitor 13–121–0055 (United Avenue), displayed a decreasing trend over this period from 86 ppb to 68 ppb, a 21 percent decrease.

The downward trend in ozone levels, coupled with the relatively small, year-over-year variation in ozone design values, makes it reasonable to conclude that the Atlanta Area will not exceed the 1997 8-hour ozone NAAQS during the second 10-year maintenance period.

3. Projected Emissions

Although under the LMP option there is no requirement to project emissions over the maintenance period, Georgia EPD provided VOC and NO_X emissions for 2014 and 2028. The year 2014 was selected as a baseline for the projection.[17] Projected emissions data for the year 2028 were obtained from EPA, and Georgia presented an inventory that reflects projected NO_X and VOC summer tons for the Area.[18] [19]

The emissions projection shows that between 2014 and 2028, total VOC emissions are estimated to fall by 27 percent in the Atlanta Area. The emissions projection trends show that between 2014 and 2028, total NO_X emissions are estimated to fall by 58 percent in the Atlanta Area. These

[16] Georgia EPD provided monitoring data for years 2009 through 2020. The values can be found on Page 12 of the submittal. The monitoring data shows the general downward trend in design values at the monitoring sites.

[17] *See https://www.epa.gov/sites/default/files/2018-11/documents/ozone_1997_naaqs_lmp_resource_document_nov_20_2018.pdf.*

[18] *See https://www.epa.gov/air-emissions-modeling/2014-2016-version-7-air-emissions-modeling-platforms.* EPA's emissions projections to 2028 were made from the 2011 NEI, as that iteration of the NEI was the most recently available version when the projection work was performed. Although this projection does not correspond exactly with the end of the second ten-year maintenance period, it provides additional support for EPA's proposed finding that the Area will maintain the NAAQS due to its low and historically stable design values. See the Emissions Inventory section of the LMP for additional information regarding the 2028 projections.

[19] Georgia defines summer tons as the total cumulative emissions from May through September.

projected declining emissions trends further support the proposed conclusion that it is unlikely that the Areas would violate the 1997 8-hour ozone NAAQS in the future. Table 3 presents a summary of projected emissions for 2028 contained in the maintenance plan.[20]

TABLE 3—PROJECTED 2028 NO_X AND VOC EMISSIONS BY SECTOR (SUMMER TONS) IN THE ATLANTA AREA

Sector	2028	
	NO_X	VOC
Fire	6	15
Nonpoint	2,554	20,552
Nonroad	4,131	7,098
Onroad	7,995	4,982
Point	4,221	2,156
Total[21]	18,907	34,803

C. Monitoring Network and Verification of Continued Attainment

EPA periodically reviews the ozone monitoring network that Georgia EPD operates and maintains in accordance with 40 CFR part 58. Georgia EPD submits an annual ambient air monitoring network plan to EPA after the plan is made available for public inspection and comment, as required by 40 CFR 58.10. EPA has reviewed and approved the 2021 Georgia Ambient Air Monitoring Network Plan (''2021 Annual Network Plan''), which includes an ozone network for the Atlanta Area that meets the requirements of 40 CFR part 58.[22]

To verify the attainment status of the Area over the maintenance period, the maintenance plan should contain provisions for continued operation of an appropriate, EPA-approved monitoring network in accordance with 40 CFR part 58. As noted above, Georgia EPD's monitoring network in the Area has been approved by EPA in accordance with 40 CFR part 58, and the State has committed to continue to maintain a network in accordance with EPA requirements. EPA proposes to find that Georgia EPD's monitoring network is adequate to verify continued attainment of the 1997 8-hour ozone NAAQS in the Area.

D. Contingency Plan

Section 175A(d) of the CAA requires that a maintenance plan include contingency provisions. The purpose of such contingency provisions is to prevent future violations of the NAAQS or to promptly remedy any NAAQS violations that might occur during the maintenance period.

The Atlanta Area LMP contingency plan includes tracking and triggering mechanisms to determine when control measures are needed, and a process for developing and adopting appropriate control measures. There are two potential triggers for the contingency plan. The Tier I trigger will be any 8-hour ozone monitoring reading exceeding 84 ppb at an ambient monitoring station located in the Atlanta Area or periodic emissions inventory updates[23] that reveal excessive or unanticipated growth greater than 10 percent in either NO_X or VOC emissions over the attainment inventory for the Atlanta Area. The Tier II trigger will be any recorded violation of the 1997 8-hour ozone NAAQS at any of the ambient monitoring stations in the Atlanta Area. Upon either the Tier I or Tier II triggers being activated, Georgia EPD will commence analyses to determine what additional measures, if any, will be necessary to attain or maintain the ozone standard. If activation of either trigger occurs, the plan provides a regulatory adoption process for revising emission control strategies. If Georgia's analysis determines that the Atlanta Area is the source of emissions that contribute to a violation, the State will evaluate those measures as specified in Section 172 of the CAA for control options as well as other available measures. Georgia will implement necessary controls as expeditiously as possible, and at least one contingency measure will be implemented within 24 months after the determination, based on quality-assured ambient data, that a violation has occurred. The Georgia EPD will begin initial analysis of possible contingency measures within 6 months of the trigger occurring.[24]

EPA proposes to find that the contingency provisions in Georgia's second maintenance plan for the 1997 8-hour Ozone NAAQS meet the requirements of the CAA section 175A(d).

E. Conclusion

EPA proposes to find that the Atlanta LMP for the 1997 8-hour ozone NAAQS includes an approvable update of the various elements (including attainment inventory, assurance of adequate monitoring and verification of continued attainment, and contingency provisions) of the initial EPA-approved Maintenance Plan for the 1997 8-hour ozone NAAQS. EPA also proposes to find that the Atlanta Area qualifies for the LMP option and adequately demonstrates maintenance of the 1997 8-hour ozone NAAQS through the documentation of monitoring data showing maximum 1997 8-hour ozone levels well below the NAAQS, historically stable design values, and low probability that the Area will experience a violation over the second 10-year maintenance period. EPA believes the Atlanta LMP for the 1997 8-hour ozone NAAQS, which retains all existing control measures, is sufficient to provide for maintenance of the 1997 8-hour ozone NAAQS in the Area over the second maintenance period (*i.e.,* through January 2, 2034), and thereby satisfies the requirements for such plans under CAA section 175A(b). EPA is therefore proposing to approve Georgia's December 17, 2021, submission of the Area's LMP for the 1997 8-hour ozone NAAQS as a revision to the Georgia SIP.

V. Transportation Conformity and General Conformity

Transportation conformity is required by section 176(c) of the CAA. Conformity to a SIP means that transportation activities will not produce new air quality violations, worsen existing violations or delay timely attainment of the NAAQS. *See* CAA 176(c)(1)(A) and (B). EPA's transportation conformity rule at 40 CFR part 93, subpart A, requires that transportation plans, programs, and projects conform to SIPs, and that it establishes the criteria and procedures for determining whether they conform. The conformity rule generally requires a demonstration that emissions from the Regional Transportation Plan (RTP) and the Transportation Improvement Program (TIP) are consistent with the motor vehicles emissions budget (MVEB) contained in the control strategy SIP revision or maintenance plan. *See* 40 CFR 93.101, 93.118, and 93.124. A MVEB is defined as ''the portion of the total allowable emissions defined in the submitted or approved control strategy implementation plan revision or maintenance plan for a

[20] The inventory documentation for this platform can be found here: *https://www.epa.gov/air-emissions-modeling/2011-version-63-platform.*

[21] The totals represented in the table may be slightly different than the inventories in the LMP based on rounding convention.

[22] The letter approving the network plan is in the docket for this proposed rulemaking.

[23] The Air Emissions Reporting Rule (AERR) requires state and local agencies to collect and submit criteria pollutant emissions data to EPA's Emissions Inventory System (EIS) according to the schedule in 40 CFR 51.30.

[24] See the Contingency Plan Section of the LMP for further information regarding the contingency plan, including measures that Georgia will consider for adoption if any of the triggers are activated.

certain date for the purpose of meeting reasonable further progress milestones or demonstrating attainment or maintenance of the NAAQS, for any criteria pollutant or its precursors, allocated to highway and transit vehicle use and emissions.'' *See* 40 CFR 93.101.

Under the conformity rule, LMP areas may demonstrate conformity without a regional emissions analysis. *See* 40 CFR 93.109(e). EPA made findings that the MVEBs in the first 10-years of the 1997 8-hour ozone maintenance plan for the Atlanta Area were adequate for transportation conformity purposes. In a **Federal Register** action published on December 2, 2013, EPA notified the public of the adequacy finding for the Atlanta Area through a final rule; the adequacy determination for Atlanta Area became effective on January 2, 2014. *See* 78 FR 72040.[25]

After approval of or an adequacy finding for the LMP, there is no requirement to meet the ''budget test'' for motor vehicle emissions pursuant to the transportation conformity rule for the respective maintenance area. All actions that would require a transportation conformity determination for the Atlanta Area under EPA's transportation conformity rule provisions are considered to have already satisfied the regional emissions analysis and ''budget test'' requirements in 40 CFR 93.118 as a result of EPA's adequacy finding for the LMP. *See* 69 FR 40004 (July 1, 2004). The Atlanta 2008 and 2015 NAAQS Areas need to continue to meet all applicable requirements of the transportation conformity regulations, including the need for a regional emissions analysis and comparison of the results of the regional emissions analysis to the applicable MVEB for the 2008 8-hour ozone NAAQS. The 2008 8-hour ozone NAAQS MVEBs will be used to demonstrate conformity for the 2015 8-hour ozone NAAQS until MVEBs for the 2015 8-hour ozone NAAQS Area are deemed adequate or approved.

However, because LMP areas are still maintenance areas, certain aspects of transportation conformity determinations still will be required for transportation plans, programs, and projects. Specifically, for such determinations, RTPs, TIPs, and transportation projects still will have to demonstrate that they are fiscally constrained (40 CFR 93.108), meet the criteria for consultation (40 CFR 93.105) and Transportation Control Measure implementation in the conformity rule provisions (40 CFR 93.113), as well as meet the hot-spot requirements for projects (40 CFR 93.116).[26] Additionally, conformity determinations for RTPs and TIPs must be determined no less frequently than every four years, and conformity of plan and TIP amendments and transportation projects is demonstrated in accordance with the timing requirements specified in 40 CFR 93.104. Finally, in order for projects to be approved they must come from a currently conforming RTP and TIP. *See* 40 CFR 93.114 and 93.115.

VI. Proposed Action

Under sections 110(k) and 175A of the CAA and for the reasons set forth above, EPA is proposing to approve the Atlanta LMP for the 1997 8-hour ozone NAAQS, submitted by Georgia EPD on December 17, 2021, as a revision to the Georgia SIP. EPA is proposing to approve the LMP because the LMP includes an acceptable update of the various elements of the 1997 8-hour ozone NAAQS Maintenance Plan approved by EPA for the first 10-year period (including emissions inventory, assurance of adequate monitoring and verification of continued attainment, and contingency provisions), and retains the relevant provisions of the SIP.

EPA also finds that the Atlanta Area, a former nonattainment area for the 1997 8-hour ozone NAAQS, qualifies for the LMP option and, therefore, the Area's LMP adequately demonstrates maintenance of the 1997 8-hour ozone NAAQS through documentation of monitoring data showing maximum 1997 8-hour ozone levels well below the NAAQS and continuation of existing control measures. EPA believes the Area's 1997 8-Hour Ozone LMP to be sufficient to provide for maintenance of the 1997 8-hour ozone NAAQS over the second 10-year maintenance period (which extends through January 2, 2034), and thereby satisfies the requirements for such a plan under CAA section 175A(b).

VII. Statutory and Executive Order Reviews

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

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

This SIP revision is not proposed 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 as specified by Executive Order 13175 (65 FR 67249, November 9, 2000), nor will it impose substantial direct costs on tribal governments or preempt tribal law.

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Intergovernmental relations, Nitrogen oxides, Ozone, Reporting and

[25] EPA approved the MVEBs on December 2, 2013. *See* 78 FR 72040. The approval was made through a final rule and became effective on January 2, 2014.

[26] A conformity determination that meets other applicable criteria in Table 1 of paragraph (b) of the section (§ 93.109(e)) is still required, including the hot-spot requirements for projects in CO, PM_{10}, and fine particulate matter ($PM_{2.5}$) areas.

recordkeeping requirements, Volatile organic compounds.

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

Daniel Blackman,

Regional Administrator, Region 4.

[FR Doc. 2022–25585 Filed 11–25–22; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of Inspector General

42 CFR Part 1001

Solicitation of Proposals for New and Modified Safe Harbors and Special Fraud Alerts

AGENCY: Office of Inspector General (OIG), Department of Health and Human Services (HHS or the Department).

ACTION: Notification of intent to develop regulations.

SUMMARY: In accordance with section 205 of the Health Insurance Portability and Accountability Act of 1996 (HIPAA), this annual notification solicits proposals and recommendations for developing new, or modifying existing, safe harbor provisions under section 1128B(b) of the Social Security Act (the Act), the Federal anti-kickback statute, as well as developing new OIG Special Fraud Alerts.

DATES: To ensure consideration, public comments must be received no later than 5 p.m. on January 27, 2023.

ADDRESSES: In commenting, please refer to file code OIG–1122–N. Because of staff and resource limitations, we cannot accept comments by fax transmission. You may submit comments in one of two ways (no duplicates, please):

1. *Electronically.* You may submit comments electronically at *https://www.regulations.gov.* Follow the ''Submit a comment'' instructions and refer to file code OIG–1122–N.

2. *By regular, express, or overnight mail.* You may send written comments to the following address: OIG, Regulatory Affairs, HHS, Attention: OIG–1122–N, Room 5527, Cohen Building, 330 Independence Avenue SW, Washington, DC 20201. Please allow sufficient time for mailed comments to be received before the close of the comment period.

For information on viewing public comments, please see the **SUPPLEMENTARY INFORMATION** section.

FOR FURTHER INFORMATION CONTACT: Susan Edwards, (202) 619–0335.

SUPPLEMENTARY INFORMATION: Inspection of Public Comments: All comments received before the close of the comment period are available for viewing by the public, including any personally identifiable or confidential business information that is included in a comment. We post all comments received before the close of the comment period on the following website as soon as possible after they have been received: *https://www.regulations.gov.*

I. Background

A. OIG Safe Harbor Provisions

Section 1128B(b) of the Act (42 U.S.C. 1320a–7b(b)), the Federal anti-kickback statute, provides for criminal penalties for whoever knowingly and willfully offers, pays, solicits, or receives remuneration to induce or reward, among other things, referrals for or purchases of items or services reimbursable under any of the Federal health care programs, as defined in section 1128B(f) of the Act (42 U.S.C. 1320a–7b(f)). The offense is classified as a felony and is punishable by a fine of up to $100,000 and imprisonment for up to 10 years. Violations of the Federal anti-kickback statute also may result in the imposition of civil monetary penalties under section 1128A(a)(7) of the Act (42 U.S.C. 1320a–7a(a)(7)), program exclusion under section 1128(b)(7) of the Act (42 U.S.C. 1320a–7(b)(7)), and liability under the False Claims Act (31 U.S.C. 3729–33).

Because of the broad reach of the statute, stakeholders expressed concern that some relatively innocuous business arrangements were covered by the statute and, therefore, potentially subject to criminal prosecution. In response, Congress enacted section 14 of the Medicare and Medicaid Patient and Program Protection Act of 1987, Public Law 100–93 (note to section 1128B of the Act; 42 U.S.C. 1320a–7b), which requires the development and promulgation of regulations, the so-called safe harbor provisions, that would specify various payment and business practices that would not be subject to sanctions under the Federal anti-kickback statute, even though they potentially may be capable of inducing referrals of business for which payment may be made under a Federal health care program. Since July 29, 1991, there has been a series of final regulations published in the **Federal Register** establishing safe harbors to protect various payment and business practices.[1] These safe harbor provisions have been developed ''to limit the reach of the statute somewhat by permitting certain non-abusive arrangements, while encouraging beneficial and innocuous arrangements.'' [2] Health care providers and others may voluntarily seek to comply with the conditions of an applicable safe harbor so that they have the assurance that their payment or business practice will not be subject to sanctions under the Federal anti-kickback statute. The safe harbor regulations promulgated by OIG are found at 42 CFR part 1001.

B. OIG Special Fraud Alerts

OIG periodically issues Special Fraud Alerts to give continuing guidance to health care industry stakeholders about practices that OIG considers to be suspect or of particular concern.[3] Special Fraud Alerts encourage industry compliance by giving stakeholders guidance that can be applied to their own practices. OIG Special Fraud Alerts are published in the **Federal Register**, on OIG's website, or both, and are intended for extensive distribution.

In developing Special Fraud Alerts, OIG relies on several sources and consults directly with experts in the subject field including those within OIG, other agencies of HHS, other Federal and State agencies, and those in the health care industry.

C. Section 205 of the Health Insurance Portability and Accountability Act of 1996

Section 205 of HIPAA, Public Law 104–191, and section 1128D of the Act (42 U.S.C. 1320a–7d), requires the Department to develop and publish an annual notification in the **Federal Register** formally soliciting proposals for developing additional or modifying existing safe harbors to the Federal anti-kickback statute and for issuing Special Fraud Alerts.

In developing or modifying safe harbors under the Federal anti-kickback statute, and in consultation with the Department of Justice, OIG thoroughly reviews the range of factual circumstances that may receive protection by the proposed or modified safe harbor. In doing so, OIG seeks to identify and develop safe harbors that protect beneficial and innocuous arrangements and safeguard Federal

[1] *See, e.g.,* Medicare and State Health Care Programs: Fraud and Abuse; Revisions to Safe Harbors Under the Anti-Kickback Statute, and Civil Monetary Penalty Rules Regarding Beneficiary Inducements, 85 FR 77684 (Dec. 2, 2020).

[2] Medicare and State Health Care Programs: Fraud and Abuse; OIG Anti-Kickback Provisions, 56 FR 35952, 35958 (July 29, 1991).

[3] *See, e.g.,* Special Fraud Alert: OIG Alerts Practitioners To Exercise Caution When Entering Into Arrangements With Purported Telemedicine Companies (July 20, 2022), *https://oig.hhs.gov/documents/root/1045/sfa-telefraud.pdf.*

health care programs and their beneficiaries from the harms caused by fraud and abuse.

II. Solicitation of New and Modified Safe Harbor Recommendations and Special Fraud Alert Proposals

OIG seeks recommendations regarding the development of additional or modified safe harbor regulations and the issuance of new Special Fraud Alerts. A detailed explanation of justifications for, or empirical data supporting, a suggestion for a new or modified safe harbor or for the issuance of a new Special Fraud Alert would be helpful and should, if possible, be included in any response to this solicitation.

A. Criteria for Modifying and Establishing Safe Harbor Provisions

In accordance with section 205 of HIPAA, we will consider various factors in reviewing proposals for additional or modified safe harbor provisions, such as the extent to which the proposals may result in an increase or decrease in:

- Access to health care services,
- The quality of health care services,
- Patient freedom of choice among health care providers,
- Competition among health care providers,
- The cost to Federal health care programs,
- The potential overutilization of health care services, and
- The ability of health care facilities to provide services in medically underserved areas or to medically underserved populations.

In addition, we will consider other factors including, for example, the existence (or nonexistence) of any potential financial benefit to health care professionals or providers that may influence their decision whether to: (1) order a health care item or service or (2) arrange for a referral of health care items or services to a particular practitioner or provider.

B. Criteria for Developing Special Fraud Alerts

In determining whether to issue additional Special Fraud Alerts, we will consider whether and to what extent the practices that would be identified in a new Special Fraud Alert may result in any of the consequences set forth above, as well as the volume and frequency of the conduct that would be identified in the Special Fraud Alert.

Dated: November 22, 2022.

Christi A. Grimm,

Inspector General.

[FR Doc. 2022–25901 Filed 11–25–22; 8:45 am]

BILLING CODE 4152–01–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

43 CFR Part 8360

[LLCOS05000 L12200000.DU0000 18X]

Notice of Proposed Supplementary Rule for Travel Management on Public Lands in Montrose, Delta, San Miguel, and Ouray Counties, CO

AGENCY: Bureau of Land Management, Interior.

ACTION: Proposed supplementary rule.

SUMMARY: The Bureau of Land Management (BLM) is proposing to establish a supplementary rule to make enforceable travel management decisions for mechanized vehicles in the Dry Creek Travel Management Plan (TMP) issued December 1, 2009; the Ridgway TMP issued May 10, 2013; and the Norwood-Burn Canyon TMP issued November 14, 2014. The proposed supplementary rule (proposed rule) would apply to public lands in Montrose, Delta, San Miguel, and Ouray counties, Colorado, administered by the BLM Uncompahgre Field Office.

DATES: Please send comments by January 27, 2023. Comments postmarked or received in person or by electronic mail after this date may not be considered in the development of the final supplementary rule.

ADDRESSES: You may submit comments by one of the following methods: mail or hand deliver to Proposed Supplementary Rule, Attention: Caroline Kilbane, Outdoor Recreation Planner, BLM Uncompahgre Field Office, 2505 S Townsend Ave., Montrose, CO 81401. You may also submit comments via email to *ckilbane@blm.gov* (include ''Proposed Supplementary Rule'' in the subject line).

FOR FURTHER INFORMATION CONTACT: Caroline Kilbane, Outdoor Recreation Planner at (970) 240–5300 or by email at *ckilbane@blm.gov*. Individuals in the United States who are deaf, deafblind, hard of hearing or have a speech disability may dial 711 (TTY, TDD, or TeleBraille) to access telecommunications relay services. Individuals outside the United States should use the relay services offered within their country to make international calls to the point-of-contact in the United States.

SUPPLEMENTARY INFORMATION:

I. Public Comment Procedures

Written comments on the proposed rule should be specific, confined to issues pertinent to the proposed rule, and explain the reason for any recommended change. Where possible, comments should reference the specific section or paragraph of the proposed rule that the comment is addressing. The BLM is not obligated to consider or include in the Administrative Record for the final supplementary rule, comments delivered to an address other than those listed earlier (See **ADDRESSES**) or comments that the BLM receives after the close of the comment period (See **DATES**), unless they are postmarked or electronically dated before the deadline.

Comments, including names, street addresses, and other contact information of respondents, will be available for public review at the address specified in the **ADDRESSES** section above, during regular business hours (8 a.m. to 4:30 p.m. Monday through Friday, except Federal holidays). Before including your address, phone number, email address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

II. Background

Prior to 2009, the BLM Uncompahgre Field Office used the 1989 Uncompahgre Basin Resource Management Plan (RMP) and the 1985 San Juan/San Miguel Resource Area RMP to manage travel on BLM-managed lands within the Dry Creek, Ridgway, and Norwood-Burn Canyon areas. In March 2007, the BLM published in the **Federal Register** a Notice of Intent to Amend the Uncompahgre Basin and San Juan/San Miguel RMPs and prepare the Dry Creek Comprehensive Travel Management Plan, Colorado (72 FR 10243). The RMP amendment, approved in June 2010, changed off-highway vehicle designations in identified areas from ''Open or Limited'' to ''Limited to existing routes year-long or with seasonal restrictions'' until further route-by-route planning could be completed. The BLM issued decision records for the Dry Creek TMP on December 1, 2009; the Ridgway TMP on May 13, 2013; and the Norwood-Burn Canyon TMP on November 14, 2014. The BLM approved the TMPs after multiple public comment opportunities and coordination with local government. On April 2, 2020, the BLM approved a revised Uncompahgre RMP that includes the Dry Creek, Ridgway,

and Norwood-Burn Canyon travel management areas (TMAs) and brings forward from the TMPs the travel management decisions for these areas. This proposed rule would enable the BLM to implement and enforce several key decisions in the TMPs to protect natural resources, enhance public safety, and help improve habitat quality, big-game winter range, and migration corridors. The proposed rule would not affect other existing rules.

III. Discussion of Proposed Supplementary Rule

This proposed rule would apply to more than 121,000 acres of public land within the Dry Creek, Ridgway, and Norwood-Burn Canyon TMAs administered by the BLM Uncompahgre Field Office in Montrose, Delta, San Miguel, and Ouray counties, Colorado.

This proposed rule is necessary to make enforceable travel management decisions in the TMPs that restrict certain activities and define allowable uses intended to enhance public safety, protect natural and cultural resources, eliminate non-motorized impacts on sensitive species habitat, and reduce conflicts among public land users.

The proposed rule would make enforceable restrictions limiting the operation of mechanized vehicles to designated travel routes identified in the TMPs, with the following exemptions: (1) big game hunters would be permitted to use mechanized game carts off designated travel routes outside of designated wilderness and wilderness study areas only when necessary to retrieve big game animals during authorized hunting seasons; (2) mechanized vehicles would be permitted to pull off designated travel routes up to one vehicle-width from the edge of a roadway to accommodate parking, dispersed camping, or general recreation; and (3) in the Dry Creek TMA, mechanized vehicles would be permitted to pull off within 300 feet of a designated travel route in a designated camping area identified by a BLM sign or map.

The proposed rule would make enforceable seasonal restrictions on travel in certain priority big game wintering habitats identified by the BLM Uncompahgre Field Office, in consultation with Colorado Parks and Wildlife, as the most important big game winter use areas within the TMAs. These seasonal restrictions would allow for human access during non-restricted periods while closing key areas during critical seasons to preserve the health of big game herds.

The proposed rule would make enforceable authorized dispersed camping in the Norwood-Burn Canyon and Dry Creek TMAs unless a BLM sign or map identifies an area as closed to such use, as well as authorized camping in designated campgrounds in the Dry Creek TMA identified by a BLM sign or map. The proposed rule would implement and make enforceable the closure of the Ridgway TMA to overnight use.

In the Ridgway TMA, the proposed rule would make enforceable the requirement that pets be leashed in the Uncompahgre Riverway Area and at all trailheads, as identified by BLM signs or maps, and under audible or physical control in all other areas. In the Norwood-Burn Canyon TMA, the proposed rule would make enforceable the requirement that pets be leashed at trailheads, as identified by BLM signs or maps, and under audible or physical control in all other areas. In the Dry Creek TMA, the proposed rule would make enforceable the requirement that pets be under audible or physical control.

IV. Procedural Matters

Executive Order 12866, Regulatory Planning and Review

This proposed rule is not a significant regulatory action and is not subject to review by the Office of Management and Budget under Executive Order 12866. The proposed rule would not have an effect of $100 million or more on the economy. The proposed rule would not adversely affect in a material way the economy; productivity; competition; jobs; the environment; public health or safety; or State, local, or Tribal Governments or communities. The proposed rule would not create a serious inconsistency or otherwise interfere with an action taken or planned by another agency. The proposed rule would not materially alter the budgetary effects of entitlements, grants, user fees, or loan programs, or the rights or obligations of their recipients; nor does it raise novel legal or policy issues. The proposed rule would not affect legal commercial activity; it would merely impose limitations on certain recreational activities on certain public lands to protect natural resources and enhance public safety.

Clarity of the Rule

Executive Order 12866 requires each agency to write regulations that are simple and easy to understand. The BLM invites your comments on how to make this proposed rule easier to understand, including answers to questions such as the following:

(1) Are the requirements in the proposed rule clearly stated?

(2) Does the proposed rule contain technical language or jargon that interferes with its clarity?

(3) Does the format of the proposed rule (grouping and order of sections, use of headings, paragraphing, etc.) aid or reduce its clarity?

(4) Would the proposed rule be easier to understand if it were divided into more (but shorter) sections?

(5) Is the description of the proposed rule in the **SUPPLEMENTARY INFORMATION** section of this preamble helpful to your understanding of the proposed rule? How could this description be more helpful in making the proposed rule easier to understand?

Please send any comments you have on the clarity of the proposed rule to one of the addresses specified in the **ADDRESSES** section.

National Environmental Policy Act

The proposed supplementary rule would implement key decisions in the TMPs. During the National Environmental Policy Act (NEPA) review for the TMPs, the BLM analyzed the substance of this proposed supplementary rule in three different environmental assessments (EAs): DOI–BLM–CO–SO50–2008–033 EA for the Dry Creek TMP (decision record signed December 1, 2009); DOI–BLM–CO–SO50–2011–0011 EA for the Ridgway TMP (decision record signed May 13, 2013); and DOI–BLM–CO–SO50–2012–019 EA for the Norwood-Burn Canyon TMP (decision record signed November 14, 2014). Electronic copies of the decision records for each TMP are on file at the BLM office at the address specified in the **ADDRESSES** section above. The BLM has completed a determination of NEPA adequacy (DOI–BLM–CO–S050–2021–0045 DNA) to confirm that the analyses in the TMP EAs, and the associated public involvement procedures, as well as the Uncompahgre Field Office RMP, are sufficient to support this rulemaking.

Regulatory Flexibility Act

Congress enacted the Regulatory Flexibility Act of 1980 (RFA), as amended, 5 U.S.C. 601–612, to ensure that government regulations do not unnecessarily or disproportionately burden small entities. The RFA requires a regulatory flexibility analysis if a rule would have a significant economic impact, either detrimental or beneficial, on a substantial number of small entities. The proposed rule would have no effect on business entities of any size. The proposed rule would merely impose reasonable restrictions on

certain recreational activities on certain public lands to protect natural resources and the environment and human health and safety. Therefore, the BLM has determined under the RFA that the proposed rule would not have a significant economic impact on a substantial number of small entities.

Small Business Regulatory Enforcement Fairness Act

The proposed supplementary rule does not constitute a ''major rule'' as defined at 5 U.S.C. 804(2). The proposed rule would merely impose reasonable restrictions on certain recreational activities on certain public lands to protect natural resources and the environment and human health and safety. The proposed rule would not:

(1) Have an annual effect on the economy of $100 million or more;

(2) Cause a major increase in costs or prices for consumers; individual industries; Federal, State, or local agencies; or geographic regions; or

(3) Have significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic and export markets.

Unfunded Mandates Reform Act

The proposed rule would not impose an unfunded mandate on State, local, or Tribal governments in the aggregate, or the private sector, of more than $100 million per year; nor would it have a significant or unique effect on small governments. The proposed rule would merely impose reasonable restrictions on certain recreational activities on certain public lands to protect natural resources and the environment and human health and safety. Therefore, the BLM is not required to prepare a statement containing the information required by the Unfunded Mandates Reform Act (2 U.S.C. 1531 *et seq.*).

Executive Order 12630, Governmental Actions and Interference With Constitutionally Protected Property Rights (Takings)

The proposed rule does not constitute a government action capable of interfering with constitutionally protected property rights. The proposed rule would not address property rights in any form and would not cause the impairment of constitutionally protected property rights. Therefore, the BLM has determined that the proposed rule would not cause a ''taking'' of private property or require further discussion of takings implications under this Executive Order.

Executive Order 13132, Federalism

The proposed rule 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. Therefore, in accordance with Executive Order 13132, the BLM has determined that this proposed rule does not have sufficient federalism implications to warrant preparation of a Federalism Assessment.

Executive Order 12988, Civil Justice Reform

Under Executive Order 12988, the BLM Colorado State Director has determined that the proposed rule would not unduly burden the judicial system and that it meets the requirements of Sections 3(a) and 3(b)(2) of the Order.

Executive Order 13175, Consultation and Coordination With Indian Tribal Governments

In accordance with Executive Order 13175, the BLM has found that the proposed rule does not include policies that have Tribal implications and would have no bearing on trust lands or lands for which title is held in fee status by Indian Tribes or U.S. government-owned lands managed by the Bureau of Indian Affairs.

Information Quality Act

In developing the proposed rule, the BLM did not conduct or use a study, experiment, or survey requiring peer review under the Information Quality Act (Section 515 of Pub. L. 106–554).

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

The proposed rule does not comprise a significant energy action. The proposed rule would not have an adverse effect on energy supply, production, or consumption and has no connection with energy policy.

Paperwork Reduction Act

The proposed rule does not contain information collection requirements that the Office of Management and Budget must approve under the Paperwork Reduction Act of 1995, 44 U.S.C. 3501–3521.

Author

The principal author of the proposed supplementary rule is Caroline Kilbane, Outdoor Recreation Planner, BLM, Uncompahgre Field Office.

V. Proposed Supplementary Rule

For the reasons stated in the preamble, and under the authorities for supplementary rules found at 43 U.S.C. 1740, and 43 CFR 8365.1–6, the BLM Colorado State Director proposes to establish a supplementary rule for BLM-managed public lands in the Dry Creek, Ridgway, and Norwood-Burn Canyon Travel Management Areas located in Montrose, Delta, San Miguel, and Ouray counties, Colorado, to read as follows:

Proposed Supplementary Rule for Dry Creek, Ridgway, and Burn Canyon

Definitions

Camping means erecting a tent or a shelter of natural or synthetic materials; preparing a sleeping bag or other bedding material for use; or parking a motor vehicle, motor home, or trailer for the purpose or apparent purpose of overnight occupancy.

Designated travel routes means roads, primitive roads, and trails open or limited to specified modes of travel and identified on: (1) a BLM sign; or (2) a map of designated roads and trails that is maintained and available for public inspection at the BLM Uncompahgre Field Office, Colorado. Designated routes are open or limited to public use in accordance with any limits and restrictions as are specified in the Uncompahgre Resource Management Plan (RMP), the Dry Creek Travel Management Plan (TMP), the Ridgway TMP, the Norwood-Burn Canyon TMP, in future decisions implementing the RMP, or in this supplementary rule. Restrictions may include signs or physical barriers such as gates, fences, posts, branches, or rocks.

Mechanized vehicle means a vehicle using a mechanical device not powered by a motor, such as a bicycle.

Pet means any domesticated or tamed animal that is kept as a companion.

Prohibited Acts

Dry Creek Travel Management Area (TMA) Prohibited Acts

(1) You must not operate or possess a mechanized vehicle except on designated travel routes, unless:

(a) You are using a mechanized game cart for the purpose of retrieving a large game animal during authorized hunting seasons, outside of Congressionally designated wilderness areas and wilderness study areas;

(b) You are using a mechanized vehicle for the purpose of parking within one vehicle-width of the edge of a designated travel route for dispersed camping, where allowed, or general recreation; or

(c) You are using a mechanized vehicle in a designated camping area as designated by a BLM sign or map and are within 300 feet of the designated travel route.

(2) You must not operate or possess a mechanized vehicle on specific routes that cross priority big game wintering habitat from December 1 to April 15 or December 1 to March 31, as designated by a BLM sign or map, except to access private inholdings with proper authorization.

(3) Pets must be controlled by physical or audible means.

Ridgway TMA Prohibited Acts

You must not operate or possess a mechanized vehicle except on designated travel routes, unless you are using a mechanized game cart for the purpose of retrieving a large game animal during authorized hunting seasons.

(1) All public access is prohibited in priority big game wintering habitat from December 1 to April 30, as designated by a BLM sign or map, except to access private inholdings with proper authorization and within the Uncompahgre Riverway Area.

(2) Pets must remain on leashes within the Uncompahgre Riverway Area and at trailheads designated by a BLM sign or map. In all other areas, pets must be controlled by physical or audible means.

(3) Overnight use is not allowed.

(4) Mechanized vehicles must be parked within one vehicle-width of the edge of a designated travel route.

Norwood-Burn Canyon TMA Prohibited Acts

(1) You must not operate or possess a mechanized vehicle except on designated travel routes, unless:

(a) You are using a mechanized game cart for the purpose of retrieving a large game animal during authorized hunting seasons; or

(b) You are using a mechanized vehicle for the purpose of parking within one vehicle-width of the edge of a designated travel route for dispersed camping or general recreation.

(2) You must not operate or possess a mechanized vehicle on any route that crosses priority big game wintering habitat from December 1 to April 30, as designated by a BLM sign or map, except to access private inholdings with proper authorization.

(3) Dispersed camping is allowed unless closed by a BLM sign or map.

(4) Pets must remain on leashes at trailheads designated by BLM signs or maps. In all other areas, pets must be controlled by physical or audible means.

Exemptions

Any Federal, state, local, or military persons acting within the scope of their official duties; members of an organized rescue or fire-fighting force performing an official duty; and persons who are expressly authorized or approved by the BLM.

Enforcement

Under Section 303(a) of the Federal Land Policy and Management Act of 1976, 43 U.S.C. 1733(a) and 43 CFR 8360.0–7, any person who violates any of these supplementary rules on public lands within Colorado may be tried before a United States Magistrate and fined no more than $1,000, imprisoned for no more than 12 months, or both. Such violations may also be subject to the enhanced fines provided for by 18 U.S.C. 3571.

Douglas Vilsack,

BLM Colorado State Director.

[FR Doc. 2022–25460 Filed 11–25–22; 8:45 am]

BILLING CODE 4310–JB–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Parts 13 and 22

[Docket No. FWS–HQ–MB–2020–0023; FF09M32000–234–FXMB12320900000]

RIN 1018–BE70

Permits for Incidental Take of Eagles and Eagle Nests

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rule; extension of public comment period.

SUMMARY: We, the U.S. Fish and Wildlife Service (Service), are extending the public comment period on our September 30, 2022, proposed rule to consider revisions to regulations authorizing the issuance of permits for eagle incidental take and eagle nest take. We are extending the comment period for 30 days to offer interested persons an additional opportunity to comment on the proposed rule. Comments previously submitted need not be resubmitted and will be fully considered in preparation of the final rule.

DATES: *Comment submission:* The public comment period on the proposed rule that published on September 30, 2022, at 87 FR 59598 is extended. We will accept comments received or postmarked on or before December 29, 2022. Comments submitted electronically using the Federal eRulemaking Portal (see **ADDRESSES**, below) must be received by 11:59 p.m. eastern time on the closing date, and comments submitted by U.S. mail must be postmarked by that date to ensure consideration.

ADDRESSES:

Document availability: The proposed rule and supporting documents, including the draft environmental review, are available at *https://www.regulations.gov* under Docket No. FWS–HQ–MB–2020–0023.

Written comments: You may submit comments by one of the following methods:

(1) *Electronically:* Go to the Federal eRulemaking Portal: *https://www.regulations.gov.* In the Search box, enter FWS–HQ–MB–2020–0023, which is the docket number for this rulemaking. Then, click on the Search button. On the resulting page, in the Search panel on the left side of the screen, under the Document Type heading, check the Proposed Rule box to locate this document. You may submit a comment by clicking on ''Comment.''

(2) *By hard copy:* Submit by U.S. mail to: Public Comments Processing, Attn: FWS–HQ–MB–2020–0023, U.S. Fish and Wildlife Service, MS: PRB/3W, 5275 Leesburg Pike, Falls Church, VA 22041–3803.

We request that you send comments only by the methods described above. We will post all comments on *https://www.regulations.gov.* This generally means that we will post any personal information you provide us (see Public Comments, below, for more information).

FOR FURTHER INFORMATION CONTACT: Jerome Ford, Assistant Director—Migratory Birds Program, U.S. Fish and Wildlife Service, telephone: (703) 358–2606. Individuals in the United States who are deaf, deafblind, hard of hearing, or have a speech disability may dial 711 (TTY, TDD, or TeleBraille) to access telecommunications relay services. Individuals outside the United States should use the relay services offered within their country to make international calls to the point-of-contact in the United States.

SUPPLEMENTARY INFORMATION:

Background

On September 30, 2022, we published a proposed rule (87 FR 59598) to consider revisions to regulations authorizing the issuance of permits for eagle incidental take and eagle nest take under the Bald and Golden Eagle Protection Act (16 U.S.C. 668–668d). The purpose of these revisions is to

increase the efficiency and effectiveness of permitting, facilitate and improve compliance, and increase the conservation benefit for eagles. In addition to continuing to authorize specific permits, we propose the creation of general permits for certain activities under prescribed conditions. We propose a general permit option for qualifying wind-energy generation projects, power line infrastructure, activities that may disturb breeding bald eagles, and bald eagle nest take. We propose to remove the current third-party monitoring requirement from eagle incidental take permits. We also propose to update current permit fees and clarify definitions.

With this document, we are announcing an extension of the comment period for an additional 30 days (see **DATES**, above) to allow the public further opportunity to provide comments on the proposed rule.

Public Comments

If you already submitted comments or information on the September 30, 2022 (87 FR 59598), proposed rule, please do not resubmit them. Any such comments are incorporated as part of the public record of the rulemaking proceeding, and we will fully consider them in the preparation of any final rule.

You may submit your comments and materials by one of the methods listed in **ADDRESSES**. We request that you send comments only by the methods described in **ADDRESSES**.

If you submit information via *https://www.regulations.gov,* your entire submission—including your personal identifying information—will be posted on the website. If your submission is made via a hardcopy that includes personal identifying information, you may request at the top of your document that we withhold this information from public review. However, we cannot guarantee that we will be able to do so. We will post all hardcopy submissions on *https://www.regulations.gov.*

Authority

The authority for this action is the Bald and Golden Eagle Protection Act (16 U.S.C. 668–668d).

Shannon A. Estenoz,

Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 2022–25837 Filed 11–25–22; 8:45 am]

BILLING CODE 4333–15–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

[Docket Nos. FWS–R4–ES–2022–0104, FWS–R4–ES–2022–0116, FWS–R4–ES–20220125, FWS–R4–ES–2022–0022; FF09E21000 FXES1111090FEDR 234]

RINs 1018–BG24; 1018–BE51; 1018–BE48; 1018–BE84

Endangered and Threatened Wildlife and Plants; Extending the Comment Periods for Four Proposed Rules

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rules; extension of the comment periods.

SUMMARY: We, the U.S. Fish and Wildlife Service (Service), announce that we are extending the comment periods for four proposed rules under the Endangered Species Act of 1973 (Act), as amended. On September 27, 2022, we published a proposed rule to list the Florida Keys mole skink (*Plestiodon egregius egregius*) as a threatened species with a rule issued under section 4(d) of the Act and to designate its critical habitat. On October 14, 2022, we published proposed rules to designate critical habitat for *Chamaecrista lineata* var. *keyensis* (Big Pine partridge pea), *Chamaesyce deltoidea* ssp. *serpyllum* (wedge spurge), *Linum arenicola* (sand flax), and *Argythamnia blodgettii* (Blodgett's silverbush); to designate critical habitat for *Sideroxylon reclinatum* ssp. *austrofloridense* (Everglades bully), *Digitaria pauciflora* (Florida pineland crabgrass), *Chamaesyce deltoidea* ssp. *pinetorum* (pineland sandmat), and *Dalea carthagenensis* var. *floridana* (Florida prairie-clover); to list the Key ring-necked snake (*Diadophis punctatus acricus*) and the rim rock crowned snake (*Tantilla oolitica*) as endangered species, and to designate critical habitat for the Key ring-necked snake and the rim rock crowned snake. We are extending the comment period for each of these proposed rules to allow all interested parties additional time to comment on the proposed rules following the impacts of Hurricane Ian. Comments previously submitted need not be resubmitted, as they will be fully considered in preparing the final determinations.

DATES: The comment periods for the proposed rules published on September 27, 2022, at 87 FR 58648, and on October 14, 2022, at 87 FR 62502, 87 FR 62564, and 87 FR 62614 are extended. We will accept comments received or postmarked on or before January 12, 2023. Comments submitted electronically using the Federal eRulemaking Portal (see **ADDRESSES**, below) must be received by 11:59 p.m. eastern time on the closing date.

ADDRESSES:

Availability of documents: You may obtain copies of the proposed rules and associated documents on the internet at *https://www.regulations.gov* under the appropriate docket number (see Table 1, below).

Written comments: You may submit written comments by one of the following methods:

(1) *Electronically:* Go to the Federal eRulemaking Portal: *https://www.regulations.gov.* In the Search box, enter the appropriate docket number (see table 1, below). Then, click on the Search button. On the resulting page, in the Search panel on the left side of the screen, under the Document Type heading, check the Proposed Rule box to locate this document. You may submit a comment by clicking on ''Comment.'' Please ensure you have found the correct document before submitting your comments. If your comments will fit in the provided comment box, please use this feature of *https://www.regulations.gov,* as it is most compatible with our comment review procedures. If you attach your comments as a separate document, our preferred file format is Microsoft Word. If you attach multiple comments (such as form letters), our preferred format is a spreadsheet in Microsoft Excel.

(2) *By hard copy:* Submit by U.S. mail to: Public Comments Processing, Attn: [Insert appropriate docket number; see table 1, below], U.S. Fish and Wildlife Service, MS: PRB/3W, 5275 Leesburg Pike, Falls Church, VA 22041–3803.

We request that you send comments only by the methods described above. We will post all comments on *https://www.regulations.gov.* This generally means that we will post any personal information you provide us (see **SUPPLEMENTARY INFORMATION**, below, for more information).

FOR FURTHER INFORMATION CONTACT: Lourdes Mena, Division Manager, Classification and Recovery, Florida Ecological Services Field Office, 7915 Baymeadows Way, Suite 200, Jacksonville, FL 32256–7517; *lourdes_mena@fws.gov;* telephone 904–731–3134. Individuals in the United States who are deaf, deafblind, hard of hearing, or have a speech disability may dial 711 (TTY, TDD, or TeleBraille) to access telecommunications relay services. Individuals outside the United States

should use the relay services offered within their country to make international calls to the point-of-contact in the United States.

SUPPLEMENTARY INFORMATION:

TABLE 1—LIST OF PROPOSED RULES EXTENDED FOR PUBLIC COMMENT

Proposed rule title	**Federal Register** citation	Docket No.
Florida Keys Mole Skink Threatened Species Status and Critical Habitat Designation.	87 FR 58648; September 27, 2022	FWS–R4–ES–2022–0104
Big Pine Partridge Pea, Wedge Spurge, Sand Flax, and Blodgett's Silverbush Critical Habitat Designation.	87 FR 62502; October 14, 2022	FWS–R4–ES–2022–0116
Everglades Bully, Florida Pineland Crabgrass, Pineland Sandmat, and Florida Prairie-Clover Critical Habitat Designation.	87 FR 62564; October 14, 2022	FWS–R4–ES–2022–0125
Key Ring-Necked Snake and Rim Rock Crowned Snake Endangered Species Status and Critical Habitat Designation.	87 FR 62614; October 14, 2022	FWS–R4–ES–2022–0022

On September 27, 2022, we published a proposed rule to list the Florida Keys mole skink as a threatened species under the Act (16 U.S.C. 1531 *et seq.*) with a proposed 4(d) rule, and to designate its critical habitat (87 FR 58648). The proposed rule established a 60-day public comment period, ending November 28, 2022. We are extending this comment period until January 12, 2023. Please refer to the proposed rule for more information on our proposed actions and the specific information we seek.

On October 14, 2022, we published proposed rules to designate critical habitat for Big Pine partridge pea, wedge spurge, sand flax, and Blodgett's silverbush (87 FR 62502); to designate critical habitat for Everglades bully, Florida pineland crabgrass, pineland sandmat, and Florida prairie-clover (87 FR 62564); to list the Key ring-necked snake and rim rock crowned snake as endangered species, and to designate critical habitat for the Key ring-necked snake and the rim rock crowned snake (87 FR 62614). The proposed rules established a 60-day public comment period, ending December 13, 2022. We are extending these comment periods until January 12, 2023. Please refer to the proposed rules for more information on our proposed actions and the specific information we seek.

On September 28, 2022, Hurricane Ian made landfall along the southwest Florida coast. Due to the impacts from the hurricane and the ongoing recovery efforts, the Service received multiple requests for additional time to review and comment on the proposed rules. We are therefore extending the comment period for these proposed rules (see table 1) by a minimum of an additional 30 days, until January 12, 2023.

If you already submitted comments or information on the September 27, 2022 (87 FR 58648) and October 14, 2022 (87 FR 62502, 87 FR 62564, 87 FR 62614) proposed rules, please do not resubmit them. Any such comments are incorporated as part of the public record of the rulemaking proceeding, and we will fully consider them in the preparation of our final determination.

Comments should be as specific as possible. Please include sufficient information with your submission (such as scientific journal articles or other publications) to allow us to verify any scientific or commercial information you assert. Please note that submissions merely stating support for, or opposition to, the action under consideration without providing supporting information, although noted, will not be considered in making a determination, as section 4(b)(1)(A) of the Act directs us to make determinations as to whether any species is an endangered species or a threatened species ''solely on the basis of the best scientific and commercial data available.''

You may submit your comments and materials by one of the methods listed in **ADDRESSES**. We request that you send comments only by the methods described in **ADDRESSES**.

If you submit information via *https://www.regulations.gov,* your entire submission—including your personal identifying information—will be posted on the website. If your submission is made via a hardcopy that includes personal identifying information, you may request at the top of your document that we withhold this information from public review. However, we cannot guarantee that we will be able to do so. We will post all hardcopy submissions on *https://www.regulations.gov.*

Authors

The primary authors of this document are the Ecological Services staff of the Southeast Regional Office, U.S. Fish and Wildlife Service.

Authority

The authority for this action is the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*).

Stephen Guertin,

Acting Director, U.S. Fish and Wildlife Service.

[FR Doc. 2022–25918 Filed 11–25–22; 8:45 am]

BILLING CODE 4333–15–P

Notices

Federal Register
Vol. 87, No. 227
Monday, November 28, 2022

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

ADMINISTRATIVE CONFERENCE OF THE UNITED STATES

Notice of Public Meeting of the Assembly of the Administrative Conference of the United States

AGENCY: Administrative Conference of the United States.

ACTION: Notice.

SUMMARY: The Assembly of the Administrative Conference of the United States will meet during a one-day hybrid plenary session to consider three proposed recommendations and to conduct other business. Written comments may be submitted in advance, and the meeting will be accessible to the public.

DATES: The meeting will take place on Thursday, December 15, 2022, from 10 a.m.–4:45 p.m. The meeting may adjourn early if all business is finished.

ADDRESSES: For those attending in person, the meeting will be held at The George Washington University Law School in the Jacob Burns Moot Court Room, 2000 H Street NW, Washington, DC 20052. There will be a virtual attendance option. Information on how the public can access the meeting will be available on the agency's website prior to the meeting at *https://www.acus.gov/meetings-and-events/plenary-meeting/78th-plenary-session.*

FOR FURTHER INFORMATION CONTACT: Shawne McGibbon, General Counsel (Designated Federal Officer), Administrative Conference of the United States, Suite 706 South, 1120 20th Street NW, Washington, DC 20036; Telephone 202–480–2080; email *smcgibbon@acus.gov.*

SUPPLEMENTARY INFORMATION: The Administrative Conference of the United States makes recommendations to federal agencies, the President, Congress, and the Judicial Conference of the United States regarding the improvement of administrative procedures (5 U.S.C. 594). The membership of the Conference, when meeting in plenary session, constitutes the Assembly of the Conference (5 U.S.C. 595).

Agenda: Three proposed recommendations will be considered by the Assembly. In addition, there will be updates on past, current, and pending Conference initiatives, as well as other business. Summaries of the recommendations appear below:

Precedential Decision Making in Agency Adjudication. This proposed recommendation identifies best practices on the use of precedential decisions in agency adjudication. It addresses whether agencies should issue precedential decisions and, if so, according to what criteria; what procedures agencies should follow to designate decisions as precedential and overrule previously designated decisions; and how agencies should communicate precedential decisions internally and publicly. It also recommends that agencies codify their procedures for precedential decision making in their rules of practice.

Public Availability of Settlement Agreements in Agency Enforcement Proceedings. This proposed recommendation identifies best practices for providing public access to settlement agreements reached during administrative enforcement proceedings. It recommends that agencies develop policies addressing when to post such agreements on their websites; provides factors for agencies to consider in determining which agreements to post on their websites; and identifies best practices for presenting settlement agreements in a clear, logical, and accessible manner without disclosing sensitive or otherwise protected information.

Regulatory Enforcement Manuals. This proposed recommendation identifies best practices for agencies regarding the use and availability of enforcement manuals—that is, documents that provide agency personnel with a single, authoritative resource for enforcement-related statutes, rules, and policies. It recommends that agencies present enforcement manuals in a clear, logical, and comprehensive fashion; periodically review and update them as needed; ensure enforcement personnel can easily access them; and consider making manuals, or portions of manuals, publicly available.

Additional information about the proposals and the agenda, as well as any changes or updates to the same, can be found at the 78th Plenary Session page on the Conference's website prior to the start of the meeting: at *https://www.acus.gov/meetings-and-events/plenary-meeting/78th-plenary-session.*

Public Participation: The Conference welcomes the virtual attendance of the public at the meeting. Members of the public wishing to view the meeting are asked to RSVP online at the 78th Plenary Session web page shown above no later than two days before the meeting to ensure adequate bandwidth. A link to a livestream of the meeting will be posted the morning of the meeting on the 78th Plenary Session web page. A video recording of the meeting will be available on the Conference's website shortly after the conclusion of the event at *https://youtube.com/channel/UC1Gu44Jq1U7XsGdC9Tfl_zA.*

Written Comments: Persons who wish to comment on any of the proposed recommendations may do so by submitting a written statement either online by clicking ''Submit a comment'' on the 78th Plenary Session web page shown above or by mail addressed to: December 2022 Plenary Session Comments, Administrative Conference of the United States, Suite 706 South, 1120 20th Street NW, Washington, DC 20036. Written submissions must be received no later than 10:00 a.m. (EDT), Friday, December 9, 2022, to ensure consideration by the Assembly.

(Authority: 5 U.S.C. 595)

Dated: November 22, 2022.

Shawne McGibbon,

General Counsel.

[FR Doc. 2022–25895 Filed 11–25–22; 8:45 am]

BILLING CODE 6110–01–P

DEPARTMENT OF AGRICULTURE

Forest Service

Sanders Resource Advisory Committee

AGENCY: Forest Service, Agriculture (USDA).

ACTION: Notice of meeting.

SUMMARY: The Sanders Resource Advisory Committee (RAC) will hold a public meeting according to the details shown below. The committee is authorized under the Secure Rural Schools and Community Self-Determination Act (the Act) and operates in compliance with the Federal Advisory Committee Act (FACA). The purpose of the committee is to improve collaborative relationships and to provide advice and recommendations to the Forest Service concerning projects and funding consistent with Title II of the Act, as well as make recommendations on recreation fee proposals for sites on the Lolo National Forest, consistent with the Federal Lands Recreation Enhancement Act. General information and meeting details can be found at the following website: *https://www.fs.usda.gov/detail/lolo/workingtogether/advisorycommittees/?cid=fsm9_021467.*

DATES: The meeting will be held on December 13, 2022, from 5 p.m. to 7 p.m., Mountain Standard Time. All RAC meetings are subject to cancellation. For status of the meeting prior to attendance, please contact the person listed under **FOR FURTHER INFORMATION CONTACT**.

ADDRESSES: This meeting is open to the public and will be held at the Thompson Falls Courthouse, located at 1111 W Main Street W, Thompson Falls, Montana 59873. The public may also join virtually via telephone and/or video conference. Virtual meeting participation details can be found on the website listed under **SUMMARY** or by contacting the person listed under **FOR FURTHER INFORMATION CONTACT**.

Written comments may be submitted as described under **SUPPLEMENTARY INFORMATION**. All comments, including names and addresses when provided, are placed in the record and are available for public inspection and copying. The public may inspect comments received upon request.

FOR FURTHER INFORMATION CONTACT: David Wrobleski, Designated Federal Officer (DFO), by phone at 406–826–4321 or email at *david.wrobleski@usda.gov* or Heather Berman, RAC Coordinator at 406–210–5287 or email at *heather.berman@usda.gov.*

Individuals who use telecommunication devices for the deaf and hard of hearing (TDD) may call the Federal Relay Service (FRS) at 1–800–877–8339, 24 hours a day, every day of the year, including holidays.

SUPPLEMENTARY INFORMATION: The purpose of the meeting is to:

1. Approve meeting minutes; and

2. Make funding recommendations on Title II projects.

The meeting is open to the public. The agenda will include time for individuals to make oral statements of three minutes or less. Individuals wishing to make an oral statement should make a request in writing at least three days prior to the meeting date to be scheduled on the agenda. Anyone who would like to bring related matters to the attention of the committee may file written statements with the committee staff before or after the meeting. Written comments and requests for time for oral comments must be sent to Heather Berman, P.O. Box 429, 408 Clayton Street, Plains, Montana 59872; or by email to *heather.berman@usda.gov.*

Persons with disabilities who require alternative means of communication for program information (*e.g.,* Braille, large print, audiotape, American Sign Language, etc.) should contact the responsible Agency or USDA's TARGET Center at 202–720–2600 (voice and TTY) or contact USDA through the Federal Relay Service at 800–877–8339. Additionally, program information may be made available in languages other than English.

USDA programs are prohibited from discriminating based on race, color, national origin, religion, sex, gender identity (including gender expression), sexual orientation, disability, age, marital status, family/parental status, income derived from a public assistance program, political beliefs, or reprisal or retaliation for prior civil rights activity, in any program or activity conducted or funded by USDA (not all bases apply to all programs). Remedies and complaint filing deadlines vary by program or incident.

Equal opportunity practices in accordance with USDA's policies will be followed in all appointments to the Committee. To ensure that the recommendations of the Committee have taken in account the needs of the diverse groups served by USDA, membership shall include to the extent possible, individuals with demonstrated ability to represent minorities, women, and person with disabilities. USDA is an equal opportunity provider, employer, and lender.

Dated: November 22, 2022.

Cikena Reid,

USDA Committee Management Officer.

[FR Doc. 2022–25841 Filed 11–25–22; 8:45 am]

BILLING CODE 3411–15–P

DEPARTMENT OF AGRICULTURE

Forest Service

Butte County Resource Advisory Committee

AGENCY: Forest Service, USDA.

ACTION: Notice of meeting.

SUMMARY: The Butte County Resource Advisory Committee (RAC) will hold a public meeting according to the details shown below. The committee is authorized under the Secure Rural Schools and Community Self-Determination Act (the Act) and operates in compliance with the Federal Advisory Committee Act (FACA). The purpose of the committee is to improve collaborative relationships and to provide advice and recommendations to the Forest Service concerning projects and funding consistent with title II of the Act, as well as make recommendations on recreation fee proposals for sites on the Plumas National Forest, consistent with the Federal Lands Recreation Enhancement Act. General information and meeting details can be found at the following website: *http://www.fs.usda.gov/main/pts/specialprojects/racweb.*

DATES: The meeting will be held on December 15, 2022 at 6 p.m. Pacific standard time. All RAC meetings are subject to cancellation. For status of the meeting prior to attendance, please contact the person listed under **FOR FURTHER INFORMATION CONTACT**.

ADDRESSES: This meeting is open to the public and will be held at the Feather River Ranger District, located at 875 Mitchell Blvd., Oroville, California 95965. The public may also join virtually via telephone and/or video conference. Virtual meeting participation details can be found on the website listed under **SUMMARY** or by contacting the person listed under **FOR FURTHER INFORMATION CONTACT**.

Written comments may be submitted as described under **SUPPLEMENTARY INFORMATION**. All comments, including names and addresses when provided, are placed in the record and are available for public inspection and copying. The public may inspect comments received upon request.

FOR FURTHER INFORMATION CONTACT: David Brillenz, Designated Federal Officer (DFO), by phone at 530–616–0404 or email at *david.brillenz@usda.gov.*

Individuals who use telecommunication devices for the deaf and hard of hearing (TDD) may call the Federal Relay Service (FRS) at 1–800–

877–8339, 24 hours a day, every day of the year, including holidays.

SUPPLEMENTARY INFORMATION: The purpose of the meeting is to:

1. Review and make funding recommendations on title II projects.

2. Establish recruitment program for new Committee nominations since most members terms expire on December 31st, 2022.

The meeting is open to the public. The agenda will include time for individuals to make oral statements of three minutes or less. Individuals wishing to make an oral statement should make a request in writing at least three days prior to the meeting date to be scheduled on the agenda. Anyone who would like to bring related matters to the attention of the committee may file written statements with the committee staff before or after the meeting. Written comments and requests for time for oral comments must be sent to David Brillenz, 875 Mitchell Blvd., Oroville, CA 95965 or by email to *david.brillenz@usda.gov.* Persons with disabilities who require alternative means of communication for program information (*e.g.,* Braille, large print, audiotape, American Sign Language, etc.) should contact the responsible Agency or USDA's TARGET Center at 202–720–2600 (voice and TTY) or contact USDA through the Federal Relay Service at 800–877–8339. Additionally, program information may be made available in languages other than English.

USDA programs are prohibited from discriminating based on race, color, national origin, religion, sex, gender identity (including gender expression), sexual orientation, disability, age, marital status, family/parental status, income derived from a public assistance program, political beliefs, or reprisal or retaliation for prior civil rights activity, in any program or activity conducted or funded by USDA (not all bases apply to all programs). Remedies and complaint filing deadlines vary by program or incident.

Equal opportunity practices in accordance with USDA's policies will be followed in all appointments to the Committee. To ensure that the recommendations of the Committee have taken in account the needs of the diverse groups served by USDA, membership shall include to the extent possible, individuals with demonstrated ability to represent minorities, women, and person with disabilities. USDA is an equal opportunity provider, employer, and lender.

Dated: November 22, 2022.

Cikena Reid,

USDA Committee Management Officer.

[FR Doc. 2022–25838 Filed 11–25–22; 8:45 am]

BILLING CODE 3411–15–P

DEPARTMENT OF AGRICULTURE

Forest Service

Sanders Resource Advisory Committee

AGENCY: Forest Service, Agriculture (USDA).

ACTION: Notice of meeting.

SUMMARY: The Sanders Resource Advisory Committee (RAC) will hold a public meeting according to the details shown below. The committee is authorized under the Secure Rural Schools and Community Self-Determination Act (the Act) and operates in compliance with the Federal Advisory Committee Act (FACA). The purpose of the committee is to improve collaborative relationships and to provide advice and recommendations to the Forest Service concerning projects and funding consistent with Title II of the Act, as well as make recommendations on recreation fee proposals for sites on the Lolo National Forest, consistent with the Federal Lands Recreation Enhancement Act. General information and meeting details can be found at the following website: *https://www.fs.usda.gov/detail/lolo/workingtogether/advisorycommittees/?cid=fsm9_021467.*

DATES: The meeting will be held on December 6, 2022, from 5 p.m. to 7 p.m., mountain Standard Time. All RAC meetings are subject to cancellation. For status of the meeting prior to attendance, please contact the person listed under **FOR FURTHER INFORMATION CONTACT**.

ADDRESSES: This meeting is open to the public and will be held at the Thompson Falls Courthouse, located at 1111 W Main Street W, Thompson Falls, Montana 59873.

The public may also join virtually via telephone and/or video conference. Virtual meeting participation details can be found on the website listed under **SUMMARY** or by contacting the person listed under **FOR FURTHER INFORMATION CONTACT**.

Written comments may be submitted as described under **SUPPLEMENTARY INFORMATION**. All comments, including names and addresses when provided, are placed in the record and are available for public inspection and copying. The public may inspect comments received upon request.

FOR FURTHER INFORMATION CONTACT: David Wrobleski, Designated Federal Officer (DFO), by phone at 406–826–4321 or email at *david.wrobleski@usda.gov* or Heather Berman, RAC Coordinator at 406–210–5287 or email at *heather.berman@usda.gov.*

Individuals who use telecommunication devices for the deaf and hard of hearing (TDD) may call the Federal Relay Service (FRS) at 800–877–8339, 24 hours a day, every day of the year, including holidays.

SUPPLEMENTARY INFORMATION: The purpose of the meeting is to:

1. Approve meeting minutes;

2. Hear from Title II project proponents and discuss Title II project proposals; and

3. Schedule the next meeting.

The meeting is open to the public. The agenda will include time for individuals to make oral statements of three minutes or less. Individuals wishing to make an oral statement should make a request in writing at least three days prior to the meeting date to be scheduled on the agenda. Anyone who would like to bring related matters to the attention of the committee may file written statements with the committee staff before or after the meeting. Written comments and requests for time for oral comments must be sent to Heather Berman, P.O. Box 429, 408 Clayton Street, Plains, Montana 59872; or by email to *heather.berman@usda.gov.* Persons with disabilities who require alternative means of communication for program information (*e.g.,* Braille, large print, audiotape, American Sign Language, etc.) should contact the responsible Agency or USDA's TARGET Center at 202–720–2600 (voice and TTY) or contact USDA through the Federal Relay Service at 800–877–8339. Additionally, program information may be made available in languages other than English.

USDA programs are prohibited from discriminating based on race, color, national origin, religion, sex, gender identity (including gender expression), sexual orientation, disability, age, marital status, family/parental status, income derived from a public assistance program, political beliefs, or reprisal or retaliation for prior civil rights activity, in any program or activity conducted or funded by USDA (not all bases apply to all programs). Remedies and complaint filing deadlines vary by program or incident.

Equal opportunity practices in accordance with USDA's policies will

be followed in all appointments to the Committee. To ensure that the recommendations of the Committee have taken in account the needs of the diverse groups served by USDA, membership shall include to the extent possible, individuals with demonstrated ability to represent minorities, women, and person with disabilities. USDA is an equal opportunity provider, employer, and lender.

Dated: November 22, 2022.

Cikena Reid,

USDA Committee Management Officer.

[FR Doc. 2022–25845 Filed 11–25–22; 8:45 am]

BILLING CODE 3411–15–P

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[S–203–2022]

Foreign-Trade Zone 222—Montgomery, Alabama, Application for Subzone, Jo-Ann Stores, LLC, Opelika, Alabama

An application has been submitted to the Foreign-Trade Zones (FTZ) Board by the Montgomery Area Chamber of Commerce, grantee of FTZ 222, requesting subzone status for the facility of Jo-Ann Stores LLC (Jo-Ann Stores), located in Opelika, Alabama. The application was submitted pursuant to the provisions of the Foreign-Trade Zones Act, as amended (19 U.S.C. 81a–81u), and the regulations of the FTZ Board (15 CFR part 400). It was formally docketed on November 21, 2022.

The proposed subzone (30 acres) is located at 3101 Anderson Road, Opelika, Alabama. No authorization for production activity has been requested at this time. The proposed subzone would be subject to the existing activation limit of FTZ 222.

In accordance with the FTZ Board's regulations, Christopher Kemp of the FTZ Staff is designated examiner to review the application and make recommendations to the Executive Secretary.

Public comment is invited from interested parties. Submissions shall be addressed to the FTZ Board's Executive Secretary and sent to: *ftz@trade.gov.* The closing period for their receipt is January 9, 2023. Rebuttal comments in response to material submitted during the foregoing period may be submitted during the subsequent 15-day period to January 23, 2023.

A copy of the application will be available for public inspection in the ''Online FTZ Information Section'' section of the FTZ Board's website, which is accessible via *www.trade.gov/ftz.*

For further information, contact Christopher Kemp at *Christopher.Kemp@trade.gov.*

Dated: November 21, 2022.

Andrew McGilvray,

Executive Secretary.

[FR Doc. 2022–25806 Filed 11–25–22; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–427–833]

Certain Preserved Mushrooms From France: Final Affirmative Determination of Sales at Less Than Fair Value

AGENCY: Enforcement and Compliance, International Trade Administration, Department of Commerce.

SUMMARY: The U.S. Department of Commerce (Commerce) determines that certain preserved mushrooms (preserved mushrooms) from France are being, or are likely to be, sold in the United States at less than fair value (LTFV).

DATES: Applicable November 28, 2022.

FOR FURTHER INFORMATION CONTACT: Christopher Williams, AD/CVD Operations, Office I, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230; telephone: (202) 482–5166.

SUPPLEMENTARY INFORMATION:

Background

On September 13, 2022, Commerce published in the **Federal Register** the *Preliminary Determination.*[1] We invited interested parties to comment on the *Preliminary Determination.* We received comments on the *Preliminary Determination* from the European Commission [2] and Giorgio Foods, Inc. (the petitioner), a domestic producer of preserved mushrooms.[3]

Period of Investigation

The period of investigation is January 1, 2021, through December 31, 2021.

Scope of the Investigation

The products covered by this investigation are preserved mushrooms from France. For a full description of the scope of this investigation, *see* Appendix I.

Analysis of Comments Received

The sole issue raised in comments that were submitted by parties in this investigation is addressed in the Issues and Decision Memorandum.[4] A list of the issues addressed in the Issues and Decision Memorandum is attached to this notice at Appendix II. The Issues and Decision Memorandum is a public document and is on file electronically via Enforcement and Compliance's Antidumping and Countervailing Duty Centralized Electronic Service System (ACCESS). ACCESS is available to registered users at *https://access.trade.gov.* In addition, a complete version of the Issues and Decision Memorandum can be accessed directly at *https://access.trade.gov/public/FRNoticesListLayout.aspx.*

Use of Adverse Facts Available

As discussed in the *Preliminary Determination,* Commerce assigned to the mandatory respondents in this investigation, Bonduelle Europe Long Life and France Champignon, estimated weighted-average dumping margins on the basis of adverse facts available (AFA), pursuant to sections 776(a) and (b) of the Tariff Act of 1930, as amended (the Act).[5] There is no new information on the record that would cause us to revisit our decision in the *Preliminary Determination.* Accordingly, for this final determination, we continue to find that the application of AFA pursuant to sections 776(a) and (b) of the Act is warranted with respect to Bonduelle Europe Long Life and France Champignon. In applying AFA, we are assigning Bonduelle Europe Long Life and France Champignon the highest margin identified in the petition, 360.88 percent.

Changes Since the Preliminary Determination

Based on the analysis of comments received, we made no changes for the final determination.

[1] *See Certain Preserved Mushrooms from France: Preliminary Affirmative Determination of Sales at Less Than Fair Value,* 87 FR 55997 (September 13, 2022) (*Preliminary Determination*).

[2] *See* European Commission's Letter, ''Comment on the Preliminary Determination Regarding the Antidumping Duty Investigation on Preserved Mushrooms from France (A–427–833),'' dated October 11, 2022 (European Commission Comments).

[3] *See* Petitioner's Letter, ''Less Than Fair Value Investigation of Certain Preserved Mushrooms from France—Petitioner's Comments in Lieu of Case Brief,'' dated October 13, 2022 (Petitioner's Comments).

[4] *See* Memorandum, ''Decision Memorandum for the Final Affirmative Determination in the Less-Than-Fair-Value Investigation of Certain Preserved Mushrooms from France,'' dated concurrently with this notice.

[5] *See Preliminary Determination,* 85 FR at 83060.

All-Others Rate

As discussed in the *Preliminary Determination,* Commerce based the all-others rate on the simple average of the dumping margins alleged in the petition, in accordance with section 735(c)(5)(B) of the Act.[6] We made no changes to the selection of the all-others rate for the final determination.

Final Determination

The final estimated weighted-average dumping margins are as follows:

Producer or exporter	Estimated weighted-average dumping margin (percent)
Bonduelle Europe Long Life	360.88
France Champignon	360.88
All Others	224.68

Disclosure

Normally, Commerce discloses to interested parties the calculations performed in connection with a final determination, in accordance with 19 CFR 351.224(b). However, because Commerce applied AFA to both mandatory respondents in this investigation, there are no calculations to disclose.

Continuation of Suspension of Liquidation

In accordance with section 735(c)(1)(B) of the Act, Commerce will instruct U.S. Customs and Border Protection (CBP) to continue to suspend liquidation of all appropriate entries of preserved mushrooms from France, as described in Appendix I to this notice, entered, or withdrawn from warehouse, for consumption on or after September 13, 2022, the date of publication of *Preliminary Determination* in the **Federal Register**.

Pursuant to section 735(c)(1)(B)(ii) of the Act and 19 CFR 351.210(d), where appropriate, Commerce will instruct CBP to require a cash deposit equal to the estimated weighted-average dumping margin or the estimated all-others rate, as follows: (1) the cash deposit rate for the respondents listed above will be equal to the company-specific estimated weighted-average dumping margin determined in this final determination; (2) if the exporter is not a respondent identified above but the producer is, then the cash deposit rate will be equal to the company-specific estimated weighted-average dumping margin established for that producer of the subject merchandise; and (3) the cash deposit rate for all other producers and exporters will be equal to the all-others estimated weighted-average dumping margin. These suspension-of-liquidation instructions will remain in effect until further notice.

U.S. International Trade Commission Notification

In accordance with section 735(d) of the Act, we will notify the U.S. International Trade Commission (ITC) of the final affirmative determination of sales at LTFV. Because Commerce's final determination is affirmative, in accordance with section 735(b)(2) of the Act, the ITC will make its final determination as to whether the domestic industry in the United States is materially injured, or threatened with material injury, by reason of imports or sales (or the likelihood of sales) for importation of preserved mushrooms from France no later than 45 days after this final determination. If the ITC determines that such injury does not exist, this proceeding will be terminated, and all cash deposits posted will be refunded and suspension of liquidation will be lifted. If the ITC determines that such injury does exist, Commerce will issue an antidumping duty order directing CBP to assess, upon further instruction by Commerce, antidumping duties on all imports of the subject merchandise entered, or withdrawn from warehouse, for consumption on or after the effective date of the suspension of liquidation, as discussed above in the ''Continuation of Suspension of Liquidation'' section.

Administrative Protective Order

This notice will serve as a final reminder to the parties subject to an administrative protective order (APO) of their responsibility concerning the disposition of proprietary information disclosed under APO in accordance with 19 CFR 351.305(a)(3). Timely written notification of return or destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and the terms of an APO is a sanctionable violation.

Notification to Interested Parties

This determination is issued and published in accordance with sections 735(d) and 777(i)(1) of the Act, and 19 CFR 351.210(c).

Dated: November 21, 2022.

Abdelali Elouaradia,

Deputy Assistant Secretary for Enforcement and Compliance.

Appendix I

Scope of the Investigation

The merchandise covered by this investigation is certain preserved mushrooms, whether imported whole, sliced, diced, or as stems and pieces. The preserved mushrooms covered under this investigation are the genus Agaricus. ''Preserved mushrooms'' refer to mushrooms that have been prepared or preserved by cleaning, blanching, and sometimes slicing or cutting. These mushrooms are then packed and heat sterilized in containers each holding a net drained weight of not more than 12 ounces (340.2 grams), including but not limited to cans or glass jars, in a suitable liquid medium, including but not limited to water, brine, butter, or butter sauce. Preserved mushrooms may be imported whole, sliced, diced, or as stems and pieces.

Excluded from the scope are ''marinated,'' ''acidified,'' or ''pickled'' mushrooms, which are prepared or preserved by means of vinegar or acetic acid, but may contain oil or other additives. To be prepared or preserved by means of vinegar or acetic acid, the merchandise must be a minimum 0.5 percent by weight acetic acid.

The merchandise subject to this investigation is classifiable under subheadings 2003.10.0127, 2003.10.0131, and 2003.10.0137 of the Harmonized Tariff Schedule of the United States (HTSUS). The subject merchandise may also be classified under HTSUS subheadings 2003.10.0143, 2003.10.0147, and 2003.10.0153. Although the HTSUS subheadings are provided for convenience and customs purposes, the written description of the merchandise under investigation is dispositive.

Appendix II

List of Topics Discussed in the Issues and Decision Memorandum

[FR Doc. 2022–25912 Filed 11–25–22; 8:45 am]

BILLING CODE 3510–DS–P

[6] *Id.*

DEPARTMENT OF COMMERCE

National Institute of Standards and Technology

Information Collection Activities; Submission to the Office of Management and Budget (OMB) for Review and Approval; Comment Request; NIST Invention Disclosure and Inventor Information Collection

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 August 31, 2022, during a 60-day comment period. This notice allows for an additional 30 days for public comments.

Agency: National Institute of Standards and Technology (NIST).

Title: NIST Invention Disclosure and Inventor Information Collection.

OMB Control Number: 0693–0085.

Form Number(s): NIST DN–45.

Type of Request: Regular submission, extension of a current information collection.

Number of Respondents:

Invention Disclosure Form: 10 per year.

Inventor Information Form: 100 per year.

Average Hours per Response:

Invention Disclosure Form: 3 hours.

Inventor Information Form: 30 minutes.

Burden Hours:

Invention Disclosure Form: 30 hours.

Inventor Information Form: 50 hours.

Needs and Uses: The NIST DN–45 Invention Disclosure Form is used to collect information pertaining to inventions created by Federal employees or by non-Federally employed individuals who have created an invention using NIST laboratory facilities as NIST Associates. The collection of this information is required to protect the United States rights to inventions created using Federal resources. The information collected on the form allows the Government to determine: (1) if an invention has been created; (2) the status of any statutory bar that pertains to the potential invention or that may pertain to the invention in the future. The information collected may allow the Government to begin a patent application process.

The Inventor Information Sheet is used to collect from individuals who have been named as potential inventors on a NIST Invention Disclosure Form. The collection of this information is used for multiple purposes:

(1) Some of the information may be required to file a patent application, if NIST seeks to protect a federally owned invention, pursuant to 35 U.S.C. 207.

(2) The form, in part, is a statement made by the respondent declaring whether the respondent considers herself/himself to be an inventor.

(3) Some of the information is needed for NIST to determine potential assignees with which NIST would potentially negotiate consolidation of rights and other patent related matters.

(4) Some of the information helps NIST determine under which statutory authority NIST may consolidate rights in an invention with other potential assignees.

(5) Country citizenship information is required to determine whether a Scientific and Technology agreement or treaty with the respondent's country may impact the U.S. Government's rights to the invention.

The information is collected by the Technology Partnerships Office and shared with the Office of Chief Counsel at NIST. The information may also be shared with non-Governmental entities that may have ownership rights to the potential invention. The Government collects this information to execute the policy and objective of the Congress expressed at 35 U.S.C. 200. 35 U.S.C. 207 authorizes Federal agencies to apply for, obtain, and maintain patents or other forms of protection on inventions in which the Federal Government owns a right, title, or interest. 35 U.S.C. 207 also authorizes each Federal agency to undertake all other suitable and necessary steps to protect and administer rights to federally owned inventions on behalf of the Federal government.

The information collected through the NIST DN–45 is necessary for NIST to execute the authority granted at 35 U.S.C. 207.

Affected Public: Individuals.

Frequency: On occasion.

Respondent's Obligation: Voluntary.

This information collection request may be viewed at *www.reginfo.gov.* Follow the instructions to view the Department of Commerce collections currently under review by OMB.

Written comments and recommendations for the proposed information collection should be submitted within 30 days of the publication of this notice on the following website *www.reginfo.gov/public/do/PRAMain.* Find this particular information collection by selecting ''Currently under 30-day Review—Open for Public Comments'' or by using the search function and entering either the title of the collection or the OMB Control Number 0693–0085.

Sheleen Dumas,

Department PRA Clearance Officer, Office of the Chief Information Officer, Commerce Department.

[FR Doc. 2022–25865 Filed 11–25–22; 8:45 am]

BILLING CODE 3510–13–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[RTID 0648–XC574]

Mid-Atlantic Fishery Management Council (MAFMC); Public Meetings

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of public meetings.

SUMMARY: The Mid-Atlantic Fishery Management Council (Council) will hold public meetings of the Council and its Executive Committee, including joint sessions with the Atlantic States Marine Fisheries Commission's (ASMFC) Summer Flounder, Scup, and Black Sea Bass Management Board and the ASMFC Interstate Fishery Management Program Policy Board.

DATES: The meetings will be held Monday, December 12, 2022 through Thursday, December 15, 2022. For agenda details, see **SUPPLEMENTARY INFORMATION**.

ADDRESSES: This meeting will be conducted in a hybrid format, with options for both in person and webinar participation.

Meeting address: The meeting will be held at the Westin Annapolis, 100 Westgate Circle, Annapolis, MD 21401; telephone: (410) 972–4300.

Webinar registration details will be available on the Council's website at *https://www.mafmc.org/briefing/december-2022.*

Council address: Mid-Atlantic Fishery Management Council, 800 N State St., Suite 201, Dover, DE 19901; telephone: (302) 674–2331; *www.mafmc.org.*

FOR FURTHER INFORMATION CONTACT: Christopher M. Moore, Ph.D., Executive Director, Mid-Atlantic Fishery Management Council; telephone: (302)

526–5255. The Council's website, *www.mafmc.org* also has details on the meeting location, proposed agenda, webinar listen-in access, and briefing materials.

SUPPLEMENTARY INFORMATION: The following items are on the agenda, although agenda items may be addressed out of order (changes will be noted on the Council's website when possible.)

Monday, December 12, 2022

Executive Committee (Closed Session)

Ricks E Savage Award

Council Convenes

Habitat Activities Update

Presentation from Greater Atlantic Regional Fisheries Office Habitat and Ecosystem Services Division on activities of interest (aquaculture, wind, and other projects) in the region

Offshore Wind Updates

Updates from the Bureau of Ocean Energy Management (Karen Baker, BOEM Chief—Office of Renewable Energy Programs)
Updates on state working group on a fisheries compensation fund

Atlantic Surfclam and Ocean Quahog Species Separation Requirements Amendment Final Action

Review public hearing comments
Review Committee and Staff recommendations
Consider final action

Tuesday, December 13, 2022

Council Convenes With the Atlantic States Marine Fisheries Commission's (ASMFC) Summer Flounder, Scup, and Black Sea Bass Management Board

Harvest Control Rule Framework/ Addendum Percent Change Approach and Recreational Fishery Models

Review the Percent Change Approach approved by the Council and Policy Board for setting recreational measures for summer flounder, scup, and black sea bass
Review Accountability Measures under the Percent Change Approach
Overview of recreational fishery statistical models to inform setting of 2023 measures

2023 Scup Recreational Measures

Review Advisory Panel and Monitoring Committee recommendations
Adopt target level of coastwide harvest based on the Harvest Control Rule Framework/Addendum Percent Change Approach
Recommend 2023 recreational management measures for Federal waters, as well as any considerations for adjustments to state/regional measures

2023 Black Sea Bass Recreational Measures

Review Advisory Panel and Monitoring Committee recommendations
Adopt target level of coastwide harvest based on the Harvest Control Rule Framework/Addendum Percent Change Approach
Recommend conservation equivalency or coastwide management and associated measures for 2023
Review and consider approval of Virginia's proposal for February 2023 recreational fishery (Board only)

2023 Summer Flounder Recreational Measures

Review Advisory Panel and Monitoring Committee recommendations
Adopt target level of coastwide harvest based on the Harvest Control Rule Framework/Addendum Percent Change Approach
Recommend conservation equivalency or coastwide management and associated measures for 2023

Council and Summer Flounder, Scup, and Black Sea Bass Board Adjourn

Council Convenes with the ASMFC Interstate Fishery Management Program Policy Board

Previously Initiated Recreational Reform Actions

Review issues to be addressed under Recreational Reform Initiative Technical Guidance Document and Recreational Sector Separation and Catch Accounting Amendment
Discuss and provide guidance on next steps

Council and Policy Board Adjourn

Wednesday, December 14, 2022

Climate Change Scenario Planning: Review Final Scenarios and Discuss Applications

(Jonathan Star, Scenario Insight)
Review final scenarios
Review and discuss initial challenges, opportunities, and potential actions identified at Manager Brainstorming Sessions
Discuss recurring ideas and main takeaways, and identify key discussion topics for February summit meeting

Monkfish Framework 13: 2023–25 Specifications and Management Measures

Review Framework 13, including recommendations from the Advisory Panel, New England SSC, Joint Committee, and PDT
Review motions from the New England Fishery Management Council
Approve Framework 13

Protected Resources Updates

Review Protected Resources Committee Meeting Report and November/ December ALWTRT meeting outcomes
Discuss final Sturgeon Bycatch Action Plan recommendations and potential joint action with NEFMC

2023 Implementation Plan

Review and approve 2023 Implementation Plan

Thursday, December 15, 2022

Proposed Hudson Canyon National Marine Sanctuary

Presentation from LeAnn Hogan (Regional Operations Coordinator for NOAA Sanctuaries Eastern Region) on the proposed sanctuary and the NMSA section 304(a)(5) consultation process with Councils
Develop Council recommendations to NOAA Sanctuaries on whether it is necessary to develop fishing regulations in the EEZ to implement the proposed sanctuary

Business Session

Committee Reports (SSC, Ecosystem and Ocean Planning Committee, Mackerel, Squid, Butterfish Committee—*Illex* Permit Action disapproval follow-up);
Executive Director's Report; Organization Reports; and Liaison Reports

Other Business and General Public Comment

Although non-emergency issues not contained in this agenda may come before this group for discussion, in accordance with the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act), those issues may not be the subject of formal action during these meetings. Actions will be restricted to those issues specifically identified in this notice and any issues arising after publication of this notice that require emergency action under section 305(c).

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: November 22, 2022.

Rey Israel Marquez,

Acting Deputy Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 2022–25886 Filed 11–25–22; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[RTID 0648–XC520]

Fisheries of the Gulf of Mexico; Southeast Data, Assessment, and Review (SEDAR); Public Meeting

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of SEDAR 74 Assessment Webinar III for Gulf of Mexico Red Snapper.

SUMMARY: The SEDAR 74 assessment of Gulf of Mexico red snapper will consist of a Data workshop, a series of Assessment webinars, and a Review workshop. See **SUPPLEMENTARY INFORMATION**.

DATES: The SEDAR 74 Assessment Webinar III will be held Friday, December 16, 2022, from 1 p.m. until 4 p.m., eastern time.

ADDRESSES:

Meeting address: The meeting will be held via webinar. The webinar is open to members of the public. Those interested in participating should contact Julie A. Neer at SEDAR (see **FOR FURTHER INFORMATION CONTACT**) to request an invitation providing webinar access information. Please request webinar invitations at least 24 hours in advance of each webinar.

SEDAR address: 4055 Faber Place Drive, Suite 201, North Charleston, SC 29405.

FOR FURTHER INFORMATION CONTACT: Julie A. Neer, SEDAR Coordinator; (843) 571–4366; email: *Julie.neer@safmc.net.*

SUPPLEMENTARY INFORMATION: The Gulf of Mexico, South Atlantic, and Caribbean Fishery Management Councils, in conjunction with NOAA Fisheries and the Atlantic and Gulf States Marine Fisheries Commissions have implemented the Southeast Data, Assessment and Review (SEDAR) process, a multi-step method for determining the status of fish stocks in the Southeast Region. SEDAR is a multi-step process including: (1) Data Workshop; (2) Assessment Process utilizing webinars; and (3) Review Workshop. The product of the Data Workshop is a data report that compiles and evaluates potential datasets and recommends which datasets are appropriate for assessment analyses. The product of the Assessment Process is a stock assessment report that describes the fisheries, evaluates the status of the stock, estimates biological benchmarks, projects future population conditions, and recommends research and monitoring needs. The assessment is independently peer reviewed at the Review Workshop. The product of the Review Workshop is a Summary documenting panel opinions regarding the strengths and weaknesses of the stock assessment and input data. Participants for SEDAR Workshops are appointed by the Gulf of Mexico, South Atlantic, and Caribbean Fishery Management Councils and NOAA Fisheries Southeast Regional Office, HMS Management Division, and Southeast Fisheries Science Center. Participants include data collectors and database managers; stock assessment scientists, biologists, and researchers; constituency representatives including fishermen, environmentalists, and NGO's; International experts; and staff of Councils, Commissions, and state and federal agencies.

The items of discussion for the webinar are as follows:

Participants will review data and discuss modeling approaches for use in the assessment of Gulf of Mexico red snapper.

Although non-emergency issues not contained in this agenda may come before this group for discussion, those issues may not be the subject of formal action during this meeting. Action will be restricted to those issues specifically identified in this notice and any issues arising after publication of this notice that require emergency action under section 305(c) of the Magnuson-Stevens Fishery Conservation and Management Act, provided the public has been notified of the intent to take final action to address the emergency.

Special Accommodations

The meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to the Council office (see **ADDRESSES**) at least 5 business days prior to each workshop.

Note: The times and sequence specified in this agenda are subject to change.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: November 22, 2022.

Rey Israel Marquez,

Acting Deputy Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 2022–25884 Filed 11–25–22; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[RTID 0648–XC529]

Fisheries of the South Atlantic; Southeast Data, Assessment, and Review (SEDAR); Public Meeting

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of SEDAR 76 South Atlantic Black Sea Bass Assessment Webinar 3.

SUMMARY: The SEDAR 76 assessment of the South Atlantic stock of black sea bass will consist of a series of assessment webinars. See **SUPPLEMENTARY INFORMATION**.

DATES: The SEDAR 76 South Atlantic Black Sea Bass Assessment Webinar 3 has been scheduled for Friday, December 16, 2022, from 9 a.m. to 12 p.m., eastern. The established times may be adjusted as necessary to accommodate the timely completion of discussion relevant to the assessment process. Such adjustments may result in the meeting being extended from or completed prior to the time established by this notice.

ADDRESSES:

Meeting address: The meeting will be held via webinar. The webinar is open to members of the public. Registration for the webinar is available by contacting the SEDAR coordinator via email at *Kathleen.Howington@safmc.net.*

SEDAR address: South Atlantic Fishery Management Council, 4055 Faber Place Drive, Suite 201, N Charleston, SC 29405; *www.sedarweb.org.*

FOR FURTHER INFORMATION CONTACT: Kathleen Howington, SEDAR Coordinator, 4055 Faber Place Drive, Suite 201, North Charleston, SC 29405; phone: (843) 571–4371; email: *Kathleen.Howington@safmc.net.*

SUPPLEMENTARY INFORMATION: The Gulf of Mexico, South Atlantic, and Caribbean Fishery Management Councils, in conjunction with NOAA Fisheries and the Atlantic and Gulf States Marine Fisheries Commissions,

have implemented the Southeast Data, Assessment and Review (SEDAR) process, a multi-step method for determining the status of fish stocks in the Southeast Region. SEDAR is a three-step process including: (1) Data Workshop; (2) Assessment Process utilizing webinars; and (3) Review Workshop. The product of the Data Workshop is a data report which compiles and evaluates potential datasets and recommends which datasets are appropriate for assessment analyses. The product of the Assessment Process is a stock assessment report which describes the fisheries, evaluates the status of the stock, estimates biological benchmarks, projects future population conditions, and recommends research and monitoring needs. The assessment is independently peer reviewed at the Review Workshop. The product of the Review Workshop is a Summary documenting panel opinions regarding the strengths and weaknesses of the stock assessment and input data. Participants for SEDAR Workshops are appointed by the Gulf of Mexico, South Atlantic, and Caribbean Fishery Management Councils and NOAA Fisheries Southeast Regional Office, Highly Migratory Species Management Division, and Southeast Fisheries Science Center. Participants include: data collectors and database managers; stock assessment scientists, biologists, and researchers; constituency representatives including fishermen, environmentalists, and non-governmental organizations (NGOs); international experts; and staff of Councils, Commissions, and State and Federal agencies.

The items of discussion at the SEDAR 76 South Atlantic Black Sea Bass Assessment Webinar 3 are as follows: Discuss any remaining data issues, model development, and model setup.

Although non-emergency issues not contained in this agenda may come before this group for discussion, those issues may not be the subject of formal action during this meeting. Action will be restricted to those issues specifically identified in this notice and any issues arising after publication of this notice that require emergency action under section 305(c) of the Magnuson-Stevens Fishery Conservation and Management Act, provided the public has been notified of the intent to take final action to address the emergency.

Special Accommodations

This meeting is accessible to people with disabilities. Requests for auxiliary aids should be directed to the South Atlantic Fishery Management Council office (see **ADDRESSES**) at least 5 business days prior to the meeting.

Note: The times and sequence specified in this agenda are subject to change.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: November 22, 2022.

Rey Israel Marquez,

Acting Deputy Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 2022–25885 Filed 11–25–22; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[RTID 0648–XC569]

Fishing Capacity Reduction Program for the Longline Catcher Processor Subsector of the Bering Sea and Aleutian Islands Non-Pollock Groundfish Fishery

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration, Commerce.

ACTION: Notice of fee rate adjustment.

SUMMARY: NMFS issues this notice to inform the public that there will be a decrease of the fee rate required to repay the reduction loan financing the non-pollock groundfish fishing capacity reduction program. Effective January 1, 2023, NMFS is decreasing the Loan A fee rate to $0.020 per pound to ensure timely repayment of the loan. The fee rate for Loan B will remain unchanged at $0.001 per pound. The decreased fee rate is due to the 15 percent increase in non-pollock groundfish Total Allowable Catch (TAC) for 2023 since the fee rate was raised in 2021.

DATES: The non-pollock groundfish program fee rate decrease will begin with landings on January 1, 2023. The first due date for fee payments with the decreased rate will be February 15, 2023.

ADDRESSES: Send questions about this notice to Michael A. Sturtevant, Program Manager, Financial Services Division, National Marine Fisheries Service, 1315 East-West Highway, Silver Spring, MD 20910–3282.

FOR FURTHER INFORMATION CONTACT: Michael A. Sturtevant, (301) 427–8782.

SUPPLEMENTARY INFORMATION:

Background

Sections 312(b)–(e) of the Magnuson-Stevens Fishery Conservation and Management Act (16 U.S.C. 1861 *et seq.*) generally authorizes fishing capacity reduction programs. In particular, section 312(d) authorizes industry fee systems for repaying reduction loans which finance reduction program costs. Subpart L of 50 CFR part 600 is the framework rule generally implementing section 312(b)–(e). Sections 1111 and 1112 of the Merchant Marine Act, 1936 (46 App. U.S.C. 1279f and 1279g) generally authorize reduction loans.

Enacted on December 8, 2004, section 219, Title II, of FY 2005 Appropriations Act, Public Law 104–447 (Act) authorizes a fishing capacity reduction program implementing capacity reduction plans submitted to NMFS by catcher processor subsectors of the Bering Sea and Aleutian Islands (BSAI) non-pollock groundfish fishery (reduction fishery) as set forth in the Act.

The longline catcher processor subsector (Longline Subsector) is among the catcher processor subsectors eligible to submit to NMFS a capacity reduction plan under the terms of the Act. The longline subsector non-pollock groundfish reduction program's objective was to reduce the number of vessels and permits endorsed for longline subsector of the non-pollock groundfish fishery. All post-reduction fish landings from the reduction fishery are subject to the longline subsector non-pollock groundfish program's fee.

NMFS proposed the implementing notice on August 11, 2006 (71 FR 46364), and published the final notice on September 29, 2006 (71 FR 57696). NMFS allocated the $35,000,000 reduction loan (A Loan) to the reduction fishery and this loan is repayable by fees from the fishery.

On September 24, 2007, NMFS published in the **Federal Register** (72 FR 54219), the final rule to implement the industry fee system for repaying the non-pollock groundfish program's reduction loan and established October 24, 2007, as the effective date when fee collection and loan repayment began. The regulations implementing the program are located at § 600.1012.

NMFS published a final rule to implement a second $2,700,000 reduction loan (B Loan) for this fishery in the **Federal Register** on September 24, 2012 (77 FR 58775). The loan was disbursed December 18, 2012 with fee collection of $0.001 per pound to begin January 1, 2013. This fee is in addition to the A Loan fee.

Purpose

The purpose of this notice is to adjust the fee rate for the reduction fishery in accordance with the framework rule's § 600.1013(b). Section 600.1013(b) directs NMFS to recalculate the fee rate

that will be reasonably necessary to ensure reduction loan repayment within the specified 30-year term.

NMFS has determined for the reduction fishery that the current fee rate of Loan A, $0.024 per pound is more than that needed to service the loan in 2023. Therefore, NMFS is decreasing the Loan A fee rate to $0.020 per pound, which NMFS has determined is sufficient to ensure timely loan repayment. The fee rate for Loan B will remain $0.001 per pound.

Subsector members may continue to use *Pay.gov* to disburse collected fee deposits at: *http://www.pay.gov/paygov/.*

Please visit the NMFS website for additional information at: *https://www.fisheries.noaa.gov/national/funding-and-financial-services/longline-catcher-processor-subsector-bering-sea-and-aleutian-islands-non-pollock.*

Notice

The new fee rate for the non-pollock groundfish fishery will begin on January 1, 2023.

From and after this date, all subsector members paying fees on the non-pollock groundfish fishery shall begin paying non-pollock groundfish fishery program fees at the revised rate.

Fee collection and submission shall follow previously established methods in § 600.1013 of the framework rule and in the final fee rule published in the **Federal Register** on September 24, 2007 (72 FR 54219).

Authority: 16 U.S.C. 1861 *et seq.;* Pub. L. 108–447.

Dated: November 22, 2022.

Brian T. Pawlak,

Chief Financial Officer/Chief Administrative Officer, Director, Office of Management and Budget, National Marine Fisheries Service.

[FR Doc. 2022–25873 Filed 11–25–22; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Telecommunications and Information Administration

Commerce Spectrum Management Advisory Committee Meeting

AGENCY: National Telecommunications and Information Administration, U.S. Department of Commerce.

ACTION: Notice of open meeting.

SUMMARY: This notice announces a public meeting of the Commerce Spectrum Management Advisory Committee (Committee). The Committee provides advice to the Assistant Secretary of Commerce for Communications and Information and the National Telecommunications and Information Administration (NTIA) on spectrum management policy matters.

DATES: The meeting will be held December 9, 2022, from 10:00 a.m. to 12:00 p.m., Eastern Standard Time (EST).

ADDRESSES: This meeting will be conducted in an electronic format and open to the public via audio teleconference (866–880–0098 participant code 48261650). Public comments may be emailed to *arichardson@ntia.gov* or mailed to Commerce Spectrum Management Advisory Committee, National Telecommunications and Information Administration, 1401 Constitution Avenue NW, Room 4600, Washington, DC 20230.

FOR FURTHER INFORMATION CONTACT: Antonio Richardson, Designated Federal Officer, at (202) 482–4156 or *arichardson@ntia.gov*; and/or visit NTIA's website at *https://www.ntia.gov/category/csmac.*

SUPPLEMENTARY INFORMATION:

Background: The Committee provides advice to the Assistant Secretary of Commerce for Communications and Information on needed reforms to domestic spectrum policies and management in order to: license radio frequencies in a way that maximizes public benefits; keep wireless networks as open to innovation as possible; and make wireless services available to all Americans. *See* Charter at *https://www.ntia.doc.gov/files/ntia/publications/csmac-charter-2021.pdf.*

This Committee is subject to the Federal Advisory Committee Act (FACA), 5 U.S.C. app. 2, and is consistent with the National Telecommunications and Information Administration Act, 47 U.S.C. 904(b). The Committee functions solely as an advisory body in compliance with the FACA. For more information about the Committee visit: *http://www.ntia.gov/category/csmac.*

Matters to Be Considered: The planned meeting for Friday, December 9, 2022, will include updates on the progress CSMAC subcommittees are making in addressing topics they are addressing, specifically 6G wireless systems, electromagnetic compatibility (EMC) improvements, and Ultra-Wideband communications. NTIA will post a detailed agenda on its website, *http://www.ntia.gov/category/csmac,* prior to the meeting. To the extent that the meeting time and agenda permit, any member of the public may address the Committee regarding the agenda items. *See Open Meeting and Public Participation Policy,* available at *http://www.ntia.gov/category/csmac.*

Time and Date: The meeting will be held on December 9, 2022, from 10:00 a.m. to 12:00 p.m., Eastern Standard Time (EST). The meeting time and the agenda topics are subject to change. Please refer to NTIA's website, *http://www.ntia.gov/category/csmac,* for the most up-to-date meeting agenda and access information.

Place: This meeting will be conducted in an electronic format and open to the public via audio teleconference. Individuals requiring accommodations are asked to notify Mr. Richardson at (202) 482–4156 or *arichardson@ntia.gov* at least ten (10) business days before the meeting.

Status: Interested parties are invited to join the teleconference and to submit written comments to the Committee at any time before or after the meeting. Parties wishing to submit written comments for consideration by the Committee in advance of the meeting are strongly encouraged to submit their comments in Microsoft Word and/or PDF format via electronic mail to *arichardson@ntia.gov.* Comments may also be sent via postal mail to Commerce Spectrum Management Advisory Committee, National Telecommunications and Information Administration, 1401 Constitution Avenue NW, Room 4600, Washington, DC 20230. It would be helpful if paper submissions also include a compact disc (CD) that contains the comments in one or both of the file formats specified above. CDs should be labeled with the name and organizational affiliation of the filer. Comments must be received five (5) business days before the scheduled meeting date in order to provide sufficient time for review. Comments received after this date will be distributed to the Committee but may not be reviewed prior to the meeting. Additionally, please note that there may be a delay in the distribution of comments submitted via postal mail to Committee members.

Records: NTIA maintains records of all Committee proceedings. Committee records are available for public inspection at NTIA's Washington, DC office at the address above. Documents including the Committee's charter, member list, agendas, minutes, and reports are available on NTIA's website at *http://www.ntia.gov/category/csmac.*

Josephine Arnold,

Senior Attorney-Advisor, National Telecommunications and Information Administration.

[FR Doc. 2022–25798 Filed 11–25–22; 8:45 am]

BILLING CODE 3510–60–P

DEPARTMENT OF COMMERCE

United States Patent and Trademark Office

Agency Information Collection Activities; Submission to the Office of Management and Budget (OMB) for Review and Approval; Comment Request; Post Allowance and Reissue

Correction

In notice document 2022–25362, appearing on page 71307 through 71310 in the issue of Tuesday, November 22, 2022, make the following correction:

On page 71307, in the third column, in the **DATES** section, in the fourth line, ''February 21, 2023'' is corrected to read ''January 23, 2023''.

[FR Doc. C1–2022–25362 Filed 11–25–22; 8:45 am]

BILLING CODE 0099–10–P

DEPARTMENT OF DEFENSE

Office of the Secretary

[Docket ID: DoD–2022–OS–0133]

Proposed Collection; Comment Request

AGENCY: Defense Finance and Accounting Service (DFAS), Department of Defense (DoD).

ACTION: 60-Day information collection notice.

SUMMARY: In compliance with the *Paperwork Reduction Act of 1995,* the Defense Finance and Accounting Service announces a proposed public information collection and seeks public comment on the provisions thereof. Comments are invited on: 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; the accuracy of the agency's estimate of the burden of the proposed information collection; ways to enhance the quality, utility, and clarity of the information to be collected; and ways to minimize the burden of the information collection on respondents, including through the use of automated collection techniques or other forms of information technology.

DATES: Consideration will be given to all comments received by January 27, 2023.

ADDRESSES: You may submit comments, identified by docket number and title, by any of the following methods:

Federal eRulemaking Portal: http://www.regulations.gov. Follow the instructions for submitting comments.

Mail: Department of Defense, Office of the Assistant to the Secretary of Defense for Privacy, Civil Liberties, and Transparency, Regulatory Directorate, 4800 Mark Center Drive, Mailbox #24, Suite 08D09, Alexandria, VA 22350–1700.

Instructions: All submissions received must include the agency name, docket number and title for this **Federal Register** document. The general policy for comments and other submissions from members of the public is to make these submissions available for public viewing on the internet at *http://www.regulations.gov* as they are received without change, including any personal identifiers or contact information.

FOR FURTHER INFORMATION CONTACT: To request more information on this proposed information collection or to obtain a copy of the proposal and associated collection instruments, please write to the Defense Finance and Accounting Service, Major General Emmett J. Bean Federal Center, 8899 E 56th St, Indianapolis, IN 46249, ATTN: Ms. Kellen Stout, or call 317–212–1801.

SUPPLEMENTARY INFORMATION:

Title; Associated Form; and OMB Number: Application for Trusteeship; DD Form 2827; OMB Control Number 0730–0013.

Needs and Uses: The information collection is needed to identify the prospective trustees for active duty military and retirees. The information is required in order for the Defense Finance and Accounting Service (DFAS) to make payments on behalf of incompetent military members or retirees. DFAS is representing all services as the functional proponent for Retired and Annuitant Pay.

Affected Public: Individuals or Households.

Annual Burden Hours: 18.75.

Number of Respondents: 75.

Responses per Respondent: 1.

Annual Responses: 75.

Average Burden per Response: 15 minutes.

Frequency: On occasion.

When members of the uniformed services are declared mentally incompetent, the need arises to have a trustee appointed to act on their behalf with regard to military pay matters. Individuals will complete this form to apply for appointment as a trustee on behalf of the member. The requirement to complete this form helps alleviate the opportunity for fraud, waste, and abuse of government funds and member's benefits.

Dated: November 22, 2022.

Aaron T. Siegel,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 2022–25861 Filed 11–25–22; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Office of the Secretary

[Docket ID DoD–2022–OS–0092]

Submission for OMB Review; Comment Request

AGENCY: Chief Information Officer (CIO), Department of Defense (DoD).

ACTION: 30-Day information collection notice.

SUMMARY: The DoD has submitted to the Office of Management and Budget (OMB) for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act.

DATES: Consideration will be given to all comments received by December 29, 2022.

ADDRESSES: Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to *www.reginfo.gov/public/do/PRAMain.* Find this particular information collection by selecting ''Currently under 30-day Review—Open for Public Comments'' or by using the search function.

FOR FURTHER INFORMATION CONTACT: Angela Duncan, 571–372–7574, *whs.mc-alex.esd.mbx.dd-dod-information-collections@mail.mil.*

SUPPLEMENTARY INFORMATION:

Title; Associated Form; and OMB Number: DoD's Defense Industrial Base (DIB) Cybersecurity (CS) Program Point of Contact Information; OMB Control Number 0704–0490.

Type of Request: Extension without change.

Number of Respondents: 935.

Responses per Respondent: 1.

Annual Responses: 935.

Average Burden per Response: 20 minutes.

Annual Burden Hours: 312.

Needs and Uses: DoD's Defense Industrial Base (DIB) Cyber Security (CS) Program enhances and supports DoD's capabilities to safeguard information that resides on, or transits, DIB unclassified information systems. The DIB CS Program is focused on sharing cyber threat information and cybersecurity best practices with DIB CS participants. This collection is

necessary for DoD to collect, share, and manage point of contact (POC) information for program administration and management purposes. The Government will collect typical business POC information from all DIB CS participants during the application process to join the program. This information includes company name and identifiers such as cage code and mailing address, employee names and titles, corporate email addresses, and corporate telephone numbers of company-identified POCs. DIB CS Program POCs include the Chief Executive Officer, Chief Information Officer, Chief Information Security Officer, and Corporate or Facility Security Officer, or their equivalents, as well as those administrative, policy, technical staff, and personnel designated to interact with the Government in executing the DIB CS Program. After joining the program, DIB CS participants provide updated POC information to DoD when personnel changes occur.

Affected Public: Businesses or other for-profit; Not-for-profit Institutions.

Frequency: As required.

Respondent's Obligation: Voluntary.

OMB Desk Officer: Ms. Jasmeet Seehra.

You may also submit comments and recommendations, identified by Docket ID number and title, by the following method:

• *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.

Instructions: All submissions received must include the agency name, Docket ID number, and title for this **Federal Register** document. The general policy for comments and other submissions from members of the public is to make these submissions available for public viewing on the internet at *http://www.regulations.gov* as they are received without change, including any personal identifiers or contact information.

DOD Clearance Officer: Ms. Angela Duncan.

Requests for copies of the information collection proposal should be sent to Ms. Duncan at *whs.mc-alex.esd.mbx.dd-dod-information-collections@mail.mil.*

Dated: November 22, 2022.

Aaron T. Siegel,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 2022–25842 Filed 11–25–22; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Office of the Secretary

[Docket ID DoD–2022–OS–0112]

Submission for OMB Review; Comment Request

AGENCY: The Under Secretary of Defense for Acquisition and Sustainment (USD(A&S)), Department of Defense (DoD).

ACTION: 30-Day information collection notice.

SUMMARY: The DoD has submitted to the Office of Management and Budget (OMB) for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act.

DATES: Consideration will be given to all comments received by December 28, 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: Angela Duncan, 571–372–7574, *whs.mc-alex.esd.mbx.dd-dod-information-collections@mail.mil.*

SUPPLEMENTARY INFORMATION:

Title; Associated Form; and OMB Number: Department of Defense Application for Priority Rating for Production or Construction Equipment; DD Form 691; OMB Control Number 0704–0055.

Type of Request: Extension without change.

Number of Respondents: 610.

Responses per Respondent: 1.

Annual Responses: 610.

Average Burden per Response: 1 hour.

Annual Burden Hours: 610.

Needs and Uses: Executive Order 12919 delegates authority to DoD to require certain contracts and orders relating to approved Defense Programs to be accepted and performed on a preferential basis. This program helps contractors acquire industrial equipment in a timely manner, thereby facilitating development and support of weapons systems and other important Defense Programs.

Affected Public: Business or other For-Profit; Not-for-Profit Institutions.

Frequency: On occasion.

Respondent's Obligation: Voluntary.

OMB Desk Officer: Ms. Jasmeet Seehra.

You may also submit comments and recommendations, identified by Docket ID number and title, by the following method:

• *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.

Instructions: All submissions received must include the agency name, Docket ID number, and title for this **Federal Register** document. The general policy for comments and other submissions from members of the public is to make these submissions available for public viewing on the internet at *http://www.regulations.gov* as they are received without change, including any personal identifiers or contact information.

DOD Clearance Officer: Ms. Angela Duncan.

Requests for copies of the information collection proposal should be sent to Ms. Duncan at *whs.mc-alex.esd.mbx.dd-dod-information-collections@mail.mil.*

Dated: November 22, 2022.

Aaron T. Siegel,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 2022–25836 Filed 11–25–22; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Office of the Secretary

[Docket ID: DoD–2022–HA–0130]

Proposed Collection; Comment Request

AGENCY: Office of the Assistant Secretary of Defense for Health Affairs (OASD(HA)), Department of Defense (DoD).

ACTION: 60-Day information collection notice.

SUMMARY: In compliance with the *Paperwork Reduction Act of 1995,* the Defense Health Agency announces a proposed public information collection and seeks public comment on the provisions thereof. Comments are invited on: 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; the accuracy of the agency's estimate of the burden of the proposed information collection; ways to enhance the quality, utility, and clarity of the information to be collected; and ways to minimize the burden of the information collection on respondents, including through the use of automated collection techniques or other forms of information technology.

DATES: Consideration will be given to all comments received by January 27, 2023.

ADDRESSES: You may submit comments, identified by docket number and title, by any of the following methods:

Federal eRulemaking Portal: http://www.regulations.gov. Follow the instructions for submitting comments.

Mail: Department of Defense, Office of the Assistant to the Secretary of Defense for Privacy, Civil Liberties, and Transparency, Regulatory Directorate, 4800 Mark Center Drive, Mailbox #24, Suite 08D09, Alexandria, VA 22350–1700.

Instructions: All submissions received must include the agency name, docket number and title for this **Federal Register** document. The general policy for comments and other submissions from members of the public is to make these submissions available for public viewing on the internet at *http://www.regulations.gov* as they are received without change, including any personal identifiers or contact information.

FOR FURTHER INFORMATION CONTACT: To request more information on this proposed information collection or to obtain a copy of the proposal and associated collection instruments, please write to Department of Defense, Washington Headquarters Services, ATTN: Executive Services Directorate, Directives Division, 4800 Mark Center Drive, Suite 03F09–09, Alexandria, VA 22350–3100, Angela Duncan, 571–372–7574.

SUPPLEMENTARY INFORMATION:

Title; Associated Form; and OMB Number: Department of Defense Active Duty/Reserve Forces Dental Examination; DD Form 2813; OMB Control Number 0720–0022.

Needs and Uses: The information collection requirement is necessary to obtain and record the dental health status of members of the Armed Forces. This form is the means for civilian dentists to record the results of their findings and provide the information to the member's military organization. The military organizations are required by Department of Defense policy to track the dental status of its members.

Affected Public: Individuals or households.

Annual Burden Hours: 37,500.

Number of Respondents: 150,000.

Responses per Respondent: 5.

Annual Responses: 750,000.

Average Burden per Response: 3 minutes.

Frequency: On occasion.

Dated: November 22, 2022.

Aaron T. Siegel,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 2022–25860 Filed 11–25–22; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Office of the Secretary

[Docket ID: DoD–2022–OS–0129]

Proposed Collection; Comment Request

AGENCY: Office of the Under Secretary of Defense for Research and Engineering, (OUSD(R&E), Department of Defense (DoD).

ACTION: 60-Day information collection notice.

SUMMARY: In compliance with the *Paperwork Reduction Act of 1995,* the Office of the Under Secretary of Defense for Research and Engineering (OUSD(R&E)) announces a proposed public information collection and seeks public comment on the provisions thereof. Comments are invited on: 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; the accuracy of the agency's estimate of the burden of the proposed information collection; ways to enhance the quality, utility, and clarity of the information to be collected; and ways to minimize the burden of the information collection on respondents, including through the use of automated collection techniques or other forms of information technology.

DATES: Consideration will be given to all comments received by January 27, 2023.

ADDRESSES: You may submit comments, identified by docket number and title, by any of the following methods:

Federal eRulemaking Portal: http://www.regulations.gov. Follow the instructions for submitting comments.

Mail: Department of Defense, Office of the Assistant to the Secretary of Defense for Privacy, Civil Liberties, and Transparency, Regulatory Directorate, 4800 Mark Center Drive, Mailbox #24, Suite 08D09, Alexandria, VA 22350–1700.

Instructions: All submissions received must include the agency name, docket number and title for this **Federal Register** document. The general policy for comments and other submissions from members of the public is to make these submissions available for public viewing on the internet at *http://www.regulations.gov* as they are received without change, including any personal identifiers or contact information.

FOR FURTHER INFORMATION CONTACT: To request more information on this proposed information collection or to obtain a copy of the proposal and associated collection instruments, please write to SMART Program Office, 4800 Mark Center Drive, Suite 17C08, Alexandria, VA, 22350–3600, ATTN: Dr. Brandon Cochenour, or call 240–526–1123.

SUPPLEMENTARY INFORMATION:

Title; Associated Form; and OMB Number: SMART Scholar Survey and Sponsoring Facilities (SF) Survey; OMB Control Number 0704–DSSS.

Needs and Uses: The information gathered through the ''Scholar Survey'' and ''Sponsoring Facilities Survey'' will inform the Department of Defense (DoD) on the Science, Mathematics and Research for Transformation (SMART) Scholarship for Service Program. The purpose of these surveys is to gain a better understanding of scholars' and sponsoring facilities' (SF) perspectives on the program and its impact on the scholar. Both surveys are part of a third-party evaluation of the SMART Program. The purpose of the scholar survey is to gain a deep perspective of SMART scholars who are participating or have participated in the program, understanding their perspective on how the SMART program operates, identifying program processes that are working well, suggesting what could be improved in the program, and determining the detailed outcomes of the program. The purpose of the SF survey is to gain a perspective of DoD facilities who are participating in the program, understanding their perspective on how the SMART program operates, identifying program processes that are working well, and suggesting what could be improved in the program. Both surveys aim to help improve the SMART Program.

Affected Public: Individuals or households.

SMART Scholar Survey

Annual Burden Hours: 900.

Number of Respondents: 1,800.

Responses per Respondent: 1.

Annual Responses: 1,800.

Average Burden per Response: 30 minutes.

Sponsoring Facilities Survey

Annual Burden Hours: 15.

Number of Respondents: 60.

Responses per Respondent: 1.

Annual Responses: 60.

Average Burden per Response: 15 minutes.

Total

Total Annual Burden Hours: 915.

Annual Responses: 1,860.

Frequency: This is expected to be a one-time collection.

Both surveys will be administered online using a password-protected Qualtrics account. Qualtrics is a Federal Risk and Authorization Management Program (FedRAMP) certified program. All respondents will receive the same survey instrument. Respondents to the scholar survey will answer questions about their experiences with the SMART Program, to include the application process, degree pursuit, and post-graduation employment with DoD. Respondents to the SF survey will answer questions about the SF's use of the SMART Program, to include outreach, selection of scholars, scholar professional development opportunities, hiring of scholars, and retention. Respondents to both surveys retain the ability to skip any survey question they do not wish to answer. Respondents may also end the survey at any time without penalty. Respondents return the collection by clicking a button (indicated by a right arrow) on the last page of the survey, which logs their answers in a Qualtrics database attached to the survey.

Dated: November 22, 2022.

Aaron T. Siegel,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 2022–25853 Filed 11–25–22; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Office of the Secretary

[Docket ID DoD–2022–OS–0114]

Submission for OMB Review; Comment Request

AGENCY: Office of the Assistant to the Secretary of Defense for Public Affairs (OASD/PA), Department of Defense (DoD).

ACTION: 30-Day information collection notice.

SUMMARY: The DoD has submitted to the Office of Management and Budget (OMB) for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act.

DATES: Consideration will be given to all comments received by December 28, 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: Angela Duncan, 571–372–7574, *whs.mc-alex.esd.mbx.dd-dod-information-collections@mail.mil.*

SUPPLEMENTARY INFORMATION:

Title; Associated Form; and OMB Number: Armed Forces Participation in Public Events; Request for Armed Forces Participation in Public Events (Non-Aviation), DD Form 2536 and Request for Military Aerial Support, DD Form 2535; OMB Control Number 0704–0290.

Type of Request: Revision.

Number of Respondents: 51,000.

Responses per Respondent: 1.

Annual Responses: 51,000.

Average Burden per Response: 21 minutes.

Annual Burden Hours: 18,000.

Needs and Uses: This information collection requirement is necessary to evaluate the eligibility of events to receive Armed Forces community outreach support and to determine whether requested military assets are available.

Affected Public: State, local, or tribal governments; Federal agencies or employees; for-profit and non-profit institutions; and individuals or households.

Frequency: On occasion.

Respondent's Obligation: Voluntary.

OMB Desk Officer: Ms. Jasmeet Seehra.

You may also submit comments and recommendations, identified by Docket ID number and title, by the following method:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.

Instructions: All submissions received must include the agency name, Docket ID number, and title for this **Federal Register** document. The general policy for comments and other submissions from members of the public is to make these submissions available for public viewing on the internet at *http://www.regulations.gov* as they are received without change, including any personal identifiers or contact information.

DOD Clearance Officer: Ms. Angela Duncan.

Requests for copies of the information collection proposal should be sent to Ms. Duncan at *whs.mc-alex.esd.mbx.dd-dod-information-collections@mail.mil.*

Dated: November 22, 2022.

Aaron T. Siegel,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 2022–25834 Filed 11–25–22; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Office of the Secretary

[Docket ID: DoD–2022–HA–0131]

Proposed Collection; Comment Request

AGENCY: Office of the Assistant Secretary of Defense for Health Affairs (OASD(HA)), Department of Defense (DoD).

ACTION: 60-Day information collection notice.

SUMMARY: In compliance with the *Paperwork Reduction Act of 1995,* the Defense Health Agency announces a proposed public information collection and seeks public comment on the provisions thereof. Comments are invited on: 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; the accuracy of the agency's estimate of the burden of the proposed information collection; ways to enhance the quality, utility, and clarity of the information to be collected; and ways to minimize the burden of the information collection on respondents, including through the use of automated collection techniques or other forms of information technology.

DATES: Consideration will be given to all comments received by January 27, 2023.

ADDRESSES: You may submit comments, identified by docket number and title, by any of the following methods:

Federal eRulemaking Portal: http://www.regulations.gov. Follow the instructions for submitting comments.

Mail: Department of Defense, Office of the Assistant to the Secretary of Defense for Privacy, Civil Liberties, and Transparency, Regulatory Directorate, 4800 Mark Center Drive, Mailbox #24, Suite 08D09, Alexandria, VA 22350–1700.

Instructions: All submissions received must include the agency name, docket number and title for this **Federal Register** document. The general policy for comments and other submissions from members of the public is to make these submissions available for public viewing on the internet at *http://www.regulations.gov* as they are received without change, including any

personal identifiers or contact information.

FOR FURTHER INFORMATION CONTACT: To request more information on this proposed information collection or to obtain a copy of the proposal and associated collection instruments, please write to Department of Defense, Washington Headquarters Services, ATTN: Executive Services Directorate, Directives Division, 4800 Mark Center Drive, Suite 03F09–09, Alexandria, VA 22350–3100, Angela Duncan, 571–372–7574.

SUPPLEMENTARY INFORMATION:

Title; Associated Form; and OMB Number: Women, Infants, and Children Overseas Program (WIC Overseas) Eligibility Application; OMB Control Number 0720–0030.

Needs and Uses: This collection is used by the Women, Infants and Children (WIC) Overseas program to determine eligibility for recipients requesting eligibility to receive WIC overseas benefits and to provide certification for services received. A successful collection of information from the respondent results in participation in the WIC Overseas program, including access to nutritious food, nutrition services, health screenings and other related resources to support families overseas to lead healthier lives.

Affected Public: Individuals or households.

Annual Burden Hours: 7,275.

Number of Respondents: 14,550.

Responses per Respondent: 2.

Annual Responses: 29,100.

Average Burden per Response: 15 minutes.

Frequency: On occasion.

Dated: November 22, 2022.

Aaron T. Siegel,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 2022–25857 Filed 11–25–22; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Office of the Secretary

[Docket ID: DoD–2022–OS–0128]

Proposed Collection; Comment Request

AGENCY: Office of the Under Secretary of Defense for Intelligence and Security (OUSD(I&S)), Department of Defense (DoD).

ACTION: 60-Day information collection notice.

SUMMARY: In compliance with the *Paperwork Reduction Act of 1995,* the OUSD(I&S) Counterintelligence & Law Enforcement Directorate (CILED) announces a proposed public information collection and seeks public comment on the provisions thereof. Comments are invited on: 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; the accuracy of the agency's estimate of the burden of the proposed information collection; ways to enhance the quality, utility, and clarity of the information to be collected; and ways to minimize the burden of the information collection on respondents, including through the use of automated collection techniques or other forms of information technology.

DATES: Consideration will be given to all comments received by January 27, 2023.

ADDRESSES: You may submit comments, identified by docket number and title, by any of the following methods:

Federal eRulemaking Portal: http://www.regulations.gov. Follow the instructions for submitting comments.

Mail: Department of Defense, Office of the Assistant to the Secretary of Defense for Privacy, Civil Liberties, and Transparency, Regulatory Directorate, 4800 Mark Center Drive, Mailbox #24, Suite 08D09, Alexandria, VA 22350–1700.

Instructions: All submissions received must include the agency name, docket number and title for this **Federal Register** document. The general policy for comments and other submissions from members of the public is to make these submissions available for public viewing on the internet at *http://www.regulations.gov* as they are received without change, including any personal identifiers or contact information.

FOR FURTHER INFORMATION CONTACT: To request more information on this proposed information collection or to obtain a copy of the proposal and associated collection instruments, please write to the Office of the Under Secretary of Defense for Intelligence and Security, 5000 Defense Pentagon, Washington, DC 20301, ATTN: Christie Bolton, Major, or call 703–614–6068.

SUPPLEMENTARY INFORMATION:

Title; Associated Form; and OMB Number: Qualification to Possess Firearms or Ammunition; DD Form 2760; OMB Control Number 0704–0461.

Needs and Uses: The information collection is necessary to determine if a Department of Defense (DoD) employee or potential employee who will carry a firearm related to a covered position does not have a qualifying conviction of domestic violence. The applicant uses the DD Form 2760, ''Qualification to Possess Firearms of Ammunition,'' to ensure compliance with 18 U.S.C. 922 and DoDI 6400.06. This disclosure is mandatory for all DoD employees or potential employees who are required by their job duties to possess a firearm or ammunition.

Affected Public: Individuals or households.

Annual Burden Hours: 3,750.

Number of Respondents: 15,000.

Responses per Respondent: 1.

Annual Responses: 15,000.

Average Burden per Response: 15 minutes.

Frequency: Annually.

Dated: November 22, 2022.

Aaron T. Siegel,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 2022–25854 Filed 11–25–22; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Office of the Secretary

[Docket ID: DoD–2022–OS–0115]

Submission for OMB Review; Comment Request

AGENCY: Pentagon Force Protection Agency (PFPA), Department of Defense (DoD).

ACTION: 30-Day information collection notice.

SUMMARY: The DoD has submitted to the Office of Management and Budget (OMB) for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act.

DATES: Consideration will be given to all comments received by December 28, 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: Angela Duncan, 571–372–7574, *whs.mc-alex.esd.mbx.dd-dod-information-collections@mail.mil.*

SUPPLEMENTARY INFORMATION:

Title; Associated Form; and OMB Number: PFPA Recruitment, Medical, and Fitness Division Forms; PFPA Form 1400; PFPA Form 1407; PFPA Form

1408; PFPA Form 1409; PFPA Form 1410; PFPA Form 6040; OMB Control Number 0704–0588.

Type of Request: Extension without change.

Number of Respondents: 3,600.

Responses per Respondent: 1.

Annual Responses: 3,600.

Average Burden per Response: PFPA Form 1400: 5 minutes; PFPA Form 1407: 5 minutes; PFPA Form 1408: 5 minutes; PFPA Form 1409: 10 minutes; PFPA Form 1410: 10 minutes; PFPA Form 6040: 20 minutes.

Annual Burden Hours: 550 hours.

Needs and Uses: This information collection is essential to the Pentagon Force Protection Agency (PFPA) and is used to make a determination of fitness for federal employment in the field of law enforcement. To that end, criminal, background and medical information is collected on the applicants.

Affected Public: Individuals or households.

Frequency: As required.

Respondent's Obligation: Voluntary.

OMB Desk Officer: Ms. Jasmeet Seehra.

You may also submit comments and recommendations, identified by Docket ID number and title, by the following method:

• *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.

Instructions: All submissions received must include the agency name, Docket ID number, and title for this **Federal Register** document. The general policy for comments and other submissions from members of the public is to make these submissions available for public viewing on the internet at *http://www.regulations.gov* as they are received without change, including any personal identifiers or contact information.

DOD Clearance Officer: Ms. Angela Duncan.

Requests for copies of the information collection proposal should be sent to Ms. Duncan at *whs.mc-alex.esd.mbx.dd-dod-information-collections@mail.mil.*

Dated: November 22, 2022.

Aaron T. Siegel,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 2022–25843 Filed 11–25–22; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Office of the Secretary

[Docket ID: DoD–2022–HA–0132]

Proposed Collection; Comment Request

AGENCY: Office of the Assistant Secretary of Defense for Health Affairs (OASD(HA)), Department of Defense (DoD).

ACTION: 60-Day information collection notice.

SUMMARY: In compliance with the *Paperwork Reduction Act of 1995,* the Defense Health Agency announces a proposed public information collection and seeks public comment on the provisions thereof. Comments are invited on: 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; the accuracy of the agency's estimate of the burden of the proposed information collection; ways to enhance the quality, utility, and clarity of the information to be collected; and ways to minimize the burden of the information collection on respondents, including through the use of automated collection techniques or other forms of information technology.

DATES: Consideration will be given to all comments received by January 27, 2023.

ADDRESSES: You may submit comments, identified by docket number and title, by any of the following methods:

Federal eRulemaking Portal: http://www.regulations.gov. Follow the instructions for submitting comments.

Mail: Department of Defense, Office of the Assistant to the Secretary of Defense for Privacy, Civil Liberties, and Transparency, Regulatory Directorate, 4800 Mark Center Drive, Mailbox #24, Suite 08D09, Alexandria, VA 22350–1700.

Instructions: All submissions received must include the agency name, docket number and title for this **Federal Register** document. The general policy for comments and other submissions from members of the public is to make these submissions available for public viewing on the internet at *http://www.regulations.gov* as they are received without change, including any personal identifiers or contact information.

FOR FURTHER INFORMATION CONTACT: To request more information on this proposed information collection or to obtain a copy of the proposal and associated collection instruments, please write to Department of Defense, Washington Headquarters Services, ATTN: Executive Services Directorate, Directives Division, 4800 Mark Center Drive, Suite 03F09–09, Alexandria, VA 22350–3100, Angela Duncan, 571–372–7574.

SUPPLEMENTARY INFORMATION:

Title; Associated Form; and OMB Number: Active Duty Dental Program (ADDP) Claim Form; OMB Control Number 0720–0053.

Needs and Uses: The information collection is necessary to obtain and record the dental readiness of Service Members using the Active Duty Dental Program (ADDP) and submit any claim for the dental procedures provided to be processed and reimbursement made to the provider. Many Service Members are not located near a military dental treatment facility and receive their dental care in the private sector.

Affected Public: Individuals or households.

Annual Burden Hours: 75,000.

Number of Respondents: 75,000.

Responses per Respondent: 4.

Annual Responses: 300,000.

Average Burden per Response: 15 minutes.

Frequency: On occasion.

Dated: November 22, 2022.

Aaron T. Siegel,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 2022–25858 Filed 11–25–22; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Department of the Navy

[Docket ID USN–2022–HQ–0026]

Submission for OMB Review; Comment Request

AGENCY: Department of the Navy, Department of Defense (DoD).

ACTION: 30-Day information collection notice.

SUMMARY: The DoD has submitted to the Office of Management and Budget (OMB) for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act.

DATES: Consideration will be given to all comments received by December 28, 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: Angela Duncan, 571–372–7574, *whs.mc-alex.esd.mbx.dd-dod-information-collections@mail.mil.*

SUPPLEMENTARY INFORMATION:

Title; Associated Form; and OMB Number: Burial at Sea Request/Authorization; OPNAV Forms 5360/1 and 5360/2; OMB Control Number 0703–BLAS.

Type of Request: Existing collection currently in use without an OMB Control Number.

Number of Respondents: 320.

Responses per Respondent: 1.

Annual Responses: 320.

Average Burden per Response: 33.75 minutes.

Annual Burden Hours: 180.

Needs and Uses: Burial at Sea is a time-honored tradition used as a mechanism to honor the service of a veteran. The OPNAV Form 5360/1, ''Burial at Sea Request/Authorization'' allows a family member to request a burial at sea for a veteran, and lists the documentation required to enable the Navy to honor the request. This information is required to ensure the person making the request is the legal person authorized to direct the disposition of the deceased.

The OPNAV Form 5360/2, ''Burial at Sea Port Checklist,'' is used only when the requested remains are fully casketed. Certain preparation is required for these remains to ensure adequate safeguarding during transportation, storage aboard the ship until the event, and to ensure the casket sinks during the ceremony. The funeral home responsible for the storage, preparation and delivery to the port uses the checklist to prepare and inspect the casketed remains prior to transport.

Affected Public: Individuals or households; Businesses or other for-profit.

Frequency: On occasion.

Respondent's Obligation: Voluntary.

OMB Desk Officer: Ms. Jasmeet Seehra.

You may also submit comments and recommendations, identified by Docket ID number and title, by the following method:

• *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.

Instructions: All submissions received must include the agency name, Docket ID number, and title for this **Federal Register** document. The general policy for comments and other submissions from members of the public is to make these submissions available for public viewing on the internet at *http://www.regulations.gov* as they are received without change, including any personal identifiers or contact information.

DOD Clearance Officer: Ms. Angela Duncan.

Requests for copies of the information collection proposal should be sent to Ms. Duncan at *whs.mc-alex.esd.mbx.dd-dod-information-collections@mail.mil.*

Dated: November 22, 2022.

Aaron T. Siegel,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 2022–25835 Filed 11–25–22; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF EDUCATION

Applications for New Awards; Mental Health Service Professional Demonstration Grant Program

AGENCY: Office of Elementary and Secondary Education, Department of Education.

ACTION: Notice.

SUMMARY: The Department of Education (Department) is issuing a notice inviting applications for fiscal year (FY) 2023 for the Mental Health Service Professional (MHSP) Demonstration Grant Program, Assistance Listing Number 84.184X. This notice relates to the approved information collection under OMB control number 1810–0772.

DATES:

Applications Available: November 28, 2022.

Deadline for Transmittal of Applications: January 27, 2023.

Deadline for Intergovernmental Review: March 28, 2023.

Pre-Application Webinar Information: The Department will hold a pre-application meeting via webinar for prospective applicants on December 14, 2022, at 3:00 p.m. and January 11, 2023, at 3:00 p.m. Eastern Time. To register, please visit the program website at: *https://oese.ed.gov/offices/office-of-formula-grants/safe-supportive-schools/mental-health-service-professional-demonstration-grant-program/.*

ADDRESSES: For the addresses for obtaining and submitting an application, please refer to our Common Instructions for Applicants to Department of Education Discretionary Grant Programs, published in the **Federal Register** on December 27, 2021 (86 FR 73264) and available at *www.federalregister.gov/d/2021-27979.* Please note that these Common Instructions supersede the version published on February 13, 2019, and, in part, describe the transition from the requirement to register in *SAM.gov* a Data Universal Numbering System (DUNS) number to the implementation of the Unique Entity Identifier (UEI). More information on the phase-out of DUNS numbers is available at *https://www2.ed.gov/about/offices/list/ofo/docs/unique-entity-identifier-transition-fact-sheet.pdf.*

FOR FURTHER INFORMATION CONTACT: Tawanda Avery, U.S. Department of Education, 400 Maryland Avenue SW, Room 3E244, Washington, DC 20202–6450. Telephone: (202) 987–1782, Email: *Mental.Health@ed.gov.*

If you are deaf, hard of hearing, or have a speech disability and wish to access telecommunications relay services, please dial 7–1–1.

SUPPLEMENTARY INFORMATION:

Full Text of Announcement

I. Funding Opportunity Description

Purpose of Program: The MHSP Program provides competitive grants to support and demonstrate innovative partnerships to train school-based mental health services providers (as defined in section 4102 of the Elementary and Secondary Education Act of 1965, as amended (ESEA)) (services providers) for employment in schools and local educational agencies (LEAs). The goal of this program is to increase the number and diversity of high-quality, trained providers available to address the shortages of mental health service professionals in schools served by high-need LEAs (as defined in this notice). The partnerships must include (1) one or more high-need LEAs or a State educational agency (SEA) on behalf of one or more high-need LEAs and (2) one or more eligible institutions of higher education (eligible IHE) (as defined in this notice).

Partnerships must provide opportunities to place postsecondary education graduate students in school-based mental health fields into high-need schools (as defined in this notice) served by the participating high-need LEAs to complete required field work, credit hours, internships, or related training, as applicable, for the degree or credential program of each student. In addition to the placement of graduate students, grantees may also develop mental health career pathways as early as secondary school, through career and technical education opportunities, or through paraprofessional support degree programs at local community or technical colleges.

Background: Like good physical health, positive mental health promotes success in life. As defined by the Centers for Disease Control and Prevention (CDC), ''Mental health includes our emotional, psychological, and social well-being. It affects how we think, feel, and act. It also helps determine how we handle stress, relate to others, and make healthy choices. Mental health is important at every stage of life, from childhood and adolescence through adulthood.'' [1]

Support for the mental health of children and youth advances educational opportunities by creating conditions for students to fully engage in learning. The increases in mental health needs, including those resulting from traumatic events such as the Novel Coronavirus 2019 (COVID–19) pandemic, community violence, and adverse childhood experiences present challenges for children and youth that for many impact their overall emotional, psychological, and social well-being and their ability to fully engage in learning. The disruptions to routines, relationships, and the learning environment have led to increased stress and trauma, social isolation, and anxiety that can have both immediate and long-term adverse impacts on the physical, social, emotional, and academic well-being of children and youth.

In response to these challenges, the FY 2022 Appropriations Act and the Bipartisan Safer Communities Act appropriated a dramatic increase in funds for the MHSP program. The final MHSP priorities, requirements, and definitions used in this notice inviting applications aim to address student mental health needs by increasing the number of school-based mental health services providers in high-need LEAs, increasing the number of services providers from diverse backgrounds or from the communities they serve, and ensuring that all services providers are trained in inclusive practices, including ensuring access to services for children and youth who are English learners.

In developing applications that meet the absolute priority, we encourage applicants to consider the needs of individuals from diverse backgrounds and utilize the program's broad allowability to use funds to provide support services that will have a meaningful impact on diversifying the school-based mental health services workforce. For example, projects may pay for participants' tuition, provide a modest salary for internships, cover the cost of transportation to and from the high-need school where the participant is placed, pay for childcare while the participant is working at the high-need school, and pay for administrative expenses, such as background check fees that are necessary for placement in a participating school. Such uses of funds may be especially critical in supporting individuals from low-income backgrounds who are pursuing careers as school-based mental health services providers.

Priorities: This competition has one absolute priority and three competitive preference priorities. These priorities are from the notice of final priorities, requirements, and definitions for the MHSP Program published in the **Federal Register** on October 4, 2022 (87 FR 60083).

Absolute Priority: For FY 2023 and any subsequent year in which we make awards from the list of unfunded applications from this competition, this priority is an absolute priority. Under 34 CFR 75.105(c)(3), we consider only applications that meet this priority.

This priority is:

Expand Capacity of High-need LEAs.

Projects that propose to expand the capacity of high-need LEAs in partnership with eligible IHEs to train school-based mental health services providers (as defined in this notice), with the goal of expanding the number of these professionals available to address the shortages of school-based mental health services providers in high-need schools.

To meet this priority, the applicant must propose a school-based mental health partnership (as defined in this notice) to place the IHE's graduate students in school-based mental health services fields into high-need schools served by the participating high-need LEAs for the purpose of completing required field work, credit hours, internships, or related training necessary to complete their degree or obtain a credential as a school-based mental health services provider.

Competitive Preference Priorities: For FY 2023 and any subsequent year in which we make awards from the list of unfunded applications from this competition, these priorities are competitive preference priorities. Under 34 CFR 75.105(c)(2)(i), we award up to an additional 5 points for Competitive Preference Priority 1 depending on how well the application meets the priority. We award up to an additional 5 points for Competitive Preference Priority 2, depending on how well the application meets the priority. We award an additional 2 points to an application that meets Competitive Preference Priority 3. The total number of competitive preference points an applicant may receive is 12.

An applicant must clearly identify in the project abstract and the project narrative section of its application the competitive preference priority or priorities it wishes the Department to consider for purposes of earning competitive preference priority points.

These priorities are:

Competitive Preference Priority 1—Increase the Number of Qualified School-Based Mental Health Services Providers in High-Need LEAs Who Are from Diverse Backgrounds or from Communities Served by the High-Need LEAs. (Up to 5 points)

Projects that propose to increase the number of qualified school-based mental health services providers in high-need LEAs who are from diverse backgrounds (*i.e.,* backgrounds that reflect the communities, identities, races, ethnicities, abilities, and cultures of the students in the high-need LEA, including underserved students) or who are from communities served by the high-need LEAs.[2] Applicants must describe how their proposal to increase the number of school-based mental health services providers who are from diverse backgrounds or who are from the communities served by the high-need LEA will help increase access to mental health services for students within the high-need LEA and best meet the mental health needs of the diverse populations of students to be served.

Competitive Preference Priority 2—Promote Inclusive Practices. (Up to 5 points)

Projects that propose to provide evidence-based (as defined in section 8101 of the ESEA) pedagogical practices in mental health services provider preparation programs or professional development programs that are inclusive with regard to race, ethnicity, culture, language, disability, and for students who identify as LGBTQI+, and that prepare school-based mental health services providers to create culturally and linguistically inclusive and identity-safe [3] environments for students when providing services.

Applicants must describe how their proposal to provide evidence-based

[1] Centers for Disease Control and Prevention. *www.cdc.gov/mentalhealth/learn/index.htm.* Accessed on September 17, 2022.

[2] All strategies to increase the diversity of providers must comply with applicable Federal civil rights laws, including title VI of the Civil Rights Act of 1964.

[3] An identity-safe environment is a place where every student feels physically and emotionally safe. Perceptions of safety often differ across different groups of students, and each intervention and support measure should be designed to ensure the safety and belonging of all students.

pedagogical practices in mental health services provider preparation programs or professional development programs will prepare school-based mental health services providers to provide inclusive practices and to create culturally and linguistically inclusive and identity-safe environments for students when providing services.

Competitive Preference Priority 3—Partnerships with HBCUs, TCUs, or other MSIs. (0 or 2 points)

Applicants that propose to implement their projects by or in partnership with one or more of the following entities:

(1) Historically Black Colleges and Universities (HBCUs) (as defined in 34 CFR 608.2).

(2) Tribal Colleges and Universities (TCUs) (as defined in section 316(b)(3) of the HEA).

(3) Minority-Serving Institutions (MSIs) (as defined in sections 316 through 320 of part A of title III, under part B of title III, or under title V of the HEA).

Note: Only institutions that the Department determined to be eligible through the FY 2022 process for eligible MSI designation, or which were granted a waiver under the process, may be considered eligible for this competitive preference priority.

Requirements: These application requirements are from the notice of final priorities, requirements, and definitions for this program published in the **Federal Register** on October 4, 2022 (87 FR 60083). We are establishing these application and program requirements for the FY 2023 grant competition and any subsequent year in which we make awards from the list of unfunded applications from this competition. These requirements are:

Program Requirement: Eligible applicants for this program are high-need LEAs, SEAs on behalf of one or more high-need LEAs, and IHEs. High-need LEA applicants and SEA applicants on behalf of one or more high-need LEAs must propose to work in partnership with an eligible IHE, which may include institutions that serve diverse learners such as an HBCU (as defined in 34 CFR 608.2), TCU (as defined in section 316(b)(3) of the HEA), or other MSI (as defined in sections 316 through 320 of part A of title III, under part B of title III, or under title V of the HEA). Eligible IHE applicants must propose to work in partnership with one or more high-need LEAs or an SEA.

Application Requirements: An applicant must include the following in its application:

(a) *Identification of schools to be served by the proposed project.*

Applicants must identify or describe how they will identify the high-need schools to be served in each high-need LEA that is part of the school-based mental health partnership.

(b) *A description of the nature and magnitude of the problem.*

Applicants must describe how the lack of school-based mental health services providers is specifically affecting students in the high-need schools to be served by project activities. Applicants must describe the nature of the problem for the LEA, based on, but not limited to, the most recent available ratios of school-based mental health services providers to students enrolled in the schools in each high-need LEA that is part of the school-based mental health partnership (in the aggregate and disaggregated by profession (*e.g.,* school social workers, school psychologists, and school counselors)). The description may also include LEA and school-level demographic data, including chronic absenteeism and discipline data, school climate surveys, school violence/crime data, data related to suicide rates, and descriptions of barriers to hiring and retaining services providers in the LEA.

(c) *A plan to enhance LEA capacity to provide mental health services to students.*

Applicants must describe the specific activities they will conduct to expand and improve LEA capacity to provide mental health services to students in high-need LEAs and ensure that students receive appropriate, evidence-based (as defined in section 8101 of the ESEA), and culturally and linguistically inclusive mental health services. To meet this requirement, the applicant must propose a school-based mental health partnership established for the purpose of placing the IHE's graduate students in school-based mental health fields into high-need schools served by the participating high-need LEAs to complete required field work, credit hours, internships, or related training as applicable for the degree or credential program of each student. If the applicant intends to establish a program that directly benefits an individual graduate student, such as through a stipend or tuition credit, the applicant must describe its approach to implementing a service obligation for such graduate student as a school-based mental health services provider in a high-need LEA commensurate with the level of support the graduate student receives.

(d) *A memorandum of understanding (MOU), a memorandum of agreement (MOA), or letter of agreement between the LEA or SEA, and the IHE.*

Applicants must include with their application an MOU, MOA, or letter of agreement that is signed by the authorized representatives of the LEA or SEA, and the IHE. The MOU, MOA, or letter of agreement must provide details regarding the roles and responsibilities of each entity in the partnership and include a description of how the partnership will place graduate students into high-need schools served by the participating high-need LEAs to complete required field work, credit hours, internships, or related training necessary to complete their degree or obtain a credential as a school-based mental health services provider. Additionally, SEA and LEA applicants must describe in the MOU, MOA, or letter of agreement how leaders across all levels of the project will be engaged in the implementation and evaluation of the project. The MOU, MOA, or letter of agreement must also include the estimated number of mental health services providers that will be placed into employment in high-need schools and high-need LEAs on an annual basis.

(e) *A plan for collaboration and coordination with related Federal, State, and local initiatives.*

Applicants must propose a plan that describes one or more of the following:

(1) How they will collaborate with at least one national, State, or local professional organization (to include a regional professional organization, if appropriate), such as a school social worker association, school psychologist association, or school counselor association;

(2) The activities to be carried out in coordination with the national, State, or local mental health, public health, child welfare, and other community agencies, which may include school-based health centers, to achieve the plan goals and objectives of establishing a pipeline program to train and expand the capacity of school-based mental health services providers in high-need LEAs;

(3) How they will leverage other available Federal, State, and local resources to achieve project goals and objectives and sustain investments beyond the budget period. Applicants must identify these other available resources and describe how they will be used to promote success across programs; and

(4) How they will use the MHSP funds to expand and enhance existing efforts or put in place new measures to increase the number of qualified school-based mental health services providers to be employed by eligible schools and LEAs qualified to provide school-based mental health services.

Evidence of collaboration and coordination described in paragraphs (e)(1) and (2) must be provided through letters of support or MOAs/MOUs from State or local organizations or agencies, where applicable.

(f) *A description of the process to identify students for mental health services.*

Applicants must describe the specific process and activities they will use to ensure students in high-need LEAs who need school-based mental health services are properly identified, assessed, and provided the appropriate school-based mental health services by qualified personnel in consultation with educators, including school leaders, and parents and families, as appropriate. To meet this requirement, applicants must also describe how they will ensure that services are evidence-based and inclusive with regard to race, ethnicity, culture, language, disability, homelessness, and for students who identify as LGBTQI+, and are accessible to all. Further, applicants must describe how LEAs will engage parents and families for the purposes of raising awareness about the availability of services and connecting students to services.

Definitions: The definitions of ''eligible institution of higher education,'' ''high-need LEA,'' ''high-need school,'' ''school-based mental health partnership,'' and ''students/children from low-income backgrounds'' are from the notice of priorities, requirements, and definitions published in the **Federal Register** on October 4, 2022 (87 FR 60083). The definitions of ''local educational agency'' (20 U.S.C. 7801(30)), ''State educational agency'' (20 U.S.C. 7801(49)), and ''school-based mental health services provider'' (20 U.S.C. 7112(6)) are from the Elementary and Secondary Education Act of 1965, as amended (ESEA). The definition of ''institution of higher education'' (20 U.S.C. 1001), ''Minority Serving Institution,'' and ''Tribal Colleges and Universities'' are from the Higher Education Act of 1965, as amended. The definition of ''Historically Black Colleges and Universities'' is from 34 CFR 608.2. The definitions of ''ambitious,'' ''baseline,'' ''logic model,'' ''project component,'' and ''relevant outcome'' are from 34 CFR 77.1. These definitions apply to the FY 2023 MHSP Program competition and any subsequent year in which we make awards from the list of unfunded applications from this competition.

These definitions are:

Ambitious means promoting continued meaningful improvement for program participants or for other individuals or entities affected by the grant, or representing a significant advancement in the field of education research, practices, or methodologies. When used to describe a performance target, whether a performance target is ambitious depends upon the context of the relevant performance measure and the baseline for that measure.

Baseline means the starting point from which performance is measured and targets are set.

Eligible institution of higher education means an institution of higher education that offers a program of study that leads to a master's degree or other graduate degree—

(a) In school psychology that prepares students in such program for a State credential as a school psychologist;

(b) In school counseling that prepares students in such program for a State credential in school counseling;

(c) In school social work that prepares students in such program for a State credential in school social work;

(d) In another school-based mental health field that prepares students in such program for a State credential to deliver school-based mental health services; or

(e) In any combination of study described in paragraphs (a) through (d).

High-need local educational agency (LEA) means an LEA—

(a)(1) For which at least 20 percent of the children served by the agency are children from low-income backgrounds;

(2) That serves at least 10,000 children from low-income backgrounds;

(3) That meets the eligibility requirements for funding under the Small, Rural School Achievement (SRSA) program under section 5211(b) of the ESEA; or

(4) That meets the eligibility requirements for funding under the Rural and Low-Income School (RLIS) program under section 5221(b) of the ESEA; and—

(b) For which there is a high student to qualified mental health services provider ratio as compared to other LEAs statewide or nationally.

High-need school means a school that, based on the most recent data available, meets at least one of the following:

(a) The school is in the highest quartile of all schools served by an LEA ranked in descending order by percentage of students from low-income backgrounds enrolled in such schools, as determined by the LEA based on one of the following measures of poverty:

(1) The percentage of students aged 5 through 17 in poverty counted in the most recent census data approved by the Secretary.

(2) The percentage of students eligible for a free or reduced-price school lunch under the Richard B. Russell National School Lunch Act based on the most recently available data.

(3) The percentage of students in families receiving assistance under the State program funded under part A of title IV of the Social Security Act.

(4) The percentage of students eligible to receive medical assistance under the Medicaid program.

(5) A composite of two or more of the measures described in paragraphs (a)(1) through (4).

(b) In the case of—

(1) An elementary school, the school serves students not less than 60 percent of whom are eligible for a free or reduced-price school lunch under the Richard B. Russell National School Lunch Act based on the most recently available data; or

(2) Any other school that is not an elementary school, the other school serves students not less than 45 percent of whom are eligible for a free or reduced-price school lunch under the Richard B. Russell National School Lunch Act based on the most recently available data.

Institution of higher education has the meaning given to such term in section 101 of the Higher Education Act of 1965 (20 U.S.C. 1001).

Local educational agency means a public board of education or other public authority legally constituted within a State for either administrative control or direction of, or to perform a service function for, public elementary schools or secondary schools in a city, county, township, school district, or other political subdivision of a State, or of or for a combination of school districts or counties that is recognized in a State as an administrative agency for its public elementary schools or secondary schools.

(b) The term includes any other public institution or agency having administrative control and direction of a public elementary school or secondary school.

(c) The term includes an elementary school or secondary school funded by the Bureau of Indian Education but only to the extent that including the school makes the school eligible for programs for which specific eligibility is not provided to the school in another provision of law and the school does not have a student population that is smaller than the student population of the local educational agency receiving assistance under this Act with the smallest student population, except that the school shall not be subject to the jurisdiction of any State educational

agency other than the Bureau of Indian Education.

(d) The term includes educational service agencies and consortia of those agencies.

(e) The term includes the State educational agency in a State in which the State educational agency is the sole educational agency for all public schools.

Logic model (also referred to as a theory of action) means a framework that identifies key project components of the proposed project (*i.e.,* the active ''ingredients'' that are hypothesized to be critical to achieving the relevant outcomes) and describes the theoretical and operational relationships among the key project components and relevant outcomes.

Project component means an activity, strategy, intervention, process, product, practice, or policy included in a project. Evidence may pertain to an individual project component or to a combination of project components (*e.g.,* training teachers on instructional practices for English learners and follow-on coaching for these teachers).

Relevant outcome means the student outcome(s) or other outcome(s) the key project component is designed to improve, consistent with the specific goals of the program.

School-based mental health partnership means the formal relationship, established for the purpose of training school-based mental health services providers for employment in schools and LEAs, between—

(a) One or more high-need LEAs or an SEA on behalf of one or more high-need LEAs; and

(b) One or more eligible IHEs, including HBCUs (as defined in 34 CFR 608.2), MSIs (as defined in sections 316 through 320 of part A of title III, under part B of title III, or under title V of the HEA), and TCUs (as defined in section 316(b)(3) of the HEA).

School-based mental health services provider means a State-licensed or State-certified school counselor, school psychologist, school social worker, or other State licensed or certified mental health professional qualified under State law to provide mental health services to children and adolescents.

Students/children from low-income backgrounds means students whose families meet any of the poverty thresholds established in section 1113 of the ESEA for the relevant grade level.

State educational agency means the agency primarily responsible for the State supervision of public elementary schools and secondary schools.

Program Authority: Section 4631(a)(1)(B) of the ESEA (20 U.S.C. 7281).

Note: Projects will be awarded and must be operated in a manner consistent with the nondiscrimination requirements contained in Federal civil rights laws.

Applicable Regulations: (a) The Education Department General Administrative Regulations in 34 CFR parts 75, 77, 81, 82, 84, 97, 98, and 99. (b) The Office of Management and Budget Guidelines to Agencies on Governmentwide Debarment and Suspension (Nonprocurement) in 2 CFR part 180, as adopted and amended as regulations of the Department in 2 CFR part 3485. (c) The Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards in 2 CFR part 200, as adopted and amended as regulations of the Department in 2 CFR part 3474. (d) The notice of final priorities, requirements, and definitions for this program published in the **Federal Register** on October 4, 2022 (87 FR 60083).

II. Award Information

Type of Award: Discretionary grants.

Estimated Available Funds: $99,567,000, provided under the Bipartisan Safer Communities Act, which is available for obligation through March 31, 2023. Note that a portion of these funds may be used for awards under the initial MHSP FY 2022 competition that will be completed by December 31, 2022, potentially reducing the actual amount available for new awards, as well as the estimated number of awards, under this notice.

Contingent upon the availability of funds and the quality of applications, we may make additional awards in subsequent years from the list of unfunded applications from this competition.

Estimated Range of Awards: $400,000 to $1,200,000.

Estimated Average Size of Awards: $800,000 for each 12-month period.

Estimated Number of Awards: 125.

Note: The Department is not bound by any estimates in this notice.

Project Period: Up to 60 months.

III. Eligibility Information

1. *Eligible Applicants:* High-need LEAs, SEAs on behalf of one or more high-need LEAs, and IHEs. High-need LEA applicants and SEA applicants on behalf of one or more high-need LEAs must propose to work in partnership with an eligible IHE. Eligible IHE applicants must propose to work in partnership with one or more high-need LEAs or a SEA.

2. a. *Cost Sharing or Matching:* This competition does not require cost sharing or matching.

b. *Indirect Cost Rate Information:* This program uses an unrestricted indirect cost rate. For more information regarding indirect costs, or to obtain a negotiated indirect cost rate, please see *www2.ed.gov/about/offices/list/ocfo/intro.html.*

c. *Administrative Cost Limitation:* This program does not include any program-specific limitation on administrative expenses. All administrative expenses must be reasonable and necessary and conform to Cost Principles described in 2 CFR part 200 subpart E of the Uniform Guidance.

3. *Subgrantees:* A grantee under this competition may not award subgrants to entities to directly carry out project activities described in its application.

4. *Limitation on Awards:* a. The Department will make only one award that serves any individual LEA.

b. The Department will only make an award to LEAs that are not current MHSP grantees.

IV. Application and Submission Information

1. *Application Submission Instructions:* Applicants are required to follow the Common Instructions for Applicants to Department of Education Discretionary Grant Programs, published in the **Federal Register** on December 27, 2021 (86 FR 73264), and available at *www.federalregister.gov/d/2021-27979,* which contain requirements and information on how to submit an application. Please note that these Common Instructions supersede the version published on February 13, 2019, and, in part, describe the transition from the requirement to register in *SAM.gov* a DUNS number to the implementation of the UEI. More information on the phase-out of DUNS numbers is available at *www2.ed.gov/about/offices/list/ocfo/intro.html.*

2. *Intergovernmental Review:* This program is subject to Executive Order 12372 and the regulations in 34 CFR part 79. Information about Intergovernmental Review of Federal Programs under Executive Order 12372 is in the application package for this competition.

3. *Funding Restrictions:* We reference regulations outlining funding restrictions in the *Applicable Regulations* section of this notice. In addition, we remind applicants that sections 4001(a) and 4001(b) of the ESEA (20 U.S.C. 7101) apply to this

program. Section 4001(a) requires entities receiving funds under title IV of the ESEA to obtain prior, written, informed consent from the parent of each child who is under 18 years of age to participate in any mental-health assessment or service that is funded under title IV of the ESEA and conducted in connection with an elementary or secondary school. Section 4001(b) prohibits the use of funds for medical services or drug treatment or rehabilitation, except for integrated student supports, specialized instructional support services, or referral to treatment for impacted students, which may include students who are victims of, or witnesses to, crime or who illegally use drugs. This prohibition does not preclude the use of funds to support mental health counseling and support services, including those provided by a mental health services provider outside of school, so long as such services are not medical.

V. Application Review Information

1. *Selection Criteria:* The selection criteria for this program are from 34 CFR 75.210. The maximum score for all selection criteria is 100 points. The points assigned to each criterion are indicated in parentheses. Non-Federal peer reviewers will evaluate and score each application program narrative against the following selection criteria:

(a) *Need for the Project and Significance* (Up to 15 points)

(1) The Secretary considers the need for the proposed project. In determining the need for the proposed project, the Secretary considers the extent to which specific gaps or weaknesses in services, infrastructure, or opportunities have been identified and will be addressed by the proposed project, including the nature and magnitude of those gaps or weaknesses. (Up to 10 points)

(2) The Secretary considers the significance of the project. In determining the significance of the proposed project, the Secretary considers the extent to which the proposed project is likely to build local capacity to provide, improve, or expand services that address the needs of the target population. (Up to 5 points)

(b) *Quality of the project design* (Up to 25 points)

(1) The Secretary considers the quality of the design of the proposed project.

(2) In determining the quality of the design of the proposed project, the Secretary considers the following factors:

(i) The extent to which the design of the proposed project includes a thorough, high-quality review of the relevant literature, a high-quality plan for project implementation, and the use of appropriate methodological tools to ensure successful achievement of project objectives. (Up to 15 points)

(ii) The extent to which the proposed project represents an exceptional approach to the priority or priorities established for the competition. (Up to 5 points)

(iii) The extent to which the proposed project demonstrates a rationale (as defined in 34 CFR 77.1(c)). (Up to 5 points)

(c) *Quality of project services* (Up to 30 points)

(1) The Secretary considers the quality of the services to be provided by the proposed project.

(2) In determining the quality of the services to be provided by the proposed project, the Secretary considers the quality and sufficiency of strategies for ensuring equal access and treatment for eligible project participants who are members of groups that have traditionally been underrepresented based on race, color, national origin, gender, age, or disability. (Up to 15 points)

(3) In addition, the Secretary considers the extent to which the training or professional development services to be provided by the proposed project are likely to alleviate the personnel shortages that have been identified or are the focus of the proposed project. (Up to 15 points)

(d) *Management Plan and Adequacy of Resources* (Up to 20 points).

(1) The Secretary considers the management plan and the adequacy of resources for the proposed project.

(2) In determining the quality of the management plan and the adequacy of resources for the proposed project, the Secretary considers:

(i) The adequacy of mechanisms for ensuring high-quality products and services from the proposed project. (Up to 10 points)

(ii) The relevance and demonstrated commitment of each partner in the proposed project to the implementation and success of the project. (Up to 10 points)

(e) *Quality of the project evaluation* (Up to 10 points)

(1) The Secretary considers the quality of the evaluation to be conducted of the proposed project.

(2) In determining the quality of the evaluation, the Secretary considers the following factors:

(i) The extent to which the methods of evaluation are thorough, feasible, and appropriate to the goals, objectives, and outcomes of the proposed project. (Up to 5 points)

(ii) The extent to which the methods of evaluation will provide performance feedback and permit periodic assessment of progress toward achieving intended outcomes. (Up to 5 points)

2. *Review and Selection Process:* We remind potential applicants that, in reviewing applications in any discretionary grant competition, the Secretary may consider, under 34 CFR 75.217(d)(3), the past performance of the applicant in carrying out a previous award, such as the applicant's use of funds, achievement of project objectives, and compliance with grant conditions. The Secretary may also consider whether the applicant failed to submit a timely performance report or submitted a report of unacceptable quality.

In addition, in making a competitive grant award, the Secretary requires various assurances including those applicable to Federal civil rights laws that prohibit discrimination in programs or activities receiving Federal financial assistance from the Department (34 CFR 100.4, 104.5, 106.4, 108.8, and 110.23).

3. *Risk Assessment and Specific Conditions:* Consistent with 2 CFR 200.206, before awarding grants under this program the Department conducts a review of the risks posed by applicants. Under 2 CFR 200.208, the Secretary may impose specific conditions and, under 2 CFR 3474.10, in appropriate circumstances, high-risk conditions on a grant if the applicant or grantee is not financially stable; has a history of unsatisfactory performance; has a financial or other management system that does not meet the standards in 2 CFR part 200, subpart D; has not fulfilled the conditions of a prior grant; or is otherwise not responsible.

4. *Integrity and Performance System:* If you are selected under this competition to receive an award that over the course of the project period may exceed the simplified acquisition threshold (currently $250,000), under 2 CFR 200.206(a)(2) we must make a judgment about your integrity, business ethics, and record of performance under Federal awards—that is, the risk posed by you as an applicant—before we make an award. In doing so, we must consider any information about you that is in the integrity and performance system (currently referred to as the Federal Awardee Performance and Integrity Information System (FAPIIS)), accessible through the System for Award Management. You may review and comment on any information about yourself that a Federal agency

previously entered and that is currently in FAPIIS.

Please note that, if the total value of your currently active grants, cooperative agreements, and procurement contracts from the Federal Government exceeds $10,000,000, the reporting requirements in 2 CFR part 200, Appendix XII, require you to report certain integrity information to FAPIIS semiannually. Please review the requirements in 2 CFR part 200, Appendix XII, if this grant plus all the other Federal funds you receive exceed $10,000,000.

5. *In General:* In accordance with the Office of Management and Budget's guidance located at 2 CFR part 200, all applicable Federal laws, and relevant Executive guidance, the Department will review and consider applications for funding pursuant to this notice inviting applications in accordance with:

(a) Selecting recipients most likely to be successful in delivering results based on the program objectives through an objective process of evaluating Federal award applications (2 CFR 200.205);

(b) Prohibiting the purchase of certain telecommunication and video surveillance services or equipment in alignment with section 889 of the National Defense Authorization Act of 2019 (Pub. L. 115–232) (2 CFR 200.216);

(c) Providing a preference, to the extent permitted by law, to maximize use of goods, products, and materials produced in the United States (2 CFR 200.322); and

(d) Terminating agreements in whole or in part to the greatest extent authorized by law if an award no longer effectuates the program goals or agency priorities (2 CFR 200.340).

VI. Award Administration Information

1. *Award Notices:* If your application is successful, we notify your U.S. Representative and U.S. Senators and send you a Grant Award Notification (GAN); or we may send you an email containing a link to access an electronic version of your GAN. We may notify you informally, also.

If your application is not evaluated or not selected for funding, we notify you.

2. *Administrative and National Policy Requirements:* We identify administrative and national policy requirements in the application package and reference these and other requirements in the *Applicable Regulations* section of this notice.

We reference the regulations outlining the terms and conditions of an award in the *Applicable Regulations* section of this notice and include these and other specific conditions in the GAN. The GAN also incorporates your approved application as part of your binding commitments under the grant.

3. *Open Licensing Requirements:* Unless an exception applies, if you are awarded a grant under this competition, you will be required to openly license to the public grant deliverables created in whole, or in part, with Department grant funds. When the deliverable consists of modifications to pre-existing works, the license extends only to those modifications that can be separately identified and only to the extent that open licensing is permitted under the terms of any licenses or other legal restrictions on the use of pre-existing works. Additionally, a grantee or subgrantee that is awarded competitive grant funds must have a plan to disseminate these public grant deliverables. This dissemination plan can be developed and submitted after your application has been reviewed and selected for funding. For additional information on the open licensing requirements please refer to 2 CFR 3474.20.

4. *Reporting:* (a) If you apply for a grant under this competition, you must ensure that you have in place the necessary processes and systems to comply with the reporting requirements in 2 CFR part 170 should you receive funding under the competition. This does not apply if you have an exception under 2 CFR 170.110(b).

(b) At the end of your project period, you must submit a final performance report, including financial information, as directed by the Secretary. If you receive a multiyear award, you must submit an annual performance report that provides the most current performance and financial expenditure information as directed by the Secretary under 34 CFR 75.118. The Secretary may also require more frequent performance reports under 34 CFR 75.720(c). For specific requirements on reporting, please go to *www.ed.gov/fund/grant/apply/appforms/appforms.html.*

(c) Under 34 CFR 75.250(b), the Secretary may provide a grantee with additional funding for data collection analysis and reporting. In this case the Secretary establishes a data collection period.

5. *Performance Measures:* The Department has established the following performance measures for Department reporting under 34 CFR 75.110 for the Mental Health Service Professional Demonstration Grant Program:

(a) The unduplicated, cumulative number of school-based mental health services providers trained by the grantee under the project to provide school-based mental health services in high-need LEAs.

(b) The unduplicated, cumulative number of school-based mental health services providers placed in a practicum or internship by the grantee in high-need LEAs to provide school-based mental health services.

(c) The unduplicated, cumulative number of school-based mental health services providers hired by high-need LEAs to provide school-based mental health services.

(d) For grantees that addressed Competitive Preference Priority 1, the number of such grantees that met their goal of increasing the diversity of school-based mental health services providers.

These measures constitute the Department's indicators of success for this program. Consequently, we advise an applicant for a grant under this program to give careful consideration to these measures in conceptualizing the approach and evaluation for its proposed project. Each grantee will be required to provide, in its annual performance and final reports, data about its progress in meeting these measures. This data will be considered by the Department in making potential continuation awards.

Consistent with 34 CFR 75.591, grantees funded under this program shall cooperate in any evaluation of the program conducted by the Department or an evaluator selected by the Department.

Performance measure targets: The applicant must propose annual targets for the measures listed above in their application. Applications must also provide the following information as directed under 34 CFR 75.110(b) and (c):

(1) An explanation of how each proposed performance target is ambitious (as defined in this notice) yet achievable compared to the baseline (as defined in this notice) for the performance measure.

(2) An explanation of the data collection and reporting methods the applicant would use and why those methods are likely to yield reliable, valid, and meaningful performance data; and

(3) An explanation of the applicant's capacity to collect and report reliable, valid, and meaningful performance data, as evidenced by high-quality data collection, analysis, and reporting in other projects or research.

Note: If the applicant does not have experience with the collection and reporting of performance data through other projects or research, the applicant should provide other evidence of capacity to successfully carry out data

collection and reporting for its proposed project.

The reviewers of each application will score related selection criteria on the basis of how well an applicant has considered these measures in conceptualizing the approach and evaluation of the project.

All grantees must submit an annual performance report and final performance report with information that is responsive to these performance measures.

6. *Continuation Awards:* In making a continuation award under 34 CFR 75.253, the Secretary considers, among other things, whether a grantee has made substantial progress in achieving the goals and objectives of the project; whether the grantee has expended funds in a manner that is consistent with its approved application and budget; and, if the Secretary has established performance measurement requirements, whether the grantee has made substantial progress in achieving the performance targets in the grantee's approved application.

In making a continuation award, the Secretary also considers whether the grantee is operating in compliance with the assurances in its approved application, including those applicable to Federal civil rights laws that prohibit discrimination in programs or activities receiving Federal financial assistance from the Department (34 CFR 100.4, 104.5, 106.4, 108.8, and 110.23).

VII. Other Information

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.

Electronic Access to This Document: The official version of this document is the document published in the **Federal Register**. You may access the official edition of the **Federal Register** and the Code of Federal Regulations at *www.govinfo.gov.* At this site you can view this document, as well as all other documents of this Department published in the **Federal Register**, in text or Portable Document Format (PDF). To use PDF you must have Adobe Acrobat Reader, which is available free at the site.

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

James F. Lane,

Senior Advisor, Office of the Secretary, Delegated the Authority to Perform the Functions and Duties of the Assistant Secretary Office Elementary and Secondary Education.

[FR Doc. 2022–25824 Filed 11–25–22; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER23–466–000]

GRP TE Lessee, 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 GRP TE Lessee, 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 December 12, 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: November 21, 2022.

Debbie-Anne A. Reese,

Deputy Secretary.

[FR Doc. 2022–25863 Filed 11–25–22; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings #1

Take notice that the Commission received the following electric rate filings:

Docket Numbers: ER18–2358–000.

Applicants: GridLiance High Plains LLC, Southwest Power Pool, Inc.

Description: Refund Report: Southwest Power Pool, Inc. submits tariff filing per 35.19a(b): Refund Report in Response to Order issued in ER18–2358 to be effective N/A.

Filed Date: 11/21/22.

Accession Number: 20221121–5044.

Comment Date: 5 p.m. ET 12/7/22.

Docket Numbers: ER22–1608–002.

Applicants: Hallador Power Company, LLC.

Description: Compliance filing: Compliance to 3 to be effective 10/21/2022.

Filed Date: 11/18/22.

Accession Number: 20221118–5179.

Comment Date: 5 p.m. ET 12/7/22.

Docket Numbers: ER22–1623–001.

Applicants: Hallador Power Company, LLC.

Description: Compliance filing: Compliance to 2 to be effective 10/21/2022.

Filed Date: 11/18/22.

Accession Number: 20221118–5206.

Comment Date: 5 p.m. ET 12/7/22.

Docket Numbers: ER23–54–001.

Applicants: PJM Interconnection, L.L.C.

Description: Tariff Amendment: Amending Cancellation of ICSA, Service Agreement No. 3477; Queue Nos. R11/Z2–109 to be effective 2/10/2020.

Filed Date: 11/21/22.

Accession Number: 20221121–5021.

Comment Date: 5 p.m. ET 12/7/22.

Docket Numbers: ER23–113–000.

Applicants: AL Solar D, LLC.

Description: Supplement to October 17, 2022 AL Solar D, LLC tariff filing.

Filed Date: 11/16/22.

Accession Number: 20221116–5187.

Comment Date: 5 p.m. ET 11/23/22.

Docket Numbers: ER23–466–000.

Applicants: GRP TE Lessee, LLC.

Description: Baseline eTariff Filing: Baseline new to be effective 11/19/2022.

Filed Date: 11/18/22.

Accession Number: 20221118–5193.

Comment Date: 5 p.m. ET 12/7/22.

Docket Numbers: ER23–467–000.

Applicants: PJM Interconnection, L.L.C.

Description: § 205(d) Rate Filing: Original ISA and ICSA, SA Nos. 6695 6696; Queue Nos. AE2–093/AF1–015 to be effective 10/20/2022.

Filed Date: 11/21/22.

Accession Number: 20221121–5027.

Comment Date: 5 p.m. ET 12/7/22.

Docket Numbers: ER23–468–000.

Applicants: PJM Interconnection, L.L.C.

Description: § 205(d) Rate Filing: Original ISA, Service Agreement No. 6698; Queue No. AE2–110 to be effective 10/20/2022.

Filed Date: 11/21/22.

Accession Number: 20221121–5039.

Comment Date: 5 p.m. ET 12/7/22.

Docket Numbers: ER23–469–000.

Applicants: NorthWestern Corporation.

Description: Compliance filing: Order No. 864 2nd Compliance Filing (Montana OATT) to be effective 1/27/2020.

Filed Date: 11/21/22.

Accession Number: 20221121–5075.

Comment Date: 5 p.m. ET 12/12/22.

Docket Numbers: ER23–470–000.

Applicants: Duke Energy Ohio, Inc., Duke Energy Kentucky, Inc., PJM Interconnection, L.L.C.

Description: § 205(d) Rate Filing: Duke Energy Ohio, Inc. submits tariff filing per 35.13(a)(2)(iii): DEOK submits revisions to OATT Attachment H–22A to be effective 5/15/2022.

Filed Date: 11/21/22.

Accession Number: 20221121–5093.

Comment Date: 5 p.m. ET 12/12/22.

Docket Numbers: ER23–471–000.

Applicants: Alabama Power Company, Georgia Power Company, Mississippi Power Company.

Description: § 205(d) Rate Filing: Alabama Power Company submits tariff filing per 35.13(a)(2)(iii): Washington County Solar LGIA Amendment Filing to be effective 11/3/2022.

Filed Date: 11/21/22.

Accession Number: 20221121–5102.

Comment Date: 5 p.m. ET 12/12/22.

Docket Numbers: ER23–472–000.

Applicants: Alabama Power Company, Georgia Power Company, Mississippi Power Company.

Description: Alabama Power Company submits tariff filing per 35.13(a)(2)(iii): Decatur Solar Energy Center LGIA Amendment Filing to be effective 11/3/2022.

Filed Date: 11/21/22.

Accession Number: 20221121–5107.

Comment Date: 5 p.m. ET 12/12/22.

Docket Numbers: ER23–473–000.

Applicants: NextEra Blythe Solar Energy Center, LLC.

Description: § 205(d) Rate Filing: NextEra Blythe Solar Energy Ctr, LLC 1st Amendment to A&R SFA to be effective 11/22/2022.

Filed Date: 11/21/22.

Accession Number: 20221121–5111.

Comment Date: 5 p.m. ET 12/12/22.

Take notice that the Commission received the following electric securities filings:

Docket Numbers: ES23–7–000.

Applicants: Union Electric Company.

Description: Application Under Section 204 of the Federal Power Act for Authorization to Issue Securities of Union Electric Company.

Filed Date: 11/18/22.

Accession Number: 20221118–5272.

Comment Date: 5 p.m. ET 12/9/22.

Docket Numbers: ES23–8–000.

Applicants: Ameren Illinois Company.

Description: Application Under Section 204 of the Federal Power Act for Authorization to Issue Securities of Ameren Illinois Company.

Filed Date: 11/18/22.

Accession Number: 20221118–5273.

Comment Date: 5 p.m. ET 12/9/22.

Docket Numbers: ES23–9–000.

Applicants: Ameren Transmission Company of Illinois.

Description: Application Under Section 204 of the Federal Power Act for Authorization to Issue Securities of Ameren Transmission Company of Illinois.

Filed Date: 11/18/22.

Accession Number: 20221118–5275.

Comment Date: 5 p.m. ET 12/9/22.

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: November 21, 2022.

Debbie-Anne A. Reese,

Deputy Secretary.

[FR Doc. 2022–25862 Filed 11–25–22; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Revocation of Market-Based Rate Authority and Termination of Electric Market-Based Rate Tariff

	Docket Nos.
Data Collection for Analytics and Surveillance and Market-Based Rate Purposes	RM16–17–001
3C Solar LLC	ER11–2649–000
Apple Group	ER07–1287–001
Backyard Farms Energy LLC	ER09–1689–000
BITH Energy, Inc	ER13–48–000
BITH Solar 1, LLC	ER13–29–000

	Docket Nos.
Bolt Energy, LLC	ER19–1826–001
Cirrus Wind 1, LLC	ER13–357–001
Conch Energy Trading, LLC	ER12–1472–000
Consolidated Power Co., LLC	ER14–1858–000
Covanta Maine, LLC	ER09–560–000
EBRFUEL, LLC	ER13–797–000
El Paso Marketing Company, L.L.C	ER95–428–000
Electron Hydro, LLC	ER13–1646–001
Energy Exchange Direct, LLC	ER08–425–000
Energy Exchange International, LLC	ER11–2730–000
EONY Generation Limited	ER00–136–000
Falcon Energy, LLC	ER09–1075–000
FC Energy Services Company, LLC	ER07–1247–002
FOREST INVESTMENT GROUP, LLC	ER05–1079–000
Full Circle Renewables, LLC	ER11–4536–000
GBC Metals LLC	ER11–2825–000
Gichi Noodin Wind Farm, LLC	ER20–2087–000
Global Energy, LLC	ER12–346–000
Hawkeye Energy Greenport, LLC	ER03–833–000
High Lonesome Mesa, LLC	ER09–712–000
Hill Energy Resource & Services, LLC	ER12–1613–001
KEPCO Solar of Alamosa LLC	ER11–4050–000
KODA Energy, LLC	ER09–107–000
Lazarus Energy Holdings, LLC	ER08–848–000
Light Power & Gas LLC	ER21–1768–000
Major Lending, LLC	ER05–744–000
Manifold Energy Inc	ER18–1549–000
Monterey Consulting Associates, Inc	ER11–4603–000
Myotis Power Marketing LLC	ER13–1249–002
NFI Solar, LLC	ER10–904–000
North Branch Resources, LLC	ER03–293–000
PACE RENEWABLE ENERGY 1 LLC	ER19–178–001
PGPV, LLC	ER12–1603–001
Piedmont Energy Fund, LP	ER13–1135–001
Power Choice Inc	ER10–812–000
RDAF Energy Solutions, LLC	ER16–895–002
Renaissance Power, L.L.C	ER01–3109–000
Renewable Power Direct, LLC	ER14–1135–000
Rigby Energy Resources, LP	ER14–166–000
RJUMR ENERGY PARTNERS CORP	ER14–2013–000
RLD Resources, LLC	ER12–1244–001
Silver Bear Power, LLC	ER13–733–000
Smith Creek Hydro, LLC	ER16–904–001
Southard Energy Partners, LLC	ER13–698–000
Southern California Telephone Company	ER11–3186–000
Spruance Genco, LLC	ER06–634–000
Sunbury Energy, LLC	ER13–113–002
Texzon Utilities, Ltd	ER03–1150–000
Thicksten Grimm Burgum, Inc	ER11–4604–000
Trane Grid Services LLC	ER13–1107–000
Tropicana Manufacturing Company Inc	ER11–2962–001
UBS AG	ER02–973–000
Viridity Energy, Inc	ER11–4706–001
Volunteer Energy Services, Inc	ER04–937–000
Western Aeon Energy Trading LLC	ER21–908–000
Western Reserve Energy Services, LLC	ER11–3263–000
White Pine Electric Power L.L.C	ER04–262–000
Windy Flats Partners, LLC	ER09–750–000
Woomera Energy, LLC	ER18–624–000
Z&Y Energy Trading LLC	ER18–2031–000

On September 22, 2022, the Commission issued an order announcing its intent to revoke the market-based rate authority of the sellers [1] captioned above that had failed to file their baseline submissions to the market-based rate relational database,[2] as required by Order No. 860.[3] The Commission directed those sellers to file the required baseline submissions within 15 days of the date of issuance of the September 22 Order or face

[1] A ''seller'' is defined as any person that has authorization to or seeks authorization to engage in sales for resale of electric energy, capacity or ancillary services at market-based rates under section 205 of the Federal Power Act (FPA). 18 CFR 35.36(a)(1); 16 U.S.C. 824d. Each seller is a public utility under section 205 of the FPA. 16 U.S.C. 824.

[2] *Data Collection for Analytics & Surveillance & Mkt.-Based Rate Purposes,* 180 FERC ¶ 61,170 (2022) (September 22 Order).

[3] *Data Collection for Analytics & Surveillance & Mkt.-Based Rate Purposes,* Order No. 860, 168 FERC ¶ 61,039 (2019), *order on reh'g,* Order No. 860–A, 170 FERC ¶ 61,129 (2020).

revocation of their authority to sell power at market-based rates and termination of their electric market-based rate tariffs.[4] On October 14, 2022, the above-captioned sellers were granted an extension of time to satisfy the Commission's requirements in Order No. 860, and the directives of the September 22 Order, up to and including October 21, 2022.[5]

The time period for compliance with the September 22 Order and the October 14 Extension has elapsed. The above-captioned sellers failed to file their delinquent baseline submissions to the market-based rate relational database. The Commission hereby revokes, effective as of the date of issuance of this notice, the market-based rate authority and terminates the electric market-based rate tariff of each of the sellers who are named in the caption of this order. This revocation does not preclude the above-captioned sellers from re-applying for market-based rate authority.

Dated: November 21, 2022.

Kimberly D. Bose,

Secretary.

[FR Doc. 2022–25831 Filed 11–25–22; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 9260–051]

Sissonville Limited Partnership; 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:* Extension of License Term.

b. *Project No:* P–9260–051.

c. *Date Filed:* November 7, 2022.

d. *Applicant:* Sissonville Limited Partnership.

e. *Name of Project:* Sissonville Hydroelectric Project (P–9260).

f. *Location:* The project is located on the Raquette River in the town of Potsdam, St. Lawrence County, New York.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791a–825r.

h. *Applicant Contact:* Erik Bergman, Manager, Boralex Hydro Operations, Inc., 39 Hudson Falls Road, South Glens Falls, New York 12803, (518) 747–0930, *erik.bergman@boralex.com.*

i. *FERC Contact:* Maryam Akhavan, (202) 502–6110, *Maryam.Akhavan@ferc.gov.*

j. *Deadline for filing comments, motions to intervene, and protests:* December 21, 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–9260–051. 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:* Sissonville Limited Partnership, licensee for the Sissonville Hydroelectric Project No. 9260 filed a request with the Commission for a 5-year, 8-month extension of the 40-year license for the project, currently expiring on April 30, 2028. The new expiration date for the project would be December 31, 2033. The licensee requests the extension to align the project license expiration date with several other licensed hydroelectric projects located in the lower Raquette River Basin. The licensee states that aligning the expiration dates for the projects would allow a more synchronized approach to the relicensing process. In addition, as requested by the New York State Department of Environmental Conservation and U.S. Fish and Wildlife Service, in exchange for support for the license extension, the licensee has agreed to conduct an eel study of the lower Raquette River and collect information on American eel distribution.

l. *Locations of the Application:* This filing may be viewed on the Commission's website at *http://www.ferc.gov* using the ''eLibrary'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. You may also register online at *http://www.ferc.gov/docs-filing/esubscription.asp* to be notified via email of new filings and issuances related to this or other pending projects. For assistance, call 1–866–208–3676 or email *FERCOnlineSupport@ferc.gov,* for TTY, call (202) 502–8659. Agencies may obtain copies of the application directly from the applicant.

m. Individuals desiring to be included on the Commission's mailing list should so indicate by writing to the Secretary of the Commission.

n. *Comments, Protests, or Motions to Intervene:* Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, .211, .214, respectively. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

o. *Filing and Service of Documents:* Any filing must (1) bear in all capital letters the title ''COMMENTS'', ''PROTEST'', or ''MOTION TO INTERVENE'' as applicable; (2) set forth in the heading the name of the applicant and the project number of the application to which the filing responds; (3) furnish the name, address, and telephone number of the person commenting, protesting or intervening; and (4) otherwise comply with the requirements of 18 CFR 385.2001 through 385.2005. All comments, motions to intervene, or protests must set forth their evidentiary basis. Any

[4] September 22 Order, 180 FERC ¶ 61,170 at Ordering Paragraph A.

[5] *Data Collection for Analytics & Surveillance & Mkt.-Based Rate Purposes,* Notice of Extension of Time, Docket No. RM16–17–000 (Oct. 14, 2022) (October 14 Extension).

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: November 21, 2022.

Kimberly D. Bose,

Secretary.

[FR Doc. 2022–25830 Filed 11–25–22; 8:45 am]

BILLING CODE 6717–01–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OECA–2017–0640; FRL–10457–01–OMS]

Information Collection Request Submitted to OMB for Review and Approval; Comment Request; Producers, Registrants, and Applicants of Pesticides and Pesticide Devices Under Section 8 of the Federal Insecticide, Fungicide, and Rodenticide Act (Renewal)

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: The Environmental Protection Agency (EPA) has submitted an information collection request (ICR), Producers, of Pesticides and Pesticide Devices under Section 8 of The Federal Insecticide, Fungicide, and Rodenticide Act (EPA ICR Number 0143.14, OMB Control Number 2070–0028) to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act. This is a proposed extension of the ICR, which is currently approved through November 30, 2022. Public comments were previously requested via the **Federal Register** on September 7, 2022, during a 60-day comment period. This notice allows for an additional 30 days for public comments. A fuller description of the ICR is given below, including its estimated burden and cost to the public. An agency may not conduct, or sponsor and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number.

DATES: Additional comments may be submitted on or before December 28, 2022.

ADDRESSES: Submit your comments to EPA, referencing Docket ID No. EPA–HQ–OECA–2017–0640, online using *www.regulations.gov* (our preferred method), by email to *docket.oeca@epa.gov,* or by mail to: EPA Docket Center, Environmental Protection Agency, Mail Code 28221T, 1200 Pennsylvania Ave. NW, Washington, DC 20460. EPA's policy is that all comments received will be included in the public docket without change including any personal information provided, unless the comment includes profanity, threats, information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute.

Submit written comments and recommendations to OMB for the proposed information collection within 30 days of publication of this notice to *www.reginfo.gov/public/do/PRAMain.* Find this particular information collection by selecting ''Currently under 30-day Review—Open for Public Comments'' or by using the search function.

FOR FURTHER INFORMATION CONTACT: Michelle Yaras, Office of Compliance, Monitoring, Assistance, and Media Programs Division, Pesticides, Waste & Toxics Branch (2227A), Environmental Protection Agency, 1200 Pennsylvania Ave. NW, Washington, DC 20460; telephone number: 202–564–4153; email address: *yaras.michelle@epa.gov.*

SUPPLEMENTARY INFORMATION: Supporting documents, which explain in detail the information that the EPA will be collecting, are available in the public docket for this ICR. The docket can be viewed online at *www.regulations.gov* or in person at the EPA Docket Center, WJC West, Room 3334, 1301 Constitution Ave. NW, Washington, DC. The telephone number for the Docket Center is 202–566–1744. For additional information about EPA's public docket, visit *http://www.epa.gov/dockets.*

Abstract: Producers of pesticides and pesticide devices must maintain certain records with respect to their operations and make such records available for inspection and copying as specified in section 8 of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) and in regulations at 40 CFR part 169.

This information collection is mandatory under 40 CFR part 169. It is used by the Agency to determine compliance with FIFRA. The information is used by EPA Regional pesticide enforcement and compliance staffs, the Office of Enforcement and Compliance Assurance (OECA), and the Office of Pesticide Programs (OPP) within the Office of Chemical Safety and Pollution Prevention (OCSPP), as well as the U.S. Department of Agriculture (USDA), the Food and Drug Administration (FDA), and other Federal agencies, States under Cooperative Enforcement Agreements, and the public. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number.

Form Numbers: None.

Respondents/affected entities: Producers of pesticides and pesticide devices for sale or distribution in or exported to the United States.

Respondent's obligation to respond: Mandatory (40 CFR part 169).

Estimated number of respondents: 19,027 (total).

Frequency of response: Annual.

Total estimated burden: 15,078 hours (per year). Burden is defined at 5 CFR 1320.03(b).

Total estimated cost: $909,655 (per year), includes $0 annualized capital or operation & maintenance costs.

Changes in the Estimates: There is a decrease of 42,054 hours in the total estimated respondent burden compared with the ICR currently approved by OMB. This decrease of 42,054 hours is a result of our reassessment of the assumptions used to estimate the burden of this ICR. Adjustments resulted from corrections of clerical or computational errors in the previous ICR renewal supporting statement. Further adjustments to the burden estimates resulted from (1) adjustments in the salary computation for industry to reflect current wage rates, (2) adjustments for inflation, and (3) adjustment to the number of respondents.

Courtney Kerwin,

Director, Regulatory Support Division.

[FR Doc. 2022–25799 Filed 11–25–22; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OAR–2022–0077; FRL–10272–01–OMS]

Information Collection Request Submitted to OMB for Review and Approval; Comment Request; NESHAP for Pulp and Paper Production (Renewal)

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: The Environmental Protection Agency (EPA) has submitted an information collection request (ICR), NESHAP for Pulp and Paper Production (EPA ICR Number 1657.10, OMB Control Number 2060–0387), to the Office of Management and Budget

(OMB) for review and approval in accordance with the Paperwork Reduction Act. This is a proposed extension of the ICR, which is currently approved through January 31, 2023. Public comments were previously requested, via the **Federal Register**, on July 22, 2022 during a 60-day comment period. This notice allows for an additional 30 days for public comments. A fuller description of the ICR is given below, including its estimated burden and cost to the public. An agency may neither conduct nor sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number.

DATES: Additional comments may be submitted on or before December 28, 2022.

ADDRESSES: Submit your comments, referencing Docket ID Number EPA–HQ–OAR–2022–0077, to EPA online using *https://www.regulations.gov/* (our preferred method), or by email to *docket@epa.gov,* or by mail to: EPA Docket Center, Environmental Protection Agency, Mail Code 28221T, 1200 Pennsylvania Ave. NW, Washington, DC 20460. EPA's policy is that all comments received will be included in the public docket without change including any personal information provided, unless the comment includes profanity, threats, information claimed to be Confidential Business Information (CBI), or other information whose disclosure is restricted by statute.

Submit written comments and recommendations to OMB for the proposed information collection within 30 days of publication of this notice to *www.reginfo.gov/public/do/PRAMain.* Find this particular information collection by selecting ''Currently under 30-day Review—Open for Public Comments'' or by using the search function.

FOR FURTHER INFORMATION CONTACT: Muntasir Ali, Sector Policies and Program Division (D243–05), Office of Air Quality Planning and Standards, U.S. Environmental Protection Agency, Research Triangle Park, North Carolina, 27711; telephone number: (919) 541–0833; email address: *ali.muntasir@epa.gov.*

SUPPLEMENTARY INFORMATION: Supporting documents, which explain in detail the information that the EPA will be collecting, are available in the public docket for this ICR. The docket can be viewed online at *https://www.regulations.gov,* or in person, at the EPA Docket Center, WJC West Building, Room 3334, 1301 Constitution Ave. NW, Washington, DC. The telephone number for the Docket Center is 202–566–1744. For additional information about EPA's public docket, visit *http://www.epa.gov/dockets.*

Abstract: The National Emission Standards for Hazardous Air Pollutants (NESHAP) for Pulp and Paper Production (40 CFR part 63, subpart S) apply to both existing facilities and new facilities that produce pulp, paper, or paperboard by employing kraft, soda, sulfite, semi-chemical, or mechanical pulping processes using wood, or any process using secondary or non-wood fiber and that emits 10 tons per year or more of any hazardous air pollutant (HAP) or 25 tons per year or more of any combination of HAPs. Affected sources are all the HAP emission points in the pulping and bleaching system for mechanical pulping processes using wood and any process using secondary or non-wood fiber. In general, all NESHAP standards require initial notifications, performance tests, and periodic reports by the owners/operators of the affected facilities. They are also required to maintain records of the occurrence and duration of any startup, shutdown, or malfunction in the operation of an affected facility, or any period during which the monitoring system is inoperative. These notifications, reports, and records are essential in determining compliance, and are required of all affected facilities subject to NESHAP.

Form Numbers: None.

Respondents/affected entities: Owners and operators of pulp and paper production facilities.

Respondent's obligation to respond: Mandatory (40 CFR part 63, subpart S).

Estimated number of respondents: 104 (total).

Frequency of response: Semiannually.

Total estimated burden: 30,800 hours (per year). Burden is defined at 5 CFR 1320.3(b).

Total estimated cost: $4,470,000 (per year), which includes $766,000 in annualized capital/startup and/or operation & maintenance costs.

Changes in the Estimates: The decrease in burden from the most recently approved ICR is due to various adjustments. An adjustment decrease is due to a decrease in respondents and more accurate estimates of hours per occurrence that were used in the calculations supporting the prior renewal. The estimated number of respondents reflects Agency review of data collected from ECHO, the Agency's internal database of information collection responses from the pulp and paper industry, and current permits for identified facilities. The hours to read and understand rule requirements were decreased for this renewal, since the prior renewal supported rule amendments. There is also a decrease in Capital/Startup vs. Operation and Maintenance (O&M) costs due to a decrease in the number of respondents.

Courtney Kerwin,

Director, Regulatory Support Division.

[FR Doc. 2022–25872 Filed 11–25–22; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OAR–2022–0020; FRL–10459–01–OMS]

Information Collection Request Submitted to OMB for Review and Approval; Comment Request; NESHAP for Publicly-Owned Treatment Works (Renewal)

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: The Environmental Protection Agency (EPA) has submitted an information collection request (ICR), NESHAP for Publicly-Owned Treatment Works (EPA ICR Number 1891.11, OMB Control Number 2060–0428), to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act. This is a proposed extension of the ICR, which is currently approved through January 31, 2023. Public comments were previously requested, via the **Federal Register**, on July 22, 2022 during a 60-day comment period. This notice allows for an additional 30 days for public comments. A fuller description of the ICR is given below, including its estimated burden and cost to the public. An agency may neither conduct nor sponsor, and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number.

DATES: Additional comments may be submitted on or before December 28, 2022.

ADDRESSES: Submit your comments, referencing Docket ID Number EPA–HQ–OAR–2022–0020, to EPA online using *https://www.regulations.gov/* (our preferred method), or by email to *docket@epa.gov,* or by mail to: EPA Docket Center, Environmental Protection Agency, Mail Code 28221T, 1200 Pennsylvania Ave. NW, Washington, DC 20460. EPA's policy is that all comments received will be

included in the public docket without change including any personal information provided, unless the comment includes profanity, threats, information claimed to be Confidential Business Information (CBI), or other information whose disclosure is restricted by statute.

Submit written comments and recommendations to OMB for the proposed information collection within 30 days of publication of this notice to *www.reginfo.gov/public/do/PRAMain.* Find this particular information collection by selecting ''Currently under 30-day Review—Open for Public Comments'' or by using the search function.

FOR FURTHER INFORMATION CONTACT: Muntasir Ali, Sector Policies and Program Division (D243–05), Office of Air Quality Planning and Standards, U.S. Environmental Protection Agency, Research Triangle Park, North Carolina, 27711; telephone number: (919) 541–0833; email address: *ali.muntasir@epa.gov.*

SUPPLEMENTARY INFORMATION: Supporting documents, which explain in detail the information that the EPA will be collecting, are available in the public docket for this ICR. The docket can be viewed online at *https://www.regulations.gov,* or in person, at the EPA Docket Center, WJC West Building, Room 3334, 1301 Constitution Ave. NW, Washington, DC. The telephone number for the Docket Center is 202–566–1744. For additional information about EPA's public docket, visit: *http://www.epa.gov/dockets.*

Abstract: The National Emission Standards for Hazardous Air Pollutants (NESHAP) for Publicly-Owned Treatment Works (POTW) (40 CFR part 63, subpart VVV) were proposed on December 1, 1998; and promulgated on October 26, 1999; and amended on both December 22, 2008, and October 26, 2017 (82 FR 49513). These regulations apply to both existing and new Group 2 POTW located at a major source of hazardous air pollutants (HAP), or to Group 1 POTW that are either area or major sources. Group 1 POTWs are facilities that accept wastewater regulated by another NESHAP and provide treatment ''as an agent'' for the industrial user. Group 1 POTWs are subject to the monitoring, recordkeeping, and reporting requirements of the other regulating NESHAP but have no additional monitoring, recordkeeping, or reporting requirements under Subpart VVV. Group 2 POTWs are POTWs that do not meet the definition of a Group 1 POTW and must meet the criteria for a pretreatment program under 40 CFR 403.8. New facilities include those that commenced either construction, or reconstruction, after the date of proposal. This information is being collected to assure compliance with 40 CFR part 63, Subpart VVV.

Form Numbers: 5900–603.

Respondents/affected entities: Owners and operators of publicly-owned treatment works.

Respondent's obligation to respond: Mandatory (40 CFR part 63, Subpart VVV).

Estimated number of respondents: 13.7 (total).

Frequency of response: Initially, occasionally, semiannually and annually.

Total estimated burden: 17 hours (per year). Burden is defined at 5 CFR 1320.3(b).

Total estimated cost: $865 (per year), which includes no annualized capital/startup and/or operation & maintenance costs.

Changes in the Estimates: The increase in burden from the most-recently approved ICR is due to an adjustment(s). The adjustment increase is due to a slight increase in the number of respondents. There is a slight increase in costs, which is due to the increased number of respondents.

Courtney Kerwin,

Director, Regulatory Support Division.

[FR Doc. 2022–25876 Filed 11–25–22; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OLEM–2021–0590; FRL–10429–01–OLEM]

Hazardous and Solid Waste Management System: Disposal of Coal Combustion Residuals From Electric Utilities; A Holistic Approach to Closure Part A: Final Decision on Request For Extension of Closure Date Submitted by Gavin Power, LLC

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of availability (NOA) of final decision.

SUMMARY: The Environmental Protection Agency (EPA or Agency) announces the availability of the final decision denying the extension request submitted by Gavin Power, LLC (Gavin) to allow a coal combustion residuals (CCR) surface impoundment, the Bottom Ash Pond, to continue to receive CCR and non-CCR wastestreams after April 11, 2021, at the General James M. Gavin Plant located in Cheshire, Ohio. EPA is denying the extension based on its determination that Gavin failed to demonstrate that the facility meets the requirements for an extension. As a result of this decision, Gavin is hereby required to cease receipt of waste at the Bottom Ash Pond no later than April 12, 2023 or such later date as EPA establishes to address demonstrated electric grid reliability issues.

DATES: The effective date of the final decision (''Effective Date'') is November 28, 2022.

ADDRESSES: The final decision and supporting information are available for review in the docket for this action at *https://www.regulations.gov* under Docket ID No. EPA–HQ–OLEM–2021–0590. The final decision is also posted on EPA's website at *https://www.epa.gov/coalash.*

FOR FURTHER INFORMATION CONTACT: Frank Behan, Materials Recovery and Waste Management Division, Office of Resource Conservation and Recovery, Environmental Protection Agency, 1200 Pennsylvania Avenue NW, MC: 5304T, Washington, DC 20460; telephone number: (202) 566–0531; email address: *Behan.Frank@epa.gov.* For more information on EPA's CCR regulations, please visit *https://www.epa.gov/coalash.*

Judicial Review: Because EPA's final action promulgates requirements under the Resource Conservation and Recovery Act (RCRA), pursuant to RCRA section 7006(a), petitions for review of this final action must be filed in the United States Court of Appeals for the District of Columbia Circuit (D.C. Circuit) within ninety days of publication of this notice in the **Federal Register**. 42 U.S.C. 6976(a)(1).

SUPPLEMENTARY INFORMATION: As documented in the final decision, EPA is taking final action to deny the request from Gavin for an extension of the date by which it must cease receipt of waste at the Bottom Ash Pond pursuant to the authority in 40 CFR 257.103(f). The Agency is denying the extension based on its determination that Gavin has not demonstrated compliance with the requirements of 40 CFR part 257, subpart D, as required in 40 CFR 257.103(f)(1)(iii).

Gavin is the owner and operator of the General James M. Gavin Plant in Cheshire, Ohio. The Gavin Plant is a coal-fired electric generation facility that generates and manages CCR on-site and is subject to the federal standards for the disposal of CCR in surface impoundments and landfills codified under 40 CFR part 257, subpart D (''regulations'' or ''CCR regulations'').

Under the CCR regulations, owners and operators of unlined CCR surface impoundments were required to cease placing CCR and non-CCR wastestreams into unlined impoundments and initiate the closure (or retrofit) of the unit no later April 11, 2021. 40 CFR 257.101(a)(1). However, the regulations also include procedures by which an owner or operator of an unlined impoundment could request additional time to cease the receipt of waste and initiate closure of the unit. 40 CFR 257.103(f). On November 30, 2020, Gavin submitted a timely demonstration pursuant to 40 CFR 257.103(f)(1) requesting additional time to develop alternative capacity to manage CCR and non-CCR wastestreams in its Bottom Ash Pond, an unlined CCR surface impoundment subject to the requirement to close no later than April 11, 2021.

On January 11, 2022, EPA proposed to deny Gavin's request for additional time to develop alternative capacity to manage CCR and non-CCR wastestreams in its Bottom Ash Pond. EPA sought comments on the proposed decision during a comment period that closed on March 25, 2022. In response to the proposed decision, the Agency received approximately 30 comment letters from the public. All comment letters can be accessed in the docket for this action at *www.regulations.gov* under Docket ID EPA–HQ–OLEM–2021–0590. EPA's responses to public comments are either in the final decision or the Response to Comments document; both are available in the docket.

After considering the comments submitted on the proposal, EPA is denying the request for an extension of the deadline for the Bottom Ash Pond to cease receipt of waste because Gavin has not demonstrated that the facility is in compliance with all of the requirements of 40 CFR part 257, subpart D, as required in § 257.103(f)(1)(iii). First, EPA finds that Gavin has not demonstrated that it complied with the closure performance standards in 40 CFR 257.102(d) when it closed the Fly Ash Reservoir, a separate CCR surface impoundment at the Gavin Plant, with at least a portion of the CCR in the closed unit in continued contact with groundwater, and without taking any measures to address the groundwater continuing to migrate into and out of the impoundment. Second, Gavin did not develop a closure plan for the Fly Ash Reservoir consistent with 40 CFR 257.102(b). Third, Gavin has not demonstrated that the groundwater monitoring system for the Bottom Ash Pond is in compliance with the requirements of 40 CFR 257.93(a), 257.93(f)(3), or 257.94(c) regarding statistical analyses of data, or of 40 CFR 257.94(e)(2) for alternative source demonstrations. Finally, Gavin has not demonstrated that the groundwater monitoring system(s) for the Fly Ash Reservoir and Residual Waste Landfill (a CCR landfill at the Gavin Plant) comply with the requirements in 40 CFR 257.91, 257.93(a), 257.93(f)(3), 257.94(c), or 257.94(e)(2).

EPA's decision is also based on the determination that Gavin's workplan for obtaining alternative capacity does not meet the requirements of 40 CFR 257.103(f)(1)(iv)(A). Specifically, Gavin failed to present a detailed plan of the fastest technically feasible schedule to complete its alternative capacity for non-CCR wastestreams. 40 CFR 257.103(f)(1)(iv)(A)(*1*)(*iii*).

As a result, Gavin is hereby required to cease receipt of waste at the Bottom Ash Pond no later than April 12, 2023 or such later date as EPA establishes to address demonstrated electric grid reliability issues. EPA recognizes the importance of maintaining grid reliability and has established a process for Gavin to seek additional time if needed to address demonstrated grid reliability issues. Because Gavin is in the Pennsylvania-New Jersey-Maryland Interconnection (PJM) region, EPA closely considered the comments from and discussions with PJM and developed a process that relies on and is consistent with PJM's existing approach to scheduling outages and protecting electric grid reliability. To utilize this process, the final decision requires Gavin to submit a request for a planned outage to PJM no later than December 13, 2022 to ensure that PJM has sufficient time to evaluate the potential impacts of a planned outage at Gavin. Additionally, Gavin must engage with PJM no later than 5 days after submitting the request for an outage to PJM and no later than December 19, 2022, to request assistance in scheduling the planned outage so that Gavin and PJM can determine the shortest period of time, if any, in which the generating unit must be online to avoid a reliability violation. Finally, to obtain an extension of the new deadline to cease receipt of waste to the Bottom Ash Pond, the final decision requires Gavin to submit a copy of the planned outage request submitted to PJM and the PJM determination (including the formal reliability assessment) to EPA within 10 days of receiving the response from PJM and no later than March 28, 2023. EPA will review the request and, without further notice and comment, issue a decision.

Barry N. Breen,

Acting Assistant Administrator, Office of Land and Emergency Management.

[FR Doc. 2022–25800 Filed 11–25–22; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OAR–2022–0074; FRL–10455–01–OMS]

Information Collection Request Submitted to OMB for Review and Approval; Comment Request; NSPS for Secondary Brass and Bronze Production, Primary Copper Smelters, Primary Zinc Smelters, Primary Lead Smelters, Primary Aluminum Reduction Plants, and Ferroalloy Production Facilities (Renewal)

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: The Environmental Protection Agency (EPA) has submitted an information collection request (ICR), NSPS for Secondary Brass and Bronze Production, Primary Copper Smelters, Primary Zinc Smelters, Primary Lead Smelters, Primary Aluminum Reduction Plants, and Ferroalloy Production Facilities (EPA ICR Number 1604.13, OMB Control Number 2060–0110), to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act. This is a proposed extension of the ICR, which is currently approved through January 31, 2023. Public comments were previously requested, via the **Federal Register**, on April 8, 2022, during a 60-day comment period. This notice allows for an additional 30 days for public comments. A fuller description of the ICR is given below, including its estimated burden and cost to the public. An agency may neither conduct nor sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number.

DATES: Additional comments may be submitted on or before December 28, 2022.

ADDRESSES: Submit your comments, referencing Docket ID Number EPA–HQ–OAR–2022–0074, to EPA online using *https://www.regulations.gov/* (our preferred method), or by email to *docket@epa.gov,* or by mail to: EPA Docket Center, Environmental Protection Agency, Mail Code 28221T,

1200 Pennsylvania Ave. NW, Washington, DC 20460. EPA's policy is that all comments received will be included in the public docket without change including any personal information provided, unless the comment includes profanity, threats, information claimed to be Confidential Business Information (CBI), or other information whose disclosure is restricted by statute. Submit written comments and recommendations to OMB for the proposed information collection within 30 days of publication of this notice to *www.reginfo.gov/public/do/PRAMain.* Find this particular information collection by selecting ''Currently under 30-day Review—Open for Public Comments'' or by using the search function.

FOR FURTHER INFORMATION CONTACT: Muntasir Ali, Sector Policies and Program Division (D243–05), Office of Air Quality Planning and Standards, U.S. Environmental Protection Agency, Research Triangle Park, North Carolina, 27711; telephone number: (919) 541–0833; email address: *ali.muntasir@epa.gov.*

SUPPLEMENTARY INFORMATION: Supporting documents, which explain in detail the information that the EPA will be collecting, are available in the public docket for this ICR. The docket can be viewed online at *https://www.regulations.gov,* or in person, at the EPA Docket Center, WJC West Building, Room 3334, 1301 Constitution Ave. NW, Washington, DC. The telephone number for the Docket Center is 202–566–1744. For additional information about EPA's public docket, visit: *http://www.epa.gov/dockets.*

Abstract: The New Source Performance Standards (NSPS) for Secondary Brass and Bronze Production (40 CFR part 60, subpart M) apply to both existing facilities and new facilities that commenced either construction or modification after June 11, 1973. These standards apply to the following facilities in secondary brass or bronze production plants: reverberatory and electric furnaces of 1,000 kg or greater production capacity and blast (cupola) furnaces of 250 kg/hr or greater production capacity. Furnaces from which molten brass or bronze are cast into the shape of finished products, such as foundry furnaces, are not considered to be affected facilities. The NSPS for Primary Copper Smelters (40 CFR part 60, subpart P) apply to both existing facilities and new facilities that commenced either construction or modification after October 16, 1974. These standards apply to the following facilities in primary copper smelters: dryer, roaster, smelting furnace, and copper converter. The NSPS for Primary Zinc Smelters (40 CFR part 60, subpart Q) apply to both existing facilities and new facilities that commenced either construction or modification after October 16, 1974. These standards apply to the following facilities in primary zinc smelters: roaster and sintering machines. The NSPS for Primary Lead Smelters (40 CFR part 60, subpart R) apply to both existing facilities and new facilities that commenced either construction or modification after October 16, 1974. These standards apply to the following facilities in primary lead smelters: sintering machine, sintering machine discharge end, blast furnace, dross reverberatory furnace, electric smelting furnace, and converter. The NSPS for Primary Aluminum Reduction Plants (40 CFR part 60, subpart S) apply to both existing facilities and new facilities that commenced either construction or modification after October 23, 1974. These standards apply to the following facilities in primary aluminum reduction plants: potroom groups and anode bake plants. The NSPS for Ferroalloy Production Facilities (40 CFR part 60, subpart Z) apply to both existing facilities and new facilities that commenced either construction or modification after October 21, 1974. These standards apply to the following facilities in ferroalloy production plants: electric submerged arc furnaces which produce silicon metal, ferrosilicon, calcium silicon, silicomanganese zirconium, ferrochrome silicon, silvery iron, high-carbon ferrochrome, charge chrome, standard ferromanganese, silicomanganese, ferromanganese silicon, or calcium carbide; and dust-handling equipment.

In general, all NSPS standards require initial notifications, performance tests, and periodic reports by the owners/operators of the affected facilities. They are also required to maintain records of the occurrence and duration of any startup, shutdown, or malfunction in the operation of an affected facility, or any period during which the monitoring system is inoperative. These notifications, reports, and records are essential in determining compliance, and are required of all affected facilities subject to NSPS.

Form Numbers: None.

Respondents/affected entities: Owners and operators or secondary brass and bronze production facilities, primary copper smelters, primary zinc smelters, primary lead smelters, primary aluminum reduction plants, and ferroalloy production facilities.

Respondent's obligation to respond: Mandatory (40 CFR 60, subparts M, P, Q, R, S, and Z).

Estimated number of respondents: 14 (total).

Frequency of response: Monthly, semiannually, annually.

Total estimated burden: 2,008 hours (per year). Burden is defined at 5 CFR 1320.3(b).

Total estimated cost: $349,000 (per year), which includes $107,000 in annualized capital/startup and/or operation & maintenance costs.

Changes in the Estimates: The decrease in burden from the most-recently approved ICR is due to an adjustment(s). Based on information collected by the Agency, all facilities subject to 40 CFR part 60, subpart S are complying with MACT Subpart LL for potroom groups and anode back furnaces as an alternative to the NSPS requirements. In addition, the MACT rule requirements for anode bake plants are more stringent and superseded the NSPS requirements for such affected facility. We assume all facilities subject to this NSPS will continue to comply with the MACT instead; therefore, this ICR adjusts the burden for Subpart S to reflect no respondents. In addition, Capital/Startup vs. O&M costs have decreased due to the same reasons as stated above.

Courtney Kerwin,

Director, Regulatory Support Division.

[FR Doc. 2022–25797 Filed 11–25–22; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OAR–2022–0085; FRL–10456–01–OMS]

Information Collection Request Submitted to OMB for Review and Approval; Comment Request; NESHAP for Oil and Natural Gas Production (Renewal)

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: The Environmental Protection Agency (EPA) has submitted an information collection request (ICR), NESHAP for Oil and Natural Gas Production (EPA ICR Number 1788.13, OMB Control Number 2060–0417), to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act. This is a proposed extension of the ICR, which is currently approved through January 31, 2023.

Public comments were previously requested, via the **Federal Register**, on July 22, 2022 during a 60-day comment period. This notice allows for an additional 30 days for public comments. A fuller description of the ICR is given below, including its estimated burden and cost to the public. An agency may neither conduct nor sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number.

DATES: Additional comments may be submitted on or before December 28, 2022.

ADDRESSES: Submit your comments, referencing Docket ID Number EPA–HQ–OAR–2022–0085, to EPA online using *https://www.regulations.gov/* (our preferred method), or by email to *docket@epa.gov,* or by mail to: EPA Docket Center, Environmental Protection Agency, Mail Code 28221T, 1200 Pennsylvania Ave. NW, Washington, DC 20460. EPA's policy is that all comments received will be included in the public docket without change including any personal information provided, unless the comment includes profanity, threats, information claimed to be Confidential Business Information (CBI), or other information whose disclosure is restricted by statute.

Submit written comments and recommendations to OMB for the proposed information collection within 30 days of publication of this notice to *www.reginfo.gov/public/do/PRAMain.* Find this particular information collection by selecting ''Currently under 30-day Review—Open for Public Comments'' or by using the search function.

FOR FURTHER INFORMATION CONTACT: Muntasir Ali, Sector Policies and Program Division (D243–05), Office of Air Quality Planning and Standards, U.S. Environmental Protection Agency, Research Triangle Park, North Carolina 27711; telephone number: (919) 541–0833; email address: *ali.muntasir@epa.gov.*

SUPPLEMENTARY INFORMATION: Supporting documents, which explain in detail the information that the EPA will be collecting, are available in the public docket for this ICR. The docket can be viewed online at *https://www.regulations.gov,* or in person at the EPA Docket Center, WJC West Building, Room 3334, 1301 Constitution Ave. NW, Washington, DC. The telephone number for the Docket Center is 202–566–1744. For additional information about EPA's public docket, visit *http://www.epa.gov/dockets.*

Abstract: The National Emission Standards for Hazardous Air Pollutants (NESHAP) for Oil and Natural Gas Production (40 CFR part 63, subpart HH) were proposed on February 6, 1998, and promulgated on June 17, 1999, only for major sources. On July 8, 2005, a supplemental proposal was proposed for area sources, with the final rule effective date on January 3, 2007. The rule was subsequently amended on August 16, 2012, to include emission sources for which standards were not previously developed. These regulations apply to emission points located at both new and existing oil and natural gas production facilities that are both major and area sources. A major source of hazardous air pollutants (HAP) is one that has the potential to emit 10 tons or more of any single HAP or 25 tons or more of total HAP per year; an area source is one with the potential to emit less than these amounts. New facilities include those that commenced either construction or reconstruction after the date of proposal. This information is being collected to assure compliance with 40 CFR part 63, subpart HH.

Form Numbers: None.

Respondents/affected entities: Oil and natural gas production facilities.

Respondent's obligation to respond: Mandatory (40 CFR part 63, subpart HH).

Estimated number of respondents: 5,146 (total).

Frequency of response: Initially, semiannually.

Total estimated burden: 60,600 hours (per year). Burden is defined at 5 CFR 1320.3(b).

Total estimated cost: $8,390,000 (per year), which includes $1,110,000 in annualized capital/startup and/or operation & maintenance costs.

Changes in the estimates: There is an increase in burden from the most-recently approved ICR currently identified in the OMB Inventory of Approved Burdens due to an increase in the number of new or modified sources. This ICR updates the number of affected sources subject to these regulations based on an assumption that the industry continues to grow at a constant rate since the previous renewal. Because the industry growth rate is constant, the number of new sources each year is constant, and there is no change in the capital/startup costs from the most recently approved ICR. However, the number of existing sources has increased due to the industry growth rate, resulting in an increase to the operation & maintenance (O&M) costs.

Courtney Kerwin,

Director, Regulatory Support Division.

[FR Doc. 2022–25796 Filed 11–25–22; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

[FR ID 114675]

Radio Broadcasting Services; AM or FM Proposals To Change the Community of License

AGENCY: Federal Communications Commission.

ACTION: Notice.

DATES: The agency must receive comments on or before January 27, 2023.

ADDRESSES: Federal Communications Commission, 45 L Street NE, Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: Rolanda F. Smith, 202–418–2054.

SUPPLEMENTARY INFORMATION: The following applicants filed AM or FM proposals to change the community of license: NEBRASKA RURAL RADIO ASSOCIATION, KOLT(AM), Fac. ID. No. 67472, FROM TERRYTOWN, NE, TO LEXINGTON, NE, File No. BMP–20220907AAE; ROGER WRIGHT DBA PROSPECT COMMUNICATIONS, WWLX(AM), Fac. ID No. 53665, FROM LAWRENCEBURG, TN, TO LORETTO, TN, File No. BP–20221026AAE; MARIA ELENA JUAREZ, KRXR(AM), Fac. ID No. 2805, FROM GOODING, ID, TO FILER, ID, File No. BMP–20221114AAA; CHRISTIAN MINISTRIES OF THE VALLEY, INC., KABV(FM), Fac. ID No. 762470, FROM PREMONT, TX, TO BEN BOLT, TX, File No. 0000203091; ALBERT BENAVIDES, KAMZ(FM), Fac. ID No. 77643, FROM TAHOKA, TX, TO ROPESVILLE, TX, File No. 0000200878; QXZ MEDIAWORKS LLC, KQXZ(FM), Fac. ID No. 762373, FROM RICHLAND SPRINGS, TX, TO ADAMSVILLE, TX, File No. 0000199020; RADIO BY GRACE, INC., WKIH(FM), Fac. ID No. 172182, FROM VIDALIA, GA, TO TWIN CITY, GA, File No. 0000202985; WILLIAM WALTER MCCUTCHEN, KSZX(FM), Fac. ID No. 190385, FROM SANTA ANNA, TX, TO MENARD, TX, File No. 0000203633; and TRACY MCCUTCHEN, KTCY(FM), Fac. ID No. 189553, FROM MENARD, TX, TO WALL, TX, File No. 0000203634. The full text of these applications is available electronically via the

Licensing and Management System (LMS), *https://apps2int.fcc.gov/dataentry/public/tv/publicAppSearch.html.*

Federal Communications Commission.

Nazifa Sawez,

Assistant Chief, Audio Division, Media Bureau.

[FR Doc. 2022–25832 Filed 11–25–22; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

[OMB 3060–0837; FR ID 115417]

Information Collection Being Reviewed by the Federal Communications Commission Under Delegated Authority

AGENCY: Federal Communications Commission.

ACTION: Notice and request for comments.

SUMMARY: As part of its continuing effort to reduce paperwork burdens, and as required by the Paperwork Reduction Act of 1995 (PRA), the Federal Communications Commission (FCC or Commission) invites the general public and other Federal agencies to take this opportunity to comment on the following information collections. Comments are requested concerning: whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; the accuracy of the Commission's burden estimate; ways to enhance the quality, utility, and clarity of the information collected; ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology; and ways to further reduce the information collection burden on small business concerns with fewer than 25 employees. The FCC may not conduct or sponsor a collection of information unless it displays a currently valid Office of Management and Budget (OMB) control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the PRA that does not display a valid OMB control number.

DATES: Written comments shall be submitted on or before January 27, 2023. If you anticipate that you will be submitting comments but find it difficult to do so within the period of time allowed by this notice, you should advise the contacts below as soon as possible.

ADDRESSES: Direct all PRA comments to Cathy Williams, FCC, via email: *PRA@fcc.gov* and to *Cathy.Williams@fcc.gov.*

FOR FURTHER INFORMATION CONTACT: For additional information about the information collection, contact Cathy Williams at (202) 418–2918.

SUPPLEMENTARY INFORMATION:

OMB Control No.: 3060–0837.

Title: FCC Form 2100, Application for Media Bureau Audio and Video Service Authorization, Schedule B (Former FCC Form 302–DTV), Section 73.3700(b)(3), Section 73.3700(h)(2) and Section 73.3800.

Form No.: FCC Form 2100, Schedule B.

Type of Review: Extension of a currently approved information collection.

Respondents: Business or other for-profit entities; not for profit institutions.

Number of Respondents and Responses: 375 respondents and 375 responses.

Estimated Time per Response: 2 hours.

Frequency of Response: One-time reporting requirement and on occasion reporting requirement.

Obligation to Respond: Required to obtain or retain benefits. The statutory authority for this collection is contained in sections 154(i), 307, 308, 309, and 319 of the Communications Act of 1934, as amended; the Community Broadcasters Protection Act of 1999, Public Law 106–113, 113 Stat. appendix I at pp. 1501A–594–1501A–598 (1999) (codified at 47 U.S.C. 336(f)); and the Middle Class Tax Relief and Job Creation Act of 2012, Public Law 112–96, 6402 (codified at 47 U.S.C. 309(j)(8)(G)), 6403 (codified at 47 U.S.C. 1452), 126 Stat. 156 (2012) (Spectrum Act).

Total Annual Burden: 750 hours.

Annual Cost Burden: $208,220.

Needs and Uses: FCC Form 2100, Schedule B (formerly FCC Form 302–DTV) is used by licensees and permittees of full power broadcast stations to obtain a new or modified station license and/or to notify the Commission of certain changes in the licensed facilities of those stations. It may be used: (1) To cover an authorized construction permit (or auxiliary antenna), provided that the facilities have been constructed in compliance with the provisions and conditions specified on the construction permit; or (2) To implement modifications to existing licenses as permitted by 47 CFR 73.1675(c) or 73.1690(c).

The information collection requirements contained in section 73.3700(b)(3) require the licensee of each channel sharee station and channel sharer station to file an application for a license for the shared channel using FCC Form 2100 Schedule B (for a full power station) or F (for a Class A station) within six months of the date that the channel sharee station licensee receives its incentive payment pursuant to section 6403(a)(1) of the Spectrum Act.

The information collection requirements contained in section 73.3700(h)(2) state that, upon termination of the license of a party to a CSA, the spectrum usage rights covered by that license may revert to the remaining parties to the CSA. Such reversion shall be governed by the terms of the CSA in accordance with paragraph (h)(4)(E) of this section. If upon termination of the license of a party to a CSA only one party to the CSA remains, the remaining licensee may file an application to change its license to non-shared status using FCC Form 2100, Schedule B (for a full power licensee) or F (for a Class A licensee).

Lastly, section 73.3800 allows full power television stations to channel share with other full power stations, Class A, LPTV and TV translator stations outside of the incentive auction context. Full power stations file FCC Form 2100, Schedule B in order to complete the licensing of their shared channel.

Federal Communications Commission.

Marlene Dortch,

Secretary, Office of the Secretary.

[FR Doc. 2022–25829 Filed 11–25–22; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL ELECTION COMMISSION

Sunshine Act Meetings

TIME AND DATE: Tuesday, November 29, 2022 at 10:00 a.m. and its continuation at the conclusion of the open meeting on December 1, 2022.

PLACE: 1050 First Street NE, Washington, DC and virtual (this meeting will be a hybrid meeting).

STATUS: This meeting will be closed to the public.

MATTERS TO BE CONSIDERED: Compliance matters pursuant to 52 U.S.C. 30109.

Matters relating to internal personnel decisions, or internal rules and practices.

Matters concerning participation in civil actions or proceedings or arbitration.

CONTACT PERSON FOR MORE INFORMATION: Judith Ingram, Press Officer, Telephone: (202) 694–1220.

Authority: Government in the Sunshine Act, 5 U.S.C. 552b.

Vicktoria J. Allen,

Acting Deputy Secretary of the Commission.

[FR Doc. 2022–25921 Filed 11–23–22; 11:15 am]

BILLING CODE 6715–01–P

FEDERAL HOUSING FINANCE AGENCY

[No. 2022–N–14]

Proposed Collection; Comment Request

AGENCY: Federal Housing Finance Agency.

ACTION: 30-Day notice of submission of information collection for approval from the Office of Management and Budget.

SUMMARY: In accordance with the requirements of the Paperwork Reduction Act of 1995 (PRA), the Federal Housing Finance Agency (FHFA) is seeking public comments concerning an information collection known as ''Community Support Requirements,'' which has been assigned control number 2590–0005 by the Office of Management and Budget (OMB). FHFA intends to submit the information collection to OMB for review and approval of a three-year extension of the control number, which is due to expire on September 30, 2023.

DATES: Interested persons may submit comments on or before December 28, 2022.

ADDRESSES: Submit comments to the Office of Information and Regulatory Affairs of the Office of Management and Budget, Attention: Desk Officer for the Federal Housing Finance Agency, Washington, DC 20503, Fax: (202) 395–3047, Email: *OIRA_submission@omb.eop.gov.* Please also submit comments to FHFA, identified by ''Proposed Collection; Comment Request: 'Community Support Requirements, (No. 2022–N–14)' '' by any of the following methods:

- *Agency Website: www.fhfa.gov/open-for-comment-or-input.*
- *Federal eRulemaking Portal: https://www.regulations.gov.* Follow the instructions for submitting comments. If you submit your comment to the *Federal eRulemaking Portal,* please also send it by *email* to FHFA at *RegComments@fhfa.gov* to ensure timely receipt by the agency.
- *Mail/Hand Delivery:* Federal Housing Finance Agency, Fourth Floor, 400 Seventh Street SW, Washington, DC 20219, ATTENTION: Proposed Collection; Comment Request: ''Community Support Requirements, (No. 2022–N–14).'' Please note that all mail sent to FHFA via the U.S. Postal Service is routed through a national irradiation facility, a process that may delay delivery by approximately two weeks. For any time-sensitive correspondence, please plan accordingly.

We will post all public comments we receive without change, including any personal information you provide, such as your name and address, email address, and telephone number, on the FHFA website at *https://www.fhfa.gov.*

Copies of all comments received will be available for examination by the public through the electronic comment docket for this PRA Notice also located on the FHFA website.

FOR FURTHER INFORMATION CONTACT: Mike Price, Senior Policy Analyst, by email at *Michael.Price@fhfa.gov,* by telephone at (202) 649–3134; Tiffani Moore, Supervisory Policy Analyst, by email at *Tiffani.Moore@fhfa.gov,* by telephone at (202) 649–3304; or Angela Supervielle, Counsel, by email at *Angela.Supervielle@fhfa.gov,* by telephone at (202) 649–3973 (these are not toll-free numbers). For TTY/TRS users with hearing and speech disabilities, dial 711 and ask to be connected to any of the contact numbers above.

SUPPLEMENTARY INFORMATION:

A. Background

1. Paperwork Reduction Act

Under the PRA (44 U.S.C. 3501—3520), and its implementing regulation (5 CFR part 1320), Federal agencies must obtain approval from OMB for each collection of information they conduct or sponsor. ''Collection of information'' is defined in 44 U.S.C. 3502(3) and 5 CFR 1320.3(c) to include agency collection of information from ten or more persons. Section 3507(b) of title 44 requires Federal agencies to provide a 30-day notice in the **Federal Register** for the public to provide comments to OMB [1] concerning each proposed collection of information, including each proposed extension of an existing collection of information. 44 U.S.C. 3507(b); 5 CFR 1320.10(a). FHFA's collection of information set forth in this document is titled the ''Community Support Requirements'' (assigned control number 2590–0005 by OMB). To comply with the PRA requirement, FHFA is publishing this Notice of a proposed three-year extension of this collection of information.

2. Community Support Requirements

The Federal Home Loan Bank System (System) consists of eleven regional Federal Home Loan Banks (Banks) and the Office of Finance, a joint office of the Banks that issues and services their debt securities. The Banks are wholesale financial institutions, organized under authority of the Federal Home Loan Bank Act (Bank Act) to serve the public interest by enhancing the availability of residential housing finance and community lending credit through their member institutions and, to a limited extent, through eligible non-member ''housing associates.'' Each Bank is structured as a regional cooperative that is owned and controlled by member financial institutions located within its district, which are also its primary customers.

Section 10(g)(1) of the Bank Act requires the Director of FHFA to promulgate regulations establishing standards of community investment or service that Bank member institutions must meet in order to maintain access to long-term Bank advances.[2] [3] Section 10(g)(2) of the Bank Act requires that, in establishing these community support requirements for Bank members, FHFA take into account factors such as the member's performance under the Community Reinvestment Act of 1977 (CRA) [4] and record of lending to first-time homebuyers.[5] FHFA's community support regulation, which establishes standards and review criteria for determining compliance with section 10(g) of the Bank Act, is set forth at 12 CFR part 1290.

Part 1290 requires that each Bank member subject to community support review submit to FHFA biennially a completed Community Support Statement (Form 060), which contains several short questions, the answers to which are used by FHFA to assess the responding member's compliance with the statutory and regulatory community

[1] The PRA requires Federal agencies to issue two notices seeking public comment on information collection activities before OMB may approve paperwork submissions. As required by section 3506(c)(2)(A) of title 44 of the PRA, FHFA published the first required notice in the **Federal Register** on August 19, 2022 (87 FR 51095) that provided a 60-day comment period for the public to submit comments to FHFA. 44 U.S.C. 3506(c)(2)(A); 5 CFR 1320.8(d). This notice providing a 30-day comment period for the public to submit comments to OMB is the second required notice.

[2] 12 U.S.C. 1430(g)(1).

[3] For purposes of the community support requirements, a long-term advance is an advance with a term of maturity greater than one year. 12 CFR 1290.1 (definition of ''long-term advance'').

[4] *See* 12 U.S.C. 2901 *et seq.*

[5] 12 U.S.C. 1430(g)(2).

support standards.[6] Members are strongly encouraged to complete and submit Form 060 online, but may submit a version via email or fax if they cannot complete the submission online. In part I of Form 060, a member that is subject to the CRA must record its most recent CRA rating and the year of that rating. Part II of Form 060 addresses a member's efforts to assist first-time homebuyers. A member may either record the number and dollar amount of mortgage loans made to first-time homebuyers in the previous or current calendar year (part II.A), or indicate the types of programs or activities it has undertaken to assist first-time homebuyers by checking selections from a list (part II.B), or do both. If a member has received a CRA rating of ''Outstanding,'' it need not complete part II. A copy of the current Form 060 and related instructions appear at the end of this notice.

Part 1290 also establishes the circumstances under which FHFA will restrict a member's access to long-term Bank advances and to the Bank Affordable Housing Programs (AHP), Community Investment Programs (CIP), and Community Investment Cash Advance (CICA) programs for failure to meet the community support requirements.[7] Part 1290 permits Bank members whose access to long-term advances has been restricted to apply directly to FHFA to remove the restriction.[8]

B. Need for and Use of the Information Collection

FHFA uses the information collection contained in FHFA Form 060 to determine whether Bank members satisfy the statutory and regulatory community support requirements, and to ensure that, as required by statute and regulation, only Bank members that meet those requirements maintain continued access to long-term Bank advances and to the Bank AHP, CIP, and CICA programs.

The OMB control number for this information collection is 2590–0005, which is due to expire on September 30, 2023. The respondents are Bank member institutions.

C. Burden Estimate

FHFA has analyzed the two facets of this information collection to estimate the hour burdens that the collection will impose upon Bank members annually over the next three years. Based on that analysis, FHFA estimates that the total annual hour burden will be 1,884 hours. The method FHFA used to determine the annual hour burden for each facet of the information collection is explained in detail below.

1. Community Support Statements

There are currently about 6,600 Bank members. With exceptions, most Bank members must submit a Community Support Statement biennially. Bank members that are non-depository community development financial institutions (CDFIs) are exempt from the submission requirement. Currently, there are 68 non-depository CDFI Bank members. Bank members who have been Bank members for less than one year as of March 31st of the year the submission is required are also exempt from filing. The Banks have lost, on average, 94 new members per year over the last three years. After subtracting the exempt members (68) and the estimated loss of 282 members (94 new members × 3 years) from the current membership of 6,600, FHFA arrives at a total estimate of about 6,250 respondents required to submit Community Support Statements each biennial cycle. Under the Community Support biennial review cycle, members submit Community Support Statements every other year. Accordingly, FHFA estimates that the total number of respondents per year is about 3,125 (half of 6,250).

FHFA estimates that the average preparation and submission time for each Community Support Statement is 0.6 hours. Therefore, the estimate for the total annual hour burden on Bank members in connection with the preparation and submission of Community Support Statements is, 1,875 hours (3,125 Statements × 0.6 hours).

2. Requests To Remove a Restriction on Access to Long-Term Advances

FHFA estimates that an annual average of 12 Bank members whose access to long-term Bank advances and to AHP, CIP, and CICA programs has been restricted will prepare and submit requests to FHFA to remove those restrictions, and that the average preparation time for each request will be 0.75 hours. Therefore, the estimate for the total annual hour burden on Bank members in connection with the preparation and submission of requests to remove a restriction on access to long-term advances is 9 hours (12 requests × 0.75 hours).

D. Comment Request

In accordance with the requirements of 5 CFR 1320.8(d), FHFA published an initial notice and request for public comments regarding this information collection in the **Federal Register** on August 19, 2022.[9] The 60-day comment period closed on October 18, 2022. FHFA received one comment letter that was not responsive to any of the questions in the notice and contained no comments relating to the Community Support Requirements or any issues arising under the PRA.

FHFA requests written comments on the following: (1) Whether the collection of information is necessary for the proper performance of FHFA functions, including whether the information has practical utility; (2) the accuracy of FHFA's estimates of the burdens of the collection of information; (3) ways to enhance the quality, utility, and clarity of the information collected; and (4) 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.

Shawn Bucholtz,

Chief Data Officer, Federal Housing Finance Agency.

BILLING CODE 8070–01–1

[6] *See* 12 CFR 1290.2. Non-depository community development financial institutions and institutions that have been Bank members for less than one year as of March 31 of the year the Form 060 is due are not required to submit Form 060.

[7] *See* 12 CFR 1290.5(b), (e).

[8] *See* 12 CFR 1290.5(d).

[9] *See* 87 FR 51095 (Aug. 19, 2022).

FHFA Form 060
Informational Purposes Only

FEDERAL HOUSING FINANCE AGENCY
COMMUNITY SUPPORT PROGRAM
COMMUNITY SUPPORT STATEMENT

(see instructions page 2)

FHFA Federal Home Loan Bank (FHLBank) Member ID Number: *[online form: Member fills in]*

Name of FHLBank Member Institution: *[online form: FHFA automatically fills in once the member enters its FHFA ID Number]*

Mailing Address: *[online form: FHFA fills in]*

City: *[online form: FHFA fills in]* **State:** *[online form: FHFA fills in]* **Zip Code:** *[online form: FHFA fills in]*

Submitter Name: *[online form: Member fills in]* **Title:** *[online form: Member fills in]*

Work Email: *[Member fills in and used for validation purposes only]*

Part I. Community Reinvestment Act (CRA) Standard:

Most recent federal CRA rating: *[online form: drop down list]* **Year of most recent federal CRA rating:** *[online form: drop down list]*

Part II. First-time Homebuyer Standard: *All Federal Home Loan Bank members must complete either Section A or B of this part, except that members with "Outstanding" federal CRA ratings need not complete this part. Members should use data or activities for the previous or current calendar year in completing this part.*

A. **Complete the following two questions:** *If your institution did not make, or did not track, mortgage loans to first-time homebuyers, you must complete Section B of this part. [online form: Member completes]*

1. **Number of mortgage loans made to first-time homebuyers** #_____
2. **Dollar amount of mortgage loans made to first-time homebuyers** $_____

B. **Check as many as applicable:**

1. **Offer in-house first-time homebuyer program (e.g., underwriting, marketing plans, outreach programs)** _____
2. **Offer other in-house lending products that serve first-time or low- and moderate-income homebuyers** _____
3. **Offer flexible underwriting standards for first-time homebuyers** _____
4. **Participate in nationwide first-time homebuyer programs (e.g., Fannie Mae, Freddie Mac)** _____
5. **Participate in federal government programs that serve first-time homebuyers (e.g., FHA, VA, USDA RD)** _____
6. **Participate in state or local government programs targeted to first-time homebuyers (e.g., mortgage revenue bond financing)** _____
7. **Provide financial support or technical assistance to community organizations that assist first-time homebuyers** _____
8. **Participate in loan consortia that make loans to first-time homebuyers** _____
9. **Participate in or support special counseling or homeownership education targeted to first-time homebuyers** _____
10. **Hold investments or make loans that support first-time homebuyer programs** _____
11. **Hold mortgage-backed securities that may include a pool of loans to low- and moderate-income homebuyers** _____
12. **Use affiliated lenders, credit union service organizations, or other correspondent, brokerage or referral arrangements with specific unaffiliated lenders, that provide mortgage loans to first-time or low- and moderate-income homebuyers** _____
13. **Participate in the Affordable Housing Program or other targeted community investment/development programs offered by the Federal Home Loan Bank** _____
14. **Other (attach description of other activities supporting first-time homebuyers; see instructions for Part II)** _____
15. **None of the above (attach explanation of any mitigating factors; see instructions for Part II)** _____

Part III. Certification: By submitting this Community Support Statement, I certify that I am a senior official of the above institution, that I am authorized to provide this information to FHFA, and that the information in this Statement and any attachments is accurate to the best of my knowledge.

Sign: *[not on the online form; "Submit" button is equivalent]* **Date:** *[not on the online form; date is automatic]*

Community Support Statement (FHFA Form 060) Instructions

Purpose: Section 10(g) of the Federal Home Loan Bank Act [12 U.S.C. § 1430(g)] sets forth the community support requirements. Under the Federal Housing Finance Agency's (FHFA) implementing community support regulation [12 CFR part 1290], FHFA is required to take into account a Federal Home Loan Bank (Bank) member's performance under the Community Reinvestment Act of 1977 [12 U.S.C. § 2901 et seq.] (federal CRA) and its record of lending to first-time homebuyers, in determining whether to maintain the member's access to long-term Bank advances and to a Bank's Affordable Housing Program (AHP) and targeted Community Investment Cash Advances (CICA) programs. For purposes of community support review, the term "long-term advances" means advances with a term to maturity greater than one year.

Part I. (CRA Standard): Members subject to the federal CRA must complete this part. Provide your institution's most recent federal CRA rating and the year of the rating. Credit unions and insurance companies, which are not subject to the federal CRA, should indicate "N/A" [i.e., not applicable] in the CRA rating field on this Community Support Statement. If your institution is not a credit union or insurance company and is not subject to the federal CRA, indicate the reason for the exemption. If a member's most recent federal CRA rating is "Needs to Improve," FHFA will place the member on probation. During the probationary period, the member will retain access to long-term Bank advances and Bank AHP and CICA programs. If the member does not receive an improved federal CRA rating at its next CRA evaluation, FHFA will restrict its prospective access to long-term Bank advances and Bank AHP and CICA programs. If a member's most recent federal CRA rating is "Substantial Non-compliance," FHFA will restrict the member's prospective access to long-term Bank advances and AHP and CICA programs. The restriction will remain in effect until the member's federal CRA rating improves.

Part II. (First-time Homebuyer Standard): All members, except those with "Outstanding" federal CRA ratings, must complete this part. A member may satisfy the first-time homebuyer standard either by: demonstrating lending performance to first-time homebuyers (Section A); or demonstrating other financial support or participation in programs, products, services or investments, that directly or indirectly assists first-time homebuyers (Section B); or by a combination of both factors. If none of the information requested in this part describes your institution's activities to support first-time homebuyers, you may attach a brief description of other activities of your institution that support first-time homebuyers, or a brief explanation of any mitigating factors that adversely affect your institution's ability to assist first-time homebuyers, such as charter or operational limitations or market conditions. If a member does not demonstrate assistance to first-time homebuyers or include an explanation of mitigating factors on this Community Support Statement, FHFA will restrict the member's prospective access to long-term Bank advances and Bank AHP and CICA programs. The restriction will remain in effect until the member submits applicable information to FHFA that demonstrates the member's compliance with the first-time homebuyer standard.

Part III. (Certification): All members must complete this part. A senior official of your institution with authorization to provide the information in this Community Support Statement must certify that the information in this Community Support Statement and any attachments are accurate to the best of his/her knowledge. If a member submits a Community Support Statement that does not include this required certification, FHFA will restrict the member's prospective access to long-term Bank advances and Bank AHP and CICA programs.

Assistance: Your institution's Federal Home Loan Bank has a Community Support Program Representative that can assist you in preparing this Community Support Statement. Please contact your FHLBank's Community Support Program Representative: https://www.fhfa.gov/PolicyProgramsResearch/Programs/AffordableHousing/Documents/FHLBanks-CSP-Representatives.pdf

Federal Housing Finance Agency
Division of Housing Mission and Goals
400 7th Street, S.W.
Washington, D.C. 20219

Paperwork Reduction Act Statement: 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 Paperwork Reduction Act, unless that collection of information displays a currently valid OMB Control Number.

FHFA Form 060 OMB Number 2590-0005 Expires 09/30/2023 Page 2 of 2

[FR Doc. 2022–25868 Filed 11–25–22; 8:45 am]
BILLING CODE 8070–01–C

FEDERAL RESERVE SYSTEM

Agency Information Collection Activities: Announcement of Board Approval Under Delegated Authority and Submission to OMB

AGENCY: Board of Governors of the Federal Reserve System.

SUMMARY: The Board of Governors of the Federal Reserve System (Board) is adopting a proposal to extend for three years, without revision, the Savings Association Holding Company Report (FR LL–(b)11; OMB No. 7100–0334).

FOR FURTHER INFORMATION CONTACT: Federal Reserve Board Clearance Officer—Nuha Elmaghrabi—Office of the Chief Data Officer, Board of Governors of the Federal Reserve System, *nuha.elmaghrabi@frb.gov,* (202) 452–3884.

Office of Management and Budget (OMB) Desk Officer for the Federal Reserve Board, Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Room 10235, 725 17th Street NW, Washington, DC 20503, or by fax to (202) 395–6974.

SUPPLEMENTARY INFORMATION: On June 15, 1984, OMB delegated to the Board authority under the Paperwork Reduction Act (PRA) to approve and assign OMB control numbers to collections of information conducted or sponsored by the Board. Board-approved collections of information are incorporated into the official OMB inventory of currently approved collections of information. The OMB inventory, as well as copies of the PRA

Submission, supporting statements (which contain more detailed information about the information collections and burden estimates than this notice), and approved collection of information instrument(s) are available at *https://www.reginfo.gov/public/do/PRAMain.* These documents are also available on the Federal Reserve Board's public website at *https://www.federalreserve.gov/apps/reportingforms/home/review* or may be requested from the agency clearance officer, whose name appears above.

Final Approval Under OMB Delegated Authority of the Extension for Three Years, Without Revision, of the Following Information Collection

Collection title: Savings Association Holding Company Report.

Collection identifier: FR LL–(b)11.

OMB control number: 7100–0334.

General description of collection: Title III of the Dodd-Frank Wall Street Reform and Consumer Protection Act transferred to the Board the supervisory functions of the former Office of Thrift Supervision related to savings and loan holding companies (SLHCs) and their non-depository subsidiaries. Pursuant to section 10(b) of the Home Owners' Loan Act (HOLA), the Board may require SLHCs to file reports concerning their operations.

Following the transfer to the Board of authority to supervise SLHCs, the Board determined to exempt certain SLHCs (exempt SLHCs) from regulatory reporting using the Board's existing regulatory reports, including the Consolidated Financial Statements for Holding Companies (FR Y–9C; OMB No. 7100–0128) and the Parent Company Only Financial Statements for Small Holding Companies (FR Y–9SP; OMB No. 7100–0128).[1] An SLHC is an exempt SLHC if it (1) meets the requirements of section 10(c)(9)(C) of HOLA (*i.e.,* it is a ''legacy'' unitary SLHC) and has primarily commercial assets, with thrift assets making up less than 5 percent of the SLHC's consolidated assets [2] or (2) primarily holds insurance-related assets and does not submit financial reports with the SEC pursuant to sections 13 or 15(d) of the Securities Exchange Act of 1934.[3]

The reports filed under this collection are mostly unstructured and include:

- Securities and Exchange Commission filings,
- Copies of reports on any company in their organizational structure provided to the SLHC by Nationally Recognized Statistical Rating Organizations and Securities Analysts,
- Supplemental information for the Quarterly Savings and Loan Holding Company Report (FR 2320; OMB No. 7100–0345),
- Information about other materially important events,
- Financial statements, and
- Exhibits that include the SLHC's charter and bylaws or instruments corresponding thereto.

Frequency: Quarterly,[4] annually, and event-generated.

Respondents: Exempt SLHCs.

Total estimated number of respondents: 3.

Total estimated annual burden hours: 26.[5]

Current actions: On August 2, 2022, the Board published a notice in the **Federal Register** (87 FR 47209) requesting public comment for 60 days on the extension, without revision, of the FR LL–(b)11. The comment period for this notice expired on October 3, 2022. The Board did not receive any comments.

Board of Governors of the Federal Reserve System, November 22, 2022.

Michele Taylor Fennell,

Deputy Associate Secretary of the Board.

[FR Doc. 2022–25891 Filed 11–25–22; 8:45 am]

BILLING CODE 6210–01–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 December 13, 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. *Nacis John Theriot, Sr., Cut Off, Louisiana;* to retain voting shares of Lafourche Bancshares, Inc., and thereby indirectly retain voting shares of South Lafourche Bank and Trust Company, both of Larose, Louisiana.

Board of Governors of the Federal Reserve System.

Michele Taylor Fennell,

Deputy Associate Secretary of the Board.

[FR Doc. 2022–25910 Filed 11–25–22; 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

[1] 76 FR 81933 (December 29, 2011).

[2] Specifically, a legacy unitary SLHC is exempt if (1) as calculated annually as of June 30th, using the four previous quarters (which includes the quarter-ended June 30th reporting period), its savings association subsidiaries' consolidated assets make up less than 5 percent of the total consolidated assets of the legacy SLHC on an enterprise-wide basis for any of these four quarters and (2) as calculated annually as of June 30th, using the assets reported as of June 30th, where more than 50 percent of the assets of the legacy unitary SLHC are derived from activities that are not otherwise permissible under HOLA on an enterprise-wide basis.

[3] Specifically, an SLHC is considered to primarily hold insurance-related assets if, as calculated annually as of June 30th, using the assets reported as of June 30th, more than 50 percent of the assets of the SLHC are derived from the business of insurance on an enterprise-wide basis.

[4] The FR LL–(b)11 is filed quarterly except for the fourth quarter when the respondent is required to file its annual report.

[5] More detailed information regarding this collection, including more detailed burden estimates, can be found in the OMB Supporting Statement posted at *https://www.federalreserve.gov/apps/reportingforms/home/review.* On the page displayed at the link, you can find the OMB Supporting Statement by referencing the collection identifier, FR LL–(b)11.

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 December 28, 2022.

A. Federal Reserve Bank of Chicago (Colette A. Fried, Assistant Vice President) 230 South LaSalle Street, Chicago, Illinois 60690–1414:

1. *Savanna-Thomson Investment, Inc., Savanna, Illinois;* to merge with Maximum Bancshares, Inc., and thereby indirectly acquire Fidelity Bank, both of West Des Moines, Iowa.

B. Federal Reserve Bank of Kansas City Jeffrey Imgarten, Assistant Vice President, 1 Memorial Drive, Kansas City, Missouri 64198:

1. *Bison Bancshares, Inc., Bison, Kansas;* to become a bank holding company by acquiring Bison State Bank, Bison, Kansas.

Board of Governors of the Federal Reserve System.

Michele Taylor Fennell,

Deputy Associate Secretary of the Board.

[FR Doc. 2022–25911 Filed 11–25–22; 8:45 am]

BILLING CODE P

FEDERAL RESERVE SYSTEM

Agency Information Collection Activities: Announcement of Board Approval Under Delegated Authority and Submission to OMB

AGENCY: Board of Governors of the Federal Reserve System.

SUMMARY: The Board of Governors of the Federal Reserve System (Board) is adopting a proposal to extend for three years, without revision, the Securities of State Member Banks as Required by Regulation H (FR H–1; OMB No. 7100–0091).

FOR FURTHER INFORMATION CONTACT: Federal Reserve Board Clearance Officer—Nuha Elmaghrabi—Office of the Chief Data Officer, Board of Governors of the Federal Reserve System, *nuha.elmaghrabi@frb.gov,* (202) 452–3884.

Office of Management and Budget (OMB) Desk Officer for the Federal Reserve Board, Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Room 10235, 725 17th Street NW, Washington, DC 20503, or by fax to (202) 395–6974.

SUPPLEMENTARY INFORMATION: On June 15, 1984, OMB delegated to the Board authority under the Paperwork Reduction Act (PRA) to approve and assign OMB control numbers to collections of information conducted or sponsored by the Board. Board-approved collections of information are incorporated into the official OMB inventory of currently approved collections of information. The OMB inventory, as well as copies of the PRA Submission, supporting statements (which contain more detailed information about the information collections and burden estimates than this notice), and approved collection of information instrument(s) are available at *https://www.reginfo.gov/public/do/PRAMain.* These documents are also available on the Federal Reserve Board's public website at *https://www.federalreserve.gov/apps/reportingforms/home/review* or may be requested from the agency clearance officer, whose name appears above.

Final Approval Under OMB Delegated Authority of the Extension for Three Years, Without Revision, of the Following Information Collection

Collection title: Securities of State Member Banks as Required by Regulation H.

Collection identifier: FR H–1.

OMB control number: 7100–0091.

General description of collection: The Board's Regulation H requires state member banks (SMBs) whose securities are subject to registration pursuant to the Securities Exchange Act of 1934 to disclose certain information to shareholders and securities exchanges and to report information relating to their securities to the Board using forms adopted by the Securities and Exchange Commission (SEC) and in compliance with certain rules and regulations adopted by the SEC.

Frequency: Annually, quarterly, and on occasion.

Respondents: SMBs.

Total estimated number of respondents: 2.

Total estimated annual burden hours: 6,649.[1]

Current actions: On July 8, 2022, the Board published a notice in the **Federal Register** (87 FR 40841) requesting public comment for 60 days on the extension, without revision, of the FR H–1. The comment period for this notice expired on September 6, 2022. The Board did not receive any comments.

Board of Governors of the Federal Reserve System, November 22, 2022.

Michele Taylor Fennell,

Deputy Associate Secretary of the Board.

[FR Doc. 2022–25892 Filed 11–25–22; 8:45 am]

BILLING CODE P

GENERAL SERVICES ADMINISTRATION

[OMB Control No. 3090–0320; Docket No. 2022–0001; Sequence No. 15]

Submission for OMB Review; General Services Administration Acquisition Regulation; Construction Manager as Constructor (CMc)

AGENCY: Office of Acquisition Policy, General Services Administration (GSA).

ACTION: Notice of request for public comments.

SUMMARY: Under the provisions of the Paperwork Reduction Act, the Regulatory Secretariat Division will be submitting to the Office of Management and Budget (OMB) a request to review and approve an extension of a previously approved information collection requirement regarding information collection 3090–0320 Construction Manager as Constructor (CMc).

DATES: *Submit comments on or before:* December 28, 2022.

ADDRESSES: Written comments and recommendations for this information collection should be sent within 30 days of publication of this notice to *www.reginfo.gov/public/do/PRAMain.* Find this particular information collection by selecting ''Currently under Review—Open for Public Comments''; or by using the search function.

FOR FURTHER INFORMATION CONTACT: Ms. Christina Mullins, General Services Acquisition Policy Division, GSA, by phone at 202–969–4066 or by email at *gsarpolicy@gsa.gov.*

SUPPLEMENTARY INFORMATION:

[1] More detailed information regarding this collection, including more detailed burden estimates, can be found in the OMB Supporting Statement posted at *https://www.federalreserve.gov/apps/reportingforms/home/review.*

A. Purpose

The General Services Administration Acquisition Regulation (GSAR) 552.236–79, Construction-Contractor-as-Constructor, requires the contractor to submit proposals to establish the final estimated cost of the work, to convert the contract to a firm-fixed-price, and to determine the final settlement for construction-manager-as-constructor (CMc) projects.

The CMc refers to a project management and contracting technique that is one of three predominant methods used for acquiring construction services by GSA. The other two methods are design-bid-build and design-build.

The information is used by contracting officers to evaluate proposals and negotiate contract modifications during contract administration. GSA would be unable to assess readily and equitably offers fairly and competitively if they were not allowed to collect data required in the information collection.

B. Annual Reporting Burden

Total public reporting burden for this collection of information is estimated to average 400 total hours ($33,004) annually, including the time for reviewing instructions, searching existing data sources, gathering, and maintaining the data needed, and completing and reviewing the collection of information. The estimated burden hours to the public for the below clauses are as follows:

GSAR 552.236–79, Construction-Contractor-as-Constructor, requires the contractor to submit proposals to establish the final estimated cost of the work, to convert the contract to a firm-fixed-price, and to determine the final settlement.

Respondents: 5.

Responses per Respondent: 1.

Total Annual Responses: 10.

Hours per Response: 40.

Total Response Burden Hours: 400.

Cost per Hour: $82.51.

Estimated Cost Burden to the Public: $33,004.

GSAR 552.236–80, Accounting Records, contains a recordkeeping requirement that is subject to the Paperwork Reduction Act (44 U.S.C. 3501, *et seq.*). The clause requires the contractor to keep all relevant documents for a period of three years after the final payment. However, the clause does not add burden to what is already estimated for the existing FAR clause at 52.215–2, Audit and Records by a previous information collection (see OMB Control Number 9000–0034).

C. Public Comments

A 60-day notice published in the **Federal Register** at 87 FR 55007 on September 8, 2022. No comments were received.

Obtaining Copies of Proposals: Requesters may obtain a copy of the information collection documents from the GSA Regulatory Secretariat Division, by calling 202–501–4755 or emailing *GSARegSec@gsa.gov.* Please cite OMB Control No. 3090–0320, Construction Manager as Constructor, in all correspondence.

Jeffrey A. Koses,

Senior Procurement Executive, Office of Acquisition Policy, Office of Government-wide Policy.

[FR Doc. 2022–25828 Filed 11–25–22; 8:45 am]

BILLING CODE 6820–61–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

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, and the Determination of the Director, Strategic Business Initiatives Unit, Office of the Chief Operating Officer, CDC, pursuant to Public Law 92–463. 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: Disease, Disability, and Injury Prevention and Control Special Emphasis Panel: (SEP)—PAR 18–812, NIOSH Member Conflict Review.

Date: February 9, 2023.

Time: 1 p.m.–3 p.m., EST.

Place: Teleconference.

Agenda: To review and evaluate grant applications.

For Further Information Contact: Michael Goldcamp, Ph.D., Scientific Review Officer, Office of Extramural Programs, National Institute for Occupational Safety and Health, CDC, 1095 Willowdale Road, Morgantown, West Virginia 26506; Telephone: (304) 285–5951; Email: *MGoldcamp@cdc.gov.*

The Director, Strategic Business Initiatives Unit, Office of the Chief Operating Officer, Centers for Disease Control and Prevention, has been delegated the authority to sign **Federal Register** notices pertaining to announcements of meetings and other committee management activities, for both the Centers for Disease Control and Prevention and the Agency for Toxic Substances and Disease Registry.

Kalwant Smagh,

Director, Strategic Business Initiatives Unit, Office of the Chief Operating Officer, Centers for Disease Control and Prevention.

[FR Doc. 2022–25779 Filed 11–25–22; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[60Day–23–0109; Docket No. CDC–2022–0135]

Proposed Data Collection Submitted for Public Comment and Recommendations

AGENCY: Centers for Disease Control and Prevention (CDC), Department of Health and Human Services (HHS).

ACTION: Notice with comment period.

SUMMARY: The Centers for Disease Control and Prevention (CDC), as part of its continuing effort to reduce public burden and maximize the utility of government information, invites the general public and other federal agencies the opportunity to comment on a continuing information collection, as required by the Paperwork Reduction Act of 1995. This notice invites comment on a proposed information collection project titled Respiratory Protective Devices—42 CFR part 84—Regulation. The purpose of the data collection is to enable 42 CFR part 84 respirator approval certification activities.

DATES: CDC must receive written comments on or before January 27, 2023.

ADDRESSES: You may submit comments, identified by Docket No. CDC–2022–0135 by either of the following methods:

- *Federal eRulemaking Portal: www.regulations.gov.* Follow the instructions for submitting comments.
- *Mail:* Jeffrey M. Zirger, Information Collection Review Office, Centers for Disease Control and Prevention, 1600

Clifton Road NE, MS H21–8, Atlanta, Georgia 30329.

Instructions: All submissions received must include the agency name and Docket Number. CDC will post, without change, all relevant comments to *www.regulations.gov.*

Please Note: Submit all comments through the Federal eRulemaking portal (*www.regulations.gov*) or by U.S. mail to the address listed above.

FOR FURTHER INFORMATION CONTACT: To request more information on the proposed project or to obtain a copy of the information collection plan and instruments, contact Jeffrey M. Zirger, Information Collection Review Office, Centers for Disease Control and Prevention, 1600 Clifton Road NE, MS H21–8, Atlanta, Georgia 30329; Telephone: 404–639–7570; Email: *omb@cdc.gov.*

SUPPLEMENTARY INFORMATION: Under the Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3501–3520), federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. In addition, the PRA also requires federal agencies to provide a 60-day notice in the **Federal Register** concerning each proposed collection of information, including each new proposed collection, each proposed extension of existing collection of information, and each reinstatement of previously approved information collection before submitting the collection to the OMB for approval. To comply with this requirement, we are publishing this notice of a proposed data collection as described below.

The OMB is particularly interested in comments that will help:

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; and

5. Assess information collection costs.

Proposed Project

Respiratory Protective Devices—42 CFR part 84 (OMB Control No. 0920–0109, Exp. 03/31/2024)—Revision—National Institute for Occupational Safety and Health (NIOSH), Centers for Disease Control and Prevention (CDC).

Background and Brief Description

The regulatory authority for the National Institute for Occupational Safety and Health (NIOSH) certification program for respiratory protective devices is found in the Mine Safety and Health Amendments Act of 1977 (30 U.S.C. 577a, 651 *et seq.,* and 657(g)) and the Occupational Safety and Health Act of 1970 (30 U.S.C. 3, 5, 7, 811, 842(h), 844). These regulations have, as their basis, the performance tests and criteria for approval of respirators used by millions of American construction workers, miners, painters, asbestos removal workers, fabric mill workers, and fire fighters.

Regulations of the Environmental Protection Agency (EPA) and the Nuclear Regulatory Commission (NRC) also require the use of NIOSH-approved respirators. These regulations also establish methods for respirator manufacturers to submit respirators for testing under the regulation and have them certified as NIOSH-approved if they meet the criteria given in the above regulation. This data collection was formerly named Respiratory Protective Devices 30 CFR part 11 but in 1995, the respirator standard was moved to 42 CFR part 84.

NIOSH, in accordance with 42 CFR part 84: (1) issues certificates of approval for respirators which have met specified construction, performance, and protection requirements; (2) establishes procedures and requirements to be met in filing applications for approval; (3) specifies minimum requirements and methods to be employed by NIOSH and by applicants in conducting inspections, examinations, and tests to determine effectiveness of respirators; (4) establishes a schedule of fees to be charged for testing and certification; and (5) establishes approval labeling requirements. Information is collected from those who request services under 42 CFR part 84 in order to properly establish the scope and intent of request.

Information collected from requests for respirator approval functions includes contact information and information about factors likely to affect respirator performance and use. Such information includes, but is not necessarily limited to, respirator design, manufacturing methods and materials, quality assurance plans and procedures, and user instruction and draft labels, as specified in the regulation.

The main instrument for data collection for respirator approval functions is the Standard Application Form for the Approval of Respirators (SAF), currently Version 9. Respirator manufacturers are the respondents (estimated to average 140 each year over the years 2020–2023) and upon completion of the SAF their requests for approval are evaluated. A total of 375 applications were submitted in CY2019. To date, 300 applications have been submitted in CY2020. The increased submission rate is due to the publication of a new respirator class, PAPR100, as well as increased certification requests due to COVID–19. The applications are submitted, at will, and taking into account both historical conditions as well as the current situation, our prediction of the number of respondents each year between CY2020 and CY2022 is 140. A $200 fee is required for each application. Respondents requesting respirator approval or certain extensions of approval are required to submit additional fees for necessary testing and evaluation as specified in 42 CFR parts 84.20–22, 84.66, 84.258 and 84.1102.

Applicants are required to provide test data that shows that the manufacturer is able to ensure that the respirator is capable of meeting the specified requirements in 42 CFR part 84. The requirement for submitted test data is likely to be satisfied by standard testing performed by the manufacturer, and is not required to follow the relevant NIOSH Standard Test Procedures. As additional testing is not required, providing proof that an adequate test has been performed is limited to providing existing paperwork.

The secondary instruments for data collection for respirator approval functions are instruments used to collect data from human subjects who are serving as test fixture surrogates to perform tests while wearing the respirator being evaluated. Such instruments are completed by the human subject or test operator and are limited to specific information required for the test.

Approvals under 42 CFR part 84 offer corroboration that approved respirators are produced to certain quality standards. Although 42 CFR part 84 Subpart E prescribes certain quality standards, it is not expected that requiring approved quality standards will impose an additional cost burden over similarly effective quality

standards that are not approved under 42 CFR part 84.

Manufacturers with current approvals are subject to site audits by the Institute or its agents. Audits may occur periodically (typically every second year), or because of a reported issue. Approximately, 50% of the sites are audited each year, each having a primary point of contact. It is estimated that the average number of site audits over the next three years will be 89.

CDC requests OMB approval for an additional three years of data collection. The estimated annual burden hours are 130,689.

ESTIMATED ANNUALIZED BURDEN HOURS

Type of respondents	Form name	Number of respondents	Number of responses per respondent	Average burden per response (in hours)	Total burden (in hours)
Business or other for-profit	Standard Application Form for the Approval of Respirators.	140	4	229	128,240
Business or other for-profit	Audit	89	1	16	1424
Member of general public	Human Participant—Consent	425	1	12/60	85
	Human Participant—Subject payment information.	425	1	24/60	170
	Human Participant—Questionnaire	425	1	12/60	85
	Human Participant—Information Sheet.	425	1	12/60	85
	Human Participant—Data Collection Form.	150	1	4	600
Total		130,689			

Jeffrey M. Zirger,

Lead, Information Collection Review Office, Office of Scientific Integrity, Office of Science, Centers for Disease Control and Prevention.

[FR Doc. 2022–25850 Filed 11–25–22; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[60Day–23–1243; Docket No. CDC–2022–0134]

Proposed Data Collection Submitted for Public Comment and Recommendations

AGENCY: Centers for Disease Control and Prevention (CDC), Department of Health and Human Services (HHS).

ACTION: Notice with comment period.

SUMMARY: The Centers for Disease Control and Prevention (CDC), as part of its continuing effort to reduce public burden and maximize the utility of government information, invites the general public and other federal agencies the opportunity to comment on a continuing information collection, as required by the Paperwork Reduction Act of 1995. This notice invites comment on a proposed information collection project titled Rapid Response Suicide Investigation Data Collection. This data collection is designed to inform the implementation of prevention strategies in a state, county, community, or vulnerable population where a possible suicide cluster or increasing trend has been observed.

DATES: CDC must receive written comments on or before January 27, 2023.

ADDRESSES: You may submit comments, identified by Docket No. CDC–2022–0134 by either of the following methods:

- *Federal eRulemaking Portal: www.regulations.gov.* Follow the instructions for submitting comments.
- *Mail*: Jeffrey M. Zirger, Information Collection Review Office, Centers for Disease Control and Prevention, 1600 Clifton Road NE, MS H21–8, Atlanta, Georgia 30329.

Instructions: All submissions received must include the agency name and Docket Number. CDC will post, without change, all relevant comments to *www.regulations.gov*.

Please Note: Submit all comments through the Federal eRulemaking portal (*www.regulations.gov*) or by U.S. mail to the address listed above.

FOR FURTHER INFORMATION CONTACT: To request more information on the proposed project or to obtain a copy of the information collection plan and instruments, contact Jeffrey M. Zirger, Information Collection Review Office, Centers for Disease Control and Prevention, 1600 Clifton Road NE, MS H21–8, Atlanta, Georgia 30329; Telephone: 404–639–7570; Email: *omb@cdc.gov.*

SUPPLEMENTARY INFORMATION: Under the Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3501–3520), federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. In addition, the PRA also requires federal agencies to provide a 60-day notice in the **Federal Register** concerning each proposed collection of information, including each new proposed collection, each proposed extension of existing collection of information, and each reinstatement of previously approved information collection before submitting the collection to the OMB for approval. To comply with this requirement, we are publishing this notice of a proposed data collection as described below.

The OMB is particularly interested in comments that will help:

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; and

5. Assess information collection costs.

Proposed Project

Rapid Response Suicide Investigation Data Collection (OMB Control No. 0920–1243, Exp. 5/31/2021)—Extension—National Center for Injury Prevention and Control (NCIPC), Centers for Disease Control and Prevention (CDC).

Background and Brief Description

CDC is frequently called upon to respond to urgent requests from one or more external partners (*e.g.,* local, state, territory, and tribal health authorities; other federal agencies; local and state leaders; schools; or other partner organizations) to conduct investigations of suicide. Supporting rapid investigations to inform the implementation of effective suicide prevention strategies is one of the most important ways CDC can serve to protect and promote the health of the public.

Rapid Response Suicide Investigation Data Collections are specifically designed to inform the implementation of prevention strategies in a state, county, community, or vulnerable population where a possible suicide cluster or increasing trend has been observed. This generic clearance will not be used to conduct research studies or to collect data designed to draw conclusions about the United States or areas beyond the defined geographic location or vulnerable population that is the focus of the investigation. CDC in collaboration with external partners (*e.g.,* local, state, territory, and tribal health authorities; other federal agencies; local and state leaders; schools; or other partner organizations) will identify the respondent universe for each Rapid Response Suicide Investigation Data Collection. The respondent universe will be determined based on the information needed to understand potential suicide clusters, significant increases in suicidal behavior and suicide, risk and protective factors, and vulnerable populations in order to inform the implementation of suicide prevention strategies. When the goal is generalizability, CDC will submit the sampling methods to OMB as part of the GenIC package.

CDC requests OMB approval for an estimated 1,000 annual burden hours. There are no costs to respondents other than their time to participate.

ESTIMATED ANNUALIZED BURDEN HOURS

Type of respondent	Form name	Number of respondents	Number of responses per respondent	Average burden per response (in hours)	Total burden hours
Rapid Response Suicide Investigation Data Collection Participants.	Rapid Response Suicide Investigation Protocol.	2,000	1	30/60	1,000

Jeffrey M. Zirger,

Lead, Information Collection Review Office, Office of Scientific Integrity, Office of Science, Centers for Disease Control and Prevention.

[FR Doc. 2022–25852 Filed 11–25–22; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Advisory Board on Radiation and Worker Health, Subcommittee for Procedures Reviews, National Institute for Occupational Safety and Health (NIOSH)

AGENCY: Centers for Disease Control and Prevention (CDC), Department of Health and Human Services (HHS).

ACTION: Notice of meeting.

SUMMARY: In accordance with the Federal Advisory Committee Act, the Centers for Disease Control and Prevention (CDC) announces the following meeting for the Subcommittee for Procedures Reviews (SPR) of the Advisory Board on Radiation and Worker Health (ABRWH or the Advisory Board). This meeting is open to the public, but without a public comment period. The public is welcome to submit written comments in advance of the meeting, to the contact person below. Written comments received in advance of the meeting will be included in the official record of the meeting. The public is also welcome to listen to the meeting by joining the audio conference (information below). The audio conference line has 150 ports for callers.

DATES: The meeting will be held on February 16, 2023, from 11 a.m. to 4:30 p.m., EST. Written comments must be received on or before February 9, 2023.

ADDRESSES: You may submit comments by mail to: Dr. Rashaun Roberts, National Institute for Occupational Safety and Health (NIOSH), 1090 Tusculum Avenue, Mailstop C–24, Cincinnati, Ohio 45226.

Meeting Information: Audio Conference Call via FTS Conferencing. The USA toll-free dial-in number is 1–866–659–0537; the pass code is 9933701.

FOR FURTHER INFORMATION CONTACT: Rashaun Roberts, Ph.D., Designated Federal Officer, NIOSH, CDC, 1090 Tusculum Avenue, Mailstop C–24, Cincinnati, Ohio 45226; Telephone: (513) 533–6800; Email: *ocas@cdc.gov.*

SUPPLEMENTARY INFORMATION:

Background: The Advisory Board was established under the Energy Employees Occupational Illness Compensation Program Act of 2000 to advise the President on a variety of policy and technical functions required to implement and effectively manage the new compensation program. Key functions of the Advisory Board include providing advice on the development of probability of causation guidelines that have been promulgated by the Department of Health and Human Services (HHS) as a final rule; advice on methods of dose reconstruction, which have also been promulgated by HHS as a final rule; advice on the scientific validity and quality of dose estimation and reconstruction efforts being performed for purposes of the compensation program; and advice on petitions to add classes of workers to the Special Exposure Cohort (SEC). In December 2000, the President delegated responsibility for funding, staffing, and operating the Advisory Board to HHS, which subsequently delegated this authority to CDC. NIOSH implements this responsibility for CDC.

The Advisory Board's charter was issued on August 3, 2001, renewed at appropriate intervals, and rechartered under Executive Order 13889 on March 22, 2022, and will terminate on March 22, 2024.

Purpose: The Advisory Board is charged with (a) providing advice to the Secretary, HHS, on the development of guidelines under Executive Order 13179; (b) providing advice to the Secretary, HHS, on the scientific

validity and quality of dose reconstruction efforts performed for this program; and (c) upon request by the Secretary, HHS, advising the Secretary on whether there is a class of employees at any Department of Energy facility who were exposed to radiation but for whom it is not feasible to estimate their radiation dose, and on whether there is reasonable likelihood that such radiation doses may have endangered the health of members of this class. SPR is responsible for overseeing, tracking, and participating in the reviews of all procedures used in the dose reconstruction process by the NIOSH Division of Compensation Analysis and Support (DCAS) and its dose reconstruction contractor (Oak Ridge Associated Universities—ORAU).

Matters To Be Considered: The agenda will include discussions on the following: (a) Technical guidance documents for dose reconstruction, the site profile for Grand Junction facilities, and a case review related to the Paducah Gaseous Diffusion Plant; (b) Newly issued SC&A reviews; and (c) Preparation for the April 2023 full ABRWH meeting. Agenda items are subject to change as priorities dictate.

For additional information, please contact 1–800–232–4636 (toll free).

The Director, Strategic Business Initiatives Unit, Office of the Chief Operating Officer, Centers for Disease Control and Prevention, has been delegated the authority to sign **Federal Register** notices pertaining to announcements of meetings and other committee management activities, for both the Centers for Disease Control and Prevention and the Agency for Toxic Substances and Disease Registry.

Kalwant Smagh,

Director, Strategic Business Initiatives Unit, Office of the Chief Operating Officer, Centers for Disease Control and Prevention.

[FR Doc. 2022–25849 Filed 11–25–22; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

World Trade Center Health Program Scientific/Technical Advisory Committee (WTCHP–STAC); Amended Notice of Solicitation of Nominations

SUMMARY: Notice is hereby given of a change in the solicitation of nominations for appointment to the World Trade Center Health Program Scientific/Technical Advisory Committee (WTCHP–STAC). The solicitation notice is being amended to extend the deadline for submission of nominations from November 14, 2022, in the original **Federal Register** notice, to December 30, 2022.

DATES: The solicitation of nominations notice was published in the **Federal Register** on October 13, 2022 (87 FR 62107). Nominations for membership on the WTCHP–STAC must be received no later than December 30, 2022. Packages received after this time will not be considered for the current membership cycle.

ADDRESSES: All nominations should be mailed to NIOSH Docket 229–J, c/o Ms. Mia Wallace, Committee Management Specialist, National Institute for Occupational Safety and Health (NIOSH), CDC, 1600 Clifton Road NE, Mailstop V24–4, Atlanta, Georgia 30329–4027, or emailed (recommended) to *nioshdocket@cdc.gov.*

FOR FURTHER INFORMATION CONTACT: Tania Carreón-Valencia, Ph.D., MS, Designated Federal Officer, WTCHP–STAC, CDC, 1600 Clifton Road NE, Mailstop R–12, Atlanta, Georgia 30329–4027; Telephone: (513) 841–4515 (this is not a toll-free number); Email: *TCarreonValencia@cdc.gov.*

SUPPLEMENTARY INFORMATION: The Director, Strategic Business Initiatives Unit, Office of the Chief Operating Officer, Centers for Disease Control and Prevention, has been delegated the authority to sign **Federal Register** notices pertaining to announcements of meetings and other committee management activities, for both the Centers for Disease Control and Prevention and the Agency for Toxic Substances and Disease Registry.

Kalwant Smagh,

Director, Strategic Business Initiatives Unit, Office of the Chief Operating Officer, Centers for Disease Control and Prevention.

[FR Doc. 2022–25848 Filed 11–25–22; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

Submission for OMB Review; Formative Evaluation of the Demonstration Grants To Strengthen the Response to Victims of Human Trafficking in Native Communities Program (New Collection)

AGENCY: Office of Planning, Research, and Evaluation, Administration for Children and Families, HHS.

ACTION: Request for public comments.

SUMMARY: The Administration for Children and Families (ACF) is proposing a new data collection activity for the Formative Evaluation of the Demonstration Grants to Strengthen the Response to Victims of Human Trafficking in Native Communities (VHT–NC) Program. The overarching goals of the formative evaluation are to understand the context in which the VHT–NC projects are implemented, the projects' goals, and the paths they take to achieve their goals. The proposed data collection will include semi-structured interviews with project staff, key partners, and project participants.

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 *OPREinfocollection@acf.hhs.gov.* Identify all requests by the title of the information collection.

SUPPLEMENTARY INFORMATION:

Description: In 2020, ACF's Office on Trafficking in Persons issued six VHT–NC demonstration grants to fund projects to build, expand, and sustain organizational and community capacity to deliver services to Native Americans (*i.e.,* American Indians, Alaska Natives, Native Hawaiians, and/or Pacific Islanders) who have experienced human trafficking through the provision of direct services, assistance, and referrals. The purpose of the proposed data collection is to obtain a comprehensive understanding of the VHT–NC projects and their communities, including implementation strengths and challenges. A primary aim is to conduct a participatory and culturally responsive formative evaluation that is informed by and respects the knowledge, values, and traditions of the communities implementing the VHT–NC projects.

The proposed data collection will include semi-structured interviews with VHT–NC project staff, key project partners, and project participants

(adults who have received assistance from the VHT–NC project). Interviews with project staff and partners will be conducted individually or, if appropriate and requested by respondents, in small groups. Interview topics will include community context, project goals and design, organizational and staff characteristics, partnerships, outreach and identification approaches, case management and service provision, survivor engagement, and community training. Interviews with project participants will be conducted individually. Participant interviews will focus on the project services and assistance received by participants, including those most helpful to healing and recovery.

Respondents: Respondents include VHT–NC project staff (*e.g.,* project directors, project coordinators, case managers/advocates, specialized services staff), key project partner staff, and project participants (adults who have received assistance from the VHT–NC project).

ANNUAL BURDEN ESTIMATES

Instrument	Number of respondents (total over request period)	Number of responses per respondent (total over request period)	Avg. burden per response (in hours)	Total/annual burden (in hours)
Project leadership interview	18	1	1.5	27
Direct services staff interview	24	1	1.25	30
Partner interview	36	1	1.25	45
Participant interview	30	1	1	30

Estimated Total Annual Burden Hours: 132.

Authority: Section 105(d)(2) of the Trafficking Victims Protection Act of 2000 (Pub. L. 106–386) [22 U.S.C. 7103].

Mary B. Jones,

ACF/OPRE Certifying Officer.

[FR Doc. 2022–25780 Filed 11–25–22; 8:45 am]

BILLING CODE 4184–47–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2019–N–3926]

Request for Nominations for Voting Members on Public Advisory Panels of the Medical Devices Advisory Committee

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is requesting nominations for voting members to serve on the Medical Devices Advisory Committee (MDAC) device panels in the Center for Devices and Radiological Health. This annual notice is also in accordance with the 21st Century Cures Act, which requires the Secretary of Health and Human Services (the Secretary) to provide an annual opportunity for patients, representatives of patients, and sponsors of medical devices that may be specifically the subject of a review by a classification panel to provide recommendations for individuals with appropriate expertise to fill voting member positions on classification panels. FDA seeks to include the views of women and men, members of all racial and ethnic groups, and individuals with and without disabilities on its advisory committees, and therefore, encourages nominations of appropriately qualified candidates from these groups.

DATES: Nominations received on or before January 27, 2023, will be given first consideration for membership on the Panels of the MDAC. Nominations received after January 27, 2023, will be considered for nomination to the committee as later vacancies occur.

ADDRESSES: All nominations for membership should be submitted electronically by logging into the FDA Advisory Nomination Portal at *https://www.accessdata.fda.gov/scripts/FACTRSPortal/FACTRS/index.cfm* or by mail to Advisory Committee Oversight and Management Staff, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 32, Rm. 5103, Silver Spring, MD 20993–0002. Information about becoming a member on an FDA advisory committee can also be obtained by visiting FDA's website at *https://www.fda.gov/AdvisoryCommittees/default.htm.*

FOR FURTHER INFORMATION CONTACT: *Regarding all nomination questions for membership, contact the following persons listed in table 1:*

TABLE 1—PRIMARY CONTACT AND PANEL

Primary contact person	Panel
Joannie Adams-White, Office of the Center Director, Center for Devices and Radiological Health, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 66, Rm. 5561, Silver Spring, MD 20993, 301–796–5421, *Joannie.Adams-White@fda.hhs.gov*.	Medical Devices Dispute Resolution Panel.
James P. Swink, Office of Management, Center for Devices and Radiological Health, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 66, Rm. 5211, Silver Spring, MD 20993, 301–796–6313, *James.Swink@fda.hhs.gov*.	Circulatory System Devices Panel.
Akinola Awojope, Office of Management, Center for Devices and Radiological Health, Food and Drug Administration,10903 New Hampshire Ave., Bldg. 66, Rm. 5216, Silver Spring, MD 20993, 301–636–0512, *Akinola.Awojope@fda.hhs.gov*.	Dental Products Panel, Neurological Devices Panel, Obstetrics and Gynecology Devices Panel, Orthopaedic and Rehabilitation Devices Panel.
Jarrod Collier, Office of Management, Center for Devices and Radiological Health, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 66, Rm. 5216, Silver Spring, MD 20993, 240–672–5763, *Jarrod.Collier@fda.hhs.gov*.	Ear, Nose and Throat Devices Panel, General Hospital and Personal Use Devices Panel, Hematology and Pathology Devices Panel, Molecular and Clinical Genetics Panel, Radiological Devices Panel.

TABLE 1—PRIMARY CONTACT AND PANEL—Continued

Primary contact person	Panel
Candace Nalls, Office of Management, Center for Devices and Radiological Health, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 66, Rm. 5214, Silver Spring, MD 20993, 301–636–0510, *Candace.Nalls@fda.hhs.gov*.	Anesthesiology and Respiratory Therapy Devices Panel, Clinical Chemistry and Clinical Toxicology Devices Panel, Gastroenterology and Urology Devices Panel, General and Plastic Surgery Devices Panel.

SUPPLEMENTARY INFORMATION: FDA is requesting nominations for voting members for vacancies listed in table 2:

TABLE 2—EXPERTISE NEEDED, VACANCIES, AND APPROXIMATE DATE NEEDED

Expertise needed	Vacancies	Approximate date needed
Anesthesiology and Respiratory Therapy Devices Panel of the Medical Devices Advisory Committee—Anesthesiologists, pulmonary medicine specialists, or other experts who have specialized interests in ventilator support, sleep medicine, pharmacology, physiology, or the effects and complications of anesthesia. FDA is also seeking applicants with pediatric expertise in these areas.	4 2	Immediately. December 1, 2023.
Circulatory System Devices Panel of the Medical Devices Advisory Committee—Interventional cardiologists, electrophysiologists, invasive (vascular) radiologists, vascular and cardiothoracic surgeons, and cardiologists with special interest in congestive heart failure.	3	July 1, 2023.
Clinical Chemistry and Clinical Toxicology Panel of the Medical Devices Advisory Committee—Doctors of medicine or philosophy with experience in clinical chemistry (e.g., cardiac markers), clinical toxicology, clinical pathology, clinical laboratory medicine, and endocrinology.	2	Immediately.
Dental Products Panel of the Medical Devices Advisory Committee—Dentists, engineers and scientists who have expertise in the areas of dental implants, dental materials, oral and maxillofacial surgery, endodontics, periodontology, tissue engineering, snoring/sleep therapy, and dental anatomy.	6 2	Immediately. November 1, 2023.
Ear, Nose, and Throat Devices Panel of the Medical Devices Advisory Committee—Otologists, neurotologists, and audiologists.	4 4	Immediately. November 1, 2023.
Gastroenterology and Urology Devices Panel of the Medical Devices Advisory Committee—Gastroenterologists, urologists, and nephrologists.	1	Immediately.
General and Plastic Surgery Devices Panel of the Medical Devices Advisory Committee—Surgeons (general, plastic, reconstructive, pediatric, thoracic, abdominal, pelvic, and endoscopic); dermatologists; experts in biomaterials, lasers, wound healing, and quality of life; and biostatisticians.	3	September 1, 2023.
General Hospital and Personal Use Devices Panel of the Medical Devices Advisory Committee—Internists, pediatricians, neonatologists, endocrinologists, gerontologists, nurses, biomedical engineers, human factors experts, or microbiologists/infection control practitioners or experts.	1 1	Immediately. January 1, 2023.
Hematology and Pathology Devices Panel of the Medical Devices Advisory Committee—Hematologists (benign and/or malignant hematology), hematopathologists (general and special hematology, coagulation and hemostasis, and hematological oncology), gynecologists with special interests in gynecological oncology, cytopathologists, and molecular pathologists with special interests in development of predictive and prognostic biomarkers, molecular oncology, cancer screening, cancer risk, digital pathology, whole slide imaging, devices utilizing artificial intelligence/machine learning.	4 3	Immediately. March 1, 2023.
Medical Devices Dispute Resolution Panel of the Medical Devices Advisory Committee—Experts with cross-cutting scientific, clinical, analytical, or mediation skills.	1	October 1, 2023.
Molecular and Clinical Genetics Panel of the Medical Devices Advisory Committee—Experts in human genetics, molecular diagnostics, and in the clinical management of patients with genetic disorders, (*e.g.,* pediatricians, obstetricians, neonatologists). Individuals with training in inborn errors of metabolism, biochemical and/or molecular genetics, population genetics, epidemiology and related statistical training, bioinformatics, computational genetics/genomics, variant classification, cancer genetics/genomics, molecular oncology, radiation biology, and clinical molecular genetics testing, (*e.g.*, sequencing, whole exome sequencing, whole genome sequencing, non-invasive prenatal testing, cancer screening, circulating cell free/circulating tumor nucleic acid testing, digital PCR, genotyping, array CGH, etc.). Individuals with experience in genetics counseling, medical ethics are also desired, and individuals with experience in ancillary fields of study will be considered.	3 3	Immediately. June 1, 2023.
Neurological Devices Panel of the Medical Devices Advisory Committee—Neurosurgeons (cerebrovascular and pediatric), neurologists (stroke, pediatric, pain management, and movement disorders), interventional neuroradiologists, psychiatrists, and biostatisticians.	2 1	Immediately. December 1, 2023.
Obstetrics and Gynecology Devices Panel of the Medical Devices Advisory Committee—Experts in perinatology, embryology, reproductive endocrinology, pediatric gynecology, gynecological oncology, operative hysteroscopy, pelviscopy, electrosurgery, laser surgery, assisted reproductive technologies, contraception, postoperative adhesions, and cervical cancer and colposcopy; biostatisticians and engineers with experience in obstetrics/gynecology devices; urogynecologists; experts in breast care; experts in gynecology in the older patient; experts in diagnostic (optical) spectroscopy; experts in midwifery; labor and delivery nursing.	3	Immediately.
Orthopaedic and Rehabilitation Devices Panel of the Medical Devices Advisory Committee—Orthopaedic surgeons (joint, spine, trauma, reconstruction, sports medicine, hand, foot and ankle, and pediatric orthopaedic surgeons); rheumatologists; engineers (biomedical, biomaterials, and biomechanical); experts in rehabilitation medicine, and musculoskeletal engineering; radiologists specializing in musculoskeletal imaging and analyses and biostatisticians.	6	Immediately.
Radiological Devices Panel of the Medical Devices Advisory Committee—Physicians with experience in general radiology, mammography, ultrasound, magnetic resonance, computed tomography, other radiological subspecialties and radiation oncology; scientists with experience in diagnostic devices, radiation physics, statistical analysis, digital imaging and image analysis.	1 1	Immediately. February 1, 2023.

I. General Description of the Committees Duties

The MDAC reviews and evaluates data on the safety and effectiveness of marketed and investigational devices and makes recommendations for their regulation. The panels engage in many activities to fulfill the functions the Federal Food, Drug, and Cosmetic Act (FD&C Act) envisions for device advisory panels. With the exception of the Medical Devices Dispute Resolution Panel, each panel, according to its specialty area, performs the following

duties: (1) advises the Commissioner regarding recommended classification or reclassification of devices into one of three regulatory categories, (2) advises on any possible risks to health associated with the use of devices, (3) advises on formulation of product development protocols, (4) reviews premarket approval applications for medical devices, (5) reviews guidelines and guidance documents, (6) recommends exemption of certain devices from the application of portions of the FD&C Act, (7) advises on the necessity to ban a device, and (8) responds to requests from the Agency to review and make recommendations on specific issues or problems concerning the safety and effectiveness of devices. With the exception of the Medical Devices Dispute Resolution Panel, each panel, according to its specialty area, may also make appropriate recommendations to the Commissioner on issues relating to the design of clinical studies regarding the safety and effectiveness of marketed and investigational devices.

The Dental Products Panel also functions at times as a dental drug panel. The functions of the dental drug panel are to evaluate and recommend whether various prescription drug products should be changed to over-the-counter status and to evaluate data and make recommendations concerning the approval of new dental drug products for human use.

The Medical Devices Dispute Resolution Panel provides advice to the Commissioner on complex or contested scientific issues between FDA and medical device sponsors, applicants, or manufacturers relating to specific products, marketing applications, regulatory decisions and actions by FDA, and Agency guidance and policies. The panel makes recommendations on issues that are lacking resolution, are highly complex in nature, or result from challenges to regular advisory panel proceedings or Agency decisions or actions.

II. Criteria for Voting Members

The MDAC with its 18 panels shall consist of a maximum of 159 standing members. Members are selected by the Commissioner or designee from among authorities in clinical and administrative medicine, engineering, biological and physical sciences, and other related professions. Almost all non-Federal members of this committee serve as Special Government Employees. A maximum of 122 members shall be standing voting members and 37 shall be nonvoting members who serve as representatives of consumer interests and of industry interests. FDA is publishing separate documents announcing the Request for Nominations Notification for Nonvoting Representatives on certain panels of the MDAC. Persons nominated for membership on the panels should have adequately diversified experience appropriate to the work of the panel in such fields as clinical and administrative medicine, engineering, biological and physical sciences, statistics, and other related professions. The nature of specialized training and experience necessary to qualify the nominee as an expert suitable for appointment may include experience in medical practice, teaching, and/or research relevant to the field of activity of the panel. The current needs for each panel are listed in table 2. Members will be invited to serve for terms of up to 4 years.

III. Nomination Procedures

Any interested person may nominate one or more qualified individuals for membership on one or more of the advisory panels. Self-nominations are also accepted. Nominations must include a current, complete résumé or curriculum vitae for each nominee, including current business address, telephone number, and email address if available and a signed copy of the Acknowledgement and Consent form available at the FDA Advisory Nomination Portal (see **ADDRESSES**). Nominations must also specify the advisory panel(s) for which the nominee is recommended. Nominations must also acknowledge that the nominee is aware of the nomination unless self-nominated. FDA will ask potential candidates to provide detailed information concerning such matters related to financial holdings, employment, and research grants and/or contracts to permit evaluation of possible sources of conflict of interest.

This notice is issued under the Federal Advisory Committee Act (5 U.S.C. app. 2) and 21 CFR part 14, relating to advisory committees.

Dated: November 21, 2022.

Lauren K. Roth,

Associate Commissioner for Policy.

[FR Doc. 2022–25813 Filed 11–25–22; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of the Secretary

Findings of Research Misconduct

AGENCY: Office of the Secretary, HHS;

ACTION: Notice.

SUMMARY: Findings of research misconduct have been made against Douglas D. Taylor, Ph.D. (Respondent), former Professor and Vice Chair for Research, Department of Obstetrics & Gynecology, University of Louisville School of Medicine (UL). Respondent engaged in research misconduct in research supported by U.S. Public Health Service (PHS) funds, specifically National Cancer Institute (NCI), National Institutes of Health (NIH), grants R41 CA139802 and R21 CA098166. The administrative actions, including debarment for a period of three (3) years, were implemented beginning on October 17, 2022, and are detailed below.

FOR FURTHER INFORMATION CONTACT: Wanda K. Jones, Dr.P.H., Acting Director, Office of Research Integrity, 1101 Wootton Parkway, Suite 240, Rockville, MD 20852, (240) 453–8200.

SUPPLEMENTARY INFORMATION: Notice is hereby given that the Office of Research Integrity (ORI) has taken final action in the following case:

Douglas D. Taylor, Ph.D., University of Louisville School of Medicine: Based on the evidence and findings of investigations conducted by UL, ORI's oversight review of UL's investigation, and additional evidence obtained and analysis conducted by ORI during its oversight review, ORI found that Dr. Douglas D. Taylor, former Professor and Vice Chair for Research, Department of Obstetrics & Gynecology, UL, engaged in research misconduct under 42 CFR part 93 in research supported by PHS funds, specifically NCI, NIH, grants R41 CA139802 and R21 CA098166.

ORI found based on a preponderance of the evidence that Respondent intentionally, knowingly, or recklessly used falsely labeled images to falsely report data in figures, and in one finding, intentionally, knowingly, or recklessly plagiarized, reused, and falsely labeled an image to falsely report data in a figure. Respondent's research misconduct occurred in one (1) funded PHS grant application, twelve (12) unfunded PHS grant applications, and two (2) PHS-supported published papers. ORI found that these acts constitute a significant departure from accepted practices of the relevant research community. The affected papers and grant applications are:

- Patient-derived tumor-reactive antibodies as diagnostic markers for ovarian cancer. *Gynecol. Oncol.* 2009 Oct;115(1):112–20; doi: 10.1016/j.ygyno.2009.06.031 (hereafter referred to as ''*Gynecol. Oncol.* 2009'').

• MicroRNA signatures of tumor-derived exosomes as diagnostic biomarkers of ovarian cancer. *Gynecol. Oncol.* 2008 Jul;110(1):13–21; doi: 10.1016/j.ygyno.2008.04.033 (hereafter referred to as ''*Gynecol. Oncol.* 2008''). Corrigendum in: *Gynecol. Oncol.* 2010 Jan;116(1):153; doi: 10.1016/j.ygyno.2009.10.045.

• R01 CA152218–01, ''Exosomal noncoding RNA for Lung Cancer Early Detection,'' submitted to NCI, NIH, on 10/05/2009, not funded.

• RC1 HD063778–01, ''Circulating exosomal microRNA in predicting preterm birth,'' submitted to the National Institute of Child Health and Human Development (NICHD), NIH, on 04/29/2009, not funded.

• R41 CA144598–01, ''Use of exosomal miRNA to diagnose pancreatic cancer,'' submitted to NCI, NIH, on 04/10/2009, not funded.

• R01 CA132886–01A2, ''Characterization of circulating lung cancer-derived exosomal miRNA,'' submitted to NCI, NIH, on 03/06/2009, not funded.

• P50 CA142508–01, ''University of Louisville SPORE [Specialized Program of Research Excellence] in Lung Cancer, Project 2: Exosomal MicroRNAs as Biomarkers for Lung Cancer,'' submitted to NCI, NIH, on 01/23/2009, not funded.

• R21 CA135269–01A1, ''miRNA methylation profiling of endometrial cancer-associated exosomes,'' submitted to NCI, NIH, on 11/12/2008, not funded.

• R41 CA139802–01, ''Exosomal microRNA profiles as diagnostic biomarkers of ovarian cancer,'' submitted to NCI, NIH, on 05/28/2009, funded, Project Award Dates: 09/23/2009–08/31/2011.

• R01 CA132886–01A1, ''Characterization of lung circulating lung cancer-derived exosomal miRNA,'' submitted to NCI, NIH, on 03/05/2008, not funded.

• R41 CA135853–01, ''Micro RNA signatures of tumor-derived exosomes as diagnostic biomarkers of cancer,'' submitted to NCI, NIH, on 12/04/2007, not funded.

• R21 CA135269–01, ''Micro RNA methylation in endometrial cancer,'' submitted to NCI, NIH, on 10/16/2007, not funded.

• R21 CA132886–01, ''Characterization of circulating lung cancer-derived exosomal miRNA,'' submitted to NCI, NIH, on 06/04/2007, not funded.

• R41 CA131011–01, ''Circulating exosomal microRNA as an Ovarian Cancer Diagnostic,'' submitted to NCI, NIH, on 01/31/2007, not funded.

• R41 CA130498–01, ''Serologically Defined Diagnostic and Therapeutic Response Markers for Ovarian Cancer,'' submitted to NCI, NIH, on 12/01/2006, not funded.

Specifically, ORI found based on a preponderance of the evidence that Respondent engaged in research misconduct by intentionally, knowingly, or recklessly:

• falsifying and/or fabricating research results by reusing parts of one graph to show quantitation of circulating tumor-derived exosomes from patients with varying stages of:

—NSCLC (lung cancer) in Figure 5 of R21 CA132886–01, R01 CA132886–01A1, R01 CA132886–01A2, P50 CA142508–01, and R01 CA152218–01

—ovarian cancer in Figure 6 of R41 CA135853–01 and R41 CA139802–01

—pancreatic cancer in Figure 4 of R41 CA144598–01

• falsifying and/or fabricating pancreatic cancer research results in Figure 6 of R41 CA144598–01 by omitting the word ''ovarian'' from the label of the same image that was previously labeled as ovarian cancer tumor cells and circulating tumor-derived exosomes in Figure 8 of R41 CA139802–01

• falsifying and/or fabricating pancreatic cancer research results in Figure 7 of R41 CA144598–01 by relabeling and omitting the word ''ovarian'' from the label of the same image that was previously labeled as ovarian cancer tumors and exosomes from these patients in Figure 3 of *Gynecol. Oncol.* 2008 and Figure 9 of R41 CA139802–01

• falsifying and/or fabricating pancreatic cancer research results in Figure 8 of R41 CA144598–01 by relabeling and omitting the word ''ovarian'' from the label of the same image that was previously labeled as benign ovarian disease and ovarian cancer in Figure 4 of *Gynecol. Oncol.* 2008 and Figure 10 of R41 CA139802–01

• falsifying and/or fabricating pancreatic cancer research results in Figure 5 of R41 CA144598–01 by relabeling and omitting the word ''ovarian'' from the label of the same image that was previously used to show data from ovarian cancer patients in Figure 2 of *Gynecol. Oncol.* 2008, Figure 7 of R41 CA139802–01, and Figure 2 of R21 CA135269–01A1

• falsifying and/or fabricating research results by reusing a graph, first claiming to show the isolation of the miRNA fraction associated with circulating tumor-derived exosomes from an unnamed cancer in a grant application focused on ovarian cancer (Figure 6 of R41 CA131011–01) and to show the isolation of the miRNA fraction associated with circulating tumor exosomes in a subsequent grant application on endometrial cancer (Figure 6 of R21 CA135269–01); this graph was then paired with a gel image showing the RNA distribution from tumor-derived exosomes from ovarian cancer (Figure 6 of R01 CA132886–01); the figure containing the graph paired with the gel image was then used to also represent exosomes derived from:

— unnamed cancer tumors in a grant application on ovarian cancer (Figure 7 of R41 CA135853–01)

—lung cancer tumors (Figure 6 of R01 CA132886–01A1, R01 CA132886–01A2, and P50 CA142508–01)

—placentas from preterm births (Figure 3 of RC1 HD063778–01)

• falsifying and/or fabricating research results by reusing a single image to show miRNAs expressed in circulating exosomes from:

—ovarian cancer patients in five grant applications (Figure 7 of R41 CA131011–01, Figure 7 of R21 CA135269–01, Figure 10 of R41 CA135853–01, Figure 4 of R21 CA135269–01A1, and Figure 11 of R41 CA139802–01)

—lung cancer patients in four grant applications (Figure 8 of R21 CA132886–01 and Figure 10 of R01 CA132886–01A1, R01 CA132886–01A2, and P50 CA142508–01)

• falsifying and/or fabricating research results by reusing a single image from a non-PHS-supported paper that claimed to demonstrate the presence of antibodies that recognize normal endometrium and endometrial tumors, from the sera of women with recurrent pregnancy loss (Figure 2A and 2B in a paper published in *Fertil Steril.* 2000 [1]), to represent the presence of antibodies that recognize antigens from normal epithelium and ovarian tumor cell lines from patients with:

—stage II or IV ovarian cancer in Figure 4 of R41 CA130498–01

—stage I and stage IIIc ovarian cancer in Figure 1 of *Gynecol. Oncol.* 2009

• plagiarizing, reusing, and relabeling an electron micrograph of melanoma derived exosomes created by a scientist and published in *Lancet* [2] in 2002 to falsely represent exosomes from patients with:

—ovarian cancer in Figure 4B of R41 CA135853–01, Figure 1B of *Gynecol.*

[1] *Fertil Steril.* 2000 Feb;73(2):305–13; doi: 10.1016/s0015–0282(99)00505–1 (hereafter referred to as ''*Fertil Steril.* 2000'').

[2] *Lancet* 2002 Jul 27;360(9329):295–305; doi: 10.1016/S0140–6736(02)09552–1 (hereafter referred to as ''*Lancet* 2002'').

Oncol. 2008, Figure 1B of R21 CA135269–01A1, Figure 4B of R41 CA139802–01, and Figure 2B of R41 CA144598–01

—NSCLC (lung cancer) in Figure 11B of R01 CA132886–01A1, R01 CA132886–01A2, P50 CA142508–01, and R01 CA152218–01

The following administrative actions have been implemented:

(1) For a period of three (3) years, beginning on October 17, 2022, Respondent is debarred from participating in ''covered transactions'' as defined in 42 CFR § 180.200 and procurement transactions covered under the Federal Acquisition Regulation (48 CFR chapter 1).

(2) Respondent is prohibited from serving in any advisory capacity to PHS including, but not limited to, service on any PHS advisory committee, board, and/or peer review committee, or as a consultant for a period of three (3) years, beginning on October 17, 2022.

(3) In accordance with 42 CFR 93.407(a)(1) and 93.411(b), HHS will send to the pertinent journal a notice of ORI's findings and the need for retraction or correction of:

- *Gynecol. Oncol.* 2009 Oct;115(1):112–20; doi: 10.1016/j.ygyno.2009.06.031
- *Gynecol. Oncol.* 2008 Jul;110(1):13–21; doi: 10.1016/j.ygyno.2008.04.033

Dated: November 22, 2022.

Wanda K. Jones,

Acting Director, Office of Research Integrity, Office of the Assistant Secretary for Health.

[FR Doc. 2022–25866 Filed 11–25–22; 8:45 am]

BILLING CODE 4150–31–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Submission for OMB Review; 30-Day Comment Request;

NIH Information Collection Forms To Support Genomic Data Sharing for Research Purposes (Office of Director)

AGENCY: National Institutes of Health, HHS.

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act of 1995, the National Institutes of Health (NIH) has submitted to the Office of Management and Budget (OMB) a request for review and approval of the information collection listed below.

DATES: Comments regarding this information collection are best assured of having their full effect if received within 30-days of the date of this publication.

ADDRESSES: Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to *www.reginfo.gov/public/do/PRAMain.* Find this particular information collection by selecting ''Currently under 30-day Review—Open for Public Comments'' or by using the search function.

FOR FURTHER INFORMATION CONTACT: To request more information on the proposed project or to obtain a copy of the data collection plans and instruments, contact: Julia Slutsman, Ph.D. Director, Genomic Data Sharing Policy Implementation, OER, OD, NIH, Natcher Building, Room 3AN–44D, 6705 Rockledge Dr., Suite 750, Bethesda, MD 20892, or call non-toll-free number (301) 594–7783 or email your request, including your address to: *slutsmaj@mail.nih.gov.*

SUPPLEMENTARY INFORMATION: This proposed information collection was previously published in the **Federal Register** on September 21, 2022, pages 57705–57707 (87 FR 57705) and allowed 60 days for public comment. No public comments were received. The purpose of this notice is to allow an additional 30 days for public comment. The Office of the Director (OD), National Institutes of Health, may not conduct or sponsor, and the respondent is not required to respond to, an information collection that has been extended, revised, or implemented on or after November 30, 2022, unless it displays a currently valid OMB control number.

In compliance with Section 3507(a)(1)(D) of the Paperwork Reduction Act of 1995, the National Institutes of Health (NIH) has submitted to the Office of Management and Budget (OMB) a request for review and approval of the information collection listed below.

Proposed Collection: NIH Information Collection Forms to Support Genomic Data Sharing for Research Purposes—0925—REVISION—expiration date 11/30/2022, Office of the Director (OD), National Institutes of Health (NIH).

Need and Use of Information Collection: Sharing research data supports the National Institutes of Health (NIH) mission and is essential to facilitate the translation of research results into knowledge, products, and procedures that improve human health. NIH has longstanding policies to make a broad range of research data, including genomic data, publicly available in a timely manner from the research activities that it funds. Genomic research data sharing is an integral element of the NIH mission as it facilitates advances in our understanding of factors that influence health and disease, while also providing opportunities to accelerate research through the power of combining large and information-rich datasets. To promote robust sharing of human and non-human data from a wide range of large-scale genomic research and provide appropriate protections for research involving human data, the NIH issued the NIH Genomic Data Sharing Policy (NIH GDS Policy). Human genomic data submissions and controlled access are managed through a central data repository, the database of Genotypes and Phenotypes (dbGaP) which is administered by the National Center for Biotechnology Information (NCBI), part of the National Library of Medicine at NIH. Under the NIH GDS Policy, all investigators who receive NIH funding to conduct large-scale genomic research are expected to register studies with human genomic data in dbGaP, no matter which NIH-designated data repository will maintain the data. As part of the registration process, investigators must provide basic study information such as the type of data that will be submitted to dbGaP, a description of the study, and an institutional assurance (*i.e.* Institutional Certification) of the data submission which delineates any limitations on the secondary use of the data (*e.g.,* data cannot be shared with for-profit companies, data can be used only for research of particular diseases). Investigators interested in using controlled-access data for secondary research must apply through dbGaP and be granted permission from the relevant NIH Data Access Committee(s). As part of the application process, investigators and their institutions must provide information such as a description of the proposed research use of controlled access datasets that conforms to any data use limitations, agree to the Genomic Data User Code of Conduct, and agree to the terms of access through a Data Use Certification agreement. Requests to renew data access and reports to close out data use are similar to the initial data access request, requiring sign-off by both the requestor and the institution, but also ask for information about how the data have been used, and about publications, presentations, or intellectual property based on the research conducted with the accessed data as well as any data security issues or other data management incidents. NIH has developed online forms, available through dbGaP, in an effort to reduce the burden for researchers and their

institutional officials to complete the study registration, data submission, data access, and renewal and closeout processes.

OMB approval is requested for 3 years. There are no costs to respondents other than their time. The total estimated annualized burden hours are 158,776.

ESTIMATED ANNUALIZED BURDEN HOURS

Form name	Type of respondent	Number of respondents	Number of responses per respondent	Average burden per response (in hours)	Total annual burden hour
dbGaP Registration and Submission	Investigator Submitting Data	1,050	1	1	1050
Institutional Certification	Investigator filling out Institutional Certification.	1,050	1	45/60	788
Institutional Certification	Institutional Official to Certify Submission.	1,050	1	45/60	788
Provisional Institutional Certification	Investigator filling out Provisional Institutional Certification.	100	1	45/60	75
Provisional Institutional Certification	Institutional Official to Certify Provisional Submission.	100	1	45/60	75
Data Access Request	Requester Submitting Request	3,900	10	1	39,000
Data Access Request	Institutional Signing Official to Certify Request.	3,900	10	1	39,000
Project Renewal or Project Close-out form.	Requester Submitting Request	3,900	10	1	39,000
Project Renewal or Project Close-out form.	Institutional Signing Official to Certify Request.	3,900	10	1	39,000
Total		18,950	159,350		158,776

Dated: November 21, 2022.

Tara A. Schwetz,

Acting Principal Deputy Director, National Institutes of Health.

[FR Doc. 2022–25840 Filed 11–25–22; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Center or Scientific Review; 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: Center for Scientific Review Special Emphasis Panel; Small Business: Basic and Integrative Biological Sciences.

Date: December 13, 2022.

Time: 10:30 a.m. to 4:00 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: Raj K. Krishnaraju, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 6190, MSC 7804, Bethesda, MD 20892, (301) 435–1047, *kkrishna@csr.nih.gov.*

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

(Catalogue of Federal Domestic Assistance Program Nos. 93.306, 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: November 21, 2022.

Tyeshia M. Roberson-Curtis,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2022–25821 Filed 11–25–22; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Substance Abuse and Mental Health Services Administration

Fiscal Year (FY) 2023 Notice of Supplemental Funding Opportunity

AGENCY: Substance Abuse and Mental Health Services Administration, Department of Health and Human Services (HHS).

ACTION: Notice of intent to award supplemental funding to the American Indian and Alaska Native Addiction Technology Transfer Center (AI/AN ATTC) recipient funded in FY 2018 under Notice of Funding Opportunity (NOFO) TI–18–001.

SUMMARY: This notice is to inform the public that the Substance Abuse and Mental Health Services Administration (SAMHSA) is supporting an administrative supplement, which is consistent with the scope of the initial FY 2018 award, of up to $375,000 for nine months to the only funded AI/AN ATTC recipient. This recipient was funded in FY 2018 under the AI/AN ATTC Cooperative Agreement NOFO TI–18–001 and has a project end date of December 29, 2022. The supplemental funds will be used to provide a 9-month extension to continue the program services for the AI/AN ATTC from December 30, 2022, to September 29, 2023.

FOR FURTHER INFORMATION CONTACT: Twyla Adams, Substance Abuse and Mental Health Services Administration, 5600 Fishers Lane, Rockville, MD 20857, telephone (240) 276–1576; email: *twyla.adams@samhsa.hhs.gov.*

SUPPLEMENTARY INFORMATION: This extension will allow SAMHSA to align the project periods of the AI/AN ATTC with the Addiction Technology Transfer Centers (ATTC), Mental Health

Technology Transfer Centers (MHTTC), and Prevention Technology Transfer Centers (PTTC) networks five-year funding cycle. The Technology Transfer Centers (TTCs) program is comprised of three networks (ATTC, MHTTC, and PTTC), which all use the same website and training and technical assistance platform. If the three networks are competed in different years and new organizations become award recipients of TTC programs, the structure of the common platform may be compromised. By competing the TTCs at the same time, if changes occur in award recipients, the new award recipients will be able to restructure the website and training platform within the first three months of the new funding cycle without disruptions.

Funding Opportunity Title: American Indian and Alaska Native Addiction Technology Transfer Centers (AI/AN ATTC) Cooperative Agreement NOFO TI–18–001.

Assistance Listing Number: 93.243.

Authority: ATTC cooperative agreements are authorized under Section 509 of the Public Health Service Act, as amended.

Justification: Eligibility for this supplemental funding is limited to the AI/AN ATTC funded in FY 2018 under the AI/AN ATTC Cooperative Agreement NOFO TI–18–001, as it is currently providing nationally focused treatment and recovery training activities that will continue to be funded through this supplement.

Alicia Broadus,

Public Health Advisor.

[FR Doc. 2022–25844 Filed 11–25–22; 8:45 am]

BILLING CODE 4162–20–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

[Docket Number USCG–2021–0183]

Draft Programmatic Environmental Impact Statement; Expansion and Modernization of Base Seattle

AGENCY: Coast Guard, DHS.

ACTION: Notice of availability for Draft Programmatic Environmental Impact Statement; Expansion and Modernization of Base Seattle; extension of comment period.

SUMMARY: The Coast Guard is extending the comment period by two weeks for the Draft Programmatic Environmental Impact Statement (PEIS) for the proposed Expansion and Modernization of Base Seattle. Notice of Availability of the Draft PEIS was published on October 11, 2022 to invite public comments on the Draft PEIS. We are extending the comment period through December 16, 2022.

DATES: The deadline for the comments period for the notice of availability published on October 11, 2022 (87 FR 61344) is extended. Comments and related material must be post-marked or received by the Coast Guard on or before December 16, 2022.

ADDRESSES: The PEIS can be reviewed at *https://www.dcms.uscg.mil/Our-Organization/Assistant-Commandant-for-Engineering-Logistics-CG-4-/Program-Offices/Environmental-Management/Environmental-Planning-and-Historic-Preservation/.* Comments can be submitted to docket number USCG–2021–0183 using the Federal eRulemaking Portal at *https://www.regulations.gov/.* See the ''Public Participation and Request for Comments'' portion of the **SUPPLEMENTARY INFORMATION** section for further instructions on submitting comments.

FOR FURTHER INFORMATION CONTACT: Requests for additional information should be sent to Dean Amundson, Coast Guard; telephone 510–637–5541, *BaseSeattlePEIS@uscg.mil.*

SUPPLEMENTARY INFORMATION: Pursuant to section 102 (2)(c) of the National Environmental Policy Act (NEPA) of 1969, sections 4321 *et seq.* of title 42 United States Code, and Council on Environmental Quality regulations (sections 1500–1508 of title 40 of the Code of Federal Regulations (CFR); CEQ), the Coast Guard published a notice of availability of a Draft PEIS for public comment in the **Federal Register** on October 11, 2022 (87 FR 61344). The Coast Guard received a public comment request to extend the comment period on the original notice of availability. The Coast Guard is extending the comment period in response to this request. The comment period would have concluded on December 2, 2022. The comment period is now open through December 16, 2022. For more detailed information, please see the original notice titled ''Notice of Availability for Draft Programmatic Environmental Impact Statement Expansion and Modernization of Base Seattle, and request for comments'' published on October 11, 2022 (87 FR 61344). A copy of that notice is also available in the docket.

I. Public Participation and Comments

The Coast Guard invites you to review the Draft PEIS. The Coast Guard will consider all submissions and may adjust our final analysis and decision based on your comments. If you submit a comment, please include the docket number for this notice, indicate the specific section of this document to which each comment applies, and provide a reason for each suggestion or recommendation.

Submitting Comments: You may submit comments on the Draft PEIS by one of the following methods:

- *Via the Web:* You may submit comments identified by docket number USCG–2021–0183 using the Federal eRulemaking Portal at *https://www.regulations.gov.*
- *Via U.S. Mail:* U.S. Coast Guard, Shore Infrastructure Logistics Center, Environmental Management Division, Attn: Mr. Dean Amundson, 1301 Clay Street, Suite 700N, Oakland, CA 94612–5203. Please note that mailed comments must be post-marked on or before the comment deadline of December 16, 2022.

Before including your address, phone number, email address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available in the docket.

Upon the completion of public comment period, the Coast Guard will prepare comment responses and publish its Final PEIS. This notice is issued under authority of NEPA, specifically in compliance with 42 U.S.C. 4332(2)(C) and CEQ implementing regulations in 40 CFR parts 1500 through 1508.

Dated: November 22, 2022.

C.J. List,

Assistant Commandant for Engineering and Logistics, Rear Admiral, U.S. Coast Guard.

[FR Doc. 2022–25825 Filed 11–25–22; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Docket ID FEMA–2022–0022; OMB No. 1660–0054]

Agency Information Collection Activities: Submission for OMB Review; Comment Request; Assistance to Firefighters Grant Program and Fire Prevention and Safety Grants-Grant Application Supplemental Information

AGENCY: Federal Emergency Management Agency, Department of Homeland Security.

ACTION: 30-Day notice of revision and request for comments.

SUMMARY: The Federal Emergency Management Agency (FEMA) will submit the information collection abstracted below to the Office of Management and Budget for review and clearance in accordance with the requirements of the Paperwork Reduction Act of 1995. This notice invites the general public to comment on the extension of a currently approved collection, with changes, concerning the applications for the Assistance to Firefighters Grant (AFG) program, the Fire Prevention and Safety (FP&S) Grants program, the Staffing for Adequate Fire and Emergency Response (SAFER) Grants program, and the Assistance to Firefighters Grant Program—COVID–19 Supplemental (AFG–S). These programs focus on enhancing the safety of the public and firefighters with respect to fire and fire-related hazards. The changes proposed will acknowledge the FEMA Grants Outcomes (FEMA GO) system as the new collection instrument for the AFG, AFG–S, SAFER, and FP&S programs. The individual forms will be combined into a question bank to allow the FEMA GO system to fully utilize its technology to simplify the process by reducing unnecessary questions.

DATES: Comments must be submitted on or before December 28, 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: Requests for additional information or copies of the information collection should be made to Director, Information Management Division, 500 C Street SW, Washington, DC 20472, email address *FEMA-Information-Collections-Management@fema.dhs.gov* or William Dunham, Fire Program Specialist, FEMA, Grant Programs Directorate, at 202–786–9813 or *Firegrants@fema.dhs.gov.*

SUPPLEMENTARY INFORMATION: The authority for these grant programs is derived from the Coronavirus Aid, Relief, and Economic Security (CARES) Act, Div. B (Pub. L. 116–136); and Sections 33 and 34 of the Federal Fire Prevention and Control Act of 1974, Public Law 93–498, as amended (15 U.S.C 2229, 2229a). The information collected is grant application information that is necessary to assess the needs of the applicants as well as the benefits to be obtained from the use of funds. The information collected through the program's application is the minimum necessary to evaluate grant applications and is necessary for FEMA to comply with mandates delineated in the law.

FEMA is consolidating several forms associated with these programs into the FEMA GO electronic system, FF–207–FY–21–116. Transitioning and consolidating these forms into the electronic system will allow FEMA to retire the following forms: FEMA Form 080–0–2, AFG Application (General Questions and Narrative); FEMA Form 080–0–2a, Activity Specific Questions for AFG Vehicle Applicants; FEMA Form 080–0–2b, Activity Specific Questions for AFG Operations and Safety Applications; FEMA Form 080–3, Activity Specific Questions for Fire Prevention and Safety Applicants; FEMA Form 080–0–3a, Fire Prevention and Safety; FEMA Form 080–0–3b, Research and Development; FEMA Form 080–0–0–13, Semi-Annual Performance Plan; FEMA Form 080–0–0–16, Final Performance Plan; FEMA Form 080–0–4, SAFER (General Questions for All Applicants); FEMA Form 080–0–4a, SAFER Hiring of Firefighters Application (Questions and Narrative); FEMA Form 080–0–4b, SAFER Recruitment and Retention of Volunteer Firefighters Application (Questions and Narrative); FEMA Form 087–0–0–2, SAFER Quarterly Report and Payment Request Form; and the AFG–S Application.

Temporary forms, FF–207–FY–22–120, AFG Programmatic Performance Report, FF–207–FY–22–123, FP&S Programmatic Performance Report, FF–207–FY–22–124, SAFER Hiring Programmatic Performance Report, and FF–207–FY–22–125, SAFER Recruitment and Retention Programmatic Performance Report, will be used to collect required performance reports until the system is able to collect this information electronically.

This proposed information collection previously published in the **Federal Register** on August 2, 2022, at 87 FR 47227 with a 60 day public comment period. No comments were received. The purpose of this notice is to notify the public that FEMA will submit the information collection abstracted below to the Office of Management and Budget for review and clearance.

Collection of Information

Title: Assistance to Firefighters Grant Program and Fire Prevention and Safety Grants-Grant Application Supplemental Information.

Type of Information Collection: Revision of a currently approved information collection.

OMB Number: 1660–0054.

FEMA Forms: FF–207–FY–21–116, Assistance to Firefighters Grant (AFG) Programs; FF–207–FY–22–120; Assistance to Firefighters Grant (AFG) Programmatic Performance Report; FF–207–FY–22–123, Fire Preventions and Safety (FP&S) Programmatic Performance Report; FF–207–FY–22–124, Staffing for Adequate Fire and Emergency Response (SAFER) Hiring Programmatic Performance Report; and FF–207–FY–22–125, Staffing for Adequate Fire and Emergency Response (SAFER) Recruitment and Retention Programmatic Performance Report.

Abstract: The Fire Prevention and Safety (FP&S) Grants program, the Staffing for Adequate Fire and Emergency Response (SAFER) Grants program, and the Assistance to Firefighters Grant Program—COVID–19 Supplemental (AFG–S) focus on enhancing the safety of the public and firefighters with respect to fire and fire-related hazards. FEMA uses this information to ensure that FEMA's responsibilities under the legislation can be fulfilled accurately and efficiently. The information will be used to objectively evaluate each of the anticipated applicants to determine which of the applicants' proposals in each of the activities are the closest to the established program priorities.

Affected Public: State, Local or Tribal Government; Not-for-Profit Institutions.

Estimated Number of Respondents: 24,112.

Estimated Number of Responses: 24,112.

Estimated Total Annual Burden Hours: 191,720.

Estimated Total Annual Respondent Cost: $12,345,373.

Estimated Respondents' Operation and Maintenance Costs: $0.

Estimated Respondents' Capital and Start-Up Costs: $0.

Estimated Total Annual Cost to the Federal Government: $433,412.

Comments

Comments may be submitted as indicated in the **ADDRESSES** caption above. Comments are solicited to (a) evaluate whether the proposed data collection is necessary for the proper performance of the agency, including whether the information shall have practical utility; (b) 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; (c) enhance the quality, utility, and clarity of the information to be collected; and (d) 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.

Millicent Brown Wilson,

Records Management Branch Chief, Office of the Chief Administrative Officer, Mission Support, Federal Emergency Management Agency, Department of Homeland Security.

[FR Doc. 2022–25899 Filed 11–25–22; 8:45 am]

BILLING CODE 9111–78–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Docket ID FEMA–2022–0025; OMB No. 1660–0140]

Agency Information Collection Activities: Submission for OMB Review; Comment Request; Integrated Public Alert and Warning Systems (IPAWS) Memorandum of Agreement Applications

AGENCY: Federal Emergency Management Agency, Department of Homeland Security.

ACTION: 30-Day notice of revision and request for comments.

SUMMARY: The Federal Emergency Management Agency (FEMA) will submit the information collection abstracted below to the Office of Management and Budget for review and clearance in accordance with the requirements of the Paperwork Reduction Act of 1995. This notice seeks comments concerning the Integrated Public Alert and Warning Systems (IPAWS) Memorandum of Agreement Applications.

DATES: Comments must be submitted on or before December 28, 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: Requests for additional information or copies of the information collection should be made to Director, Information Management Division, 500 C Street SW, Washington, DC 20472, email address *FEMA-Information-Collections-Management@fema.dhs.gov* or Wade Witmer, Deputy for the Integrated Public Alert and Warning System (IPAWS) Program, FEMA, National Continuity Programs, (202) 646–2523, *wade.witmer@fema.dhs.gov*.

SUPPLEMENTARY INFORMATION: Public Law 114–143, the Integrated Public Alert and Warning System Modernization Act of 2015, and Presidential Executive Order 13407, Public Alert and Warning System, establishes the policy for an effective, reliable, integrated, flexible, and comprehensive system to alert and warn the American people in situations of war, terrorist attack, natural disaster, or other hazards to public safety and wellbeing. The Integrated Public Alert and Warning System (IPAWS) is the Department of Homeland Security's response to the Executive Order. The Stafford Act (42 U.S.C. 5121, *et. seq.,* Public Law 93–288, as amended) requires that FEMA make IPAWS available to Federal, State, and local agencies for the purpose of providing warning to governmental authorities and the civilian population in areas endangered by disasters. The information collected is used by FEMA to create a Memorandum of Agreement that regulates the management, operations, and security of the information technology system connection between a Federal, State, Tribal, territorial, or local alerting authority and IPAWS–OPEN (Open Platform for Emergency Notifications).

The IPAWS Public Alerting Authorization application captures information detailing which types of events the local jurisdiction wants to be configured to use IPAWS for and which primary dissemination channels should be available. For example, if a community wants to send a Civil Emergency Message (CEM) to broadcast across radio, television, and cable, they will request ''CEM'' for ''EAS''—the Emergency Alert System. These requested permissions are reviewed by either the State or by Tribal authorities for compliance with established overall alerting policies and plans. IPAWS uses the approved information to configure permissions in IPAWS–OPEN.

This proposed information collection previously published in the **Federal Register** on August 26, 2022, at 87 FR 52589 with a 60 day public comment period. No comments were received. The purpose of this notice is to notify the public that FEMA will submit the information collection abstracted below to the Office of Management and Budget for review and clearance.

Collection of Information

Title: Integrated Public Alert and Warning Systems (IPAWS) Memorandum of Agreement Applications.

Type of Information Collection: Extension, with change, of a currently approved information collection.

OMB Number: 1660–0140.

FEMA Forms: FEMA Form FF–302–FY–22–102 (formerly 007–0–25), IPAWS Memorandum of Agreement (MOA) Application; FEMA Form FF–302–FY–22–103 (formerly 007–0–26a/b), IPAWS Public Alerting Authority (PAA) Application.

Abstract: A Federal, State, Tribal, territorial, or local alerting authority that applies for authorization to use IPAWS is designated as a Collaborative Operating Group (COG) by the IPAWS Program Management Office (PMO). Access to IPAWS is free; however, to send a message using IPAWS, an organization must procure its own IPAWS compatible software. To become a COG, a Memorandum of Agreement governing system security must be executed between the sponsoring organization and FEMA.

Affected Public: State, Tribal, or local Government.

Estimated Number of Respondents: 841.

Estimated Number of Responses: 841.

Estimated Total Annual Burden Hours: 526.

Estimated Total Annual Respondent Cost: $30,487.

Estimated Respondents' Operation and Maintenance Costs: $0.

Estimated Respondents' Capital and Start-Up Costs: $0.

Estimated Total Annual Cost to the Federal Government: $123,164.

Comments

Comments may be submitted as indicated in the **ADDRESSES** caption above. Comments are solicited to (a) evaluate whether the proposed data collection is necessary for the proper performance of the agency, including whether the information shall have practical utility; (b) 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; (c) enhance the quality, utility, and clarity of the information to be collected; and (d) 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.

Millicent Brown Wilson,

Records Management Branch Chief, Office of the Chief Administrative Officer, Mission Support, Federal Emergency Management Agency, Department of Homeland Security

[FR Doc. 2022–25900 Filed 11–25–22; 8:45 am]

BILLING CODE 9111–AB–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Docket ID FEMA–2022–0026; OMB No. 1660–0023]

Agency Information Collection Activities: Submission for OMB Review; Comment Request; Community Assistance Contact (CAC) and Community Assistance Visits (CAV) Reports

AGENCY: Federal Emergency Management Agency, Department of Homeland Security.

ACTION: 30-Day notice of revision and request for comments.

SUMMARY: The Federal Emergency Management Agency (FEMA) will submit the information collection abstracted below to the Office of Management and Budget for review and clearance in accordance with the requirements of the Paperwork Reduction Act of 1995. This notice seeks comments concerning the effectiveness of a community's implementation of the National Flood Insurance Program's Community Assistance Program (CAC) and Community Assistance Visits (CAV) Reports.

DATES: Comments must be submitted on or before December 28, 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: Requests for additional information or copies of the information collection should be made to Director, Information Management Division, 500 C Street SW, Washington, DC 20472, email address *FEMA-Information-Collections-Management@fema.dhs.gov* or Sarah Owen, Program Specialist, Floodplain Management Division, Mitigation Directorate, Federal Insurance and Mitigation Administration, FEMA at *Sarah.Owen@fema.dhs.gov* or (510) 409–4818.

SUPPLEMENTARY INFORMATION: The National Flood Insurance Program (NFIP) codified as 42 U.S.C. 4001, *et seq.* is authorized by Public Law 90–448 (1968) and expanded by Public Law 93–234 (1973). The Department of Homeland Security, Federal Emergency Management Agency (FEMA) administers the NFIP. The NFIP's major objective is to assure that participating communities are achieving the flood loss reduction objectives through adoption and enforcement of adequate land use and control measures. Sections 1315 and 1361 provide the basis for FEMA's process to evaluate how well communities are implementing their floodplain management programs. Title 44 CFR 59.22 directs the respondent to submit evidence of the corrective and preventive measures taken to meet the flood loss reduction objectives.

The two key methods FEMA uses in determining community assistance needs are through the Community Assistance Contact (CAC) and Community Assistance Visit (CAV), which serve to provide a systematic means of monitoring community NFIP compliance. Through the CAC and CAV, FEMA can also determine to what extent communities are achieving the flood loss reduction objectives of the NFIP. By providing assistance to communities, the CAC and CAV also serve to enhance FEMA's goals of reducing future flood losses, thereby achieving the NFIP's cost-containment objective. The burden hours and costs associated with this collection were re-evaluated which led to the main revision in this extension request.

This proposed information collection previously published in the **Federal Register** on September 1, 2022, at 87 FR 53760 with a 60 day public comment period. No comments were received. The purpose of this notice is to notify the public that FEMA will submit the information collection abstracted below to the Office of Management and Budget for review and clearance.

Collection of Information

Title: Community Assistance Contact (CAC) and Community Assistance Visits (CAV) Reports.

Type of Information Collection: Extension, with change, of a currently approved information collection.

OMB Number: 1660–0023.

FEMA Forms: FEMA Form FF–206–FY–21–141 (formerly 086–0–28(E)), Community Assistance Visit (CAV) Report; FEMA Form FF–206–FY–21–142 (formerly 086–0–29(E)), Community Assistance Contact (CAC) Report.

Abstract: Through the use of a Community Assistance Contact (CAC) or Community Assistance Visit (CAV), FEMA can make a comprehensive assessment of a community's floodplain management program. Through this assessment, FEMA can assist the community to understand the NFIP's requirements, and implement effective flood loss reductions measures. Communities can achieve cost savings through flood mitigation actions by way of insurance premium discounts and reduced property damage.

Affected Public: State, Local or Tribal Government.

Estimated Number of Respondents: 100.

Estimated Number of Responses: 2,000.

Estimated Total Annual Burden Hours: 60,000.

Estimated Total Annual Respondent Cost: $2,505,600.

Estimated Respondents' Operation and Maintenance Costs: $0.

Estimated Respondents' Capital and Start-Up Costs: $0.

Estimated Total Annual Cost to the Federal Government: $2,181,968.

Comments

Comments may be submitted as indicated in the **ADDRESSES** caption above. Comments are solicited to (a) evaluate whether the proposed data collection is necessary for the proper performance of the agency, including whether the information shall have practical utility; (b) 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; (c) enhance the quality, utility, and clarity of the information to be collected; and (d) 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.

Millicent Brown Wilson,

Records Management Branch Chief, Office of the Chief Administrative Officer, Mission Support, Federal Emergency Management Agency, Department of Homeland Security.

[FR Doc. 2022–25897 Filed 11–25–22; 8:45 am]

BILLING CODE 9111–47–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Docket ID FEMA–2022–0002; Internal Agency Docket No. FEMA–B–2287]

Proposed Flood Hazard Determinations

AGENCY: Federal Emergency Management Agency, Department of Homeland Security.

ACTION: Notice.

SUMMARY: Comments are requested on proposed flood hazard determinations, which may include additions or modifications of any Base Flood Elevation (BFE), base flood depth, Special Flood Hazard Area (SFHA) boundary or zone designation, or regulatory floodway on the Flood Insurance Rate Maps (FIRMs), and where applicable, in the supporting Flood Insurance Study (FIS) reports for the communities listed in the table below. The purpose of this notice is to seek general information and comment regarding the preliminary FIRM, and where applicable, the FIS report that the Federal Emergency Management Agency (FEMA) has provided to the affected communities. The FIRM and FIS report are the basis of the floodplain management measures that the community is required either to adopt or to show evidence of having in effect in order to qualify or remain qualified for participation in the National Flood Insurance Program (NFIP).

DATES: Comments are to be submitted on or before February 27, 2023.

ADDRESSES: The Preliminary FIRM, and where applicable, the FIS report for each community are available for inspection at both the online location *https://hazards.fema.gov/femaportal/prelimdownload* and the respective Community Map Repository address listed in the tables below. Additionally, the current effective FIRM and FIS report for each community are accessible online through the FEMA Map Service Center at *https://msc.fema.gov* for comparison.

You may submit comments, identified by Docket No. FEMA–B–2287, to Rick Sacbibit, Chief, Engineering Services Branch, Federal Insurance and Mitigation Administration, FEMA, 400 C Street SW, Washington, DC 20472, (202) 646–7659, or (email) *patrick.sacbibit@fema.dhs.gov.*

FOR FURTHER INFORMATION CONTACT: Rick Sacbibit, Chief, Engineering Services Branch, Federal Insurance and Mitigation Administration, FEMA, 400 C Street SW, Washington, DC 20472, (202) 646–7659, or (email) *patrick.sacbibit@fema.dhs.gov;* or visit the FEMA Mapping and Insurance eXchange (FMIX) online at *https://www.floodmaps.fema.gov/fhm/fmx_main.html.*

SUPPLEMENTARY INFORMATION: FEMA proposes to make flood hazard determinations for each community listed below, in accordance with section 110 of the Flood Disaster Protection Act of 1973, 42 U.S.C. 4104, and 44 CFR 67.4(a).

These proposed flood hazard determinations, together with the floodplain management criteria required by 44 CFR 60.3, are the minimum that are required. They should not be construed to mean that the community must change any existing ordinances that are more stringent in their floodplain management requirements. The community may at any time enact stricter requirements of its own or pursuant to policies established by other Federal, State, or regional entities. These flood hazard determinations are used to meet the floodplain management requirements of the NFIP.

The communities affected by the flood hazard determinations are provided in the tables below. Any request for reconsideration of the revised flood hazard information shown on the Preliminary FIRM and FIS report that satisfies the data requirements outlined in 44 CFR 67.6(b) is considered an appeal. Comments unrelated to the flood hazard determinations also will be considered before the FIRM and FIS report become effective.

Use of a Scientific Resolution Panel (SRP) is available to communities in support of the appeal resolution process. SRPs are independent panels of experts in hydrology, hydraulics, and other pertinent sciences established to review conflicting scientific and technical data and provide recommendations for resolution. Use of the SRP only may be exercised after FEMA and local communities have been engaged in a collaborative consultation process for at least 60 days without a mutually acceptable resolution of an appeal. Additional information regarding the SRP process can be found online at *https://www.floodsrp.org/pdfs/srp_overview.pdf.*

The watersheds and/or communities affected are listed in the tables below. The Preliminary FIRM, and where applicable, FIS report for each community are available for inspection at both the online location *https://hazards.fema.gov/femaportal/prelimdownload* and the respective Community Map Repository address listed in the tables. For communities with multiple ongoing Preliminary studies, the studies can be identified by the unique project number and Preliminary FIRM date listed in the tables. Additionally, the current effective FIRM and FIS report for each community are accessible online through the FEMA Map Service Center at *https://msc.fema.gov* for comparison.

(Catalog of Federal Domestic Assistance No. 97.022, ''Flood Insurance.'')

Michael M. Grimm,

Assistant Administrator for Risk Management, Federal Emergency Management Agency, Department of Homeland Security.

Community	Community map repository address
Arapahoe County, Colorado and Incorporated Areas Project: 19–08–0022S Preliminary Date: June 10, 2022	
City of Centennial	Southeast Metro Stormwater Authority, 7437 South Fairplay Street, Centennial, CO 80112.
City of Englewood	Civic Center, 1000 Englewood Parkway, Englewood, CO 80110.
City of Greenwood Village	City Hall, 6060 South Quebec Street, Greenwood Village, CO 80111.
City of Littleton	Public Works Department, 2255 West Berry Avenue, Littleton, CO 80120.
City of Sheridan	Municipal Center, 4101 South Federal Boulevard, Sheridan, CO 80110.
Unincorporated Areas of Arapahoe County	Arapahoe County Public Works and Development Department, 6924 South Lima Street, Centennial, CO 80112.

Community	Community map repository address
Harney County, Oregon and Incorporated Areas Project: 20–10–0012S Preliminary Date: May 27, 2022	
Burns Paiute Reservation	Burns Paiute Tribal Office, 100 Pasigo Street, Burns, OR 97720.
City of Burns	City Hall, 242 South Broadway Avenue, Burns, OR 97720.
City of Hines	City Hall, 101 East Barnes Avenue, Hines, OR 97738.
Unincorporated Areas of Harney County	Harney County Planning Department, 360 North Alvord Avenue, Burns, OR 97720.
Lane County, Oregon and Incorporated Areas Project: 17–10–0923S Preliminary Date: February 28, 2020 and January 28, 2022	
City of Cottage Grove	City Hall, 400 East Main Street, Cottage Grove, OR 97424.
City of Creswell	City Hall, 13 South 1st Street, Creswell, OR 97426.
City of Eugene	Public Works Department, 99 West 10th Avenue, Eugene, OR 97401.
City of Springfield	Planning Department, 225 5th Street, Springfield, OR 97477.
Unincorporated Areas of Lane County	Lane County Public Works Building, 3050 North Delta Highway, Eugene, OR 97408.

[FR Doc. 2022–25906 Filed 11–25–22; 8:45 am]

BILLING CODE 9110–12–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Docket ID FEMA–2022–0002; Internal Agency Docket No. FEMA–B–2289]

Proposed Flood Hazard Determinations

AGENCY: Federal Emergency Management Agency, Department of Homeland Security.

ACTION: Notice.

SUMMARY: Comments are requested on proposed flood hazard determinations, which may include additions or modifications of any Base Flood Elevation (BFE), base flood depth, Special Flood Hazard Area (SFHA) boundary or zone designation, or regulatory floodway on the Flood Insurance Rate Maps (FIRMs), and where applicable, in the supporting Flood Insurance Study (FIS) reports for the communities listed in the table below. The purpose of this notice is to seek general information and comment regarding the preliminary FIRM, and where applicable, the FIS report that the Federal Emergency Management Agency (FEMA) has provided to the affected communities. The FIRM and FIS report are the basis of the floodplain management measures that the community is required either to adopt or to show evidence of having in effect in order to qualify or remain qualified for participation in the National Flood Insurance Program (NFIP).

DATES: Comments are to be submitted on or before February 27, 2023.

ADDRESSES: The Preliminary FIRM, and where applicable, the FIS report for each community are available for inspection at both the online location *https://hazards.fema.gov/femaportal/prelimdownload* and the respective Community Map Repository address listed in the tables below. Additionally, the current effective FIRM and FIS report for each community are accessible online through the FEMA Map Service Center at *https://msc.fema.gov* for comparison.

You may submit comments, identified by Docket No. FEMA–B–2289, to Rick Sacbibit, Chief, Engineering Services Branch, Federal Insurance and Mitigation Administration, FEMA, 400 C Street SW, Washington, DC 20472, (202) 646–7659, or (email) *patrick.sacbibit@fema.dhs.gov*.

FOR FURTHER INFORMATION CONTACT: Rick Sacbibit, Chief, Engineering Services Branch, Federal Insurance and Mitigation Administration, FEMA, 400 C Street SW, Washington, DC 20472, (202) 646–7659, or (email) *patrick.sacbibit@fema.dhs.gov*; or visit the FEMA Mapping and Insurance eXchange (FMIX) online at *https://www.floodmaps.fema.gov/fhm/fmx_main.html*.

SUPPLEMENTARY INFORMATION: FEMA proposes to make flood hazard determinations for each community listed below, in accordance with section 110 of the Flood Disaster Protection Act of 1973, 42 U.S.C. 4104, and 44 CFR 67.4(a).

These proposed flood hazard determinations, together with the floodplain management criteria required by 44 CFR 60.3, are the minimum that are required. They should not be construed to mean that the community must change any existing ordinances that are more stringent in their floodplain management requirements. The community may at any time enact stricter requirements of its own or pursuant to policies established by other Federal, State, or regional entities. These flood hazard determinations are used to meet the floodplain management requirements of the NFIP.

The communities affected by the flood hazard determinations are provided in the tables below. Any request for reconsideration of the revised flood hazard information shown on the Preliminary FIRM and FIS report that satisfies the data requirements outlined in 44 CFR 67.6(b) is considered an appeal. Comments unrelated to the flood hazard determinations also will be considered before the FIRM and FIS report become effective.

Use of a Scientific Resolution Panel (SRP) is available to communities in support of the appeal resolution process. SRPs are independent panels of experts in hydrology, hydraulics, and other pertinent sciences established to review conflicting scientific and technical data and provide recommendations for resolution. Use of the SRP only may be exercised after FEMA and local communities have been engaged in a collaborative consultation process for at least 60 days without a mutually acceptable resolution of an appeal. Additional information regarding the SRP process can be found online at *https://www.floodsrp.org/pdfs/srp_overview.pdf*.

The watersheds and/or communities affected are listed in the tables below. The Preliminary FIRM, and where applicable, FIS report for each community are available for inspection at both the online location *https://hazards.fema.gov/femaportal/prelimdownload* and the respective Community Map Repository address listed in the tables. For communities

with multiple ongoing Preliminary studies, the studies can be identified by the unique project number and Preliminary FIRM date listed in the tables. Additionally, the current effective FIRM and FIS report for each community are accessible online through the FEMA Map Service Center at *https://msc.fema.gov* for comparison.

(Catalog of Federal Domestic Assistance No. 97.022, ''Flood Insurance.'')

Michael M. Grimm,

Assistant Administrator for Risk Management, Federal Emergency Management Agency, Department of Homeland Security.

Community	Community map repository address
Breckinridge County, Kentucky and Incorporated Areas Project: 20–04–0002S Preliminary Date: May 10, 2022	
City of Cloverport	City Hall, 212 West Main Street, Cloverport, KY 40111.
Unincorporated Areas of Breckinridge County	Breckinridge County Courthouse, 208 South Main Street, Hardinsburg, KY 40143.
Daviess County, Kentucky and Incorporated Areas Project: 20–04–0002S Preliminary Date: May 10, 2022	
City of Owensboro	Public Works Building, 1410 West 5th Street, Owensboro, KY 42301.
Unincorporated Areas of Daviess County	Daviess County Courthouse, 212 Saint Ann Street, Owensboro, KY 42303.
Hancock County, Kentucky and Incorporated Areas Project: 20–04–0002S Preliminary Date: May 10, 2022	
City of Hawesville	City Hall, 395 Main Street, Hawesville, KY 42348.
City of Lewisport	City Hall, 405 2nd Street, Lewisport, KY 42351.
Unincorporated Areas of Hancock County	Hancock County Administration Building, 225 Main Cross Street, Hawesville, KY 42348.
Henderson County, Kentucky and Incorporated Areas Project: 20–04–0002S Preliminary Date: May 10, 2022	
City of Henderson	Municipal Center, 222 1st Street, Henderson, KY 42420.
Unincorporated Areas of Henderson County	City of Henderson Police Department, 1990 Barrett Court, Suite A, Henderson, KY 42420.

[FR Doc. 2022–25904 Filed 11–25–22; 8:45 am]

BILLING CODE 9111–12–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Docket ID FEMA–2022–0002; Internal Agency Docket No. FEMA–B–2290]

Proposed Flood Hazard Determinations

AGENCY: Federal Emergency Management Agency, Department of Homeland Security.

ACTION: Notice.

SUMMARY: Comments are requested on proposed flood hazard determinations, which may include additions or modifications of any Base Flood Elevation (BFE), base flood depth, Special Flood Hazard Area (SFHA) boundary or zone designation, or regulatory floodway on the Flood Insurance Rate Maps (FIRMs), and where applicable, in the supporting Flood Insurance Study (FIS) reports for the communities listed in the table below. The purpose of this notice is to seek general information and comment regarding the preliminary FIRM, and where applicable, the FIS report that the Federal Emergency Management Agency (FEMA) has provided to the affected communities. The FIRM and FIS report are the basis of the floodplain management measures that the community is required either to adopt or to show evidence of having in effect in order to qualify or remain qualified for participation in the National Flood Insurance Program (NFIP).

DATES: Comments are to be submitted on or before February 27, 2023.

ADDRESSES: The Preliminary FIRM, and where applicable, the FIS report for each community are available for inspection at both the online location *https://hazards.fema.gov/femaportal/prelimdownload* and the respective Community Map Repository address listed in the tables below. Additionally, the current effective FIRM and FIS report for each community are accessible online through the FEMA Map Service Center at *https://msc.fema.gov* for comparison.

You may submit comments, identified by Docket No. FEMA–B–2290, to Rick Sacbibit, Chief, Engineering Services Branch, Federal Insurance and Mitigation Administration, FEMA, 400 C Street SW, Washington, DC 20472, (202) 646–7659, or (email) *patrick.sacbibit@fema.dhs.gov.*

FOR FURTHER INFORMATION CONTACT: Rick Sacbibit, Chief, Engineering Services Branch, Federal Insurance and Mitigation Administration, FEMA, 400 C Street SW, Washington, DC 20472, (202) 646–7659, or (email) *patrick.sacbibit@fema.dhs.gov;* or visit the FEMA Mapping and Insurance eXchange (FMIX) online at *https://www.floodmaps.fema.gov/fhm/fmx_main.html.*

SUPPLEMENTARY INFORMATION: FEMA proposes to make flood hazard determinations for each community listed below, in accordance with section 110 of the Flood Disaster Protection Act of 1973, 42 U.S.C. 4104, and 44 CFR 67.4(a).

These proposed flood hazard determinations, together with the floodplain management criteria required by 44 CFR 60.3, are the minimum that are required. They should not be construed to mean that the community must change any existing ordinances

that are more stringent in their floodplain management requirements. The community may at any time enact stricter requirements of its own or pursuant to policies established by other Federal, State, or regional entities. These flood hazard determinations are used to meet the floodplain management requirements of the NFIP.

The communities affected by the flood hazard determinations are provided in the tables below. Any request for reconsideration of the revised flood hazard information shown on the Preliminary FIRM and FIS report that satisfies the data requirements outlined in 44 CFR 67.6(b) is considered an appeal. Comments unrelated to the flood hazard determinations also will be considered before the FIRM and FIS report become effective.

Use of a Scientific Resolution Panel (SRP) is available to communities in support of the appeal resolution process. SRPs are independent panels of experts in hydrology, hydraulics, and other pertinent sciences established to review conflicting scientific and technical data and provide recommendations for resolution. Use of the SRP only may be exercised after FEMA and local communities have been engaged in a collaborative consultation process for at least 60 days without a mutually acceptable resolution of an appeal. Additional information regarding the SRP process can be found online at *https://www.floodsrp.org/pdfs/srp_overview.pdf.*

The watersheds and/or communities affected are listed in the tables below. The Preliminary FIRM, and where applicable, FIS report for each community are available for inspection at both the online location *https://hazards.fema.gov/femaportal/prelimdownload* and the respective Community Map Repository address listed in the tables. For communities with multiple ongoing Preliminary studies, the studies can be identified by the unique project number and Preliminary FIRM date listed in the tables. Additionally, the current effective FIRM and FIS report for each community are accessible online through the FEMA Map Service Center at *https://msc.fema.gov* for comparison.

(Catalog of Federal Domestic Assistance No. 97.022, ''Flood Insurance.'')

Michael M. Grimm,

Assistant Administrator for Risk Management, Federal Emergency Management Agency, Department of Homeland Security.

Community	Community map repository address
DeKalb County, Tennessee and Incorporated Areas Project: 20–04–0039S Preliminary Date: July 28, 2021	
Unincorporated Areas of DeKalb County	DeKalb County Courthouse, 1 Public Square, Room 204, Smithville, TN 37166.
Jackson County, Tennessee and Incorporated Areas Project: 20–04–0037S Preliminary Date: May 26, 2021	
Town of Gainesboro	City Hall, 402 East Hull Avenue, Gainesboro, TN 38562.
Unincorporated Areas of Jackson County	Jackson County Courthouse, 101 East Hull Avenue, Gainesboro, TN 38562.
Wilson County, Tennessee and Incorporated Areas Project: 20–04–0042S Preliminary Date: October 27, 2021	
City of Lebanon	City Hall, 200 North Castle Heights Avenue, Suite 300, Lebanon, TN 37087.
Unincorporated Areas of Wilson County	Wilson County Courthouse, 228 East Main Street, Planning Office, Room 5, Lebanon, TN 37087.

[FR Doc. 2022–25908 Filed 11–25–22; 8:45 am]

BILLING CODE 9110–12–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Docket ID FEMA–2022–0043; OMB No. 1660–0002]

Agency Information Collection Activities: Proposed Collection; Comment Request; Disaster Assistance Registration

AGENCY: Federal Emergency Management Agency, Department of Homeland Security.

ACTION: 60-Day notice of revision and request for comments.

SUMMARY: The Federal Emergency Management Agency (FEMA), as part of its continuing effort to reduce paperwork and respondent burden, invites the general public to take this opportunity to comment on an extension, with change, of a currently approved information collection. In accordance with the Paperwork Reduction Act of 1995, this notice seeks comments concerning changes to modernize and simplify the disaster assistance registration. The changes will reduce the burden on survivors by only requiring them to answer questions based on the type of assistance they need. This will also reduce the amount of time it takes for survivors to apply either online, or through a call center, therefore allowing call center agents to assist survivors more quickly. The notice also includes FEMA documenting all post-registration contacts, including callouts, casework, and auto-dialers performed for the purpose of determining whether disaster assistance applicants have unmet needs and may be eligible for additional assistance and/or share the results of those contacts directly with external stakeholders, such as state or local government partners, who can potentially assist those same applicants with assistance or services not provided by FEMA through specific programs directly targeted to disaster survivors.

DATES: Comments must be submitted on or before January 27, 2023.

ADDRESSES: Please submit comments at *www.regulations.gov* under Docket ID FEMA–2022–0043. Follow the instructions for submitting comments.

All submissions received must include the agency name and Docket ID. Regardless of the method used for

submitting comments or material, all submissions will be posted, without change, to the Federal eRulemaking Portal at *http://www.regulations.gov,* and will include any personal information you provide. Therefore, submitting this information makes it public. You may wish to read the Privacy Act notice that is available via the link in the footer of *www.regulations.gov.*

FOR FURTHER INFORMATION CONTACT: Brian Thompson, Supervisory Program Specialist, FEMA, Recovery Directorate at 540–686–3602 or *Brian.Thompson6@fema.dhs.gov.* You may contact the Information Management Division for copies of the proposed collection of information at email address: *FEMA-Information-Collections-Management@fema.dhs.gov.*

SUPPLEMENTARY INFORMATION: The Robert T. Stafford Disaster Relief and Emergency Assistance Act (Pub. L. 93–288, *as amended*) (the Stafford Act) is the legal basis for FEMA to provide financial assistance and services to individuals who apply for disaster assistance benefits in the event of a Presidentially-declared disaster. Regulations in Title 44 of the Code of Federal Regulations, Subpart D, ''Federal Assistance to Individuals and Households,'' implement the policy and procedures set forth in section 408 of the Stafford Act. Housing Assistance (HA) is a provision of the Individuals and Households Program (IHP), authorized by Section 408(c) of the Stafford Act. There are two forms of assistance: financial and direct. Financial Housing Assistance refers to funds provided to eligible applicants for temporary lodging expenses, rental of temporary housing, or repair or replacement of a damaged primary residence. Direct Temporary Housing Assistance includes providing Temporary Housing Units (THU) through Multi-Family Lease or Repair (MLR) or Direct Lease, or placing transportable temporary housings (TTHU), such as manufactured housing units (MHU) and recreational vehicles or travel trailers, on private, commercial, or group sites. This program provides financial assistance and, if necessary, direct assistance to eligible individuals and households who, as a direct result of a major disaster, have necessary expenses and serious needs that are unable to be met through other means. Individuals and households may apply for assistance through the Registration Intake (RI) process under the IHP in person, via telephone, or the internet. FEMA provides financial assistance under Other Needs Assistance to individuals or households affected by a major disaster to meet disaster-related medical, dental, funeral, childcare, personal property, transportation, moving and storage expenses, and other necessary expenses or serious needs resulting from a major disaster under Section 408(e)(1) of the Stafford Act.

The changes to the following forms support Executive Order 14058, *Transforming Federal Customer Experience and Service Delivery to Rebuild Trust in Government.* The changes will rebuild trust in the Federal Government by promoting transparency of FEMA's Disaster Assistance application process.

- FF–104–FY–21–123 (formerly 009–0–1T (English)), Tele-Registration, Disaster Assistance Registration
- FF–104–FY–21–123–A (formerly 009–0–1T (Spanish)), Tele-Registration, Registro Para Asistencia De Desastre
- FEMA Form FF–104–FY–21–122 (formerly 009–0–1 (English)), Paper Application, Disaster Assistance Registration
- FEMA Form FF–104–FY–21–122–A (formerly 009–0–2 (Spanish)), Solicitud en Papel, Registro Para Asistencia De Desastre
- FEMA Form FF–104–FY–21–125 (formerly 009–0–1Int (English)), Internet, Disaster Assistance Registration
- FEMA Form FF–104–FY–21–125–A (formerly 009–0–2Int (Spanish)), Internet, Registro Para Asistencia De Desastre

In documenting all post-registration callouts, auto-dialer contacts and subsequent collection of data, FEMA can determine whether applicants have unmet needs, can process the applicant for financial or direct assistance sharing the results of those contacts directly with external stakeholders. This data is specifically used for FEMA and its stakeholders to determine whether assistance is warranted.

Collection of Information

Title: Disaster Assistance Registration.

Type of Information Collection: Extension, with change, of a currently approved information collection.

OMB Number: 1660–0002.

FEMA Forms: FEMA Form FF–104–FY–21–122 (formerly 009–0–1 (English)), Paper Application, Disaster Assistance Registration; FEMA Form FF–104–FY–21–122–A (formerly 009–0–2 (Spanish)), Solicitud en Papel, Registro Para Asistencia De Desastre; FF–104–FY–21–123 (formerly 009–0–1T (English)), Tele-Registration, Disaster Assistance Registration; FF–104–FY–21–123–A (formerly 009–0–1T (Spanish)), Tele-Registration, Registro Para Asistencia De Desastre; FEMA Form FF–104–FY–21–123–COVID–FA (English), Tele-Registration, COVID–19 Funeral Assistance; FF–104–FY–21–125 (formerly 009–0–1Int (English)), Internet, Disaster Assistance Registration; FF–104–FY–21–125–A (formerly 009–0–2Int (Spanish)), Internet, Registro Para Asistencia De Desastre; FEMA Form FF–104–FY–21–127 (formerly 009–0–5 (English)), Manufactured Housing Unit Revocable License and Receipt for Government Property (Revocable License); FEMA Form FF–104–FY–21–127–A (formerly 009–0–6 (Spanish)), Licencia Revocable para la Unidad de Vivienda Temporera y Recibo para el uso de Propiedad del Govierno (Licencia Revocable); FEMA Form FF–104–FY–21–128 (formerly 009–0–3 (English)), Declaration and Release; FEMA Form FF–104–FY–21–128–A (formerly 009–0–4 (Spanish)), Declaracion Y Autorizacion; FEMA Template FT–104–FY–22–101, Request for Information (RFI)—COVID–19 Funeral Assistance; FEMA Template FT–104–FY–22–102, Request for Information (RFI)—Ownership Verification; FEMA Template FT–104–FY–22–103, Request for Information (RFI)—Occupancy Verification; FEMA Template FT–104–FY–22–104 Request for Information (RFI)—Medical, Dental, Disability-Accessibility-Related Items.

Abstract: The forms in this collection are used to obtain pertinent information to provide financial assistance, and if necessary, direct assistance to eligible individuals and households who, as a direct result of a disaster or emergency, have uninsured or under-insured, necessary or serious expenses they are unable to meet. This revision of a currently approved information collection will improve the applicant's experience with the disaster assistance registration process by providing a simpler, more intuitive interface and limiting required responses to those needed based on their needs. These changes will rebuild trust in the Federal Government by promoting transparency of FEMA's Disaster Assistance application process.

Affected Public: Individuals or Households.

Estimated Number of Respondents: 2,043,134.

Estimated Number of Responses: 2,043,134.

Estimated Total Annual Burden Hours: 642,031.

Estimated Total Annual Respondent Cost: $25,199,718.

Estimated Respondents' Operation and Maintenance Costs: $0.

Estimated Respondents' Capital and Start-Up Costs: $0.

Estimated Total Annual Cost to the Federal Government: $31,983,280.

Comments

Comments may be submitted as indicated in the **ADDRESSES** caption above. Comments are solicited to (a) evaluate whether the proposed data collection is necessary for the proper performance of the agency, including whether the information shall have practical utility; (b) 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; (c) enhance the quality, utility, and clarity of the information to be collected; and (d) 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.

Millicent Brown Wilson,

Records Management Branch Chief, Office of the Chief Administrative Officer, Mission Support, Federal Emergency Management Agency, Department of Homeland Security.

[FR Doc. 2022–25846 Filed 11–25–22; 8:45 am]

BILLING CODE 9111–24–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Docket ID FEMA–2022–0002]

Final Flood Hazard Determinations

AGENCY: Federal Emergency Management Agency, Department of Homeland Security.

ACTION: Notice.

SUMMARY: Flood hazard determinations, which may include additions or modifications of Base Flood Elevations (BFEs), base flood depths, Special Flood Hazard Area (SFHA) boundaries or zone designations, or regulatory floodways on the Flood Insurance Rate Maps (FIRMs) and where applicable, in the supporting Flood Insurance Study (FIS) reports have been made final for the communities listed in the table below.

The FIRM and FIS report are the basis of the floodplain management measures that a community is required either to adopt or to show evidence of having in effect in order to qualify or remain qualified for participation in the Federal Emergency Management Agency's (FEMA's) National Flood Insurance Program (NFIP).

DATES: The date of March 21, 2023 has been established for the FIRM and, where applicable, the supporting FIS report showing the new or modified flood hazard information for each community.

ADDRESSES: The FIRM, and if applicable, the FIS report containing the final flood hazard information for each community is available for inspection at the respective Community Map Repository address listed in the tables below and will be available online through the FEMA Map Service Center at *https://msc.fema.gov* by the date indicated above.

FOR FURTHER INFORMATION CONTACT: Rick Sacbibit, Chief, Engineering Services Branch, Federal Insurance and Mitigation Administration, FEMA, 400 C Street SW, Washington, DC 20472, (202) 646–7659, or (email) *patrick.sacbibit@fema.dhs.gov;* or visit the FEMA Mapping and Insurance eXchange (FMIX) online at *https://www.floodmaps.fema.gov/fhm/fmx_main.html.*

SUPPLEMENTARY INFORMATION: The Federal Emergency Management Agency (FEMA) makes the final determinations listed below for the new or modified flood hazard information for each community listed. Notification of these changes has been published in newspapers of local circulation and 90 days have elapsed since that publication. The Deputy Associate Administrator for Insurance and Mitigation has resolved any appeals resulting from this notification.

This final notice is issued in accordance with section 110 of the Flood Disaster Protection Act of 1973, 42 U.S.C. 4104, and 44 CFR part 67. FEMA has developed criteria for floodplain management in floodprone areas in accordance with 44 CFR part 60.

Interested lessees and owners of real property are encouraged to review the new or revised FIRM and FIS report available at the address cited below for each community or online through the FEMA Map Service Center at *https://msc.fema.gov.*

The flood hazard determinations are made final in the watersheds and/or communities listed in the table below.

(Catalog of Federal Domestic Assistance No. 97.022, ''Flood Insurance.'')

Michael M. Grimm,

Assistant Administrator for Risk Management, Federal Emergency Management Agency, Department of Homeland Security.

Community	Community map repository address
Coconino County, Arizona and Incorporated Areas Docket No.: FEMA B–2156	
City of Sedona	Community Development Department, 102 Roadrunner Drive, Sedona, AZ 86336.
Unincorporated Areas of Coconino County	Coconino County Community Development Department, 2500 North Fort Valley Road, Building 1, Flagstaff, AZ 86001.
Boone County, Kentucky and Incorporated Areas Docket No.: FEMA–B–2185	
City of Florence	Boone County Administration Building, 2950 Washington Street, Room 312, Burlington, KY 41005.
City of Union	Boone County Administration Building, 2950 Washington Street, Room 312, Burlington, KY 41005.
City of Walton	Boone County Administration Building, 2950 Washington Street, Room 312, Burlington, KY 41005.

Community	Community map repository address
Unincorporated Areas of Boone County	Boone County Administration Building, 2950 Washington Street, Room 312, Burlington, KY 41005.
Carroll County, Kentucky and Incorporated Areas Docket No.: FEMA–B–2185	
City of Carrollton	Carroll County Emergency Operation Center, 829 Polk Street, Carrollton, KY 41008.
City of Ghent	Carroll County Emergency Operation Center, 829 Polk Street, Carrollton, KY 41008.
Unincorporated Areas of Carroll County	Carroll County Emergency Operation Center, 829 Polk Street, Carrollton, KY 41008.
Gallatin County, Kentucky and Incorporated Areas Docket No.: FEMA–B–2185	
City of Glencoe	Gallatin County Courthouse, 200 Washington Street, Warsaw, KY 41095.
City of Warsaw	Gallatin County Courthouse, 200 Washington Street, Warsaw, KY 41095.
Cayuga County, New York (All Jurisdictions) Docket No.: FEMA–B–2173	
Town of Sterling	Town Hall, 1290 State Route 104A, Sterling, NY 13156.
Village of Fair Haven	Fair Haven Village Office, 14523 Cayuga Street, Fair Haven, NY 13064.
Oconto County, Wisconsin and Incorporated Areas Docket No.: FEMA–B–2120	
City of Oconto	City Hall, 1210 Main Street, Oconto, WI 54153.
Unincorporated Areas of Oconto County	Oconto County Courthouse, 301 Washington Street, Oconto, WI 54153.

[FR Doc. 2022–25909 Filed 11–25–22; 8:45 am]
BILLING CODE 9110–12–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Docket ID FEMA–2022–0024; OMB No. 1660–0085]

Agency Information Collection Activities: Submission for OMB Review; Comment Request; Crisis Counseling Assistance and Training Program

AGENCY: Federal Emergency Management Agency, Department of Homeland Security.

ACTION: 30-Day notice of revision and request for comments.

SUMMARY: The Federal Emergency Management Agency (FEMA) will submit the information collection abstracted below to the Office of Management and Budget for review and clearance in accordance with the requirements of the Paperwork Reduction Act of 1995. This notice seeks comments concerning the Crisis Counseling Assistance and Training Program, which provides Federal funding in response to a state or Federally recognized Tribe's request for Crisis Counseling services for a Presidentially declared major disaster.

DATES: Comments must be submitted on or before December 28, 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: Requests for additional information or copies of the information collection should be made to Director, Information Management Division, 500 C Street SW, Washington, DC 20472, email address *FEMA-Information-Collections-Management@fema.dhs.gov* or Ani Brown, EM Specialist, Recovery/Individual Assistance/Community Services at *Tammya.Brown@fema.dhs.gov* or (202) 735–4047.

SUPPLEMENTARY INFORMATION: Section 416 of the Robert T. Stafford Disaster Relief and Emergency Assistance Act, (Pub. L. 93–288, as amended and codified at 42 U.S.C. 5183) (''Act''), authorizes the President to provide professional counseling services, including financial assistance to states (which includes the fifty states, the District of Columbia, and the U.S. territories), Federally recognized Indian Tribal governments, local agencies or private mental health organizations for professional counseling services, to survivors of major disasters to relieve mental health problems caused or aggravated by a major disaster or its aftermath. The implementing regulations for Section 416 of the Stafford Act are at 44 CFR 206.171. Under 44 CFR 206.171 and by agreement, the U.S. Department of Health and Human Services-Center for Mental Health Services (HHS–CMHS), which has expertise in crisis counseling, coordinates with FEMA in administering the Crisis Counseling Assistance and Training Program (CCP). FEMA and HHS–CMHS provide program oversight, technical assistance, and training to States and Federally recognized Tribes applying for CCP funding for major disasters.

FEMA is proposing to revise the collection by rewording the sub-question from question 8 on the Crisis Counseling Assistance and Training Program (CCP), Immediate Services

Program (ISP) Application, FEMA Form FF–104–FY–21–148 (formerly 003–0–1) and from question 12 on the Crisis Counseling Assistance and Training Program, Regular Services Program (RSP) Application, FEMA Form FF–104–FY–21–149 (formerly 003–0–2). The rewording of these sub-questions will allow for greater transparency of plans to ensure accessibility to all eligible survivors.

This proposed information collection previously published in the **Federal Register** on August 24, 2022, at 87 FR 52018 with a 60 day public comment period. FEMA received four comments. One comment agreed with the changes being made and three comments were not germane to this collection. The purpose of this notice is to notify the public that FEMA will submit the information collection abstracted below to the Office of Management and Budget for review and clearance.

Collection of Information

Title: Crisis Counseling Assistance and Training Program.

Type of Information Collection: Revision of a currently approved information collection.

OMB Number: 1660–0085.

FEMA Forms: FEMA Form FF–104–FY–21–148 (formerly 003–0–1), Crisis Counseling Assistance and Training Program, Immediate Services Program Application; FEMA Form FF–104–FY–21–149 (formerly 003–0–2), Crisis Counseling Assistance and Training Program, Regular Services Program Application; ISP Final Report Narrative; Quarterly Report Narratives; and Final RSP Report Narrative.

Abstract: The Crisis Counseling Assistance and Training Program (CCP) consists of two grant programs, the Immediate Services Program (ISP) and the Regular Services Program (RSP). The ISP and RSP provide supplemental funding to states and Federally recognized Tribes following a Presidentially declared major disaster under the Stafford Act. These grant programs provide funding for training and services, including community outreach, public education, and counseling techniques. States and Federally recognized Tribes are required to submit an application that provides information on Needs Assessment, Plan of Service, Program Management, and an accompanying Budget.

Affected Public: State, local or Tribal Government.

Estimated Number of Respondents: 90.

Estimated Number of Responses: 108.

Estimated Total Annual Burden Hours: 1,728.

Estimated Total Annual Respondent Cost: $141,334.

Estimated Respondents' Operation and Maintenance Costs: $0.

Estimated Respondents' Capital and Start-Up Costs: $0.

Estimated Total Annual Cost to the Federal Government: $156,729.

Comments

Comments may be submitted as indicated in the **ADDRESSES** caption above. Comments are solicited to (a) evaluate whether the proposed data collection is necessary for the proper performance of the agency, including whether the information shall have practical utility; (b) 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; (c) enhance the quality, utility, and clarity of the information to be collected; and (d) 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.

Millicent Brown Wilson,

Records Management Branch Chief, Office of the Chief Administrative Officer, Mission Support, Federal Emergency Management Agency, Department of Homeland Security.

[FR Doc. 2022–25898 Filed 11–25–22; 8:45 am]

BILLING CODE 9111–24–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Docket ID FEMA–2022–0002; Internal Agency Docket No. FEMA–B–2288]

Proposed Flood Hazard Determinations

AGENCY: Federal Emergency Management Agency, Department of Homeland Security.

ACTION: Notice.

SUMMARY: Comments are requested on proposed flood hazard determinations, which may include additions or modifications of any Base Flood Elevation (BFE), base flood depth, Special Flood Hazard Area (SFHA) boundary or zone designation, or regulatory floodway on the Flood Insurance Rate Maps (FIRMs), and where applicable, in the supporting Flood Insurance Study (FIS) reports for the communities listed in the table below. The purpose of this notice is to seek general information and comment regarding the preliminary FIRM, and where applicable, the FIS report that the Federal Emergency Management Agency (FEMA) has provided to the affected communities. The FIRM and FIS report are the basis of the floodplain management measures that the community is required either to adopt or to show evidence of having in effect in order to qualify or remain qualified for participation in the National Flood Insurance Program (NFIP).

DATES: Comments are to be submitted on or before February 27, 2023.

ADDRESSES: The Preliminary FIRM, and where applicable, the FIS report for each community are available for inspection at both the online location *https://hazards.fema.gov/femaportal/prelimdownload* and the respective Community Map Repository address listed in the tables below. Additionally, the current effective FIRM and FIS report for each community are accessible online through the FEMA Map Service Center at *https://msc.fema.gov* for comparison.

You may submit comments, identified by Docket No. FEMA–B–2288, to Rick Sacbibit, Chief, Engineering Services Branch, Federal Insurance and Mitigation Administration, FEMA, 400 C Street SW, Washington, DC 20472, (202) 646–7659, or (email) *patrick.sacbibit@fema.dhs.gov*.

FOR FURTHER INFORMATION CONTACT: Rick Sacbibit, Chief, Engineering Services Branch, Federal Insurance and Mitigation Administration, FEMA, 400 C Street SW, Washington, DC 20472, (202) 646–7659, or (email) *patrick.sacbibit@fema.dhs.gov*; or visit the FEMA Mapping and Insurance eXchange (FMIX) online at *https://www.floodmaps.fema.gov/fhm/fmx_main.html*.

SUPPLEMENTARY INFORMATION: FEMA proposes to make flood hazard determinations for each community listed below, in accordance with section 110 of the Flood Disaster Protection Act of 1973, 42 U.S.C. 4104, and 44 CFR 67.4(a).

These proposed flood hazard determinations, together with the floodplain management criteria required by 44 CFR 60.3, are the minimum that are required. They should not be construed to mean that the community must change any existing ordinances that are more stringent in their floodplain management requirements. The community may at any time enact stricter requirements of its own or pursuant to policies established by other

Federal, State, or regional entities. These flood hazard determinations are used to meet the floodplain management requirements of the NFIP.

The communities affected by the flood hazard determinations are provided in the tables below. Any request for reconsideration of the revised flood hazard information shown on the Preliminary FIRM and FIS report that satisfies the data requirements outlined in 44 CFR 67.6(b) is considered an appeal. Comments unrelated to the flood hazard determinations also will be considered before the FIRM and FIS report become effective.

Use of a Scientific Resolution Panel (SRP) is available to communities in support of the appeal resolution process. SRPs are independent panels of experts in hydrology, hydraulics, and other pertinent sciences established to review conflicting scientific and technical data and provide recommendations for resolution. Use of the SRP only may be exercised after FEMA and local communities have been engaged in a collaborative consultation process for at least 60 days without a mutually acceptable resolution of an appeal. Additional information regarding the SRP process can be found online at *https://www.floodsrp.org/pdfs/srp_overview.pdf.*

The watersheds and/or communities affected are listed in the tables below. The Preliminary FIRM, and where applicable, FIS report for each community are available for inspection at both the online location *https://hazards.fema.gov/femaportal/prelimdownload* and the respective Community Map Repository address listed in the tables. For communities with multiple ongoing Preliminary studies, the studies can be identified by the unique project number and Preliminary FIRM date listed in the tables. Additionally, the current effective FIRM and FIS report for each community are accessible online through the FEMA Map Service Center at *https://msc.fema.gov* for comparison.

(Catalog of Federal Domestic Assistance No. 97.022, ''Flood Insurance.'')

Michael M. Grimm,

Assistant Administrator for Risk Management, Federal Emergency Management Agency, Department of Homeland Security.

Community	Community map repository address
Berrien County, Michigan (All Jurisdictions) Project: 13–05–4209S Preliminary Date: September 02, 2022	
City of Benton Harbor	City Hall, 200 East Wall Street, Benton Harbor, MI 49022.
Charter Township of Benton	Benton Township Office, 1725 Territorial Road, Benton Harbor, MI 49022.
Charter Township of St. Joseph	Township Hall, 3000 Washington Avenue, St. Joseph, MI 49085.
Preble County, Ohio and Incorporated Areas Project: 14–05–4456S Preliminary Date: February 09, 2022	
City of Eaton	Municipal Building, 328 North Maple Street, Eaton, OH 45320.
Unincorporated Areas of Preble County	Preble County Courthouse, Land Use Management Office, 101 East Main Street, Eaton, OH 45320.
Village of Camden	Village Office, 56 West Central Avenue, Camden, OH 45311.
Village of Gratis	Village Office, 404 East Harrison Street, Gratis, OH 45330.
Village of Lewisburg	Municipal Office, 112 South Commerce Street, Lewisburg, OH 45338.
Village of Verona	Municipal Building, 138 Mill Street, Verona, OH 45378.
Village of West Alexandria	Village Office, 1 Water Street, West Alexandria, OH 45381.

[FR Doc. 2022–25905 Filed 11–25–22; 8:45 am]

BILLING CODE 9111–12–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Docket ID FEMA–2022–0002; Internal Agency Docket No. FEMA–B–2291]

Changes in Flood Hazard Determinations

AGENCY: Federal Emergency Management Agency, Department of Homeland Security.

ACTION: Notice.

SUMMARY: This notice lists communities where the addition or modification of Base Flood Elevations (BFEs), base flood depths, Special Flood Hazard Area (SFHA) boundaries or zone designations, or the regulatory floodway (hereinafter referred to as flood hazard determinations), as shown on the Flood Insurance Rate Maps (FIRMs), and where applicable, in the supporting Flood Insurance Study (FIS) reports, prepared by the Federal Emergency Management Agency (FEMA) for each community, is appropriate because of new scientific or technical data. The FIRM, and where applicable, portions of the FIS report, have been revised to reflect these flood hazard determinations through issuance of a Letter of Map Revision (LOMR), in accordance with Federal Regulations. The currently effective community number is shown in the table below and must be used for all new policies and renewals.

DATES: These flood hazard determinations will be finalized on the dates listed in the table below and revise the FIRM panels and FIS report in effect prior to this determination for the listed communities.

From the date of the second publication of notification of these changes in a newspaper of local circulation, any person has 90 days in which to request through the community that the Deputy Associate Administrator for Insurance and Mitigation reconsider the changes. The flood hazard determination information may be changed during the 90-day period.

ADDRESSES: The affected communities are listed in the table below. Revised flood hazard information for each community is available for inspection at both the online location and the respective community map repository address listed in the table below. Additionally, the current effective FIRM and FIS report for each community are accessible online through the FEMA Map Service Center at *https://msc.fema.gov* for comparison.

Submit comments and/or appeals to the Chief Executive Officer of the community as listed in the table below.

FOR FURTHER INFORMATION CONTACT: Rick Sacbibit, Chief, Engineering Services Branch, Federal Insurance and Mitigation Administration, FEMA, 400 C Street SW, Washington, DC 20472, (202) 646–7659, or (email) *patrick.sacbibit@fema.dhs.gov;* or visit the FEMA Mapping and Insurance eXchange (FMIX) online at *https://www.floodmaps.fema.gov/fhm/fmx_main.html.*

SUPPLEMENTARY INFORMATION: The specific flood hazard determinations are not described for each community in this notice. However, the online location and local community map repository address where the flood hazard determination information is available for inspection is provided.

Any request for reconsideration of flood hazard determinations must be submitted to the Chief Executive Officer of the community as listed in the table below.

The modifications are made pursuant to section 201 of the Flood Disaster Protection Act of 1973, 42 U.S.C. 4105, and are in accordance with the National Flood Insurance Act of 1968, 42 U.S.C. 4001 *et seq.,* and with 44 CFR part 65.

The FIRM and FIS report are the basis of the floodplain management measures that the community is required either to adopt or to show evidence of having in effect in order to qualify or remain qualified for participation in the National Flood Insurance Program (NFIP).

These flood hazard determinations, together with the floodplain management criteria required by 44 CFR 60.3, are the minimum that are required. They should not be construed to mean that the community must change any existing ordinances that are more stringent in their floodplain management requirements. The community may at any time enact stricter requirements of its own or pursuant to policies established by other Federal, State, or regional entities. The flood hazard determinations are in accordance with 44 CFR 65.4.

The affected communities are listed in the following table. Flood hazard determination information for each community is available for inspection at both the online location and the respective community map repository address listed in the table below. Additionally, the current effective FIRM and FIS report for each community are accessible online through the FEMA Map Service Center at *https://msc.fema.gov* for comparison.

(Catalog of Federal Domestic Assistance No. 97.022, ''Flood Insurance.'')

Michael M. Grimm,

Assistant Administrator for Risk Management, Federal Emergency Management Agency, Department of Homeland Security.

State and county	Location and case No.	Chief executive officer of community	Community map repository	Online location of letter of map revision	Date of modification	Community No.
Colorado:						
Jefferson.	City of Arvada (21–08–1154P).	The Honorable Marc Williams, Mayor, City of Arvada, 8101 Ralston Road, Arvada, CO 80002.	Engineering Division, 8101 Ralston Road, Arvada, CO 80002.	*https://msc.fema.gov/portal/advanceSearch.*	Jan. 20, 2023	085072
Jefferson.	Unincorporated areas of Jefferson County (21–08–1154P).	The Honorable Andy Kerr, Chair, Jefferson County Board of Commissioners, 100 Jefferson County Parkway, Suite 5550, Golden, CO 80419.	Jefferson County Planning and Zoning Division, 100 Jefferson County Parkway, Suite 3550, Golden, CO 80419.	*https://msc.fema.gov/portal/advanceSearch.*	Jan. 20, 2023	080087
Jefferson.	Unincorporated areas of Jefferson County (22–08–0163P).	The Honorable Andy Kerr, Chair, Jefferson County Board of Commissioners, 100 Jefferson County Parkway, Suite 5550, Golden, CO 80419.	Jefferson County Planning and Zoning Division, 100 Jefferson County Parkway, Suite 3550, Golden, CO 80419.	*https://msc.fema.gov/portal/advanceSearch.*	Feb. 10, 2023	080087
Larimer.	Town of Estes Park (22–08–0205P).	The Honorable Wendy Koenig-Schuett, Mayor, Town of Estes Park, P.O. Box 1200, Estes Park, CO 80517.	Town Hall, 170 MacGregor Avenue, Estes Park, CO 80517.	*https://msc.fema.gov/portal/advanceSearch.*	Feb. 2, 2023	080193
Larimer.	Unincorporated areas of Larimer County (22–08–0205P).	The Honorable Kristin Stephens, Chair, Larimer County, Board of Commissioners, 200 West Oak Street, Suite 2200, Fort Collins, CO 80521.	Larimer County Engineering Department, 200 West Oak Street, Suite 3000, Fort Collins, CO 80521.	*https://msc.fema.gov/portal/advanceSearch.*	Feb. 2, 2023	080101

State and county	Location and case No.	Chief executive officer of community	Community map repository	Online location of letter of map revision	Date of modification	Community No.
Weld.	Town of Windsor (22–08–0286P).	The Honorable Paul Rennemeyer, Mayor, Town of Windsor, 301 Walnut Street, Windsor, CO 80550.	Town Hall, 301 Walnut Street, Windsor, CO 80550.	*https://msc.fema.gov/portal/advanceSearch.*	Feb. 6, 2023	080264
Weld.	Unincorporated areas of Weld County (22–08–0286P).	Scott James, Chair, Weld County, Board of Commissioners, 1150 O Street, Greeley, CO 80632.	Weld County Administration Building, 1150 O Street, Greeley, CO 80632.	*https://msc.fema.gov/portal/advanceSearch.*	Feb. 6, 2023	080266
Florida:						
Collier.	City of Marco Island (22–04–4408P).	Mike McNees, Manager, City of Marco Island, 50 Bald Eagle Drive, Marco Island, FL 34145.	Building Services Department, 50 Bald Eagle Drive, Marco Island, FL 34145.	*https://msc.fema.gov/portal/advanceSearch.*	Jan. 27, 2023	120426
Hillsborough.	City of Tampa (22–04–3679P).	The Honorable Jane Castor, Mayor, City of Tampa, 306 East Jackson Street, Tampa, FL 33602.	Planning Department, 1400 North Boulevard, 306 East Jackson Street, Tampa, FL 33607.	*https://msc.fema.gov/portal/advanceSearch.*	Feb. 16, 2023	120114
Monroe.	Unincorporated areas of Monroe County (22–04–5024P).	The Honorable David Rice, Mayor, Monroe County Board of Commissioners, 9400 Overseas Highway, Suite 210, Marathon, FL 33050.	Monroe County Building Department, 2798 Overseas Highway, Suite 300, Marathon, FL 33050.	*https://msc.fema.gov/portal/advanceSearch.*	Feb. 21, 2023	125129
Monroe.	Unincorporated areas of Monroe County (22–04–5026P).	The Honorable David Rice, Mayor, Monroe County Board of Commissioners, 9400 Overseas Highway, Suite 210, Marathon, FL 33050.	Monroe County Building Department, 2798 Overseas Highway, Suite 300, Marathon, FL 33050.	*https://msc.fema.gov/portal/advanceSearch.*	Feb. 21, 2023	125129
Monroe.	Village of Islamorada (22–04–2883P).	The Honorable Pete Bacheler, Mayor, Village of Islamorada, 86800 Overseas Highway, Islamorada, FL 33036.	Building Department, 86800 Overseas Highway, Islamorada, FL 33036.	*https://msc.fema.gov/portal/advanceSearch.*	Jan. 3, 2023	120424
Monroe.	Village of Islamorada (22–04–5027P).	The Honorable Pete Bacheler, Mayor, Village of Islamorada, 86800 Overseas Highway, Islamorada, FL 33036.	Building Department, 86800 Overseas Highway, Islamorada, FL 33036.	*https://msc.fema.gov/portal/advanceSearch.*	Feb. 13, 2023	120424
Polk.	Unincorporated areas of Polk County (22–04–1142P).	Bill Beasley, Manager, Polk County, P.O. Box 9005, Bartow, FL 33831.	Polk County Land Development Division, 330 West Church Street, Bartow, FL 33830.	*https://msc.fema.gov/portal/advanceSearch.*	Jan. 26, 2023	120261
Volusia.	City of Daytona Beach (21–04–5321P).	Deric C. Feacher, Manager, City of Daytona Beach, 301 South Ridgewood Avenue, Daytona Beach, FL 32115.	Utilities Department, 125 Basin Street, Suite 100 Daytona Beach, FL 32114.	*https://msc.fema.gov/portal/advanceSearch.*	Feb. 7, 2023	125099
Volusia.	Unincorporated areas of Volusia County (21–04–5321P).	George Recktenwald, Manager, Volusia County, 123 West Indiana Avenue, Deland, FL 32720.	Thomas C. Kelly Administration Center, 123 West Indiana Avenue, Deland, FL 32720.	*https://msc.fema.gov/portal/advanceSearch.*	Feb. 7, 2023	125155

State and county	Location and case No.	Chief executive officer of community	Community map repository	Online location of letter of map revision	Date of modification	Community No.
North Carolina:						
Franklin.	Unincorporated areas of Franklin County (22–04–3395P)	The Honorable Michael S. Schriver, Chair, Franklin County Board of Commissioners, 113 Market Street, Louisburg, NC 27549.	Franklin County Planning and Inspections Department, 215 East Nash Street, Louisburg, NC 27549.	*https://msc.fema.gov/portal/advanceSearch.*	Feb. 10, 2023	370377
Wake.	City of Raleigh (21–04–0780P).	The Honorable Mary-Ann Baldwin, Mayor, City of Raleigh, 222 West Hargett Street, Raleigh, NC 27602.	Engineering Services Department, 1 Exchange Plaza, Suite 706, Raleigh, NC 27601.	*https://msc.fema.gov/portal/advanceSearch.*	Jan. 5, 2023	370243
Oklahoma: Rogers.	City of Owasso (22–06–1793P).	The Honorable Kelly Lewis, Mayor, City of Owasso, 200 South Main Street, Owasso, OK 74055.	Public Works Department, 301 West 2nd Avenue, Owasso, OK 74055.	*https://msc.fema.gov/portal/advanceSearch.*	Feb. 16, 2023	400210
Pennsylvania: Lehigh.	Township of Upper Macungie (22–03–0156P).	The Honorable James M. Brunell, Chair, Township of Upper Macungie, Board of Supervisors, 8330 Schantz Road, Breinigsville, PA 18031.	Township Hall, 8330 Schantz Road, Breinigsville, PA 18031.	*https://msc.fema.gov/portal/advanceSearch.*	Feb. 3, 2023	421044
Texas:						
Bexar.	City of San Antonio (21–06–2098P).	The Honorable Ron Nirenberg, Mayor, City of San Antonio, P.O. Box 839966, San Antonio, TX 78283.	Transportation and Capitol Improvements, Storm Water Division Department, 1901 South Alamo Street, 2nd Floor, San Antonio, TX 78204.	*https://msc.fema.gov/portal/advanceSearch.*	Jan. 23, 2023	480045
Bexar.	Unincorporated areas of Bexar County (21–06–2098P).	The Honorable Nelson W. Wolff, Bexar County Judge, 101 West Nueva Street, 10th Floor, San Antonio, TX 78205.	Bexar County Public Works Department, 1948 Probandt Street, San Antonio, TX 78283.	*https://msc.fema.gov/portal/advanceSearch.*	Jan. 23, 2023	480035
Collin.	City of Celina (22–06–0892P).	The Honorable Sean Terry, Mayor, City of Celina, 142 North Ohio Street, Celina, TX 75009.	City Hall, 142 North Ohio Street, Celina, TX 75009.	*https://msc.fema.gov/portal/advanceSearch.*	Feb. 7, 2023	480133
Harris.	City of Houston (22–06–0051P).	The Honorable Sylvester Turner, Mayor, City of Houston, P.O. Box 1562, Houston, TX 77251.	Floodplain Management Department, 1002 Washington Avenue, Houston, TX 77002.	*https://msc.fema.gov/portal/advanceSearch.*	Jan. 30, 2023	480296
Harris.	Unincorporated areas of Harris County (22–06–1000P).	The Honorable Lina Hidalgo, Harris County Judge, 1001 Preston Street, Suite 911, Houston, TX 77092.	Harris County Engineering Department, Permit Division, 10555 Northwest Freeway, Suite 120, Houston, TX 77092.	*https://msc.fema.gov/portal/advanceSearch.*	Jan. 30, 2023	480287
Williamson.	City of Hutto (21–06–3276P).	The Honorable Mike Snyder, Mayor, City of Hutto, 500 West Live Oak Street, Hutto, TX 78634.	Department of Public Works, 210 U.S. Highway 79 East, Suite 203, Hutto, TX 78634.	*https://msc.fema.gov/portal/advanceSearch.*	Feb. 2, 2023	481047

State and county	Location and case No.	Chief executive officer of community	Community map repository	Online location of letter of map revision	Date of modification	Community No.
Williamson.	Unincorporated areas of Williamson County (21–06–3276P).	The Honorable Bill Gravell, Jr., Williamson County Judge, 710 South Main Street, Suite 101, Georgetown, TX 78626.	Williamson County Central Maintenance Facility, 3151 Southeast Inner Loop, Georgetown, TX 78216.	*https://msc.fema.gov/portal/advanceSearch.*	Feb. 2, 2023	481079
Wisconsin: Dane.	City of Madison (22–05–1179P).	The Honorable Satya Rhodes-Conway, Mayor, City of Madison, 210 Martin Luther King Jr. Boulevard, Room 403, Madison, WI 53703.	Municipal Building, 215 Martin Luther King Jr. Boulevard, Room 017, Madison, WI 53703.	*https://msc.fema.gov/portal/advanceSearch.*	Feb. 1, 2023	550083
Utah:						
Salt Lake.	City of Riverton (22–08–0092P).	The Honorable Trent Staggs, Mayor, City of Riverton, 12830 South Redwood Road, Riverton, UT 84065.	Public Works Department, 12526 South 4150 West, Riverton, UT 84065.	*https://msc.fema.gov/portal/advanceSearch.*	Feb. 16, 2023	490104
Salt Lake.	City of South Jordan (22–08–0092P).	The Honorable Dawn R. Ramsey, Mayor, City of South Jordan, 1600 West Towne Center Drive, South Jordan, UT 84095.	Engineering Services Department, 1600 West Towne Center Drive, South Jordan, UT 84095.	*https://msc.fema.gov/portal/advanceSearch.*	Feb. 16, 2023	490107
Wyoming: Sweetwater.	City of Rock Springs (22–08–0270P).	The Honorable Tim Kaumo, Mayor, City of Rock Springs, 212 D Street, Rock Springs, WY 82901.	Department of Planning and Zoning, 212 D Street, Rock Springs, WY 82901.	*https://msc.fema.gov/portal/advanceSearch.*	Jan. 19, 2023	560051

[FR Doc. 2022–25907 Filed 11–25–22; 8:45 am]

BILLING CODE 9110–12–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–6364–N–01]

Announcement of the Housing Counseling Federal Advisory Committee Public Meeting

AGENCY: Office of the Assistant Secretary for Housing—Federal Housing Commissioner, Department of Housing and Urban Development (HUD).

ACTION: Notice of Housing Counseling Federal Advisory Committee public meeting.

SUMMARY: This gives notice of a Housing Counseling Federal Advisory Committee (HCFAC) meeting and sets forth the proposed agenda. The HCFAC meeting will be held on Tuesday, December 13, 2022. The meeting is open to the public and is accessible to individuals with disabilities.

DATES: The virtual meeting will be held on Tuesday, December 13, 2022, starting at 1:00 p.m. Eastern Standard Time (EST) via teleconference.

FOR FURTHER INFORMATION CONTACT: Virginia F. Holman, Housing Program Specialist, Office of Housing Counseling, U.S. Department of Housing and Urban Development, 600 East Broad Street, Richmond, VA 23219; telephone number 540–894–7790 (this is not a toll-free number); email *virginia.f.holman@hud.gov.* 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.* Individuals may also email *HCFACCommittee@hud.gov* for information.

SUPPLEMENTARY INFORMATION: HUD is convening the virtual meeting of the HCFAC on Tuesday, December 13, 2022, from 1:00 p.m. to 4:00 p.m. EST. The meeting will be held via ZOOM. This meeting notice is provided in accordance with the Federal Advisory Committee Act, 5. U.S.C. App. 10(a)(2).

Draft Agenda—Housing Counseling Federal Advisory Committee Meeting

Tuesday, December 13, 2022

I. Welcome
II. Presentations and HCFAC Member Discussion
III. Public Comment
IV. Next Steps
V. Adjourn

Registration

The public is invited to attend this one-day virtual meeting using ZOOM. Advance registration is required to attend. To register, please visit *https://us06web.zoom.us/webinar/register/WN_X6utn5KQS7mvcsIw9uXGfA* and complete the registration form no later than December 7, 2022. Registration will be closed after December 7, 2022. After submitting the registration form, registrants will receive a confirmation email with the meeting link and passcode needed to attend. If you have any questions about registration, please

email *HCFACCommittee@ajantaconsulting.com.*

Public Comments

The public will have an opportunity to give written and oral comments relative to agenda topics for the HCFAC's consideration. Written comments can be provided on the registration form or by emailing *HCFACCommittee@ajantaconsulting.com.* All written comments must be provided by December 7, 2022. Please note, written comments will not be read during the meeting.

Oral comments may be provided during the meeting. Comments from the public will be received at the end of the meeting to ensure all agenda items can be completed. Each person providing oral comments will be allocated two minutes. This time will be allocated on a first-come first-served basis by HUD. The meeting registration confirmation will contain additional instructions for providing oral comments. The HCFAC will not respond to individual written or oral statements during the meeting but will take all public comments into account in its deliberations.

Meeting Records

Records and documents discussed during the meeting, as well as other information about the work of the HCFAC, will be available for public viewing as they become available at *https://www.facadatabase.gov/FACA/apex/FACAPublicCommittee?id=a10t0000001gzvQAAQ.*

Information on the Committee is also available on *hud.gov* at *https://www.hud.gov/program_offices/housing/sfh/hcc* and on HUD Exchange at *https://www.hudexchange.info/programs/housing-counseling/federal-advisory-committee/.*

Julia R. Gordon,

Assistant Secretary for Housing—FHA Commissioner.

[FR Doc. 2022–25782 Filed 11–25–22; 8:45 am]

BILLING CODE 4210–67–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

[FWS–HQ–R–2022–N067; FXGO1664091HCC0–FF09D00000–190]

Hunting and Wildlife Conservation Council Virtual Meeting

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of virtual meeting.

SUMMARY: The U.S. Fish and Wildlife Service (Service) gives notice of a virtual meeting of the Hunting and Wildlife Conservation Council (HWCC), in accordance with the Federal Advisory Committee Act.

DATES:

Teleconference/Web Meeting: The HWCC will meet on Monday, December 19, 2022, from 11 a.m. to 5 p.m. (eastern time).

Registration: Registration to attend or participate in the meeting is required. The deadline for registration is Monday, December 12, 2022.

Accessibility: The deadline for accessibility accommodation requests is December 12, 2022. Please see *Accessibility Information* below.

ADDRESSES: The meeting will be held via a virtual meeting platform. To register and receive the meeting link or telephone number for participation, contact the Designated Federal Officer (see **FOR FURTHER INFORMATION CONTACT**).

FOR FURTHER INFORMATION CONTACT: Douglas Hobbs, Designated Federal Officer, by email at *doug_hobbs@fws.gov,* or by telephone at 703–358–2336. Individuals in the United States who are deaf, deafblind, hard of hearing, or have a speech disability may dial 711 (TTY, TDD, or TeleBraille) to access telecommunications relay services. Individuals outside the United States should use the relay services offered within their country to make international calls to the point-of-contact in the United States.

SUPPLEMENTARY INFORMATION: The HWCC was established to further the provisions of the Fish and Wildlife Act of 1956 (16 U.S.C. 742a *et seq.*), the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1701–1785), the National Wildlife Refuge System Improvement Act of 1997 (16 U.S.C. 668dd–ee), other statutes applicable to specific bureaus, and Executive Order 13443 (August 16, 2007), ''Facilitation of Hunting Heritage and Wildlife Conservation.'' The HWCC's purpose is to provide recommendations to the Federal Government, through the Secretary of the Interior and the Secretary of Agriculture, regarding policies and endeavors that (a) benefit wildlife resources; (b) encourage partnership among the public; sporting conservation organizations; and Federal, State, Tribal, and territorial governments; and (c) benefit fair chase recreational hunting and safe recreational shooting sports.

Meeting Agenda

This meeting is open to the public. The meeting agenda will include presentations by representatives of the U.S Department of Agriculture on the upcoming efforts to reauthorize the wildlife conservation titles included in the Farm Bill reauthorization, a discussion of issues related to future management of the use of lead-based firearm ammunition and fishing tackle on public lands and waters managed by the U.S. Fish and Wildlife Service, and public comment. The final agenda and other related meeting information will be posted on the HWCC website, *https://www.fws.gov/program/hwcc.*

Public Input

If you wish to provide oral public comment or provide a written comment for the HWCC to consider, contact the Designated Federal Officer (see **FOR FURTHER INFORMATION CONTACT**) no later than Monday, December 12, 2022.

Depending on the number of people who want to comment and the time available, the amount of time for individual oral comments may be limited. Interested parties should contact the Designated Federal Officer, in writing (see **FOR FURTHER INFORMATION CONTACT**), for placement on the public speaker list for this meeting. Requests to address the HWCC during the meeting will be accommodated in the order the requests are received. Registered speakers who wish to expand upon their oral statements, or those who had wished to speak but could not be accommodated on the agenda, may submit written statements to the Designated Federal Officer up to 30 days following the meeting.

Accessibility Information

Please make requests in advance for sign language interpreter services, assistive listening devices, or other reasonable accommodations. Please contact the Designated Federal Officer (see **FOR FURTHER INFORMATION CONTACT**) no later than Monday, December 12, 2022, to give the U.S. Fish and Wildlife Service sufficient time to process your request. All reasonable accommodation requests are managed on a case-by-case basis.

Public Disclosure

Before including your address, phone number, email address, or other personal identifying information in a comment on this notice, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

Authority: 5 U.S.C. appendix 2.

Barbara W. Wainman,

Assistant Director—External Affairs.

[FR Doc. 2022–25883 Filed 11–25–22; 8:45 am]

BILLING CODE 4333–15–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

[Docket No. FWS–HQ–IA–2022–0138; FXIA16710900000–223–FF09A30000]

Marine Mammal Protection Act; Receipt of Permit Application

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of receipt of permit application; request for comments.

SUMMARY: We, the U.S. Fish and Wildlife Service (Service), invite the public to comment on foreign or native species for which the Service has jurisdiction under the Marine Mammal Protection Act (MMPA). With some exceptions, the MMPA prohibits activities with listed species unless Federal authorization is issued that allows such activities. This Act also requires that we invite public comment before issuing permits for any activity otherwise prohibited with respect to any species.

DATES: We must receive comments by December 28, 2022.

ADDRESSES:

Obtaining Documents: The application, application supporting materials, and any comments and other materials that we receive will be available for public inspection at *https://www.regulations.gov* in Docket No. FWS–HQ–IA–2022–0138.

Submitting Comments: When submitting comments, please specify the name of the applicant and the permit number at the beginning of your comment. You may submit comments by one of the following methods:

- *Internet: https://www.regulations.gov.* Search for and submit comments on Docket No. FWS–HQ–IA–2022–0138.
- *U.S. Mail:* Public Comments Processing, Attn: Docket No. FWS–HQ–IA–2022–0138; U.S. Fish and Wildlife Service Headquarters, MS: PRB/3W; 5275 Leesburg Pike; Falls Church, VA 22041–3803.

For more information, see Public Comment Procedures under **SUPPLEMENTARY INFORMATION**.

FOR FURTHER INFORMATION CONTACT: Brenda Tapia, by phone at 703–358–2185 or via email at *DMAFR@fws.gov.* Individuals in the United States who are deaf, deafblind, hard of hearing, or have a speech disability may dial 711 (TTY, TDD, or TeleBraille) to access telecommunications relay services. Individuals outside the United States should use the relay services offered within their country to make international calls to the point-of-contact in the United States.

SUPPLEMENTARY INFORMATION:

I. Public Comment Procedures

A. How do I comment on submitted applications?

We invite the public and local, State, Tribal, and Federal agencies to comment on applications. Before issuing permits, we take into consideration any information that we receive during the public comment period.

You may submit your comments and materials by one of the methods in **ADDRESSES**. We will not consider comments sent by email or to an address not in **ADDRESSES**. We will not consider or include in our administrative record comments we receive after the close of the comment period (see **DATES**).

When submitting comments, please specify the name of the applicant and the permit number at the beginning of your comment. Provide sufficient information to allow us to authenticate any scientific or commercial data you include. The comments and recommendations that will be most useful and likely to influence agency decisions are: (1) Those supported by quantitative information or studies; and (2) those that include citations to, and analyses of, the applicable laws and regulations.

B. May I review comments submitted by others?

You may view and comment on others' public comments at *https://www.regulations.gov* unless our allowing so would violate the Privacy Act (5 U.S.C. 552a) or Freedom of Information Act (5 U.S.C. 552).

C. Who will see my comments?

If you submit a comment at *https://www.regulations.gov,* your entire comment, including any personal identifying information, will be posted on the website. If you submit a hardcopy comment that includes personal identifying information, such as your address, phone number, or email address, you may request at the top of your document that we withhold this information from public review. However, we cannot guarantee that we will be able to do so. Moreover, all submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses, will be made available for public disclosure in their entirety.

II. Background

To help us carry out our conservation responsibilities for affected species, and in consideration of section 104(c) of the Marine Mammal Protection Act of 1972, as amended (MMPA; 16 U.S.C. 1361 *et seq.*), we invite public comments on permit applications before final action is taken. With some exceptions, this Act prohibits certain activities with listed species unless Federal authorization is issued that allows such activities. Service regulations regarding permits for any activity otherwise prohibited by the MMPA with respect to any marine mammals are available in title 50 of the Code of Federal Regulations in part 18.

Concurrent with publishing this notice in the **Federal Register**, we are forwarding copies of the marine mammal application to the Marine Mammal Commission and the Committee of Scientific Advisors for their review.

III. Permit Application

We invite comments on the following application.

Applicant: Alaska Veterinary Pathology Services, Eagle River, AK; Permit No. PER0032559

The applicant requests a permit to export samples collected from dead stranded polar bear (*Ursus maritimus*), Pacific walrus (*Odobenus rosmarus divergens*), and non-distinct population segment northern sea otter (*Enhydra lutris kenyoni*) for the purpose of scientific research. This notification covers activities to be conducted by the applicant over a 5-year period.

IV. Next Steps

After the comment period closes, we will make a decision regarding permit issuance. If we issue a permit to the applicant in this notice, we will publish a notice in the **Federal Register**. You may locate the notice announcing the permit issuance by searching *https://www.regulations.gov* for the permit number listed above in this document. For example, to find information about the potential issuance of Permit No. 12345A, you would go to *regulations.gov* and search for ''12345A''.

V. Authority

We issue this notice under the authority of the Marine Mammal Protection Act of 1972, as amended (16

U.S.C. 1361 *et seq.*), and its implementing regulations.

Brenda Tapia,

Supervisory Program Analyst/Data Administrator, Branch of Permits, Division of Management Authority.

[FR Doc. 2022–25816 Filed 11–25–22; 8:45 am]

BILLING CODE 4333–15–P

DEPARTMENT OF THE INTERIOR

Geological Survey

[GR23RB00TU77E00; OMB Control Number 1028–NEW]

Agency Information Collection Activities; Submission to the Office of Management and Budget for Review and Approval; Values Mapping for Planning in Regional Ecosystems (VaMPIRE) Public Participatory GIS Mapping Application

AGENCY: U.S. Geological Survey, Interior.

ACTION: Notice of information collection; request for comment.

SUMMARY: In accordance with the Paperwork Reduction Act (PRA), the U.S. Geological Survey (USGS) is proposing a new information collection.

DATES: Interested persons are invited to submit comments on or before December 28, 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. Written comments can also be sent by mail to U.S. Geological Survey, Information Collections Officer, 12201 Sunrise Valley Drive, MS 159, Reston, VA 20192; or by email to *gs-info_collections@usgs.gov.* Please reference OMB Control Number 1028–NEW in the subject line of your comments.

FOR FURTHER INFORMATION CONTACT: To request additional information about this Information Collection Request (ICR), contact Rudy Schuster by email at *schusterr@usgs.gov,* or by telephone at 970–226–9165. Individuals in the United States who are deaf, deafblind, hard of hearing, or have a speech disability may dial 711 (TTY, TDD, or TeleBraille) to access telecommunications relay services. Individuals outside the United States should use the relay services offered within their country to make international calls to the point-of-contact in the United States. You may also view the ICR at *http://www.reginfo.gov/public/do/PRAMain.*

SUPPLEMENTARY INFORMATION: In accordance with the PRA and 5 CFR 1320.8(d)(1), we provide the general public and other Federal agencies with an opportunity to comment on new, proposed, revised, and continuing collections of information. This helps us assess the impact of our information collection requirements and minimize the public's reporting burden. It also helps the public understand our information collection requirements and provide the requested data in the desired format.

A **Federal Register** notice with a 60-day public comment period soliciting comments on this collection of information was published on April 28, 2022 (87 FR 25288). We received one comment asking to receive a copy of the draft ICR. We responded that we would send the ICR once it is complete.

As part of our continuing effort to reduce paperwork and respondent burdens, we are again soliciting comments from the public and other Federal agencies on the proposed ICR that is described below. We are especially interested in public comment addressing the following:

(1) Whether or not the collection of information is necessary for the proper performance of the functions of the agency, including whether or not the information will have practical utility;

(2) The accuracy of our estimate of the burden for this collection of information, including the validity of the methodology and assumptions used;

(3) Ways to enhance the quality, utility, and clarity of the information to be collected; and

(4) How the agency might minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of response.

Comments that you submit in response to this notice are a matter of public record. Before including your address, phone number, email address, or other personally identifiable information (PII) in your comment, you should be aware that your entire comment—including your PII—may be made publicly available at any time. While you can ask us in your comment to withhold your PII from public review, we cannot guarantee that we will be able to do so.

*Abstract:*The USGS developed a Public Participatory GIS (PPGIS) mapping application to aid in gathering information from Bureau of Land Management (BLM) visitors about their uses of and values for public lands and waters. The BLM is mandated by the Federal Land and Policy Management Act of 1976 to manage public lands for multiple uses, including outdoor recreation and human use. This information collection would provide data on human uses of and values for public lands and waters for consideration during Federal planning, permitting, and management efforts. The PPGIS tool used to collect data is called the Values Mapping for Planning in Regional Ecosystems (VaMPIRE) application. VaMPIRE is a partnership with the BLM and is designed to gather spatially referenced data on the values people attach to places and the activities they do on BLM lands. The spatially referenced data can be used to identify landscape values; how proposed management actions might affect use and value; where potential conflicts might occur; and high-performing areas where multiple values can co-exist. The mapping application incorporates a survey designed to assess behavioral changes by the public based on land use and explores if visitors would change locations, activities, or frequency of visits given possible land-use change scenarios. VaMPIRE also identifies if there is an overall change in the value received from public lands under specified management changes.

This information collection would pilot test the use of VaMPIRE in three different locations, using different methodologies that are appropriate for each location and context. In the Moab (Utah) area, data will be collected online by emailing a link to the application and survey to visitors who reserved BLM campgrounds or permits in certain locations. In Mojave Trails National Monument (California), data will be collected online by emailing the link to interested-party email lists BLM maintains. In San Luis Valley (Colorado), data will be collected through in-person workshops to reach local community members.

Title of Collection: Public Participatory GIS mapping application and visitor survey.

OMB Control Number: 1028–NEW.

Form Number: None.

Type of Review: New.

Respondents/Affected Public: Individuals (Visitors to Bureau of Land Management Lands).

Total Estimated Number of Annual Respondents: 1,333.

Total Estimated Number of Annual Responses: 1,333.

Estimated Completion Time per Response: We estimate it will take on average 15 minutes to complete the full online survey, 3 minutes to complete the non-response survey, and 45 minutes to respond at an in-person workshop.

Total Estimated Number of Annual Burden Hours: 321 hours.

Respondent's Obligation: Voluntary.

Frequency of Collection: Respondents will provide information one time.

Total Estimated Annual Nonhour Burden Cost: None.

An agency may not conduct or sponsor, nor is a person required to respond to, a collection of information unless it displays a currently valid OMB control number.

The authority for this action is the PRA (44 U.S.C. 3501 *et seq.*).

Adrienne Bartlewitz,

Rocky Mountain Region Chief of Staff, U.S. Geological Survey.

[FR Doc. 2022–25803 Filed 11–25–22; 8:45 am]

BILLING CODE P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[L14400000/LLAZ920000/ET0000/AZA–38142]

Public Land Order No. 7915; Withdrawal of Public Land for Land Management Evaluation Purposes, Arizona

AGENCY: Bureau of Land Management, Interior.

ACTION: Public Land Order.

SUMMARY: This order withdraws 2,365.89 acres of public land in Maricopa County, Arizona, from all forms of appropriation under the public land laws, including location and entry under the United States mining laws, and from leasing under the mineral and geothermal leasing laws for 5 years for land management evaluation purposes, subject to valid existing rights.

DATES: This Public Land Order takes effect on November 28, 2022.

FOR FURTHER INFORMATION CONTACT: Michael Ouellett, Realty Specialist, BLM Arizona State Office 1 North Central Avenue, Suite 800, Phoenix, AZ 85004, telephone: (602) 417–9561, email at *mouellett@blm.gov.* Individuals in the United States who are deaf, deafblind, hard of hearing, or have a speech disability may dial 711 (TTY, TDD, or TeleBraille) to access telecommunications relay services. Individuals outside the United States should use the relay services offered within their country to make international calls to the point-of-contact in the United States. You will receive a reply during normal business hours.

SUPPLEMENTARY INFORMATION: This withdrawal keeps the lands identified as follows from the specified forms of appropriation to maintain the current environmental baseline, relative to mineral exploration and development, subject to valid existing rights, to allow the Bureau of Land Management and the Department of the Air Force (USAF) time to complete their land management evaluations. The evaluation of these acres, identified as the Gila Bend Addition, is for a potential Barry M. Goldwater Range legislative withdrawal expansion, pending processing of the USAF's application for withdrawal of public land for defense purposes under the Engle Act (85 FR 21876).

Order

By virtue of the authority vested in the Secretary of the Interior by Section 204 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. 1714, it is ordered as follows:

1. Subject to valid existing rights, the following described public lands are hereby withdrawn from all forms of appropriation under the public land laws, including location and entry under the United States mining laws, and from leasing under the mineral and geothermal leasing laws, to maintain current environmental baseline conditions.

Gila and Salt River Meridian, Arizona

T.6 S., R.4 W.,
  Sec. 19, lots 3 and 4, E½SW¼;
  Sec. 31, lots 1 and 2, E½NW¼.
T.7 S., R.4 W.,
  Sec. 5, SW¼SW¼SW¼;
  Sec. 6, lots 3 thru 7, SE¼NW¼, E½SW¼, SE¼;
  Sec. 7;
  Sec. 8;
  Sec. 9, S½.

The areas described aggregate 2,365.89 acres.

2. This withdrawal will expire 5 years from the effective date of this order, unless, as a result of a review conducted pursuant to Section 204(f) of the Federal Land Policy and Management Act of 1976, 43 U.S.C. 1714(f), the Secretary determines that the withdrawal shall be extended.

Shannon A. Estenoz,

Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 2022–25839 Filed 11–25–22; 8:45 am]

BILLING CODE 4310–32–P

DEPARTMENT OF THE INTERIOR

National Park Service

[NPS–WASO–NAGPRA–34834; PPWOCRADN0–PCU00RP16.R50000]

Native American Graves Protection and Repatriation Review Committee; Notice of Public Meetings

AGENCY: National Park Service, Interior.

ACTION: Meeting notice.

SUMMARY: The National Park Service is hereby giving notice that the Native American Graves Protection and Repatriation Review Committee (Committee) will hold two virtual meetings as indicated below.

DATES: The Committee will meet via teleconference on Thursday, January 5, 2023, from 11:00 a.m. until approximately 3:00 p.m. (Eastern), and Tuesday, January 10, 2023, from 2:00 p.m. until approximately 6:00 p.m. (Eastern). All meetings are open to the public.

FOR FURTHER INFORMATION CONTACT: Melanie O'Brien, Designated Federal Officer, National Native American Graves Protection and Repatriation Act Program (2253), National Park Service, telephone (202) 354–2201, or email *nagpra_info@nps.gov.*

Individuals in the United States who are deaf, deafblind, hard of hearing, or have a speech disability may dial 711 (TTY, TDD, or TeleBraille) to access telecommunications relay services. Individuals outside the United States should use the relay services offered within their country to make international calls to the point-of-contact in the United States.

SUPPLEMENTARY INFORMATION: The Committee was established in section 8 of the Native American Graves Protection and Repatriation Act of 1990 (NAGPRA). Information about NAGPRA, the Committee, and Committee meetings is available on the National NAGPRA Program website at *https://www.nps.gov/subjects/nagpra/review-committee.htm.*

The Committee is responsible for monitoring the NAGPRA inventory and identification process; reviewing and making findings related to the identity or cultural affiliation of cultural items, or the return of such items; facilitating the resolution of disputes; compiling an inventory of culturally unidentifiable human remains that are in the possession or control of each Federal agency and museum, and recommending specific actions for developing a process for disposition of such human remains; consulting with

Indian Tribes and Native Hawaiian organizations and museums on matters affecting such Tribes or organizations lying within the scope of work of the Committee; consulting with the Secretary of the Interior on the development of regulations to carry out NAGPRA; and making recommendations regarding future care of repatriated cultural items. The Committee's work is carried out during the course of meetings that are open to the public.

The agenda for each meeting may include a report from the National NAGPRA Program; the discussion of the Review Committee Report to Congress; subcommittee reports and discussion; and other topics related to the Committee's responsibilities under section 8 of NAGPRA. In addition, the agenda may include requests to the Committee for a recommendation to the Secretary of the Interior that an agreed-upon disposition of Native American human remains proceed.

During each meeting, there will be time scheduled for public comments. During public comment, the Review Committee and the Department of the Interior are particularly interested in hearing oral comment on the proposed rule at 43 CFR part 10, RIN 1024–AE19, published on October 18, 2022. If interested, individuals should register for opportunities to make oral comments at: *https://www.nps.gov/orgs/1335/events.htm.* Oral comments will be recorded and submitted for the record and oral commenters should include a written copy of their statement prior to the public meeting. Time for oral comments may be limited.

Written comments may be submitted, see **FOR FURTHER INFORMATION CONTACT**. All comments received will be provided to the Committee. Information on joining the virtual conference by internet or phone will be available on the National NAGPRA Program website at *https://www.nps.gov/orgs/1335/events.htm.*

Meeting Accessibility: Please make requests in advance for sign language interpreter services, assistive listening devices, or other reasonable accommodations. We ask that you contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section of this notice at least seven (7) business days prior to the meeting to give the Department of the Interior sufficient time to process your request. All reasonable accommodation requests are managed on a case-by-case basis.

Public Disclosure of Comments: Before including your address, telephone number, email address, or other personal identifying information in your comments, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

Authority: 5 U.S.C. Appendix 2; 25 U.S.C. 3006.

Alma Ripps,

Chief, Office of Policy.

[FR Doc. 2022–25804 Filed 11–25–22; 8:45 am]

BILLING CODE 4312–52–P

DEPARTMENT OF THE INTERIOR

Bureau of Ocean Energy Management

[OMB Control Number 1010–0114; Docket ID: BOEM–2017–0016]

Agency Information Collection Activities; Submission to the Office of Management and Budget; Oil and Gas Production Requirements in the Outer Continental Shelf

AGENCY: Bureau of Ocean Energy Management, Interior.

ACTION: Notice of information collection; request for comment.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, the Bureau of Ocean Energy Management (BOEM) proposes this information collection request (ICR) to renew the Office of Management and Budget's (OMB's) Control Number 1010–0114.

DATES: Comments must be received by OMB no later than December 28, 2022.

ADDRESSES: Submit your written comments on this ICR to the OMB's desk officer for the Department of the Interior at *www.reginfo.gov/public/do/PRAMain* within 30 days of publication of this notice. From the *www.reginfo.gov/public/do/PRAMain* landing page, find this information collection by selecting ''Currently under Review—Open for Public Comments'' or by searching for docket number BOEM–2017–0016. Please provide a copy of your comments by parcel delivery to the BOEM Information Collection Clearance Officer, Anna Atkinson, Bureau of Ocean Energy Management, 45600 Woodland Road, Sterling, Virginia 20166; or by email to *anna.atkinson@boem.gov.* Please reference OMB Control Number 1010–0114 in the subject line of your comments.

FOR FURTHER INFORMATION CONTACT: Anna Atkinson by email at *anna.atkinson@boem.gov* or by telephone at 703–787–1025. Individuals in the United States who are deaf, deafblind, hard of hearing, or have a speech disability may dial 711 (TTY, TDD, or TeleBraille) to access telecommunications relay services. Individuals outside the United States should use the relay services offered within their country to make international calls to the point-of-contact in the United States.

SUPPLEMENTARY INFORMATION: In accordance with the Paperwork Reduction Act of 1995, BOEM provides the general public and other Federal agencies with an opportunity to comment on new, proposed, revised, and continuing collections of information. This helps BOEM assess the impact of its information collection requirements and minimize the public's reporting burden. It also helps the public understand BOEM's information collection requirements and provide the requested data in the desired format.

Title of Collection: ''Oil and Gas Production in the Outer Continental Shelf.''

Abstract: This ICR addresses regulations under 30 CFR part 550, subparts A and K, which deal with regulatory requirements of oil, gas, and sulfur operations on the Outer Continental Shelf (OCS). This request also covers the related notices to lessees and operators (NTLs) that BOEM issues to clarify and provide guidance on some aspects of its regulations, and forms BOEM–0127, BOEM–0140, BOEM–1123, and BOEM–1832.

The OCS Lands Act, as amended (43 U.S.C. 1331 *et seq.*), authorizes the Secretary of the Interior to prescribe rules and regulations to administer leasing of the OCS and all operations conducted under a lease. Leasing on the OCS must balance orderly energy resource development with protection of the human, marine, and coastal environments; ensure the public receives fair market value for the resources of the OCS; and preserve and maintain market competition.

BOEM uses the information collected under these regulations to ensure that leasing and operations on the OCS are carried out in a safe and environmentally sound manner, do not interfere with the rights of other users on the OCS, and balance the protection and development of OCS resources.

OMB Control Number: 1010–0114.

Form Number:

- BOEM–0127, ''Sensitive Reservoir Information Report;''
- BOEM–0140, ''Bottomhole Pressure Survey Report;''
- BOEM–1123, ''Designation of Operator;'' and

- BOEM–1832, ''Notification of Incidents of Noncompliance.''

Type of Review: Renewal of a currently approved information collection.

Respondents/Affected Public: Federal oil, gas, or sulfur lessees and operators.

Total Estimated Number of Annual Responses: 5,621 responses.

Total Estimated Number of Annual Burden Hours: 27,849 hours.

Respondent's Obligation: Mandatory.

Frequency of Collection: On occasion, monthly.

Total Estimated Annual Non-Hour Burden Cost: $165,492.

Estimated Reporting and Recordkeeping Hour Burden: The current annual burden for this collection is 18,323 hours and 5,302 responses. BOEM proposes to increase the annual burden to 27,849 hours and 5,621 responses. BOEM conducted public outreach regarding the industry's recommendation to increase the number of static bottomhole pressure surveys, which is expected to cause an increase in sensitive reservoir information reports. Based on industry recommendations, BOEM is asking OMB for approval of an additional 9,526 annual burden hours and 319 responses.

The following table details the individual components and respective burden hour estimates of this ICR.

BURDEN BREAKDOWN

Citation 30 CFR 550 subpart A and related forms/NTLs	Reporting or recordkeeping requirement	Hour burden	Average number of annual responses	Annual burden hours
		Non-hour cost burdens		
Authority and Definition of Terms				
104; 181; Form BOEM–1832.	Appeal orders or decisions; appeal INCs; request hearing due to cancellation of lease.	Exempt under 5 CFR 1320.4(a)(2), (c).		0
Performance Standards				
115; 116	Request determination of well producibility; make available or submit data and information; notify BOEM of test.	5	90 responses	450
119	Apply for subsurface storage of gas; sign storage agreement	10	3 applications	30
Subtotal			93 responses	480
Cost Recovery Fees				
125; 126; 140	Cost Recovery Fees; confirmation receipt etc.; verbal approvals and written request to follow. Includes request for refunds.	Cost Recovery Fees and related items are covered individually throughout this subpart.		0
Designation of Operator				
143	Report change of name, address, etc	Not considered information collection under 5 CFR 1320.3(h)(1).		0
143(a–c); 144; Form BOEM–1123.	Submit designation of operator (Form BOEM–1123—form takes 30 minutes); report updates; notice of termination; submit designation of agent. Request exception. NO FEE.	1	2,584 forms	2,584
143(a–d); 144; Form BOEM–1123.	Change designation of operator (Form BOEM–1123—form takes 30 minutes); report updates; notice of termination; submit designation of agent; include *pay.gov* confirmation receipt. Request exception. SERVICE FEE.	1	930 forms	930
		$175 fee × 930 = $162,750		
186(a)(3)	Apply for user account in TIMS (electronic/digital form submittals)	Not considered information collection under 5 CFR 1320.3(h)(1).		0
Subtotal			3,514 responses	3,514
			$162,750 non-hour cost burden	
Compliance				
101; 135; 136; Form BOEM–1832.	Submit response and required information for INC, probation, or revocation of operating status. Notify when violations corrected.	2	94 submissions	188
	Request waiver of 14-day response time for reconsideration	1	1	1
135; 136	Request reimbursement for services provided to BOEM representatives during reviews; comment.	1.5	2 requests	3
Subtotal			97 responses	192
Special Types of Approval				
125(c); 140	Request various oral approvals not specifically covered elsewhere in regulatory requirements.	1	100 requests	100
141; 101–199	Request approval to use new or alternative procedures; submit required information.	20	100 requests	2,000

BURDEN BREAKDOWN—Continued

Citation 30 CFR 550 subpart A and related forms/NTLs	Reporting or recordkeeping requirement	Hour burden	Average number of annual responses	Annual burden hours
142; 101–199	Request approval of departure from operating requirements not specifically covered elsewhere in regulatory requirements; submit required information.	2.5	100 requests	250
Subtotal			300 responses	2,350
Right-of-use and Easement				
160; 161; 123; NTL 2015–N06.	OCS lessees: Apply for new or modified right-of-use and easement to construct and maintain off-lease platforms, artificial islands, and installations and other devices; include notifications and submitting required information.	9	26 applications	234
160(c)	Establish a Company File for qualification; submit updated information, submit qualifications for lessee/bidder, request exception.	Burden covered under 30 CFR 556 (1010–0006).		0
160; 165; 123	State lessees: Apply for new or modified right-of-use and easement to construct and maintain off-lease platforms, artificial islands, and installations and other devices; include *pay.gov* confirmation and notifications.	5	1 application	5
		$2,742 state lease fee × 1 = $2,742		
166; NTL 2015–N04	State lessees: Furnish surety bond; additional security if required	Burden covered under 30 CFR 556 (1010–0006).		0
Subtotal			27 responses	239
			$2,742 non-hour cost burden	
Primary Lease Requirements, Lease Term Extensions, and Lease Cancellations				
181(d); 182(b), 183(a)(b).	Request termination of suspension, cancellation of lease, lesser lease term (no requests in recent years for termination/cancellation of a lease; minimal burden).	20	1 request	20
182; 183, 185; 194	Submitting new, revised, or modified exploration plan, development/production plan, or development operations coordination document, and related surveys/reports.	Burden covered under 30 CFR 550, Subpart B (1010–0151).		0
184	Request compensation for lease cancellation pursuant to the OCS Lands Act (no lease cancellations in many years; minimal burden).	50	1 request	50
Subtotal			2 responses	70
Information and Reporting Requirements				
186(a)	Apply to receive administrative entitlements to eWell/TIMS system for electronic submissions.	Not considered IC under 5 CFR 1320.3(h)(1).		0
186; NTL 2015–N01	Submit information, reports, and copies as BOEM requires (as related to worst case discharge and blowout scenarios).	10	125	1,250
135; 136	Report apparent violations or non-compliance	1.5	2 reports	3
194	Report archaeological discoveries. Submit archaeological and follow-up reports and additional information.	2	6 reports	12
194	Request departures from conducting archaeological resources surveys and/or submitting reports in GOMR.	1	2 requests	2
194	Submit ancillary surveys/investigations reports, as required	Burden covered under 30 CFR 550 Subpart B (1010–0151).		0
196	Submit data/information for G&G activity and request reimbursement	Burden covered under 30 CFR 551 (1010–0048).		0
197(b)(2)	Demonstrate release of G&G data would unduly damage competitive position.	1	1	1
197(c)	Submit confidentiality agreement	1	1	1
Subtotal			137 responses	1,269
Recordkeeping				
135; 136	During reviews, make records available as requested by inspectors	2	7 reviews	14
Subtotal			7 responses	14

BURDEN BREAKDOWN—CONTINUED

Citation 30 CFR 550 subpart K and related forms	Well surveys and classifying reservoirs	Hour burden	Average number of annual responses	Annual burden hours
1153	Conduct static bottomhole pressure survey; submit Form BOEM–0140 (Bottomhole Pressure Survey Report).	19 GOM & Alaska 70 Pacific	330 surveys 70 surveys	6,270 4,900
1153(d)	Submit justification, information, and Form BOEM–0140, to request a departure from requirement to run a static bottomhole pressure survey.	9	120 survey departures	1,080
1154; 1167	Submit request and supporting information to reclassify reservoir	8	5 requests	40
1155; 1165(b); 1166; 1167.	Submit Form BOEM–0127 (Sensitive Reservoir Information Report) and supporting information/revisions (within 45 days after the beginning of production, discovering that the reservoir is sensitive, the reservoir is classified as sensitive, or when reservoir parameters are revised. SRIs must be submitted annually). AK Region: submit BOEM–0127 and request an MER for each producing sensitive reservoir.	8 GOM 40 Pacific 2 Alaska	700 forms 39 forms 1 form	5,600 1,560 2
1153–1167	Request general departure or alternative compliance not specifically covered elsewhere in regulatory requirements.	10 GOM 1 Pacific 0 Alaska	10 departures 169 departures 0	100 169 0
1165	Submit proposed plan for enhanced recovery operations to BSEE	Burden covered under BSEE 30 CFR 250 (1014–0019).		0
Subtotal			1,444 responses	19,721
Total Burden			5,621 responses	27,849
			$165,492 Non-Hour Cost Burdens	

A **Federal Register** notice with a 60-day public comment period on this proposed ICR was published on August 1, 2022 (87 FR 46992). BOEM did not receive any comments during that comment period.

BOEM is again soliciting comments on the proposed ICR. BOEM is especially interested in public comments addressing the following issues: (1) is the collection necessary to the proper functions of BOEM; (2) what can BOEM do to ensure that this information is processed and used in a timely manner; (3) is the burden estimate accurate; (4) how might BOEM enhance the quality, utility, and clarity of the information to be collected; and (5) how might BOEM minimize the burden of this collection on the respondents, including minimizing the burden through the use of information technology?

Comments submitted in response to this notice are a matter of public record and will be available for public review on *www.reginfo.gov.* You should be aware that your entire comment—including your address, phone number, email address, or other personally identifiable information included in your comment—may be made publicly available. Even if BOEM withholds your information in the context of this ICR, your comment is subject to the Freedom of Information Act (FOIA). If your comment is requested under the FOIA, your information will only be withheld if BOEM determines that a FOIA exemption to disclosure applies. BOEM will make such a determination in accordance with the Department of the Interior's (DOI's) FOIA regulations and applicable law.

In order for BOEM to consider withholding from disclosure your personally identifiable information, you must identify, in a cover letter, any information contained in your comments that, if released, would constitute a clearly unwarranted invasion of your personal privacy. You must also briefly describe any possible harmful consequence of the disclosure of information, such as embarrassment, injury, or other harm.

Note that BOEM will make available for public inspection all comments on *www.reginfo.gov,* in their entirety, submitted by organizations and businesses or by individuals identifying themselves as representatives of organizations or businesses.

BOEM protects proprietary information in accordance with FOIA (5 U.S.C. 552), DOI's implementing regulations (43 CFR part 2), and 30 CFR parts 550 and 552 promulgated pursuant to the Outer Continental Shelf Lands Act (43 U.S.C. 1352(c)).

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a valid OMB control number.

The authority for this action is the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

Karen Thundiyil,

Chief, Office of Regulations, Bureau of Ocean Energy Management.

[FR Doc. 2022–25790 Filed 11–25–22; 8:45 am]

BILLING CODE 4340–98–P

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

[S1D1S SS08011000 SX064A000 231S180110; S2D2S SS08011000 SX064A000 23XS501520; OMB Control Number 1029–0116]

Submission to the Office of Management and Budget for Review and Approval; Revisions, Renewal, and Transfer, Assignment, or Sale of Permit Rights

AGENCY: Office of Surface Mining Reclamation and Enforcement, Interior.

ACTION: Notice of information collection; request for comment.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, we, the Office of Surface Mining Reclamation and Enforcement (OSMRE), are proposing to renew an information collection.

DATES: Interested persons are invited to submit comments on or before January 27, 2023.

ADDRESSES: Send your comments on this information collection request (ICR) by mail to Mark Gehlhar, Office of Surface Mining Reclamation and Enforcement, 1849 C Street NW, Room 4556–MIB, Washington, DC 20240, or by email to *mgehlhar@osmre.gov.* Please reference OMB Control Number 1029–0116 in the subject line of your comments.

FOR FURTHER INFORMATION CONTACT: To request additional information about this ICR, contact Mark Gehlhar by email at *mgehlhar@osmre.gov,* or by telephone at 202–208–2716. Individuals in the United States who are deaf, deafblind, hard of hearing, or have a speech disability may dial 711 (TTY, TDD, or TeleBraille) to access telecommunications relay services. Individuals outside the United States should use the relay services offered within their country to make international calls to the point-of-contact in the United States. You may also view the ICR at *http://www.reginfo.gov/public/do/PRAMain.*

SUPPLEMENTARY INFORMATION: In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*) and 5 CFR 1320.8(d)(1), we provide the general public and other Federal agencies with an opportunity to comment on new, proposed, revised, and continuing collections of information. This helps us assess the impact of our information collection requirements and minimize the public's reporting burden. It also helps the public understand our information collection requirements and provide the requested data in the desired format.

We are soliciting comments on the proposed ICR that is described below. We are especially interested in public comment addressing the following issues: (1) is the collection necessary to the proper functions of the agency; (2) will this information be processed and used in a timely manner; (3) is the estimate of burden accurate; (4) how might the agency enhance the quality, utility, and clarity of the information to be collected; and (5) how might the agency minimize the burden of this collection on the respondents, including through the use of information technology.

Comments that you submit in response to this notice are a matter of public record. We will include or summarize each comment in our request to OMB to approve this ICR. Before including your address, phone number, email address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

Abstract: Sections 506 and 511 of Public Law 95–87 provide that persons seeking permit revisions, renewals, transfer, assignment, or sale of their permit rights for coal mining activities submit relevant information to the regulatory authority to allow the regulatory authority to determine whether the applicant meets the requirements for the action anticipated.

Title of Collection: Revisions, Renewals, and Transfer, Assignment, or Sale of Permit Rights.

OMB Control Number: 1029–0116.

Form Number: None.

Type of Review: Extension of a currently approved collection.

Respondents/Affected Public: Businesses, State and Tribal governments.

Total Estimated Number of Annual Respondents: 600.

Total Estimated Number of Annual Responses: 7,130.

Estimated Completion Time per Response: Varies from 2 to 90 hours, depending on activity.

Total Estimated Number of Annual Burden Hours: 404,165.

Respondent's Obligation: Required to obtain or retain a benefit.

Frequency of Collection: One time.

Total Estimated Annual Nonhour Burden Cost: $910,000.

An agency may not conduct or sponsor and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number.

The authority for this action is the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

Mark J. Gehlhar,

Information Collection Clearance Officer, Division of Regulatory Support.

[FR Doc. 2022–25775 Filed 11–25–22; 8:45 am]

BILLING CODE 4310–05–P

DEPARTMENT OF JUSTICE

[OMB Number 1121–0376]

Agency Information Collection Activities; Proposed eCollection eComments Requested; Revision of a Currently Approved Collection: National Inmate Survey in Jails (NIS–4J)

AGENCY: Bureau of Justice Statistics, Department of Justice.

ACTION: 30-Day notice.

SUMMARY: The Bureau of Justice Statistics, Office of Justice Programs, Department of Justice (DOJ), will be submitting the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995.

DATES: Comments are encouraged and will be accepted for 30 days until December 28, 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: If you have additional comments especially on the estimated public burden or associated response time, suggestions, or need a copy of the proposed information collection instrument with instructions or additional information, please contact Amy Lauger, Supervisory Statistician, Re-entry, Recidivism, and Special Projects Unit, Bureau of Justice Statistics, 810 Seventh Street NW, Washington, DC 20531 (email: *Amy.Lauger@usdoj.gov;* telephone: 202–307–5955).

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 Bureau of Justice Statistics, 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:* National Inmate Survey in Jails (NIS–4J).

3. *The agency form number, if any, and the applicable component of the Department sponsoring the collection:* There is no agency form number at this time. The applicable component within the Department of Justice is the Bureau of Justice Statistics, in the Office of Justice Programs.

4. *Affected public who will be asked or required to respond, as well as a brief abstract:* Respondents will primarily be State or Local Government entities. The work under this clearance will be used to produce estimates for the incidence and prevalence of sexual victimization within correctional facilities as required under the Prison Rape Elimination Act of 2003 (Pub. L. 108–79). The Bureau of Justice Statistics uses this information in published reports and for the U.S. Congress, Executive Office of the President, practitioners, researchers, students, the media, and others interested in criminal justice statistics.

In 2003, the Prison Rape Elimination Act (PREA or the Act) was signed into law. The Act requires BJS to ''carry out, for each calendar year, a comprehensive statistical review and analysis of the incidence and effects of prison rape.'' The Act further instructs BJS to collect survey data: ''. . .the Bureau shall. . .use surveys and other statistical studies of current and former inmates. . .''

To implement the Act, BJS developed the National Prison Rape Statistics Program (NPRS), which includes four separate data collection efforts: the Survey on Sexual Violence (SSV), the National Inmate Survey (NIS), the National Survey of Youth in Custody (NSYC), and the National Former Prisoner Survey (NFPS). The NIS collects information on sexual victimization self-reported by inmates held in adult correctional facilities, both prisons and jails. The NIS has been conducted three times, in 2007 (NIS–1), in 2008–09 (NIS–2), and in 2011–12 (NIS–3). Each iteration of NIS was conducted in at least one facility in all 50 states and the District of Columbia. In each iteration of the survey, inmates completed the survey using an audio computer-assisted self-interview (ACASI), whereby they heard questions and instructions via headphones and responded to the survey items via a touchscreen interface.

The collection requested in this notice is the fourth iteration of the National Inmate Survey in Jails. For NIS–4, administration of the survey in prisons will take place separately from survey administration in jails. This collection request is specific to conducting the survey in adult jail facilities.

BJS submitted this collection for approval in summer 2022. Since then, changes have been made to several items in the collection. The main differences include editing of items in the ACASI survey and facility questionnaire, removal of items from the facility questionnaire, editing of sampling plan, and editing of consent forms and scripts.

5. *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* Prior to data collection commencing in 2023, BJS will coordinate the logistics of NIS–4 survey administration with staff at jail facilities. It is estimated that 290 facility respondents will devote 150 minutes of time to this coordination effort, not including staff escort time. During data collection in 2023, jail staff will escort an estimated 65,360 jail inmates to/from the interviews, which consists of a short consent administration and an approximately 35-minute survey.

6. *An estimate of the total public burden (in hours) associated with the collection:* The total estimated NIS–4 Jails public burden, inclusive of facility staff and respondent burden estimates, is 64,010 hours. This comprises 17,065 hours of facility staff burden and 46,945 hours of respondent interviewing burden. This burden estimate assumes 100% participation from both facilities and inmates, but historically both facility and inmate participation have not reached 100%. For purposes of comparison, during Year 3 of the NIS, the total maximum burden was estimated at 68,078 hours for the jail sample. The total burden used was 33,022 hours.

If additional information is required contact: Robert Houser, Department Clearance Officer, Policy and Planning Staff, Justice Management Division, United States Department of Justice, Two Constitution Square, 145 N Street NE, 3E.206, Washington, DC 20530.

Dated: November 21, 2022.

Robert Houser,

Department Clearance Officer for PRA, Policy and Planning Staff, Office of the Chief Information Officer, U.S. Department of Justice.

[FR Doc. 2022–25801 Filed 11–25–22; 8:45 am]

BILLING CODE 4410–18–P

DEPARTMENT OF LABOR

Request for Feedback under Executive Order 14008

AGENCY: Office of the Assistant Secretary for Policy, Labor.

ACTION: Notice.

SUMMARY: The United States Department of Labor (the Department) is updating its Environmental Justice Strategy and solicitating feedback on how the Department could improve services and better serve environmental justice communities.

DATES: Interested persons are invited to provide oral feedback on December 9, 2022, 11 a.m.–12 p.m. EST and/or provide written feedback by 5 p.m. EST on December 9, 2022, at *EnvironmentalJustice@DOL.GOV*.

Instructions: Written submissions must include your name and reference DOL Environmental Justice Strategy feedback. All feedback, including any personal information you provide, may be made public. Therefore, the Department cautions participants about providing information they do not want made available to the public or submitting materials that contain personal information (either about themselves or others), such as Social Security Numbers and birthdates.

Registration: Interested persons should register for the meeting at *https://www.zoomgov.com/meeting/register/vJIsceusqDopEk8g0U9P-l-ecQ-mDv4U83o*.

ADDRESSES: If you require a reasonable accommodation to attend this listening session, please email *EnvironmentalJustice@DOL.GOV* at least five (5) business days prior to the event.

FOR FURTHER INFORMATION CONTACT: Lisa Stuart, 202–693–5959, *EnvironmentalJustice@DOL.GOV*.

SUPPLEMENTARY INFORMATION: During the call, feedback will be solicited by officials across the Department. The Department is conducting this session to seek a diversity of viewpoints and insights from interested stakeholders to inform its future actions. But the Department is not seeking consensus recommendations.

The White House issued Executive Order 14008, Tackling the Climate Crisis at Home and Abroad, resulting in part, in the Council on Environmental Quality and a White House advisory committee focused on serving environmental justice communities. The policy of the Administration is to secure economic justice and spur economic opportunities for disadvantaged communities that have been historically marginalized and overburdened, including places that have suffered as a result of economic shifts and places that have suffered the most from persistent pollution, including low-income rural and urban communities, communities of color, and Native communities. At the Department we refer to the individuals in such communities as disadvantaged workers.

The Department provides a range of services that seeks to assist and improve the overall job quality for disadvantaged workers, through job search, training, income maintenance, worker empowerment, safety and health protections, and other worker protections. The Department is interested in learning about potential approaches and gathering feedback to improving services for the economically disadvantaged. In this session, the Department will seek public input on what are the greatest needs and/or barriers facing disadvantaged and/or environmentally-impacted communities as it relates to employment, worker protections, and worker rights.

Authority: E.O. 14008, E.O. 12898, 59 FR 7629, 3 CFR, 1994 Comp. p. 859.

Rajesh D. Nayak,

Assistant Secretary for Policy.

[FR Doc. 2022–25893 Filed 11–25–22; 8:45 am]

BILLING CODE 4510–HX–P

DEPARTMENT OF LABOR

Agency Information Collection Activities; Submission for OMB Review; Comment Request; Labor Standards for Federal Service Contracts

ACTION: Notice of availability; request for comments.

SUMMARY: The Department of Labor (DOL) is submitting this Wage and Hour Division (WHD)-sponsored information collection request (ICR) to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995 (PRA). Public comments on the ICR are invited.

DATES: The OMB will consider all written comments that the agency receives on or before December 28, 2022.

ADDRESSES: Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to *www.reginfo.gov/public/do/PRAMain.* Find this particular information collection by selecting ''Currently under 30-day Review—Open for Public Comments'' or by using the search function.

Comments are invited on: (1) whether the collection of information is necessary for the proper performance of the functions of the Department, including whether the information will have practical utility; (2) if the information will be processed and used in a timely manner; (3) the accuracy of the agency's estimates of the burden and cost of the collection of information, including the validity of the methodology and assumptions used; (4) ways to enhance the quality, utility and clarity of the information collection; and (5) ways to minimize the burden of the collection of information on those who are to respond, including the use of automated collection techniques or other forms of information technology.

FOR FURTHER INFORMATION CONTACT: Mara Blumenthal by telephone at 202–693–8538, or by email at *DOL_PRA_PUBLIC@dol.gov.*

SUPPLEMENTARY INFORMATION: The Wage and Hour Division administers the McNamara-O'Hara Service Contract Act (SCA), 41 U.S.C. 6703 et seq, and enforces the SCA's compensation requirements. The SCA applies to every contract entered into by the United States or the District of Columbia, the principal purpose of which is to furnish services to the United States through the use of service employees. This information collection contains recordkeeping and incidental reporting requirements in SCA regulations applicable to employers performing on service contracts with the Federal government. For additional substantive information about this ICR, see the related notice published in the **Federal Register** on July 11, 2022 (87 FR 41146).

This information collection is subject to the PRA. A Federal agency generally cannot conduct or sponsor a collection of information, and the public is generally not required to respond to an information collection, unless the OMB approves it and displays a currently valid OMB Control Number. In addition, notwithstanding any other provisions of law, no person shall generally be subject to penalty for failing to comply with a collection of information that does not display a valid OMB Control Number. *See* 5 CFR 1320.5(a) and 1320.6.

DOL seeks PRA authorization for this information collection for three (3) years. OMB authorization for an ICR cannot be for more than three (3) years without renewal. The DOL notes that information collection requirements submitted to the OMB for existing ICRs receive a month-to-month extension while they undergo review.

Agency: DOL–WHD.

Title of Collection: Labor Standards for Federal Service Contracts.

OMB Control Number: 1235–0007.

Affected Public: Private Sector—Businesses or other for-profits.

Total Estimated Number of Respondents: 137,394.

Total Estimated Number of Responses: 137,394.

Total Estimated Annual Time Burden: 136,463 hours.

Total Estimated Annual Other Costs Burden: $0.

(Authority: 44 U.S.C. 3507(a)(1)(D))

Dated: November 18, 2022.

Mara Blumenthal,

Senior PRA Analyst.

[FR Doc. 2022–25877 Filed 11–25–22; 8:45 am]

BILLING CODE 4510–27–P

DEPARTMENT OF LABOR

Agency Information Collection Activities; Submission for OMB Review; Comment Request; Operations Mining Under a Body of Water

ACTION: Notice of availability; request for comments.

SUMMARY: The Department of Labor (DOL) is submitting this Mine Safety and Health Administration (MSHA)-sponsored information collection request (ICR) to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995 (PRA). Public comments on the ICR are invited.

DATES: The OMB will consider all written comments that the agency receives on or before December 28, 2022.

ADDRESSES: Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to *www.reginfo.gov/public/do/PRAMain.* Find this particular information collection by selecting ''Currently under 30-day Review—Open for Public Comments'' or by using the search function.

Comments are invited on: (1) whether the collection of information is necessary for the proper performance of the functions of the Department, including whether the information will have practical utility; (2) if the information will be processed and used in a timely manner; (3) the accuracy of the agency's estimates of the burden and cost of the collection of information, including the validity of the methodology and assumptions used; (4) ways to enhance the quality, utility and clarity of the information collection; and (5) ways to minimize the burden of the collection of information on those who are to respond, including the use of automated collection techniques or other forms of information technology.

FOR FURTHER INFORMATION CONTACT: Nora Hernandez by telephone at 202–693–8633, or by email at *DOL_PRA_PUBLIC@dol.gov.*

SUPPLEMENTARY INFORMATION: Title 30 CFR 75.1716, 75.1716–1 and 75.1716–3 require operators of underground coal mines to provide MSHA notification before mining under bodies of water and to obtain a permit to mine under a body of water if, in the judgment of the Secretary, it is sufficiently large to constitute a hazard to miners. The regulation is necessary to prevent the inundation of underground coal mines with water that cause hazards to miners, including the potential for drowning. For additional substantive information about this ICR, see the related notice published in the **Federal Register** on August 19, 2022 (87 FR 51150).

This information collection is subject to the PRA. A Federal agency generally cannot conduct or sponsor a collection of information, and the public is generally not required to respond to an information collection, unless the OMB approves it and displays a currently valid OMB Control Number. In addition, notwithstanding any other provisions of law, no person shall generally be subject to penalty for failing to comply with a collection of information that does not display a valid OMB Control Number. *See* 5 CFR 1320.5(a) and 1320.6.

DOL seeks PRA authorization for this information collection for three (3) years. OMB authorization for an ICR cannot be for more than three (3) years without renewal. The DOL notes that information collection requirements submitted to the OMB for existing ICRs receive a month-to-month extension while they undergo review.

Agency: DOL–MSHA.

Title of Collection: Operations Mining Under a Body of Water.

OMB Control Number: 1219–0020.

Affected Public: Businesses or other for-profits institutions.

Total Estimated Number of Respondents: 50.

Total Estimated Number of Responses: 50.

Total Estimated Annual Time Burden: 275 hours.

Total Estimated Annual Other Costs Burden: $680.

(Authority: 44 U.S.C. 3507(a)(1)(D))

Nora Hernandez,

Departmental Clearance Officer.

[FR Doc. 2022–25874 Filed 11–25–22; 8:45 am]

BILLING CODE 4510–43–P

DEPARTMENT OF LABOR

Agency Information Collection Activities; Submission for OMB Review; Comment Request; Application for a Permit To Fire More Than 20 Boreholes and for the Use of Nonpermissible Blasting Units, Explosives, and Shot-Firing Units; Posting Notices of Misfires

ACTION: Notice of availability; request for comments.

SUMMARY: The Department of Labor (DOL) is submitting this Mine Safety and Health Administration (MSHA)-sponsored information collection request (ICR) to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995 (PRA). Public comments on the ICR are invited.

DATES: The OMB will consider all written comments that the agency receives on or before December 28, 2022.

ADDRESSES: Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to *www.reginfo.gov/public/do/PRAMain.* Find this particular information collection by selecting ''Currently under 30-day Review—Open for Public Comments'' or by using the search function.

Comments are invited on: (1) whether the collection of information is necessary for the proper performance of the functions of the Department, including whether the information will have practical utility; (2) if the information will be processed and used in a timely manner; (3) the accuracy of the agency's estimates of the burden and cost of the collection of information, including the validity of the methodology and assumptions used; (4) ways to enhance the quality, utility and clarity of the information collection; and (5) ways to minimize the burden of the collection of information on those who are to respond, including the use of automated collection techniques or other forms of information technology.

FOR FURTHER INFORMATION CONTACT: Nora Hernandez by telephone at 202–693–8633, or by email at *DOL_PRA_PUBLIC@dol.gov.*

SUPPLEMENTARY INFORMATION: Under section 313 of the Federal Mine Safety and Health Act of 1977 (Mine Act), 30 U.S.C. 873, any explosives used in underground coal mines must be permissible. The Mine Act also provides that, under safeguards prescribed by the Secretary, the firing of more than 20 shots and the use of nonpermissible explosives in sinking shafts and slopes from the surface in rock may be permitted. 30 CFR 75.1321 outlines the procedures by which a permit may be issued for the firing of more than 20 boreholes and for the use of nonpermissible shot-firing units in underground coal mines. At surface coal mines and surface work areas of underground coal mines, 30 CFR 77.1909–1 outlines the procedures by which a coal mine operator may apply for a permit to use non-permissible explosives and shot-firing units in the blasting of rock during the development of shafts or slopes. Additionally, in the event of a misfire of explosives, 30 CFR 75.1327 requires that a qualified person post a warning to prohibit entry at each accessible entrance to the affected area. For additional substantive information about this ICR, see the related notice published in the **Federal Register** on August 19, 2022 (87 FR 51149).

This information collection is subject to the PRA. A Federal agency generally cannot conduct or sponsor a collection of information, and the public is generally not required to respond to an information collection, unless the OMB approves it and displays a currently valid OMB Control Number. In addition, notwithstanding any other provisions of law, no person shall generally be subject to penalty for failing to comply with a collection of information that does not display a valid OMB Control Number. *See* 5 CFR 1320.5(a) and 1320.6.

DOL seeks PRA authorization for this information collection for three (3) years. OMB authorization for an ICR cannot be for more than three (3) years without renewal. The DOL notes that information collection requirements submitted to the OMB for existing ICRs receive a month-to-month extension while they undergo review.

Agency: DOL–MSHA.

Title of Collection: Application for a Permit to Fire More than 20 Boreholes and for the Use of Nonpermissible

Blasting Units, Explosives, and Shot-firing Units; Posting Notices of Misfires.

OMB Control Number: 1219–0025.

Affected Public: Businesses or other for-profits institutions.

Total Estimated Number of Respondents: 41.

Total Estimated Number of Responses: 42.

Total Estimated Annual Time Burden: 41 hours.

Total Estimated Annual Other Costs Burden: $150.

(Authority: 44 U.S.C. 3507(a)(1)(D).)

Nora Hernandez,

Departmental Clearance Officer.

[FR Doc. 2022–25875 Filed 11–25–22; 8:45 am]

BILLING CODE 4510–43–P

DEPARTMENT OF LABOR

Mine Safety and Health Administration

Petition for Modification of Application of Existing Mandatory Safety Standards

AGENCY: Mine Safety and Health Administration, Labor.

ACTION: Notice.

SUMMARY: This notice is a summary of a petition for modification submitted to the Mine Safety and Health Administration (MSHA) by the party listed below.

DATES: All comments on the petition must be received by MSHA's Office of Standards, Regulations, and Variances on or before December 28, 2022.

ADDRESSES: You may submit comments identified by Docket No. MSHA–2022–0066 by any of the following methods:

1. *Federal eRulemaking Portal: https://www.regulations.gov.* Follow the instructions for submitting comments for MSHA–2022–0066.

2. *Fax:* 202–693–9441.

3. *Email: petitioncomments@dol.gov.*

4. *Regular Mail or Hand Delivery:* MSHA, Office of Standards, Regulations, and Variances, 201 12th Street South, Suite 4E401, Arlington, Virginia 22202–5452.

Attention: S. Aromie Noe, Director, Office of Standards, Regulations, and Variances. Persons delivering documents are required to check in at the receptionist's desk in Suite 4E401. Individuals may inspect copies of the petition and comments during normal business hours at the address listed above. Before visiting MSHA in person, call 202–693–9455 to make an appointment, in keeping with the Department of Labor's COVID–19 policy. Special health precautions may be required.

FOR FURTHER INFORMATION CONTACT: S. Aromie Noe, Office of Standards, Regulations, and Variances at 202–693–9440 (voice), *Petitionsformodification@dol.gov* (email), or 202–693–9441 (fax). [These are not toll-free numbers.]

SUPPLEMENTARY INFORMATION: Section 101(c) of the Federal Mine Safety and Health Act of 1977 and Title 30 of the Code of Federal Regulations (CFR) part 44 govern the application, processing, and disposition of petitions for modification.

I. Background

Section 101(c) of the Federal Mine Safety and Health Act of 1977 (Mine Act) allows the mine operator or representative of miners to file a petition to modify the application of any mandatory safety standard to a coal or other mine if the Secretary of Labor determines that:

1. An alternative method of achieving the result of such standard exists which will at all times guarantee no less than the same measure of protection afforded the miners of such mine by such standard; or

2. The application of such standard to such mine will result in a diminution of safety to the miners in such mine.

In addition, sections 44.10 and 44.11 of 30 CFR establish the requirements for filing petitions for modification.

II. Petition for Modification

Docket Number: M–2022–030–C

Petitioner: Ramaco Resources, LCC, PO Box 219, Verner, West Virginia, 25650.

Mine: Mine No. 1, MSHA ID No. 44–07369, located in Tazewell County, Virginia.

Regulation Affected: 30 CFR 75.507–1(a), Electric equipment other than power-connection points; outby the last open crosscut; return air; permissibility requirements.

Modification Request: The petitioner requests a modification of 30 CFR 75.507–1(a) to permit the use of battery-powered nonpermissible surveying equipment, including, but not limited to, portable battery operated mine transits, total station surveying equipment, distance meters, and data loggers outby the last open crosscut.

The petitioner states that:

(a) To comply with requirements of 30 CFR 75.372 and 30 CFR 75.1200 use of the most practical and accurate surveying equipment is necessary.

(b) Accurate surveying is critical to the safety of the miners.

(c) Underground mining by its nature, size and complexity of mine plans requires that accurate and precise measurements be completed in a prompt and efficient manner.

The petitioner proposes the following alternative method:

(a) Using the following total station and theodolite and similar low voltage battery-operated total stations and theodolites with an ingress protection (IP) rating of 66 or greater in or inby the last open crosscut subject to the conditions of the Decision and Order:

(1) Sokkia—CX–105LN

(b) The equipment allowed under the Decision and Order is low voltage or batterypowered non-permissible total stations and theodolites with an IP rating of 66 or greater.

(c) The operator shall maintain a logbook for electronic surveying equipment with the equipment, in the location where mine record books are kept, or in the location where the surveying record books are kept. The logbook will contain the date of manufacture and/or purchase of each piece of electronic surveying equipment. The logbook shall be made available to MSHA upon request.

(d) All non-permissible electronic surveying equipment to be used in the return air outby the last open crosscut shall be examined by the person to operate the equipment prior to taking the equipment underground to ensure the equipment is maintained in a safe operating condition.

These examinations shall include:

(1) Checking the instrument for any physical damage and the integrity of the case;

(2) Removing the battery and inspecting for corrosion;

(3) Inspecting the contact points to ensure a secure connection to the battery;

(4) Reinserting the battery and powering up and shutting down to ensure proper connections; and

(5) Checking the battery compartment cover or battery attachment to ensure that it is securely fastened.

The results of this examination shall be recorded in the logbook.

(e) The equipment shall be examined at least weekly by a qualified person as defined in 30 CFR 75.153; the examination results shall be recorded weekly in the equipment's logbook. Examination entries in the logbook may be expunged after 1 year.

(f) The operator shall ensure that all non-permissible electronic surveying equipment is serviced according to the manufacturer's recommendations. Dates of service shall be recorded in the equipment's logbook and shall include a description of the work performed.

(g) The non-permissible surveying equipment that will be used in the

return airway outby the last open crosscut shall not be put into service until MSHA has initially inspected the equipment and determined that it is in compliance with all the terms and conditions of the Decision and Order.

(h) Non-permissible surveying equipment shall not be used if methane is detected in concentrations at or above 1.0 percent methane. When 1.0 percent or more of methane is detected while the non-permissible surveying equipment is being used, the equipment shall be de-energized immediately and the non-permissible electronic equipment withdrawn from the return airway outby the last open crosscut. All requirements of 30 CFR 75.323 shall be complied with prior to entering the return airway outby the last open crosscut.

(i) As an additional safety check, prior to setting up and energizing nonpermissible electronic surveying equipment in the return airway outby the last open crosscut, the surveyor(s) shall conduct a visual examination of the immediate area for evidence that the area appears to be sufficiently rock-dusted and for the presence of accumulated float coal dust. If the rock-dusting appears insufficient or the presence of accumulated float coal dust is observed, the equipment shall not be energized until sufficient rock dust has been applied and/or the accumulations of float coal dust have been removed. If nonpermissible electronic surveying equipment is to be used in an area that has not been rock-dusted within 40 feet of a working face where a continuous mining machine is used to extract coal, the area shall be rock-dusted prior to energizing the electronic surveying equipment.

(j) All hand-held methane detectors shall be MSHA-approved and maintained in permissible and proper operating condition as defined by 30 CFR 75.320. All methane detectors shall provide visual and audible warnings when methane is detected at or above 1.0 percent.

(k) Prior to energizing any of the non-permissible surveying equipment in the return airway outby the last open crosscut, methane tests shall be made in accordance with 30 CFR 75.323(a).

(l) All areas to be surveyed must be pre-shifted according to 30 CFR 75.360 prior to surveying. If the area was not pre-shifted, a supplemental examination according to 30 CFR 75.361 shall be performed before any non-certified person enters the area. If the area has been examined according to 30 CFR 75.360 or 30 CFR 75.361, additional examination is not required.

(m) A qualified person as defined in 30 CFR 75.151 shall continuously monitor for methane immediately before and during the use of non-permissible surveying equipment in the return airway outby the last open crosscut. A second person in the surveying crew, if there are two people in the crew, shall also continuously monitor for methane. That person shall be a qualified person as defined in 30 CFR 75.151 or be in the process of being trained to be a qualified person but have yet to ''make such tests for a period of 6 months'' as required by 30 CFR 75.150. Upon completion of the 6-month training period, the second person on the surveying crew shall become qualified in order to continue on the surveying crew. If the surveying crew consists of only one person, they shall monitor for methane with two separate devices.

(n) Batteries contained in the surveying equipment shall be changed out or charged in the return airway outby the last open crosscut. Replacement batteries for the electronic surveying equipment shall be carried only in the electronic equipment carrying case spare battery compartment. Before each surveying shift, all batteries for the electronic surveying equipment shall be charged sufficiently that they are not expected to be replaced on that shift.

(o) When using non-permissible electronic surveying equipment in the return airway outby the last open crosscut, the surveyor shall confirm by measurement or by inquiry of the person in charge of the section that the air quantity on the section, on that shift, in the last open crosscut is at least the minimum quantity required by the mine's ventilation plan.

(p) Personnel engaged in the use of surveying equipment shall be properly trained to recognize the hazards and limitations associated with the use of surveying equipment in areas where methane could be present.

(q) All members of the surveying crew shall receive specific training on the terms and conditions of the Decision and Order before using non-permissible electronic equipment in the return airway outby the last open crosscut. A record of the training shall be kept with the other training records.

(r) Within 60 days after any granted Decision and Order becomes final, the operator shall submit proposed revisions for its approved 30 CFR part 48 training plans to the Coal Mine Safety and Health District Manager. These proposed revisions shall specify initial and refresher training regarding the terms and conditions of the Decision and Order. When training is conducted on the terms and conditions of the Decision and Order, a MSHA Certificate of Training (Form 5000–23) shall be completed and shall include comments indicating it was surveyor training.

(s) The operator shall replace or retire from service any electronic surveying instrument acquired prior to December 31, 2004, within 1 year of the Decision and Order becoming final. Within 3 years of the date the Decision and Order becomes final, the operator shall replace or retire from service any theodolite acquired more than 5 years prior to the date the granted Decision and Order became final and any total station or other electronic surveying equipment identified in the Decision and Order acquired more than 10 years prior to the date the Decision and Order became final. After 5 years, the operator shall maintain a cycle of purchasing new electronic surveying equipment so that theodolites shall be no older than 5 years from date of manufacture and total stations and other electronic surveying equipment shall be no older than 10 years from date of manufacture.

(t) The operator is responsible for ensuring that all surveying contractors hired by the operator use electronic equipment in accordance with the requirements of item (s). The conditions of use specified in the Decision and Order shall apply to all non-permissible electronic surveying equipment used in the return airway outby the last open crosscut regardless of whether the equipment is used by the operator or by an independent contractor.

(u) Non-permissible surveying equipment may be used when production is occurring, subject to these conditions:

(1) On a mechanized mining unit (MMU) where production is occurring, non-permissible electronic surveying equipment shall not be used downwind of the discharge point of any face ventilation controls, such as tubing (including controls such as ''baloney skins'') or curtains.

(2) Production may continue while non-permissible electronic surveying equipment is used if the surveying equipment is used in a separate split of air from where production is occurring.

(3) Non-permissible surveying equipment shall not be used in a split of air ventilating a MMU if any ventilation controls will be disrupted during such surveying. Disruption of ventilation controls means any change to the mine's ventilation system that causes the ventilation system not to function in accordance with the mine's approved ventilation plan.

(4) If while surveying a surveyor must disrupt ventilation, the surveyor shall

cease surveying and communicate to the section foreman that ventilation must be disrupted. Production shall stop while ventilation is disrupted. Ventilation controls shall be reestablished immediately after the disruption is no longer necessary. Production shall only resume after all ventilation controls are reestablished and are in compliance with approved ventilation or other plans and other applicable laws, standards, or regulations.

(5) Any disruption in ventilation shall be recorded in the logbook required by the Decision and Order. The logbook shall include a description of the nature of the disruption, the location of the disruption, the date and time of the disruption, the date and time the surveyor communicated the disruption to the section foreman, the date and time production ceased, the date and time ventilation was reestablished, and the date and time production resumed.

(6) All surveyors, section foremen, section crew members, and other personnel who will be involved with or affected by surveying operations shall receive training in accordance with 30 CFR 48.7 on the requirements of the Decision and Order within 60 days of the date the Decision and Order becomes final. Such training shall be completed before any non-permissible surveying equipment can be used while production is occurring. The operator shall keep a record of such training and provide it to MSHA upon request.

(7) The operator shall provide annual retraining to all personnel who will be involved with or affected by surveying operations in accordance with 30 CFR 48.8. The operator shall train new miners on the requirements of the Decision and Order in accordance with 30 CFR 48.6. The operator shall keep a record of such training and provide it to MSHA upon request.

The petitioner asserts that the alternative method proposed will at all times guarantee no less than the same measure of protection afforded the miners under the mandatory standard.

Song-ae Aromie Noe,

Director, Office of Standards, Regulations, and Variances.

[FR Doc. 2022–25879 Filed 11–25–22; 8:45 am]

BILLING CODE 4520–43–P

DEPARTMENT OF LABOR

Mine Safety and Health Administration

Petition for Modification of Application of Existing Mandatory Safety Standards

AGENCY: Mine Safety and Health Administration, Labor.

ACTION: Notice.

SUMMARY: This notice is a summary of a petition for modification submitted to the Mine Safety and Health Administration (MSHA) by the party listed below.

DATES: All comments on the petition must be received by MSHA's Office of Standards, Regulations, and Variances on or before December 28, 2022.

ADDRESSES: You may submit comments identified by Docket No. MSHA–2022–0062 by any of the following methods:

1. *Federal eRulemaking Portal: https://www.regulations.gov.* Follow the instructions for submitting comments for MSHA–2022–062.
2. *Fax:* 202–693–9441.
3. *Email: petitioncomments@dol.gov.*
4. *Regular Mail or Hand Delivery:* MSHA, Office of Standards, Regulations, and Variances, 201 12th Street South, Suite 4E401, Arlington, Virginia 22202–5452.

Attention: S. Aromie Noe, Director, Office of Standards, Regulations, and Variances. Persons delivering documents are required to check in at the receptionist's desk in Suite 4E401. Individuals may inspect copies of the petition and comments during normal business hours at the address listed above. Before visiting MSHA in person, call 202–693–9455 to make an appointment, in keeping with the Department of Labor's COVID–19 policy. Special health precautions may be required.

FOR FURTHER INFORMATION CONTACT: S. Aromie Noe, Office of Standards, Regulations, and Variances at 202–693–9440 (voice), *Petitionsformodification@dol.gov* (email), or 202–693–9441 (fax). [These are not toll-free numbers.]

SUPPLEMENTARY INFORMATION: Section 101(c) of the Federal Mine Safety and Health Act of 1977 and Title 30 of the Code of Federal Regulations (CFR) part 44 govern the application, processing, and disposition of petitions for modification.

I. Background

Section 101(c) of the Federal Mine Safety and Health Act of 1977 (Mine Act) allows the mine operator or representative of miners to file a petition to modify the application of any mandatory safety standard to a coal or other mine if the Secretary of Labor determines that:

1. An alternative method of achieving the result of such standard exists which will at all times guarantee no less than the same measure of protection afforded the miners of such mine by such standard; or

2. The application of such standard to such mine will result in a diminution of safety to the miners in such mine.

In addition, sections 44.10 and 44.11 of 30 CFR establish the requirements for filing petitions for modification.

II. Petition for Modification

Docket Number: M–2022–027–C.

Petitioner: Crimson Oak Grove Resources, LLC, 8800 Oak Grove Mine Road, Adger, Alabama, 35006.

Mine: Oak Grove Mine, MSHA ID No. 01–00851, located in Jefferson County, Alabama.

Regulation Affected: 30 CFR 75.507–1(a), Electric equipment other than power-connection points; outby the last open crosscut; return air; permissibility requirements.

Modification Request: The petitioner requests a modification of 30 CFR 75.507–1(a) to permit the use of the CleanSpace EX Powered Respirator, an intrinsically safe Powered Air Purifying Respirator (PAPR), in return air outby the last open crosscut as an alternative method for respirable dust protection.

The petitioner states that:

(a) Oak Grove Mine previously used the 3M airstream helmets to provide miners respirable dust protection on the longwall faces. 3M has discontinued the Airstream helmet and there are no other MSHA approved PAPRs available.

(b) The CleanSpace EX is certified by UL under the ANSI/UL 60079–11 standard to be used in hazardous locations because it meets the intrinsic safety protection level and is acceptable in other jurisdictions for use in mines with the potential for methane accumulation.

(c) The CleanSpace EX Power Unit, manufactured by CleanSpace, has been determined to be intrinsically safe under IECEx and other countries' standards. CleanSpace is not pursuing MSHA approval.

The petitioner proposes the following alternative method:

(a) The equipment will be examined at least weekly by a qualified person in accordance with 30 CFR 75.512–2. Examination results will be recorded weekly and may be expunged after 1 year.

(b) The petitioner will comply with 30 CFR 75.323.

(c) A qualified person under 30 CFR 75.151 will monitor for methane as is required in the affected area of the mine.

(d) When not in operation, batteries for the PAPR will be charged on the surface or underground in intake air and not in return air outby the last open crosscut.

(e) The following battery charging products will be used: PAF–0066 and PAF–1100.

(f) Qualified miners will receive training regarding how to safely use, care for, and inspect the PAPR and on the Decision and Order before using equipment in the relevant part of the mine. A record of the training will be kept and made available upon request.

The petitioner asserts that the alternative method proposed will at all times guarantee no less than the same measure of protection afforded the miners under the mandatory standard.

Song-ae Aromie Noe,

Director, Office of Standards, Regulations, and Variances.

[FR Doc. 2022–25870 Filed 11–25–22; 8:45 am]

BILLING CODE 4520–43–P

DEPARTMENT OF LABOR

Mine Safety and Health Administration

Petition for Modification of Application of Existing Mandatory Safety Standards

AGENCY: Mine Safety and Health Administration, Labor.

ACTION: Notice.

SUMMARY: This notice is a summary of a petition for modification submitted to the Mine Safety and Health Administration (MSHA) by the party listed below.

DATES: All comments on the petition must be received by MSHA's Office of Standards, Regulations, and Variances on or before December 28, 2022.

ADDRESSES: You may submit comments identified by Docket No. MSHA–2022–0061 by any of the following methods:

1. *Federal eRulemaking Portal: https://www.regulations.gov.* Follow the instructions for submitting comments for MSHA–2022–0061.

2. *Fax:* 202–693–9441.

3. *Email: petitioncomments@dol.gov.*

4. *Regular Mail or Hand Delivery:* MSHA, Office of Standards, Regulations, and Variances, 201 12th Street South, Suite 4E401, Arlington, Virginia 22202–5452.

Attention: S. Aromie Noe, Director, Office of Standards, Regulations, and Variances. Persons delivering documents are required to check in at the receptionist's desk in Suite 4E401. Individuals may inspect copies of the petition and comments during normal business hours at the address listed above. Before visiting MSHA in person, call 202–693–9455 to make an appointment, in keeping with the Department of Labor's COVID–19 policy. Special health precautions may be required.

FOR FURTHER INFORMATION CONTACT: S. Aromie Noe, Office of Standards, Regulations, and Variances at 202–693–9440 (voice), *Petitionsformodification@dol.gov* (email), or 202–693–9441 (fax). [These are not toll-free numbers.]

SUPPLEMENTARY INFORMATION: Section 101(c) of the Federal Mine Safety and Health Act of 1977 and title 30 of the Code of Federal Regulations (CFR) part 44 govern the application, processing, and disposition of petitions for modification.

I. Background

Section 101(c) of the Federal Mine Safety and Health Act of 1977 (Mine Act) allows the mine operator or representative of miners to file a petition to modify the application of any mandatory safety standard to a coal or other mine if the Secretary of Labor determines that:

1. An alternative method of achieving the result of such standard exists which will at all times guarantee no less than the same measure of protection afforded the miners of such mine by such standard; or

2. The application of such standard to such mine will result in a diminution of safety to the miners in such mine.

In addition, sections 44.10 and 44.11 of 30 CFR establish the requirements for filing petitions for modification.

II. Petition for Modification

Docket Number: M–2022–026–C.

Petitioner: Crimson Oak Grove Resources, LLC, 8800 Oak Grove Mine Road, Adger, Alabama, 35006.

Mine: Oak Grove Mine, MSHA ID No. 01–00851, located in Jefferson County, Alabama.

Regulation Affected: 30 CFR 75.1002(a), Installation of electric equipment and conductors; permissibility.

Modification Request: The petitioner requests a modification of 30 CFR 75.1002(a) to permit the use of the CleanSpace EX Powered Respirator, an intrinsically safe Powered Air Purifying Respirator (PAPR), within 150 feet of pillar workings or longwall faces as an alternative method for respirable dust protection.

The petitioner states that:

(a) Oak Grove Mine previously used the 3M airstream helmets to provide miners respirable dust protection on the longwall faces. 3M has discontinued the Airstream helmet and there are no other MSHA approved PAPRs available.

(b) The CleanSpace EX is certified by UL under the ANSI/UL 60079–11 standard to be used in hazardous locations because it meets the intrinsic safety protection level and is acceptable in other jurisdictions for use in mines with the potential for methane accumulation.

(d) The CleanSpace EX Power Unit, manufactured by CleanSpace, has been determined to be intrinsically safe under IECEx and other countries' standards. CleanSpace is not pursuing MSHA approval.

The petitioner proposes the following alternative method:

(a) The equipment will be examined at least weekly by a qualified person in accordance with 30 CFR 75.512–2. Examination results will be recorded weekly and may be expunged after 1 year.

(b) The petitioner will comply with 30 CFR 75.323.

(c) A qualified person under 30 CFR 75.151 will monitor for methane as is required in the affected area of the mine.

(e) When not in operation, batteries for the PAPR will be charged on the surface or underground in intake air and not within 150 feet of the pillar workings or longwall face.

(f) The following battery charging products will be used: PAF–0066 and PAF–1100.

(g) Qualified miners will receive training regarding how to safely use, care for, and inspect the PAPR and on the Decision and Order before using equipment in the relevant part of the mine. A record of the training will be kept and made available upon request.

The petitioner asserts that the alternative method proposed will at all times guarantee no less than the same measure of protection afforded the miners under the mandatory standard.

Song-ae Aromie Noe,

Director, Office of Standards, Regulations, and Variances.

[FR Doc. 2022–25869 Filed 11–25–22; 8:45 am]

BILLING CODE 4520–43–P

DEPARTMENT OF LABOR

Mine Safety and Health Administration

Petition for Modification of Application of Existing Mandatory Safety Standards

AGENCY: Mine Safety and Health Administration, Labor.

ACTION: Notice.

SUMMARY: This notice is a summary of a petition for modification submitted to the Mine Safety and Health Administration (MSHA) by the party listed below.

DATES: All comments on the petition must be received by MSHA's Office of Standards, Regulations, and Variances on or before December 28, 2022.

ADDRESSES: You may submit comments identified by Docket No. MSHA–2022–0065 by any of the following methods:

1. *Federal eRulemaking Portal: https://www.regulations.gov.* Follow the instructions for submitting comments for MSHA–2022–0065.
2. *Fax:* 202–693–9441.
3. *Email: petitioncomments@dol.gov.*
4. *Regular Mail or Hand Delivery:* MSHA, Office of Standards, Regulations, and Variances, 201 12th Street South, Suite 4E401, Arlington, Virginia 22202–5452.

Attention: S. Aromie Noe, Director, Office of Standards, Regulations, and Variances. Persons delivering documents are required to check in at the receptionist's desk in Suite 4E401. Individuals may inspect copies of the petition and comments during normal business hours at the address listed above. Before visiting MSHA in person, call 202–693–9455 to make an appointment, in keeping with the Department of Labor's COVID–19 policy. Special health precautions may be required.

FOR FURTHER INFORMATION CONTACT: S. Aromie Noe, Office of Standards, Regulations, and Variances at 202–693–9440 (voice), *Petitionsformodification@dol.gov* (email), or 202–693–9441 (fax). [These are not toll-free numbers.]

SUPPLEMENTARY INFORMATION: Section 101(c) of the Federal Mine Safety and Health Act of 1977 and title 30 of the Code of Federal Regulations (CFR) part 44 govern the application, processing, and disposition of petitions for modification.

I. Background

Section 101(c) of the Federal Mine Safety and Health Act of 1977 (Mine Act) allows the mine operator or representative of miners to file a petition to modify the application of any mandatory safety standard to a coal or other mine if the Secretary of Labor determines that:

1. An alternative method of achieving the result of such standard exists which will at all times guarantee no less than the same measure of protection afforded the miners of such mine by such standard; or
2. The application of such standard to such mine will result in a diminution of safety to the miners in such mine.

In addition, sections 44.10 and 44.11 of 30 CFR establish the requirements for filing petitions for modification.

II. Petition for Modification

Docket Number: M–2022–029–C.

Petitioner: Ramaco Resources, LCC, PO Box 219, Verner, West Virginia, 25650.

Mine: Mine No. 1, MSHA ID No. 44–07369, located in Tazewell County, Virginia.

Regulation Affected: 30 CFR 75.500(d), Permissible electric equipment.

Modification Request: The petitioner requests a modification of 30 CFR 75.500(d) to permit the use of battery-powered nonpermissible surveying equipment, including, but not limited to, portable battery operated mine transits, total station surveying equipment, distance meters, and data loggers in or inby the last open crosscut.

The petitioner states that:

(a) To comply with requirements of 30 CFR 75.372 and 30 CFR 75.1200 use of the most practical and accurate surveying equipment is necessary.

(b) Mechanical surveying equipment has been obsolete for several years. Such equipment of acceptable quality is not commercially available, and it is difficult, if not impossible, to have such equipment serviced or repaired.

(c) Electronic surveying equipment is, at a minimum, eight to ten times more accurate than mechanical equipment.

(d) The mine uses the continuous mining machine method of mining.

(e) Accurate surveying is critical to the safety of the miners.

(f) Underground mining by its nature, size and complexity of mine plans requires that accurate and precise measurements be completed in a prompt and efficient manner.

The petitioner proposes the following alternative method:

(a) Using the following total station and theodolite and similar low voltage battery-operated total stations and theodolites with an ingress protection (IP) rating of 66 or greater in or inby the last open crosscut subject to the conditions of the Decision and Order:

(1) Sokkia—CX–105LN.

(b) The equipment allowed under the Decision and Order is low voltage or batterypowered non-permissible total stations and theodolites with an IP rating of 66 or greater.

(c) The operator shall maintain a logbook for electronic surveying equipment with the equipment, in the location where mine record books are kept, or in the location where the surveying record books are kept. The logbook will contain the date of manufacture and/or purchase of each piece of electronic surveying equipment. The logbook shall be made available to MSHA upon request.

(d) All non-permissible electronic surveying equipment to be taken into or inby the last open crosscut shall be examined by the person to operate the equipment prior to taking the equipment underground to ensure the equipment is maintained in a safe operating condition. These examinations shall include:

(1) Checking the instrument for any physical damage and the integrity of the case;

(2) Removing the battery and inspecting for corrosion;

(3) Inspecting the contact points to ensure a secure connection to the battery;

(4) Reinserting the battery and powering up and shutting down to ensure proper connections; and

(5) Checking the battery compartment cover or battery attachment to ensure that it is securely fastened.

The results of this examination shall be recorded in the logbook.

(e) The equipment shall be examined at least weekly by a qualified person as defined in 30 CFR 75.153; the examination results shall be recorded weekly in the equipment's logbook. Examination entries in the logbook may be expunged after 1 year.

(f) The operator shall ensure that all non-permissible electronic surveying equipment is serviced according to the manufacturer's recommendations. Dates of service shall be recorded in the equipment's logbook and shall include a description of the work performed.

(g) The non-permissible surveying equipment to be taken into or inby the last open crosscut

shall not be put into service until MSHA has initially inspected the equipment and determined that it is in compliance with all the terms and conditions of the Decision and Order.

(h) Non-permissible surveying equipment shall not be used if methane is detected in concentrations at or above 1.0 percent methane. When 1.0 percent or more of methane is detected while the non-permissible surveying

equipment is being used, the equipment shall be de-energized immediately and the non-permissible electronic equipment withdrawn outby the last open crosscut. All requirements of 30 CFR 75.323 shall be complied with prior to being taken into or inby the last open crosscut.

(i) As an additional safety check, prior to setting up and energizing nonpermissible electronic surveying equipment in or inby the last open crosscut, the surveyor(s) shall conduct a visual examination of the immediate area for evidence that the area appears to be sufficiently rock-dusted and for the presence of accumulated float coal dust. If the rock-dusting appears insufficient or the presence of accumulated float coal dust is observed, the equipment shall not be energized until sufficient rock dust has been applied and/or the accumulations of float coal dust have been removed. If nonpermissible electronic surveying equipment is to be used in an area that has not been rock-dusted within 40 feet of a working face where a continuous mining machine is used to extract coal, the area shall be rock-dusted prior to energizing the electronic surveying equipment.

(j) All hand-held methane detectors shall be MSHA-approved and maintained in permissible and proper operating condition as defined by 30 CFR 75.320. All methane detectors shall provide visual and audible warnings when methane is detected at or above 1.0 percent.

(k) Prior to energizing any of the non-permissible surveying equipment in or inby the last open crosscut, methane tests shall be made in accordance with 30 CFR 75.323(a).

(l) All areas to be surveyed must be pre-shifted according to 30 CFR 75.360 prior to surveying. If the area was not pre-shifted, a supplemental examination according to 30 CFR 75.361 shall be performed before any non-certified person enters the area. If the area has been examined according to 30 CFR 75.360 or 30 CFR 75.361, additional examination is not required.

(m) A qualified person as defined in 30 CFR 75.151 shall continuously monitor for methane immediately before and during the use of non-permissible surveying equipment in or inby the last open crosscut. A second person in the surveying crew, if there are two people in the crew, shall also continuously monitor for methane. That person shall be a qualified person as defined in 30 CFR 75.151 or be in the process of being trained to be a qualified person but have yet to ''make such tests for a period of 6 months'' as required by 30 CFR 75.150. Upon completion of the 6-month training period, the second person on the surveying crew shall become qualified in order to continue on the surveying crew. If the surveying crew consists of only one person, they shall monitor for methane with two separate devices.

(n) Batteries contained in the surveying equipment shall be changed out or charged in intake air outby the last open crosscut. Replacement batteries for the electronic surveying equipment shall be carried only in the electronic equipment carrying case spare battery compartment. Before each surveying shift, all batteries for the electronic surveying equipment shall be charged sufficiently that they are not expected to be replaced on that shift.

(o) When using non-permissible electronic surveying equipment in or inby the last open crosscut, the surveyor shall confirm by measurement or by inquiry of the person in charge of the section that the air quantity on the section, on that shift, in the last open crosscut is at least the minimum quantity required by the mine's ventilation plan.

(p) Personnel engaged in the use of surveying equipment shall be properly trained to recognize the hazards and limitations associated with the use of surveying equipment in areas where methane could be present.

(q) All members of the surveying crew shall receive specific training on the terms and conditions of the Decision and Order before using non-permissible electronic equipment in or inby the last open crosscut. A record of the training shall be kept with the other training records.

(r) Within 60 days after any granted Decision and Order becomes final, the operator shall submit proposed revisions for its approved 30 CFR part 48 training plans to the Coal Mine Safety and Health District Manager. These proposed revisions shall specify initial and refresher training regarding the terms and conditions of the Decision and Order. When training is conducted on the terms and conditions of the Decision and Order, a MSHA Certificate of Training (Form 5000–23) shall be completed and shall include comments indicating it was surveyor training.

(s) The operator shall replace or retire from service any electronic surveying instrument acquired prior to December 31, 2004, within 1 year of the Decision and Order becoming final. Within 3 years of the date the Decision and Order becomes final, the operator shall replace or retire from service any theodolite acquired more than 5 years prior to the date the granted Decision and Order became final and any total station or other electronic surveying equipment identified in the Decision and Order acquired more than 10 years prior to the date the Decision and Order became final. After 5 years, the operator shall maintain a cycle of purchasing new electronic surveying equipment so that theodolites shall be no older than 5 years from date of manufacture and total stations and other electronic surveying equipment shall be no older than 10 years from date of manufacture.

(t) The operator is responsible for ensuring that all surveying contractors hired by the operator use electronic equipment in accordance with the requirements of item (s). The conditions of use specified in the Decision and Order shall apply to all non-permissible electronic surveying equipment used in or inby the last open crosscut regardless of whether the equipment is used by the operator or by an independent contractor.

(u) Non-permissible surveying equipment may be used when production is occurring, subject to these conditions:

(1) On a mechanized mining unit (MMU) where production is occurring, non-permissible electronic surveying equipment shall not be used downwind of the discharge point of any face ventilation controls, such as tubing (including controls such as ''baloney skins'') or curtains.

(2) Production may continue while non-permissible electronic surveying equipment is used if the surveying equipment is used in a separate split of air from where production is occurring.

(3) Non-permissible surveying equipment shall not be used in a split of air ventilating a MMU if any ventilation controls will be disrupted during such surveying. Disruption of ventilation controls means any change to the mine's ventilation system that causes the ventilation system not to function in accordance with the mine's approved ventilation plan.

(4) If while surveying a surveyor must disrupt ventilation, the surveyor shall cease surveying and communicate to the section foreman that ventilation must be disrupted. Production shall stop while ventilation is disrupted. Ventilation controls shall be reestablished immediately after the disruption is no longer necessary. Production shall only resume after all ventilation controls are reestablished and are in compliance with approved ventilation or other plans and other applicable laws, standards, or regulations.

(5) Any disruption in ventilation shall be recorded in the logbook required by the Decision and Order. The logbook

shall include a description of the nature of the disruption, the location of the disruption, the date and time of the disruption, the date and time the surveyor communicated the disruption to the section foreman, the date and time production ceased, the date and time ventilation was reestablished, and the date and time production resumed.

(6) All surveyors, section foremen, section crew members, and other personnel who will be involved with or affected by surveying operations shall receive training in accordance with 30 CFR 48.7 on the requirements of the Decision and Order within 60 days of the date the Decision and Order becomes final. Such training shall be completed before any non-permissible surveying equipment can be used while production is occurring. The operator shall keep a record of such training and provide it to MSHA upon request.

(7) The operator shall provide annual retraining to all personnel who will be involved with or affected by surveying operations in accordance with 30 CFR 48.8. The operator shall train new miners on the requirements of the Decision and Order in accordance with 30 CFR 48.6. The operator shall keep a record of such training and provide it to MSHA upon request

The petitioner asserts that the alternative method proposed will at all times guarantee no less than the same measure of protection afforded the miners under the mandatory standard.

Song-ae Aromie Noe,

Director, Office of Standards, Regulations, and Variances.

[FR Doc. 2022–25878 Filed 11–25–22; 8:45 am]

BILLING CODE 4520–43–P

DEPARTMENT OF LABOR

Mine Safety and Health Administration

Petition for Modification of Application of Existing Mandatory Safety Standards

AGENCY: Mine Safety and Health Administration, Labor.

ACTION: Notice.

SUMMARY: This notice is a summary of a petition for modification submitted to the Mine Safety and Health Administration (MSHA) by the party listed below.

DATES: All comments on the petition must be received by MSHA's Office of Standards, Regulations, and Variances on or before December 28, 2022.

ADDRESSES: You may submit comments identified by Docket No. MSHA–2022–0063 by any of the following methods:

1. *Federal eRulemaking Portal: https://www.regulations.gov.* Follow the instructions for submitting comments for MSHA–2022–063.
2. *Fax:* 202–693–9441.
3. *Email: petitioncomments@dol.gov.*
4. *Regular Mail or Hand Delivery:* MSHA, Office of Standards, Regulations, and Variances, 201 12th Street South, Suite 4E401, Arlington, Virginia 22202–5452.

Attention: S. Aromie Noe, Director, Office of Standards, Regulations, and Variances. Persons delivering documents are required to check in at the receptionist's desk in Suite 4E401. Individuals may inspect copies of the petition and comments during normal business hours at the address listed above. Before visiting MSHA in person, call 202–693–9455 to make an appointment, in keeping with the Department of Labor's COVID–19 policy. Special health precautions may be required.

FOR FURTHER INFORMATION CONTACT: S. Aromie Noe, Office of Standards, Regulations, and Variances at 202–693–9440 (voice), *Petitionsformodification@dol.gov* (email), or 202–693–9441 (fax). [These are not toll-free numbers.]

SUPPLEMENTARY INFORMATION: Section 101(c) of the Federal Mine Safety and Health Act of 1977 and Title 30 of the Code of Federal Regulations (CFR) part 44 govern the application, processing, and disposition of petitions for modification.

I. Background

Section 101(c) of the Federal Mine Safety and Health Act of 1977 (Mine Act) allows the mine operator or representative of miners to file a petition to modify the application of any mandatory safety standard to a coal or other mine if the Secretary of Labor determines that:

1. An alternative method of achieving the result of such standard exists which will at all times guarantee no less than the same measure of protection afforded the miners of such mine by such standard; or

2. The application of such standard to such mine will result in a diminution of safety to the miners in such mine.

In addition, sections 44.10 and 44.11 of 30 CFR establish the requirements for filing petitions for modification.

II. Petition for Modification

Docket Number: M–2022–028–C

Petitioner: Crimson Oak Grove Resources, LLC, 8800 Oak Grove Mine Road, Adger, Alabama, 35006.

Mine: Oak Grove Mine, MSHA ID No. 01–00851, located in Jefferson County, Alabama.

Regulation Affected: 30 CFR 75.500(d), Permissible electric equipment.

Modification Request: The petitioner requests a modification of 30 CFR 75.500(d) to permit the use of the CleanSpace EX Powered Respirator, an intrinsically safe Powered Air Purifying Respirator (PAPR), inby the last open crosscut as an alternative method for respirable dust protection.

The petitioner states that:

(a) Oak Grove Mine previously used the 3M airstream helmets to provide miners respirable dust protection on the longwall faces. 3M has discontinued the Airstream helmet and there are no other MSHA approved PAPRs available.

(b) The CleanSpace EX is certified by UL under the ANSI/UL 60079–11 standard to be used in hazardous locations because it meets the intrinsic safety protection level and is acceptable in other jurisdictions for use in mines with the potential for methane accumulation.

(c) The CleanSpace EX Power Unit, manufactured by CleanSpace, has been determined to be intrinsically safe under IECEx and other countries' standards. CleanSpace is not pursuing MSHA approval.

The petitioner proposes the following alternative method:

(a) The equipment will be examined at least weekly by a qualified person in accordance with 30 CFR 75.512–2. Examination results will be recorded weekly and may be expunged after 1 year.

(b) The petitioner will comply with 30 CFR 75.323.

(c) A qualified person under 30 CFR 75.151 will monitor for methane as is required in the affected area of the mine.

(d) When not in operation, batteries for the PAPR will be charged on the surface or underground in intake air and not inby the last open crosscut.

(e) The following battery charging products will be used: PAF–0066 and PAF–1100.

(f) Qualified miners will receive training regarding how to safely use, care for, and inspect the PAPR and on the Decision and Order before using equipment in the relevant part of the mine. A record of the training will be kept and made available upon request.

The petitioner asserts that the alternative method proposed will at all times guarantee no less than the same measure of protection afforded the miners under the mandatory standard.

Song-ae Aromie Noe,

Director, Office of Standards, Regulations, and Variances.

[FR Doc. 2022–25871 Filed 11–25–22; 8:45 am]

BILLING CODE 4520–43–P

DEPARTMENT OF LABOR

Mine Safety and Health Administration

Petition for Modification of Application of Existing Mandatory Safety Standards

AGENCY: Mine Safety and Health Administration, Labor.

ACTION: Notice.

SUMMARY: This notice is a summary of a petition for modification submitted to the Mine Safety and Health Administration (MSHA) by the party listed below.

DATES: All comments on the petition must be received by MSHA's Office of Standards, Regulations, and Variances on or before December 28, 2022.

ADDRESSES: You may submit comments identified by Docket No. MSHA–2022–0067 by any of the following methods:

1. *Federal eRulemaking Portal: https://www.regulations.gov.* Follow the instructions for submitting comments for MSHA–2022–0067.
2. *Fax:* 202–693–9441.
3. *Email: petitioncomments@dol.gov.*
4. *Regular Mail or Hand Delivery:* MSHA, Office of Standards, Regulations, and Variances, 201 12th Street South, Suite 4E401, Arlington, Virginia 22202–5452.

Attention: S. Aromie Noe, Director, Office of Standards, Regulations, and Variances. Persons delivering documents are required to check in at the receptionist's desk in Suite 4E401. Individuals may inspect copies of the petition and comments during normal business hours at the address listed above. Before visiting MSHA in person, call 202–693–9455 to make an appointment, in keeping with the Department of Labor's COVID–19 policy. Special health precautions may be required.

FOR FURTHER INFORMATION CONTACT: S. Aromie Noe, Office of Standards, Regulations, and Variances at 202–693–9440 (voice), *Petitionsformodification@dol.gov* (email), or 202–693–9441 (fax). [These are not toll-free numbers.]

SUPPLEMENTARY INFORMATION: Section 101(c) of the Federal Mine Safety and Health Act of 1977 and Title 30 of the Code of Federal Regulations (CFR) part 44 govern the application, processing, and disposition of petitions for modification.

I. Background

Section 101(c) of the Federal Mine Safety and Health Act of 1977 (Mine Act) allows the mine operator or representative of miners to file a petition to modify the application of any mandatory safety standard to a coal or other mine if the Secretary of Labor determines that:

1. An alternative method of achieving the result of such standard exists which will at all times guarantee no less than the same measure of protection afforded the miners of such mine by such standard; or
2. The application of such standard to such mine will result in a diminution of safety to the miners in such mine.

In addition, sections 44.10 and 44.11 of 30 CFR establish the requirements for filing petitions for modification.

II. Petition for Modification

Docket Number: M–2022–031–C

Petitioner: Ramaco Resources, LCC, P.O. Box 219, Verner, West Virginia, 25650.

Mine: Mine No. 1, MSHA ID No. 44–07369, located in Tazewell County, Virginia.

Regulation Affected: 30 CFR 75.1002(a), Installation of electric equipment and conductors; permissibility.

Modification Request: The petitioner requests a modification of 30 CFR 75.1002(a) to permit the use of battery-powered nonpermissible surveying equipment, including, but not limited to, portable battery operated mine transits, total station surveying equipment, distance meters, and data loggers within 150 feet of pillar workings or longwall faces.

The petitioner states that:

(a) To comply with requirements of 30 CFR 75.372, 30 CFR 75.1002(a), and 30 CFR 75.1200 use of the most practical and accurate surveying equipment is necessary. To ensure the safety of the miners in active mines and to protect miners in future mines which may mine in close proximity, it is necessary to determine the exact location and extent of the mine workings.

(b) Accurate surveying is critical to the safety of the miners.

(c) Underground mining by its nature, size and complexity of mine plans requires that accurate and precise measurements be completed in a prompt and efficient manner.

The petitioner proposes the following alternative method:

(a) Using the following total station and theodolite and similar low voltage battery-operated total stations and theodolites with an ingress protection (IP) rating of 66 or greater within 150 feet of pillar workings or longwall faces subject to the conditions of the Decision and Order:

(1) Sokkia—CX–105LN.

(b) The equipment allowed under the Decision and Order is low voltage or batterypowered non-permissible total stations and theodolites with an IP rating of 66 or greater.

(c) The operator shall maintain a logbook for electronic surveying equipment with the equipment, in the location where mine record books are kept, or in the location where the surveying record books are kept. The logbook will contain the date of manufacture and/or purchase of each piece of electronic surveying equipment. The logbook shall be made available to MSHA upon request.

(d) All non-permissible electronic surveying equipment to be used within 150 feet of pillar workings or longwall faces shall be examined by the person to operate the equipment prior to taking the equipment underground to ensure the equipment is maintained in a safe operating condition. These examinations shall include:

(1) Checking the instrument for any physical damage and the integrity of the case;

(2) Removing the battery and inspecting for corrosion;

(3) Inspecting the contact points to ensure a secure connection to the battery;

(4) Reinserting the battery and powering up and shutting down to ensure proper connections; and

(5) Checking the battery compartment cover or battery attachment to ensure that it is securely fastened.

The results of this examination shall be recorded in the logbook.

(e) The equipment shall be examined at least weekly by a qualified person as defined in 30 CFR 75.153; the examination results shall be recorded weekly in the equipment's logbook. Examination entries in the logbook may be expunged after 1 year.

(f) The operator shall ensure that all non-permissible electronic surveying equipment is serviced according to the manufacturer's recommendations. Dates of service shall be recorded in the equipment's logbook and shall include a description of the work performed.

(g) The non-permissible surveying equipment that will be used within 150 feet of pillar workings or longwall faces shall not be put into service until MSHA has initially inspected the equipment and determined that it is in compliance with all the terms and conditions of the Decision and Order.

(h) As an additional safety check, prior to setting up and energizing nonpermissible electronic surveying equipment within 150 feet of pillar workings or longwall faces, the surveyor(s) shall conduct a visual examination of the immediate area for evidence that the area appears to be

sufficiently rock-dusted and for the presence of accumulated float coal dust. If the rock-dusting appears insufficient or the presence of accumulated float coal dust is observed, the equipment shall not be energized until sufficient rock dust has been applied and/or the accumulations of float coal dust have been removed. If nonpermissible electronic surveying equipment is to be used in an area that has not been rock-dusted within 40 feet of a working face where a continuous mining machine is used to extract coal, the area shall be rock-dusted prior to energizing the electronic surveying equipment.

(i) All hand-held methane detectors shall be MSHA-approved and maintained in permissible and proper operating condition as defined by 30 CFR 75.320. All methane detectors shall provide visual and audible warnings when methane is detected at or above 1.0 percent.

(j) Prior to energizing any of the non-permissible surveying equipment within 150 feet of pillar workings or longwall faces, methane tests shall be made in accordance with 30 CFR 75.323(a).

(k) All areas to be surveyed must be pre-shifted according to 30 CFR 75.360 prior to surveying. If the area was not pre-shifted, a supplemental examination according to 30 CFR 75.361 shall be performed before any non-certified person enters the area. If the area has been examined according to 30 CFR 75.361, additional examination is not required.

(l) A qualified person as defined in 30 CFR 75.151 shall continuously monitor for methane immediately before and during the use of non-permissible surveying equipment within 150 feet of pillar workings or longwall faces. A second person in the surveying crew, if there are two people in the crew, shall also continuously monitor for methane. That person shall be a qualified person as defined in 30 CFR 75.151 or be in the process of being trained to be a qualified person but have yet to ''make such tests for a period of 6 months'' as required by 30 CFR 75.151. Upon completion of the 6-month training period, the second person on the surveying crew shall become qualified in order to continue on the surveying crew. If the surveying crew consists of only one person, they shall monitor for methane with two separate devices.

(m) Batteries contained in the surveying equipment shall be changed out or charged more than 150 feet of pillar workings or the longwall face. Replacement batteries for the electronic surveying equipment shall be carried only in the electronic equipment carrying case spare battery compartment. Before each surveying shift, all batteries for the electronic surveying equipment shall be charged sufficiently that they are not expected to be replaced on that shift.

(n) When using non-permissible electronic surveying equipment in within 150 feet of pillar workings or longwall faces, the surveyor shall confirm by measurement or by inquiry of the person in charge of the section that the air quantity on the section, on that shift, in the last open crosscut is at least the minimum quantity required by the mine's ventilation plan.

(o) Personnel engaged in the use of surveying equipment shall be properly trained to recognize the hazards and limitations associated with the use of surveying equipment in areas where methane could be present.

(p) All members of the surveying crew shall receive specific training on the terms and conditions of the Decision and Order before using non-permissible electronic equipment within 150 feet of pillar workings or longwall faces. A record of the training shall be kept with the other training records.

(q) Within 60 days after any granted Decision and Order becomes final, the operator shall submit proposed revisions for its approved 30 CFR part 48 training plans to the Coal Mine Safety and Health District Manager. These proposed revisions shall specify initial and refresher training regarding the terms and conditions of the Decision and Order. When training is conducted on the terms and conditions of the Decision and Order, a MSHA Certificate of Training (Form 5000–23) shall be completed and shall include comments indicating it was surveyor training.

(r) The operator shall replace or retire from service any electronic surveying instrument acquired prior to December 31, 2004, within 1 year of the Decision and Order becoming final. Within 3 years of the date the Decision and Order becomes final, the operator shall replace or retire from service any theodolite acquired more than 5 years prior to the date the granted Decision and Order became final and any total station or other electronic surveying equipment identified in the Decision and Order acquired more than 10 years prior to the date the Decision and Order became final. After 5 years, the operator shall maintain a cycle of purchasing new electronic surveying equipment so that theodolites shall be no older than 5 years from date of manufacture and total stations and other electronic surveying equipment shall be no older than 10 years from date of manufacture.

(s) The operator is responsible for ensuring that all surveying contractors hired by the operator use electronic equipment in accordance with the requirements of item (s). The conditions of use specified in the Decision and Order shall apply to all non-permissible electronic surveying equipment used in the return airway outby the last open crosscut regardless of whether the equipment is used by the operator or by an independent contractor.

(t) Non-permissible surveying equipment may be used when production is occurring, subject to these conditions:

(1) On a mechanized mining unit (MMU) where production is occurring, non-permissible electronic surveying equipment shall not be used downwind of the discharge point of any face ventilation controls, such as tubing (including controls such as ''baloney skins'') or curtains.

(2) Production may continue while non-permissible electronic surveying equipment is used if the surveying equipment is used in a separate split of air from where production is occurring.

(3) Non-permissible surveying equipment shall not be used in a split of air ventilating a MMU if any ventilation controls will be disrupted during such surveying. Disruption of ventilation controls means any change to the mine's ventilation system that causes the ventilation system not to function in accordance with the mine's approved ventilation plan.

(4) If while surveying a surveyor must disrupt ventilation, the surveyor shall cease surveying and communicate to the section foreman that ventilation must be disrupted. Production shall stop while ventilation is disrupted. Ventilation controls shall be reestablished immediately after the disruption is no longer necessary. Production shall only resume after all ventilation controls are reestablished and are in compliance with approved ventilation or other plans and other applicable laws, standards, or regulations.

(5) Any disruption in ventilation shall be recorded in the logbook required by the Decision and Order. The logbook shall include a description of the nature of the disruption, the location of the disruption, the date and time of the disruption, the date and time the surveyor communicated the disruption to the section foreman, the date and time production ceased, the date and time ventilation was reestablished, and the date and time production resumed.

(6) All surveyors, section foremen, section crew members, and other personnel who will be involved with or affected by surveying operations shall receive training in accordance with 30 CFR 48.7 on the requirements of the

Decision and Order within 60 days of the date the Decision and Order becomes final. Such training shall be completed before any non-permissible surveying equipment can be used while production is occurring. The operator shall keep a record of such training and provide it to MSHA upon request.

(7) The operator shall provide annual retraining to all personnel who will be involved with or affected by surveying operations in accordance with 30 CFR 48.8. The operator shall train new miners on the requirements of the Decision and Order in accordance with 30 CFR 48.6. The operator shall keep a record of such training and provide it to MSHA upon request

The petitioner asserts that the alternative method proposed will at all times guarantee no less than the same measure of protection afforded the miners under the mandatory standard.

Song-ae Aromie Noe,

Director, Office of Standards, Regulations, and Variances.

[FR Doc. 2022–25880 Filed 11–25–22; 8:45 am]

BILLING CODE 4520–43–P

NATIONAL SCIENCE FOUNDATION

Sunshine Act Meetings

The National Science Board's Committee on Strategy hereby gives notice of the scheduling of a teleconference for the transaction of National Science Board business pursuant to the National Science Foundation Act and the Government in the Sunshine Act.

TIME AND DATE: Thursday, December 1, 2022, from 10:00 a.m.–11:00 p.m. EST.

PLACE: This meeting will be held in person at NSF headquarters at 2415 Eisenhower Ave., Alexandria, VA 22314, and by videoconference through the National Science Foundation.

STATUS: Closed.

MATTERS TO BE CONSIDERED: The agenda of the teleconference is: Committee Chair's opening remarks; Discussion of NSF's FY 2023 Budget; Discussion of NSF's FY 2024 Budget Request; and Update on the CHIPS and Science Act.

CONTACT PERSON FOR MORE INFORMATION: Point of contact for this meeting is: Kathy Jacquart, *kjaquart@nsf.gov* (703) 292–7000. Meeting information and updates may be found at *www.nsf.gov/nsb.*

Christopher Blair,

Executive Assistant to the National Science Board Office.

[FR Doc. 2022–26036 Filed 11–23–22; 4:15 pm]

BILLING CODE 7555–01–P

NATIONAL SCIENCE FOUNDATION

Sunshine Act Meetings

The National Science Board's Awards and Facilities Committee hereby gives notice of the scheduling of a teleconference for the transaction of National Science Board business pursuant to the National Science Foundation Act and the Government in the Sunshine Act.

TIME AND DATE: Wednesday, November 30, 2022, from 1:00–3:40 p.m. EST.

PLACE: This meeting will be held at NSF headquarters, 2145 Eisenhower Ave., Alexandria, VA 22314, and by videoconference.

STATUS: Closed.

MATTERS TO BE CONSIDERED: The agenda of the teleconference is: Committee Chair's Opening Remarks; Context item: Authorization of Infrastructure Recapitalization Portfolio; Context item: Authorization for NSF to issue the Request for Proposal for the Recompetition of the Antarctic Support Contract; Context Item: Mid-scale Research Infrastructure Tract 2 Awards Portfolio; and Information item: Annual Report of the Chief Officer for Research Facilities.

CONTACT PERSON FOR MORE INFORMATION: Point of contact for this meeting is: Michelle McCrackin, *mmccrack@nsf.gov,* (703) 292–7000. Meeting information and updates may be found at *www.nsf.gov/nsb.*

Christopher Blair,

Executive Assistant to the National Science Board Office.

[FR Doc. 2022–26033 Filed 11–23–22; 4:15 pm]

BILLING CODE 7555–01–P

NATIONAL SCIENCE FOUNDATION

Notice of Permit Applications Received Under the Antarctic Conservation Act of 1978

AGENCY: National Science Foundation.

ACTION: Notice of Permit Applications Received.

SUMMARY: The National Science Foundation (NSF) is required to publish a notice of permit applications received to conduct activities regulated under the Antarctic Conservation Act of 1978. NSF has published regulations under the Antarctic Conservation Act in the Code of Federal Regulations. This is the required notice of permit applications received.

DATES: Interested parties are invited to submit written data, comments, or views with respect to this permit application by December 28, 2022. This application may be inspected by interested parties at the Permit Office, address below.

ADDRESSES: Comments should be addressed to Permit Office, Office of Polar Programs, National Science Foundation, 2415 Eisenhower Avenue, Alexandria, Virginia 22314 or *ACApermits@nsf.gov.*

FOR FURTHER INFORMATION CONTACT: Andrew Titmus, ACA Permit Officer, at the above address, 703–292–8030.

SUPPLEMENTARY INFORMATION: The National Science Foundation, as directed by the Antarctic Conservation Act of 1978 (Pub. L. 95–541, 45 CFR 670), as amended by the Antarctic Science, Tourism and Conservation Act of 1996, has developed regulations for the establishment of a permit system for various activities in Antarctica and designation of certain animals and certain geographic areas as requiring special protection. The regulations establish such a permit system to designate Antarctic Specially Protected Areas.

Application Details

1. *Applicant*

Permit Application: 2023–024

Nikola Bajo, Grand Circle Corporation, 347 Congress St. Boston MA 02210

Activity for Which Permit Is Requested

Waste Management. The applicant seeks an Antarctic Conservation Act permit authorizing waste management activities associated with the operation of Unmanned Aerial Systems (UAS) in Antarctica for commercial, educational and ice reconnaissance purposes. All pilots will be required to have demonstrated flight experience and must be pre-approved by Expedition Leaders. Flights will not be conducted over any wildlife colonies or concentrations of wildlife, Antarctic Specially Protected Areas or any listed Historical Sites and Monuments. Flights near any Antarctic Stations must first be coordinated with and approved by station leadership. Mitigation measures consistent with those published by IAATO will be adhered to in order to prevent loss of aircrafts and to minimize any potential environmental impacts. The applicant is seeking a waste permit to cover any accidental release that may result from operating UAVs.

Location

Antarctic Peninsula Region

Dates of Permitted Activities

December 12, 2022—March 31, 2027

Erika N. Davis,

Program Specialist, Office of Polar Programs.

[FR Doc. 2022–25833 Filed 11–25–22; 8:45 am]

BILLING CODE 7555–01–P

NATIONAL SCIENCE FOUNDATION

Sunshine Act Meetings

The National Science Board's Committee on Strategy's Subcommittee on Technology, Innovation and Partnerships hereby gives notice of the scheduling of a teleconference for the transaction of National Science Board business pursuant to the NSF Act and the Government in the Sunshine Act.

TIME AND DATE: Thursday, December 1, 2022, from 9:15–9:50 a.m. EST.

PLACE: This meeting will be held at NSF headquarters, 2145 Eisenhower Ave., Alexandria, VA 22314, and by videoconference.

STATUS: Closed.

MATTERS TO BE CONSIDERED: The agenda is: Subcommittee Chair's Opening Remarks; Update on TIP Competitions and Programmatic Activities; and Discussion of Regional Innovation Engine Plans at Various FY 2023 Budget Levels.

CONTACT PERSON FOR MORE INFORMATION: Point of contact for this meeting is: Chris Blair, *cblair@nsf.gov,* 703/292–7000. Meeting information and updates may be found at *www.nsf.gov/nsb.*

Christopher Blair,

Executive Assistant to the National Science Board Office.

[FR Doc. 2022–26037 Filed 11–23–22; 4:15 pm]

BILLING CODE 7555–01–P

NATIONAL SCIENCE FOUNDATION

Sunshine Act Meetings

The National Science Board (NSB) hereby gives notice of the scheduling of meetings for the transaction of National Science Board business pursuant to the National Science Foundation Act and the Government in the Sunshine Act.

TIME AND DATE: Thursday, December 1, 2022, from 12:30 p.m.–5:05 p.m., and Friday, December 2, 2022, from 9:00 a.m.–1:35 p.m. EST.

PLACE: These meetings will be held at NSF headquarters, 2415 Eisenhower Avenue, Alexandria, VA 22314, and by videoconference. To attend in-person, please email your name as it appears on your photo ID, along with your affiliation, at least 24 hours in advance to *nationalsciencebrd@nsf.gov.* If the COVID status for Alexandria, Virginia remains ''medium'' or goes to ''high,'' please fill out and bring OMB's certification of vaccination form with you. Visitors who are not vaccinated or refuse to divulge their vaccination status will not be admitted. All open sessions of the meeting will be webcast live on the NSB YouTube channel.

December 1, 2022: *https://www.youtube.com/watch?v=6LKim21zxUE*

STATUS: Parts of these meetings will be open to the public. The rest of the meetings will be closed to the public. See full description below.

MATTERS TO BE CONSIDERED:

Friday, December 1, 2022

Plenary Board Meeting

Open Session: 12:30 p.m.–2:40 p.m.

- NSB Chair's Remarks
  - Chair's Activities
- Approval of August 3–4, 2022, open meeting minutes
- NSF Director's Remarks
  - Cool Scientists presentations
- Committee Reports
  - Committee on Oversight
  - Committee on External Engagement
  - Committee on Science and Engineering Policy
- Working Group Reports
  - Socioeconomic Status Working Group
  - Explorations in K–12 STEM Education
- NSB Chair's Closing Remarks
- NSF Director's Closing Remarks
  - Senior staff updates
  - Office of Legislative and Public Affairs Update information item

Open Session: 2:55 p.m.–4:20 p.m.

- NSB Panel: Addressing Workforce Shortages in Critical Technologies
- NSF Update Sexual Assault/Harassment Prevention Response (SAHPR) report

Open Session: 4:30 p.m.–5:05 p.m.

- Discussion with the Director of the White House Office of Science and Technology Policy, Dr. Arati Prabhakar
- NSB Chair's Remarks

Friday, December 2, 2022

Plenary Board

Closed Session: 9:00 a.m.–10:45 a.m.

- NSB Chair's Remarks
- Approval of August 3–4, 2022, and August 24, 2022, Closed Meeting Minutes
- NSF Director's Remarks Agency Operating Status
- NSF CHIPS and Science Act Implementation Update
- NSF Update on SAHPR
- Committee Reports
  - Committee on Awards and Facilities Report
  - Subcommittee on Technology, Innovation, and Partnerships Report
  - Committee on Strategy Report

Closed Session: 11:00 a.m.–1:35 p.m.

- Vote to Enter Executive Plenary Closed
- Executive Plenary Closed NSB Chair's Opening Remarks
  - Strategic discussion of Technology, Innovation, and Partnerships Directorate Funding Options
  - NSB Chair's Remarks
  - Approval of August 3–4, 2022, Executive Closed Meeting Minutes
  - NSF Director's Remarks, including organizational updates
  - Discussion and Vote on 2023 Honorary Awards
  - NSB Chair's Closing Remarks

Meeting Adjourns: 1:35 p.m.

Portions Open to the Public

Thursday, December 1, 2022

12:30 p.m.–2:40 p.m. Plenary NSB
2:55 p.m.–4:20 p.m. Plenary NSB
4:30 p.m.–5:05 p.m. Plenary NSB

Portions Closed to the Public

Friday, December 2, 2022

9:00 a.m.–10:45 a.m. Plenary NSB
11:00 a.m.–1:35 p.m. Plenary NSB, executive closed

Members of the public are advised that the NSB provides some flexibility around start and end times. A session may be allowed to run over by as much as 15 minutes if the Chair decides the extra time is warranted. The next session will start no later than 15 minutes after the noticed start time. If a session ends early, the next meeting may start up to 15 minutes earlier than the noticed start time. Sessions will not vary from noticed times by more than 15 minutes.

CONTACT PERSON FOR MORE INFORMATION: The NSB Office contact is Chris Blair, *cblair@nsf.gov,* 703–292–7000. The NSB Public Affairs contact is Nadine Lymn, *nlymn@nsf.gov,* 703–292–2490. Please refer to the NSB website for additional information: *https://www.nsf.gov/nsb.*

Christopher Blair,

Executive Assistant to the National Science Board Office.

[FR Doc. 2022–26056 Filed 11–23–22; 4:15 pm]

BILLING CODE 7555–01–P

NATIONAL SCIENCE FOUNDATION

Agency Information Collection Activities: Comment Request; NSF I-Corps Teams Executive Summary Form

AGENCY: National Science Foundation.

ACTION: Notice.

SUMMARY: The National Science Foundation (NSF) is announcing plans to establish this collection. In accordance with the requirements of the Paperwork Reduction Act of 1995, we are providing opportunity for public comment on this action. After obtaining and considering public comment, NSF will prepare the submission requesting Office of Management and Budget (OMB) clearance of this collection for no longer than 3 years.

DATES: Written comments on this notice must be received by January 27, 2023 to be assured consideration. Comments received after that date will be considered to the extent practicable. Send comments to address below.

FOR FURTHER INFORMATION CONTACT: Suzanne H. Plimpton, Reports Clearance Officer, National Science Foundation, 2415 Eisenhower Avenue, Suite W18200, Alexandria, Virginia 22314; telephone (703) 292–7556; or send email to *splimpto@nsf.gov*. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339, which is accessible 24 hours a day, 7 days a week, 365 days a year (including Federal holidays).

SUPPLEMENTARY INFORMATION:

Title of Collection: NSF I-Corps Teams Executive Summary Form.

OMB Control No.: 3145–New.

Expiration Date of Approval: Not applicable.

Abstract: The NSF Innovation Corps (I-Corps) Teams Program Executive Summary is an important component of the NSF I-Corps Teams pre-submission process and conveys information needed to direct the proposed team project to the appropriate NSF Program Director (PD) for review and possible proposal submission invitation. This Executive Summary (ES) is to be submitted by the applying team to the cognizant I-Corps Team's PD outlining solicitation-specific aspects of the project (such as proposed team members, technology, commercial application and NSF lineage). In the past, this ES was submitted via email as an attached two-page (maximum) document and was often in varying formats or missing some parts of the required ES elements. The NSF I-Corps Teams Executive Summary Form captures the same requested information, as outlined in NSF I-Corps Teams Program solicitation, but all within one secure, web-based form. In specific, the form collects submitting team member information (composition, roles and a brief description of each member's qualifications), Principal Investigator (PI) information (and a brief description of their connection to the team), NSF lineage (relevant current or previous NSF awards), brief descriptions of: the core technology, the potential commercial application, and the current commercialization plan for the proposed technology. If the proposed I-Corps Team is applying based on participation in a local or regional NSF I-Corps Site or Node training session, the form will provide fields for the applying team to complete regarding the associated I-Corps Site or Node senior member's contact information (as a reference) and location of the associated Site or Node.

Respondents: Investigators who submit proposals to NSF's I-Corps Teams Program.

Estimated Number of Annual Respondents: 400.

Burden on the Public: 2 hours (per response) for an annual total of 800 hours.

Dated: November 22, 2022.

Suzanne H. Plimpton,

Reports Clearance Officer, National Science Foundation.

[FR Doc. 2022–25922 Filed 11–25–22; 8:45 am]

BILLING CODE 7555–01–P

NUCLEAR REGULATORY COMMISSION

[Docket No. 50–610; NRC–2022–0167]

Abilene Christian University

AGENCY: Nuclear Regulatory Commission.

ACTION: Construction permit application; acceptance for docketing.

SUMMARY: The U.S. Nuclear Regulatory Commission (NRC) staff accepts and dockets an application for a construction permit from Abilene Christian University (ACU) for a molten salt research reactor to be built in Abilene, Texas.

DATES: This action became effective on November 18, 2022.

ADDRESSES: Please refer to Docket ID NRC–2022–0167 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–2022–0167. Address questions about Docket IDs in *Regulations.gov* to Stacy Schumann; telephone: 301–415–0624; email: *Stacy.Schumann@nrc.gov*. For technical questions, contact the individual listed in the **FOR FURTHER INFORMATION CONTACT** section of this document.
- *NRC's Agencywide Documents Access and Management System (ADAMS):* You may obtain publicly available documents online in the ADAMS Public Documents collection at *https://www.nrc.gov/reading-rm/adams.html*. To begin the search, select ''Begin Web-based ADAMS Search.'' For problems with ADAMS, please contact the NRC's Public Document Room (PDR) reference staff at 1–800–397–4209, 301–415–4737, or by email to *PDR.Resource@nrc.gov*. The ADAMS accession number for each document referenced (if it is available in ADAMS) is provided the first time that it is mentioned in this document.
- *NRC's PDR:* You may examine and purchase copies of public documents, by appointment, at the NRC's PDR, Room P1 B35, One White Flint North, 11555 Rockville Pike, Rockville, Maryland 20852. To make an appointment to visit the PDR, please send an email to *PDR.Resource@nrc.gov* or call 1–800–397–4209 or 301–415–4737, between 8:00 a.m. and 4:00 p.m. Eastern Time (ET), Monday through Friday, except Federal holidays.
- *NRC's Public Website:* The construction permit application is available under the NRC's ACU Construction Permit Application public website at *https://www.nrc.gov/reactors/non-power/msrr-acu.html*.

FOR FURTHER INFORMATION CONTACT: Richard F. Rivera, Office of Nuclear Reactor Regulation, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001; telephone: 301–415–7190; email: *Richard.Rivera@nrc.gov*.

SUPPLEMENTARY INFORMATION:

I. Discussion

On August 12, 2022, Abilene Christian University (ACU) filed, pursuant to Section 104c. of the Atomic Energy Act and part 50 of title 10 of the *Code of Federal Regulations* (10 CFR), ''Domestic Licensing of Production and Utilization Facilities,'' an application (ADAMS Package Accession No. ML22227A201) for a construction permit for the molten salt research reactor (MSRR) (a ''non-power reactor'' as defined in 10 CFR 50.2), which would be located in Abilene, Texas. The MSRR would be a high-temperature

reactor that uses molten fluoride-based fuel salt. A notice of receipt and availability of this portion of the application was published in the **Federal Register** on October 14, 2022 (87 FR 62463).

The MSRR construction permit application consisted of the following information:

- The general information required by 10 CFR 50.33,
- The Preliminary Safety Analysis Report required by 10 CFR 50.34(a), and
- Environmental Information as required by 10 CFR 51.41.

On September 27, 2022, the NRC staff notified ACU that it needed additional information and was pausing the docketing review to allow ACU the opportunity to supplement its construction permit application (ADAMS Package Accession No. ML22270A170). On October 14, 2022, ACU supplemented its construction permit application with additional information regarding the proposed MSRR's instrumentation and control system design (ADAMS Package Accession No. ML22293B816).

The NRC staff determined that the application, as supplemented, is acceptable for docketing under Docket No. 50–610. The NRC staff provided ACU notice of the determination that its application was acceptable for docketing by letter dated November 18, 2022 (ADAMS Accession No. ML22313A097).

The NRC staff will perform a detailed technical review of the construction permit application and document its safety findings in a safety evaluation report. Also, in accordance with 10 CFR part 51, ''Environmental Protection Regulations for Domestic Licensing and Related Regulatory Functions,'' the NRC staff will conduct an environmental review of the proposed action.

Docketing of the application does not preclude the NRC from requesting additional information from the applicant as the review proceeds, nor does it predict whether the Commission will grant or deny the application. If the Commission finds that the construction permit application meets the applicable standards of the Atomic Energy Act and the Commission's regulations, and that any required notifications to other agencies and bodies have been made, the Commission will issue a construction permit, in the form and containing conditions and limitations that the Commission finds appropriate and necessary.

The Commission will announce, in a future **Federal Register** notice, the opportunity to petition for leave to intervene on the construction permit application.

Dated: November 22, 2022.

For the Nuclear Regulatory Commission.

Richard F. Rivera,

Project Manager, Advanced Reactor Licensing Branch 1, Division of Advanced Reactors and Non-Power Production and Utilization Facilities, Office of Nuclear Reactor Regulation.

[FR Doc. 2022–25890 Filed 11–25–22; 8:45 am]

BILLING CODE 7590–01–P

PENSION BENEFIT GUARANTY CORPORATION

Submission of Information Collection for OMB Review; Comment Request; Special Financial Assistance Information

AGENCY: Pension Benefit Guaranty Corporation.

ACTION: Notice of request for extension of OMB approval of information collection.

SUMMARY: The Pension Benefit Guaranty Corporation (PBGC) is requesting that the Office of Management and Budget (OMB) extend approval, with modifications, under the Paperwork Reduction Act, of a collection of information contained in PBGC's regulation on special financial assistance. This notice informs the public of PBGC's intent and solicits public comment on the collection of information.

DATES: Comments must be submitted on or before December 28, 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. All comments received will be posted without change to PBGC's website, *http://www.pbgc.gov,* including any personal information provided. Do not submit comments that include any personally identifiable information or confidential business information.

A copy of the request will be posted on PBGC's website at *https://www.pbgc.gov/prac/laws-and-regulation/federal-register-notices-open-for-comment.* It may also be obtained without charge by writing to the Disclosure Division of the Office of the General Counsel of PBGC, 445 12th Street SW, Washington, DC 20024–2101, or calling 202–229–4040 during normal business hours. If you are deaf or hard of hearing or have a speech disability, please dial 7–1–1 to access telecommunications relay services.

FOR FURTHER INFORMATION CONTACT: Melissa Rifkin (*rifkin.melissa@pbgc.gov*), Attorney, Regulatory Affairs Division, Office of the General Counsel, Pension Benefit Guaranty Corporation, 445 12th Street SW, Washington, DC 20024–2101, 202–229–6563. If you are deaf or hard of hearing or have a speech disability, please dial 7–1–1 to access telecommunications relay services.

SUPPLEMENTARY INFORMATION: Section 4262 of the Employee Retirement Income Security Act of 1974 (ERISA) requires PBGC to provide special financial assistance (SFA) to certain financially troubled multiemployer plans upon application for assistance. Part 4262 of PBGC's regulations, ''Special Financial Assistance by PBGC,'' provides guidance to multiemployer pension plan sponsors on eligibility, determining the amount of SFA, content of an application for SFA, the process of applying, PBGC's review of applications, restrictions and conditions, and reporting and notice requirements.

To apply for SFA, a plan sponsor must file an application with PBGC and include information about the plan, plan documentation, and actuarial information, as specified in §§ 4262.6 through 4262.9. Also, if the plan is changing certain assumptions for purposes of demonstrating its eligibility for SFA or its requested amount of SFA, then the plan sponsor may use PBGC's SFA assumptions guidance. PBGC needs the application information to review a plan's eligibility for SFA, priority group status (if applicable), and amount of requested SFA. In this renewal, PBGC is making clarifying changes to the application instructions, including to the information required to be filed. For example, PBGC is clarifying the required documentation of a death audit and the information to be filed for certain assumptions changes. PBGC estimates that over the next 3 years an annual average of 59 plan sponsors will file applications for SFA (initial, revised, and supplemented) with an average annual hour burden of 590 hours and an average annual cost burden of $1,770,000.

Under § 4262.10(g), a plan sponsor may, but is not required to, file a lock-in application as a plan's initial application. The lock-in application contains basic information about the plan and a statement of intent to lock-in base data. PBGC needs the

information in the lock-in application to ensure that a plan sponsor intends to lock-in the plan's data. PBGC estimates that over the next 3 years an annual average of 23 plan sponsors will file lock-in applications for SFA with an average annual hour burden of 23 hours and an average annual cost burden of $18,400.

Under § 4262.16(i), a plan sponsor of a plan that has received SFA must file an Annual Statement of Compliance with the restrictions and conditions under section 4262 of ERISA and part 4262 once every year through 2051. In this renewal, PBGC is making clarifying changes and adding required documents that must be provided with this filing. PBGC needs the information in the Annual Statement of Compliance to ensure that a plan is compliant with the imposed restrictions and conditions. PBGC estimates that over the next 3 years an annual average of 120 plan sponsors will file Annual Statements of Compliance with an average annual hour burden of 240 hours and an average annual cost burden of $288,000.

Under § 4262.15(c), a plan sponsor of a plan with benefits that were suspended under sections 305(e)(9) or 4245(a) of ERISA must issue notices of reinstatement to participants and beneficiaries whose benefits were suspended and are being reinstated. Participants and beneficiaries need the notice of reinstatement to better understand the calculation and timing of their reinstated benefits and, if applicable, make-up payments. PBGC estimates that over the next 3 years an average of 5 plans per year will be required to send notices to participants with suspended benefits. PBGC estimates that these notices will impose an average annual hour burden of 10 hours and average annual cost burden of $10,000.

Finally, under § 4262.16(d), (f), and (h) a plan sponsor must file a request for a determination from PBGC for approval for an exception under certain circumstances for SFA conditions under § 4262.16 relating to reductions in contributions, transfers or mergers, and settlement of withdrawal liability. PBGC needs the information required for a request for determination to determine whether to approve an exception from the specified condition of receiving SFA. PBGC estimates that beginning in 2023, PBGC will receive an average of 2.2 requests per year for determinations. PBGC estimates an average annual hour burden of 7.6 hours and average annual cost burden of $19,000.

The estimated aggregate average annual hour burden for the next 3 years for the information collection in part 4262 is 870.6 hours for employer and fund office administrative, clerical, and supervisory time. The estimated aggregate average annual cost burden for the next three years for the information collection request in part 4262 is $2,105,400, for approximately 5,264 contract hours assuming an average hourly rate of $400 for work done by outside actuaries and attorneys. The actual hour burden and cost burden per plan will vary depending on plan size and other factors.

The existing collection of information was approved under OMB control number 1212–0074 (expires January 31, 2023). On August 11, 2022, PBGC published in the **Federal Register** (at 87 FR 49617) a notice informing the public of its intent to request an extension of this collection of information. No comments were received. PBGC is requesting that OMB extend approval of the collection with modifications for three years. 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.

Issued in Washington, DC.

Hilary Duke,

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

[FR Doc. 2022–25859 Filed 11–25–22; 8:45 am]

BILLING CODE 7709–02–P

POSTAL REGULATORY COMMISSION

[Docket Nos. MC2023–55 and CP2023–53]

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:* December 1, 2022.

ADDRESSES: Submit comments electronically via the Commission's Filing Online system at *http://www.prc.gov.* Those who cannot submit comments electronically should contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section by telephone for advice on filing alternatives.

FOR FURTHER INFORMATION CONTACT: David A. Trissell, General Counsel, at 202–789–6820.

SUPPLEMENTARY INFORMATION:

Table of Contents

I. Introduction

The Commission gives notice that the Postal Service filed request(s) for the Commission to consider matters related to negotiated service agreement(s). The request(s) may propose the addition or removal of a negotiated service agreement from the Market Dominant or the Competitive product list, or the modification of an existing product currently appearing on the Market Dominant or the Competitive product list.

Section II identifies the docket number(s) associated with each Postal Service request, the title of each Postal Service request, the request's acceptance date, and the authority cited by the Postal Service for each request. For each request, the Commission appoints an officer of the Commission to represent the interests of the general public in the proceeding, pursuant to 39 U.S.C. 505 (Public Representative). Section II also establishes comment deadline(s) pertaining to each request.

The public portions of the Postal Service's request(s) can be accessed via the Commission's website (*http://www.prc.gov*). Non-public portions of the Postal Service's request(s), if any, can be accessed through compliance with the requirements of 39 CFR 3011.301.[1]

The Commission invites comments on whether the Postal Service's request(s) in the captioned docket(s) are consistent with the policies of title 39. For request(s) that the Postal Service states concern Market Dominant product(s), applicable statutory and regulatory requirements include 39 U.S.C. 3622, 39 U.S.C. 3642, 39 CFR part 3030, and 39 CFR part 3040, subpart B. For request(s) that the Postal Service states concern Competitive product(s), applicable statutory and regulatory requirements include 39 U.S.C. 3632, 39 U.S.C. 3633, 39 U.S.C. 3642, 39 CFR part 3035, and 39 CFR part 3040, subpart B. Comment deadline(s) for each request appear in section II.

II. Docketed Proceeding(s)

1. *Docket No(s).:* MC2023–55 and CP2023–53; *Filing Title:* USPS Request to Add Priority Mail Contract 767 to Competitive Product List and Notice of Filing Materials Under Seal; *Filing*

[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).

Acceptance Date: November 21, 2022; *Filing Authority:* 39 U.S.C. 3642, 39 CFR 3040.130 through 3040.135, and 39 CFR 3035.105; *Public Representative:* Christopher C. Mohr; *Comments Due:* December 1, 2022.

This Notice will be published in the **Federal Register**.

Erica A. Barker,

Secretary.

[FR Doc. 2022–25826 Filed 11–25–22; 8:45 am]

BILLING CODE 7710–FW–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–96367; File No. SR–PEARL–2022–52]

Self-Regulatory Organizations; MIAX PEARL, LLC; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Amend Exchange Rule 404, Series of Option Contracts Open for Trading To Amend the Short Term Option Series Program

November 21, 2022.

Pursuant to the provisions of Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'')[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on November 17, 2022, MIAX PEARL, LLC (''MIAX Pearl'' or the ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') a proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange is filing a proposal to amend Exchange Rule 404, Series of Option Contracts Open for Trading.

The text of the proposed rule change is available on the Exchange's website at *http://www.miaxoptions.com/rule-filings/pearl* at MIAX Pearl's principal office, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

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 Exchange Rule 404, Series of Option Contracts Open for Trading. Specifically, the Exchange proposes to amend Interpretations and Polices .02 of Rule 404 to (i) limit the number of Short Term Option Expiration Dates for options on SPDR S&P 500 ETF Trust (SPY), the INVESCO QQQ Trust℠, Series 1(QQQ), and iShares Russell 2000 ETF (IWM) from five to two expirations for Monday and Wednesday expirations; and (ii) expand the Short Term Option Series program to permit the listing and trading of options series with Tuesday and Thursday expirations for options on SPY and QQQ listed pursuant to the Short Term Option Series Program, subject to the same proposed limitation of two expirations.

The Exchange also proposes to amend the definition of a Short Term Option Series contained in Exchange Rule 100.

Curtail Short Term Option Expiration Dates

Currently, after an option class has been approved for listing and trading on the Exchange, the Exchange may open for trading on any Thursday or Friday that is a business day (''Short Term Option Opening Date'') series of options on that class that expire at the close of business on each of the next five Fridays that are business days and are not Fridays in which monthly options series or Quarterly Options Series expire (''Short Term Option Expiration Dates''). The Exchange may have no more than a total of five Short Term Option Expiration Dates not including any Monday or Wednesday SPY, QQQ, and IWM Expirations. Further, if the Exchange is not open for business on the respective Thursday or Friday, the Short Term Option Opening Date will be the first business day immediately prior to that respective Thursday or Friday. Similarly, if the Exchange is not open for business on a Friday, the Short Term Option Expiration Date will be the first business day immediately prior to that Friday.

Today, with respect to Wednesday SPY, QQQ, and IWM Expirations, the Exchange may open for trading on any Tuesday or Wednesday that is a business day series of options on SPY, QQQ, and IWM to expire on any Wednesday of the month that is a business day and is not a Wednesday in which Quarterly Options Series expire (''Wednesday SPY Expirations,'' ''Wednesday QQQ Expirations,'' and ''Wednesday IWM Expirations''). With respect to Monday SPY, QQQ, and IWM Expirations, the Exchange may open for trading on any Friday or Monday that is a business day series of options on SPY, QQQ, or IWM to expire on any Monday of the month that is a business day and is not a Monday in which Quarterly Options Series expire (''Monday SPY Expirations,'' ''Monday QQQ Expirations,'' and ''Monday IWM Expirations''), provided that Monday SPY Expirations, Monday QQQ Expirations, and Monday IWM Expirations that are listed on a Friday must be listed at least one business week and one business day prior to the expiration. The Exchange may list up to five consecutive Wednesday SPY Expirations, Wednesday QQQ Expirations, and Wednesday IWM Expirations and five consecutive Monday SPY Expirations, Monday QQQ Expirations, and Monday IWM Expirations at one time; the Exchange may have no more than a total of five each of Wednesday SPY Expirations, Wednesday QQQ Expirations, and Wednesday IWM Expirations and a total of five each of Monday SPY Expirations, Monday QQQ Expirations, and Monday IWM Expirations. Monday and Wednesday SPY Expirations, Monday and Wednesday QQQ Expirations, and Monday and Wednesday IWM Expirations will be subject to the provisions of Interpretations and Policies .02 of Exchange Rule 404.

Proposal

At this time, the Exchange proposes to curtail the number of Short Term Option Expiration Dates from five to two[3] for SPY, QQQ, and IWM for Monday and Wednesday Expirations, as well as the proposed Tuesday and Thursday Expirations in SPY and QQQ (''Short Term Option Daily Expirations'').

The Exchange proposes to create a new category of Short Term Option Expiration Dates called ''Short Term Option Daily Expirations'' which will only permit two Short Term Option Expiration Dates for each of Monday, Tuesday, Wednesday, and Thursday expirations at one time. The Exchange

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] The Exchange proposes to list the two front months for Short Term Option Daily Expirations.

proposes to include a table, labeled ''Table 1,'' within Interpretations and Policies .02 of Rule 404, which specifies each symbol that qualifies as a Short Term Option Daily Expiration. The table would note the number of expirations for each symbol as well as expiration days. The Exchange proposes to include Monday and Wednesday expirations for SPY, QQQ, and IWM and Tuesday and Thursday expirations for SPY and QQQ and list the number of expirations as ''2'' for these symbols. The Exchange's proposal to permit Tuesday and Thursday expirations for options on SPY and QQQ listed pursuant to the Short Term Option Series Program is explained below in more detail. In the event Short Term Option Daily Expirations expire on the same day in the same class as a monthly options series or a Quarterly Options Series the Exchange would skip that week's listing and instead list the following week; the two weeks of Short Term Option Expiration Dates would therefore not be consecutive. Specifically, the Exchange proposes to state within Policy .02 of Exchange Rule 404,

> In addition to the above, the Exchange may open for trading series of options on the symbols provided in Table 1 below that expire at the close of business on each of the next two Mondays, Tuesdays, Wednesdays, and Thursdays, respectively, that are business days and are not business days in which monthly options series or Quarterly Options Series expire (''Short Term Option Daily Expirations''). The Exchange may have no more than a total of two Short Term Option Daily Expirations for each of Monday, Tuesday, Wednesday, and Thursday expirations at one time. Short Term Option Daily Expirations would be subject to this Policy .02

SPY, QQQ, and IWM Friday expirations and other option symbols expiring on a Friday that are not noted in Table 1 will continue to have a total of five Short Term Option Expiration Dates provided those Friday expirations are not Fridays in which monthly options series or Quarterly Options Series expire (''Friday Short Term Option Expiration Dates''). These expirations would be referred to as ''Short Term Option Weekly Expirations'' to distinguish them from the proposed expirations that would be subject to Short Term Option Daily Expirations. The Exchange proposes to add rule text to Policy .02 of Exchange Rule 404, which states that Monday Short Term Option Expiration Dates, Tuesday Short Term Option Expiration Dates, Wednesday Short Term Option Expiration Dates, and Thursday Short Term Option Expiration Dates, together with Friday Short Term Option Expiration Dates, are collectively ''Short Term Option Expiration Dates.''[4]

Tuesday and Thursday Expirations

At this time, the Exchange proposes to expand the Short Term Option Series Program to permit the listing and trading of no more than a total of two consecutive Tuesday and Thursday ''Tuesday Short Term Option Daily Expirations'' and ''Thursday Short Term Option Daily Expirations'' each for SPY and QQQ at one time. Tuesday and Thursday Short Term Option Daily Expirations would be subject to Policy .02 of Exchange Rule 404.

A Short Term Option Series means a series in an option class that is approved for listing and trading on the Exchange in which the series is opened for trading on any Monday, Tuesday, Wednesday, Thursday, or Friday, that is a business day and that expires on the Monday, Wednesday, or Friday of the following business week that is a business day, or, in the case of a series that is listed on a Friday and expires on a Monday, is listed one business week and one business day prior to that expiration. If a Tuesday, Wednesday, Thursday, or Friday, is not a business day, the series may be opened (or shall expire) on the first business day immediately prior to that Tuesday, Wednesday, Thursday, or Friday. For a series listed pursuant to this section for Monday expiration, if a Monday is not a business day, the series shall expire on the first business day immediately following that Monday.

The Exchange proposes to amend the definition of Short Term Option Series in Exchange Rule 100 to accommodate the listing of options series that expire on Tuesdays and Thursdays. Specifically, the Exchange proposes to add Tuesday and Thursday to the permitted expiration days, which currently include Monday, Wednesday, and Friday, that it may open for trading.

The Exchange also proposes corresponding changes within Policy .02 of Exchange Rule 404, which sets forth the requirements for SPY and QQQ options that are listed pursuant to the Short Term Option Series Program as Short Term Option Daily Expirations. Similar to Monday and Wednesday SPY, QQQ, and IWM Short Term Option Daily Expirations within Policy .02 of Exchange Rule 404, the Exchange proposes that it may open for trading on any Monday or Tuesday that is a business day series of options on the symbols provided in Table 1 that expire at the close of business on each of the next two Tuesdays that are business days and are not business days in which monthly options series or Quarterly Options Series expire (''Tuesday Short Term Option Expiration Date'').

Likewise, the Exchange proposes that it may open for trading on any Wednesday or Thursday that is a business day series of options on symbols provided in Table 1 that expire at the close of business on each of the next two Thursdays that are business days and are not business days in which monthly options series or Quarterly Options Series expire (''Thursday Short Term Option Expiration Date'').

In the event that options on SPY and QQQ expire on a Tuesday or Thursday and that Tuesday or Thursday is the same day that a monthly option series or Quarterly Options Series expires, the Exchange would skip that week's listing and instead list the following week; the two weeks would therefore not be consecutive. Today, Monday and Wednesday Expirations in SPY, QQQ, and IWM skip the weekly listing in the event the weekly listing expires on the same day in the same class as a Quarterly Options Series. Currently, there is no rule text provision that states that Monday and Wednesday Expirations in SPY, QQQ, and IWM skip the weekly listing in the event the weekly listing expires on the same day in the same class as a monthly option series. Practically speaking, Monday and Wednesday Expirations in SPY, QQQ, and IWM would not expire on the same day as a monthly expiration.

The interval between strike prices for the proposed Tuesday and Thursday SPY and QQQ Short Term Option Daily Expirations will be the same as those for the current Short Term Option Series for Monday, Wednesday, and Friday expirations applicable to the Short Term Option Series Program.[5] Specifically, the Tuesday and Thursday SPY and QQQ Short Term Option Daily Expirations will have a $0.50 strike interval minimum.[6] As is the case with other equity options series listed pursuant to the Short Term Option Series Program, the Tuesday and Thursday SPY and QQQ Short Term Option Daily Expiration series will be P.M.-settled.

With respect to the Short Term Option Series Program, a Tuesday or Thursday expiration series shall expire on the first business day immediately

[4] Defining the term ''Short Term Option Expiration Dates'' will make clear that this term includes expiration dates for each day Short Term Options are listed.

[5] *See* Interpretations and Policies .02(e) of Exchange Rule 404.

[6] *See* Interpretations and Policies .02(e) of Exchange Rule 404.

prior to that Tuesday or Thursday, *e.g.,* Monday or Wednesday of that week, respectively, if the Tuesday or Thursday is not a business day.[7]

Currently, for each option class eligible for participation in the Short Term Option Series Program, the Exchange is limited to opening thirty (30) series for each expiration date for the specific class.[8] The thirty (30) series restriction does not include series that are opened by other securities exchanges under their respective weekly rules; the Exchange may list these additional series that are listed by other exchanges.[9] This thirty (30) series restriction would apply to Tuesday and Thursday SPY and QQQ Short Term Option Daily Expiration series as well. In addition, the Exchange will be able to list series that are listed by other exchanges, assuming they file similar rules with the Commission to list SPY and QQQ options expiring on Tuesdays and Thursdays with a limit of two Tuesday Short Term Daily Expirations and two Thursday Short Term Daily Expirations.

Finally, the Exchange is amending Policy .02(b) of Exchange Rule 404, to conform the rule text to the usage of the term ''Short Term Option Daily Expirations.'' Today, with the exception of Monday and Wednesday SPY Expirations, Monday and Wednesday QQQ Expirations, and Monday and Wednesday IWM Expirations, no Short Term Option Series may expire in the same week in which monthly option series on the same class expire. With this proposal, Tuesday and Thursday SPY Expirations and Tuesday and Thursday QQQ Expirations would be treated similarly to existing Monday and Wednesday SPY, QQQ, and IWM Expirations. With respect to monthly option series, Short Term Option Daily Expirations will be permitted to expire in the same week in which monthly option series on the same class expire. Not listing Short Term Option Daily Expirations for one week every month because there was a monthly on that same class on the Friday of that week would create investor confusion.

Further, as with Monday and Wednesday SPY, QQQ, and IWM Expirations, the Exchange would not permit Tuesday and Thursday Short Term Option Daily Expirations to expire on a business day in which monthly options series or Quarterly Options Series expire.[10] Therefore, all Short Term Option Daily Expirations would expire at the close of business on each of the next two Mondays, Tuesdays, Wednesdays, and Thursdays, respectively, that are business days and are not business days in which monthly options series or Quarterly Options Series expire. The Exchange believes that it is reasonable to not permit two expirations on the same day in which a monthly options series or a Quarterly Options Series would expire.

The Exchange does not believe that any market disruptions will be encountered with the introduction of P.M.-settled Tuesday and Thursday Short Term Option Daily Expirations. The Exchange has the necessary capacity and surveillance programs in place to support and properly monitor trading in the proposed Tuesday and Thursday Short Term Option Daily Expirations. The Exchange currently trades P.M.-settled Short Term Option Series that expire Monday and Wednesday for SPY, QQQ, and IWM and has not experienced any market disruptions nor issues with capacity. Today, the Exchange has surveillance programs in place to support and properly monitor trading in Short Term Option Series that expire Monday and Wednesday for SPY, QQQ, and IWM.

The Exchange's proposal mirrors that of Nasdaq ISE, which was recently approved by the Commission.[11] In its proposal Nasdaq ISE provides an analysis of the impact of the proposal which the Exchange does not dispute.

Implementation

Notwithstanding this implementation, Monday and Wednesday Expirations in SPY, QQQ, and IWM that were listed prior to the date of implementation will continue to be listed on the Exchange until those options expire pursuant to current Short Term Option Series Rules within Interpretations and Policies .02 of Exchange Rule 404.

2. Statutory Basis

The Exchange believes that its proposed rule change is consistent with Section 6(b) of the Act[12] in general, and furthers the objectives of Section 6(b)(5) of the Act[13] in particular, in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to and perfect the mechanisms of a free and open market and a national market system and, in general, to protect investors and the public interest.

The proposal is consistent with the Act as this proposal reduces the number of Short term Option Expirations to be listed on the Exchange. This reduction would remove impediments to and perfect the mechanism of a free and open market by encouraging Market Makers[14] to continue to deploy capital more efficiently and improve displayed market quality.[15] Also, the Exchange's proposal curtails the number of Monday, Tuesday, Wednesday, and Thursday expirations in SPY, QQQ, and IWM without reducing the classes of options available for trading on the Exchange. The Exchange believes that despite the proposed curtailment of expirations, Members will continue to be able to expand hedging tools and tailor their investment and hedging needs more effectively in SPY, QQQ, and IWM.

Similar to SPY, QQQ, and IWM Monday and Wednesday Expirations (proposed to be SPY, QQQ, and IWM Monday and Wednesday Short Term Daily Expirations), the introduction of SPY and QQQ Tuesday and Thursday Short Term Daily Expirations is consistent with the Act as it will, among other things, expand hedging tools available to market participants and continue the reduction of the premium cost of buying protection. The Exchange believes that SPY and QQQ Tuesday and Thursday expirations (renamed SPY and QQQ Tuesday and Thursday Short Term Daily Expirations) will allow market participants to purchase SPY and QQQ options based on their timing as needed and allow them to tailor their investment and hedging needs more effectively. Further, the proposal to permit Tuesday and Thursday Short Term Daily Expirations for options on

[7] *See* Interpretations and Policies .02 of Exchange Rule 404.

[8] *See* Interpretations and Policies .02(c) of Exchange Rule 404.

[9] *See* Interpretations and Policies .02(a) of Exchange Rule 404.

[10] While the Exchange proposes to add rule text within Policy .02 of Exchange Rule 404 with respect to Monday Expirations, Tuesday Expirations, and Wednesday Expirations, stating that those expirations would not expire on business days that are business days in which monthly options series expire, practically speaking this would not occur.

[11] *See* Securities Exchange Act Release No. 96281 (November 9, 2022), 87 FR 68769 (November 16, 2022) (SR–ISE–2022–18) (Order Granting Approval of a Proposed Rule Change to Amend the Short Term Option Series Program).

[12] 15 U.S.C. 78f(b).

[13] 15 U.S.C. 78f(b)(5).

[14] The term ''Market Maker'' or ''MM'' means a Member registered with the Exchange for the purposes of making markets in options contracts traded on the Exchange and that is vested with the rights and responsibilities specified in Chapter VI of MIAX Pearl Rules. *See* Exchange Rule 100.

[15] Today, Market Makers are required to quote a specified time in the series in which the Market Maker is registered. *See* Exchange Rule 605(d)(1).

SPY and QQQ listed pursuant to the Short Term Option Series Program, subject to the proposed limitation of two expirations, would protect investors and the public interest by providing the investing public and other market participants more flexibility to closely tailor their investment and hedging decisions in SPY and QQQ options, thus allowing them to better manage their risk exposure.

In particular, the Exchange believes the Short Term Option Series Program has been successful to date and that Tuesday and Thursday SPY and QQQ Short Term Daily Expirations should simply expand the ability of investors to hedge risk against market movements stemming from economic releases or market events that occur throughout the month in the same way that the Short Term Option Series Program has expanded the landscape of hedging. Similarly, the Exchange believes Tuesday and Thursday SPY and QQQ Short Term Daily Expirations should create greater trading and hedging opportunities and flexibility, and will provide customers with the ability to tailor their investment objectives more effectively. The Exchange currently lists Monday and Wednesday SPY, QQQ, and IWM Expirations (renamed SPY, QQQ, and IWM Monday and Wednesday Short Term Daily Expirations).[16]

Today, with the exception of Monday and Wednesday SPY Expirations, Monday and Wednesday QQQ Expirations, and Monday and Wednesday IWM Expirations, no Short Term Option Series may expire in the same week in which monthly option series on the same class expire. With this proposal, Tuesday and Thursday SPY Expirations and Tuesday and Thursday QQQ Expirations would be treated similarly to existing Monday and Wednesday SPY, QQQ, and IWM Expirations. The Exchange believes that permitting Short Term Option Daily Expirations to expire in the same week that standard monthly options expire on Fridays is consistent with the Act. Not listing Short Term Option Daily Expirations for one week every month because there was a monthly on that same class on the Friday of that week would create investor confusion.

Further, as with Monday and Wednesday SPY, QQQ, and IWM Expirations, the Exchange would not permit Tuesday and Thursday Short Term Option Daily Expirations to expire on a business day in which monthly options series or Quarterly Options Series expire. Therefore, all Short Term Option Daily Expirations would expire at the close of business on each of the next two Mondays, Tuesdays, Wednesdays, and Thursdays, respectively, that are business days and are not business days in which monthly options series or Quarterly Options Series expire. The Exchange believes that it is consistent with the Act to not permit two expirations on the same day in which a monthly options series or a Quarterly Options Series would expire similar to Monday and Wednesday SPY, QQQ, and IWM Expirations.

There are no material differences in the treatment of Wednesday SPY and QQQ expirations for Short Term Option Series as compared to the proposed Tuesday and Thursday SPY and QQQ Short Term Daily Expirations. Given the similarities between Wednesday SPY, QQQ, and IWM Expirations and the proposed Tuesday and Thursday SPY and QQQ Short Term Daily Expirations, the Exchange believes that applying the provisions in Policy .02 of Exchange Rule 404 that currently apply to Wednesday SPY, QQQ, and IWM Expirations to Tuesday and Thursday SPY and QQQ Short Term Daily Expirations is justified.

Finally, the Exchange represents that it has an adequate surveillance program in place to detect manipulative trading in the proposed Tuesday and Thursday SPY and QQQ Short Term Daily Expirations, in the same way that it monitors trading in the current Short Term Option Series and trading in Monday and Wednesday SPY, QQQ, and IWM Expirations. The Exchange also represents that it has the necessary systems capacity to support the new options series. Finally, the Exchange does not believe that any market disruptions will be encountered with the introduction of Tuesday and Thursday SPY and QQQ Short Term Daily Expirations.

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 proposal will provide an overall reduction in the number of Short Term Option Expirations to be listed on the Exchange. The Exchange believes this reduction will not impose an undue burden on competition, rather, it should encourage Market Makers to continue to deploy capital more efficiently and improve displayed market quality.[17] Also, the Exchange's proposal curtails the number of weekly expirations in SPY, QQQ, and IWM without reducing the classes of options available for trading on the Exchange. The Exchange believes that despite the proposed curtailment of weekly expirations, Members will continue to be able to expand hedging tools and tailor their investment and hedging needs more effectively in SPY, QQQ, and IWM.

Similar to SPY, QQQ, and IWM Monday and Wednesday Expirations, the introduction of SPY and QQQ Tuesday and Thursday Short Term Daily Expirations does not impose an undue burden on competition. The Exchange believes that it will, among other things, expand hedging tools available to market participants and continue the reduction of the premium cost of buying protection. The Exchange believes that SPY and QQQ Tuesday and Thursday Short Term Daily Expirations will allow market participants to purchase SPY and QQQ options based on their timing as needed and allow them to tailor their investment and hedging needs more effectively.

The Exchange does not believe the proposal will impose any burden on inter-market competition, as nothing prevents the other options exchanges from proposing similar rules to list and trade Short Term Option Series with Tuesday and Thursday Short Term Daily Expirations. The Exchange notes that having Tuesday and Thursday SPY and QQQ expirations is not a novel proposal, as Wednesday SPY, QQQ, and IWM Expirations are currently listed on the Exchange.[18]

Further, the Exchange does not believe the proposal will impose any burden on intra-market competition, as all market participants will be treated in the same manner under this proposal.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Written comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The Exchange has filed the proposed rule change pursuant to Section 19(b)(3)(A)(iii) of the Act[19] and Rule 19b–4(f)(6) thereunder.[20] Because the foregoing proposed rule change does

[16] *See* Interpretations and Policies .02 of Exchange Rule 404.

[17] *See supra* note 15.

[18] *See* Interpretations and Policies .02 of Exchange Rule 404.

[19] 15 U.S.C. 78s(b)(3)(A)(iii).

[20] 17 CFR 240.19b–4(f)(6).

not: (i) significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, it has become effective pursuant to Section 19(b)(3)(A)(iii) of the Act [21] and subparagraph (f)(6) of Rule 19b–4 thereunder.[22]

A proposed rule change filed pursuant to Rule 19b–4(f)(6) under the Act [23] normally does not become operative for 30 days after the date of its filing. However, Rule 19b–4(f)(6)(iii) [24] permits the Commission to designate a shorter time if such action is consistent with the protection of investors and the public interest. The Exchange has requested that the Commission waive the 30-day operative delay so that the proposed rule change may become operative upon filing. The Commission notes that it recently approved Nasdaq ISE's substantially similar proposal.[25] The Exchange has stated that waiver of the 30-day operative delay will allow the Exchange to implement the proposal at the same time as competitor exchanges. For these reasons, the Commission believes that the proposed rule change presents no novel issues and that waiver of the 30-day operative delay is consistent with the protection of investors and the public interest. Accordingly, the Commission hereby waives the operative delay and designates the proposed rule change operative upon filing.[26]

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov*. Please include File Number SR–PEARL–2022–52 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549–1090.

All submissions should refer to File Number SR–PEARL–2022–52. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's internet website (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street NE, Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of such filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change. Persons submitting comments are cautioned that we do not redact or edit personal identifying information from comment submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–PEARL–2022–52 and should be submitted on or before December 19, 2022.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[27]

J. Matthew DeLesDernier,

Deputy Secretary.

[FR Doc. 2022–25787 Filed 11–25–22; 8:45 am]

BILLING CODE 8011–01–P

[21] 15 U.S.C. 78s(b)(3)(A)(iii).

[22] 17 CFR 240.19b–4(f)(6). In addition, Rule 19b–4(f)(6)(iii) requires a self-regulatory organization to give the Commission written notice of its intent to file the proposed rule change, along with a brief description and text of the proposed rule change, at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Exchange has satisfied this requirement.

[23] 17 CFR 240.19b–4(f)(6).

[24] 17 CFR 240.19b–4(f)(6)(iii).

[25] *See* Securities Exchange Act Release No. 96281 (November 9, 2022), 87 FR 68769 (November 11, 2022) (SR–ISE–2022–18).

[26] For purposes only of waiving the 30-day operative delay, the Commission has also considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[27] 17 CFR 200.30–3(a)(12), (59).

SECURITIES AND EXCHANGE COMMISSION

Sunshine Act Meetings

TIME AND DATE: 2:00 p.m. on Thursday, December 1, 2022.

PLACE: The meeting will be held via remote means and/or at the Commission's headquarters, 100 F Street NE, Washington, DC 20549.

STATUS: This meeting will be closed to the public.

MATTERS TO BE CONSIDERED: Commissioners, Counsel to the Commissioners, the Secretary to the Commission, and recording secretaries will attend the closed meeting. Certain staff members who have an interest in the matters also may be present.

In the event that the time, date, or location of this meeting changes, an announcement of the change, along with the new time, date, and/or place of the meeting will be posted on the Commission's website at *https://www.sec.gov.*

The General Counsel of the Commission, or his designee, has certified that, in his opinion, one or more of the exemptions set forth in 5 U.S.C. 552b(c)(3), (5), (6), (7), (8), 9(B) and (10) and 17 CFR 200.402(a)(3), (a)(5), (a)(6), (a)(7), (a)(8), (a)(9)(ii) and (a)(10), permit consideration of the scheduled matters at the closed meeting.

The subject matter of the closed meeting will consist of the following topics:

Institution and settlement of injunctive actions;

Institution and settlement of administrative proceedings;

Resolution of litigation claims; and

Other matters relating to examinations and enforcement proceedings.

At times, changes in Commission priorities require alterations in the scheduling of meeting agenda items that may consist of adjudicatory, examination, litigation, or regulatory matters.

CONTACT PERSON FOR MORE INFORMATION: For further information; please contact Vanessa A. Countryman from the Office of the Secretary at (202) 551–5400.

(Authority: 5 U.S.C. 552b.)

Dated: November 23, 2022.

J. Lynn Taylor,

Assistant Secretary.

[FR Doc. 2022–26014 Filed 11–23–22; 4:15 pm]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–96368; File No. SR–EMERALD–2022–32]

Self–Regulatory Organizations; MIAX Emerald, LLC; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change to Amend Exchange Rule 515 to Make a Minor, Non–Substantive Edit

November 21, 2022.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on November 10, 2022, MIAX Emerald, LLC (''MIAX Emerald'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange. The Exchange filed the proposal as a ''non–controversial'' proposed rule change pursuant to Section 19(b)(3)(A)(iii) of the Act[3] and Rule 19b–4(f)(6) thereunder. 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 make a minor, non–substantive edit to Exchange Rule 515, Execution of Orders and Quotes.

The text of the proposed rule change is available on the Exchange's website at *http://www.miaxoptions.com/rule–filings/emerald,* at MIAX Emerald's principal office, and at the Commission's Public Reference Room.

II. Self–Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self–Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to amend Exchange Rule 515 to make a minor, non–substantive edit to the numbering convention used in the rule to provide accuracy, precision, and ease of reference within the rule text.

Specifically, the Exchange proposes to amend Rule 515(h)(4)(D) to change the reference from subparagraph ''(D)'' to subparagraph ''(iv).'' On July 1, 2022, the Exchange submitted a substantive proposal to adopt new paragraph (D) to Exchange Rule 515(h)(4).[4] Concurrently, the Exchange filed a proposal to make a number of non–substantive edits within rule 515 to, among other things, harmonize the numbering hierarchy within the rule to that used throughout the Exchange's Rulebook.[5] However, this proposal did not include paragraph (D) to Rule 515(h)(4) as that provision had not yet become operative on the Exchange.

The Exchange recently implemented its proposal that includes new subparagraph (D) to Rule 515(h)(4)[6] and now proposes to amend subparagraph (D) to renumber as subparagraph (iv) to conform with the numbering convention used throughout Rule 515. No other changes to the rule are proposed.

2. Statutory Basis

The Exchange believes that the proposed rule changes are consistent with Section 6(b) of the Act[7] in general, and furthers the objectives of Section 6(b)(5) of the Act[8] in particular, in that they are designed to prevent fraudulent and manipulative acts and practices, promote just and equitable principles of trade, foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, remove impediments to and perfect the mechanisms of a free and open market and a national market system and, in general, protect investors and the public interest.

The Exchange believes that the proposed change to Exchange Rule 515 promotes just and equitable principles of trade and removes impediments to and perfects the mechanism of a free and open market and a national market system because the proposed rule change will provide greater clarity to Members[9] and the public regarding the Exchange's Rules by conforming the numbering in Exchange Rule 515 to the existing identification scheme in the Exchange's Rulebook. It is in the public interest for rules to be accurate and concise so as to eliminate the potential for confusion.

B. Self–Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act. Specifically, the Exchange believes the proposed change will not impose any burden on intra–market competition as there is no functional change to the Exchange's System[10] and because the rules of the Exchange apply to all MIAX Emerald participants equally. The Exchange believes the proposed rule change will not impose any burden on intra–market competition as the proposed change is not designed to address any competitive issue but rather is designed to remedy a minor non–substantive issue and provide added precision and accuracy to the rule text of Exchange Rule 515. In addition, the Exchange does not believe the proposal will impose any burden on inter–market competition as the proposal does not address any competitive issues and is intended to protect investors by providing further transparency and precision for referencing the Exchange's Rules.

C. Self–Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Written comments were neither solicited nor received.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 15 U.S.C. 78s(b)(3)(A)(iii).

[4] *See* Securities Exchange Act Release No. 95272 (July 13, 2022), 87 FR 43065 (July 20, 2022) (SR–EMERALD–2022–23).

[5] *See* Securities Exchange Act Release No. 95343 (July 20, 2022), 87 FR 44475 (July 26, 2022) (SR–EMERALD–2022–24).

[6] *See* MIAX Emerald Regulatory Circular 2022–59, Four Decimal Precision for Pricing Stock–Option Complex Strategies (October 18, 2022) available at *https://www.miaxoptions.com/sites/default/files/circular–files/MIAX_Emerald_Options_RC_2022_59.pdf.*

[7] 15 U.S.C. 78f(b).

[8] 15 U.S.C. 78f(b)(5).

[9] The term ''Member'' means an individual or organization approved to exercise the trading rights associated with a Trading Permit. Members are deemed ''members'' under the Exchange Act. *See* Exchange Rule 100.

[10] The term ''System'' means the automated trading system used by the Exchange for the trading of securities. *See* Exchange Rule 100.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A) of the Act [11] and Rule 19b–4(f)(6) [12] thereunder because the proposal does not: (i) significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) by its terms, become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate if consistent with the protection of investors and the public interest.[13]

A proposed rule change filed pursuant to Rule 19b–4(f)(6) under the Act [14] normally does not become operative for 30 days after the date of its filing. However, Rule 19b–4(f)(6)(iii) [15] permits the Commission to designate a shorter time if such action is consistent with the protection of investors and the public interest. The Exchange has asked the Commission to waive the 30-day operative delay so that the proposal may become operative immediately upon filing.

The Exchange states that waiver of the 30-day operative delay would permit the Exchange to update the subparagraph numbering in Exchange Rule 515 immediately, thereby avoiding any potential investor confusion during the operative delay period. The Commission believes that waiver of the 30-day operative delay is consistent with the protection of investors and the public interest because the proposed rule change does not raise any new or novel issues. Accordingly, the Commission hereby waives the operative delay and designates the proposal operative upon filing.[16]

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.[17]

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–EMERALD–2022–32.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549–1090.

All submissions should refer to File Number SR–EMERALD–2022–32. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's internet website (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street NE, Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change. Persons submitting comments are cautioned that we do not redact or edit personal identifying information from comment submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–EMERALD–2022–32, and should be submitted on or before December 19, 2022.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[18]

J. Matthew DeLesDernier,

Deputy Secretary.

[FR Doc. 2022–25786 Filed 11–25–22; 8:45 am]

BILLING CODE 8011–01–P

[11] 15 U.S.C. 78s(b)(3)(A).

[12] 17 CFR 240.19b–4(f)(6).

[13] In addition, Rule 19b–4(f)(6)(iii) requires the Exchange to give the Commission written notice of the Exchange's intent to file the proposed rule change, along with a brief description and text of the proposed rule change, at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Exchange has satisfied this requirement.

[14] 17 CFR 240.19b–4(f)(6).

[15] 17 CFR 240.19b–4(f)(6)(iii).

[16] For purposes only of waiving the 30-day operative delay, the Commission has also considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[17] 15 U.S.C. 78s(b)(3)(C).

[18] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Investment Company Act Release No. 34755; File No. 812–15393]

Prospect Floating Rate and Alternative Income Fund, Inc. and Prospect Capital Management L.P.

November 21, 2022.

AGENCY: Securities and Exchange Commission (''Commission'' or ''SEC'').

ACTION: Notice.

Notice of an application under section 6(c) of the Investment Company Act of 1940 (the ''Act'') for an exemption from sections 18(a)(2), 18(c) and 18(i) and section 61(a) of the Act.

SUMMARY OF APPLICATION: Applicants request an order to permit certain closed-end management investment companies that have elected to be regulated as business development companies (''BDCs'') to issue multiple classes of shares with varying sales loads and asset-based service and/or distribution fees.

APPLICANTS: Prospect Floating Rate and Alternative Income Fund, Inc. and Prospect Capital Management L.P.

FILING DATES: The application was filed on October 5, 2022.

HEARING OR NOTIFICATION OF HEARING: An order granting the requested relief will be issued unless the Commission orders a hearing. Interested persons may request a hearing on any application by emailing the Commission's Secretary at *Secretarys-Office@sec.gov* and serving the Applicants with a copy of the request by email, if an email address is listed for the relevant Applicant below, or personally or by mail, if a physical address is listed for the relevant Applicant below. Hearing requests should be received by the Commission by 5:30 p.m. on December 12, 2022, and should be accompanied by proof of service on the Applicants, in the form of an affidavit or, for lawyers, a certificate of service. Pursuant to rule 0–5 under the Act, hearing requests should state the nature of the writer's interest, any facts bearing upon the desirability of a hearing on the matter, the reason for the request, and the issues contested.

Persons who wish to be notified of a hearing may request notification by emailing the Commission's Secretary.

ADDRESSES: The Commission: *Secretarys-Office@sec.gov.* Applicants: Russell Wininger, Prospect Floating Rate and Alternative Income Fund, Inc., 10 East 40th Street, 42nd Floor, New York, New York 10016, *rwininger@prospectcap.com;* Cynthia R. Beyea, Esq., Eversheds Sutherland (US) LLP, 700 Sixth Street NW, Suite 700, Washington, DC 20001, *cynthiabeyea@eversheds-sutherland.com.*

FOR FURTHER INFORMATION CONTACT: Matthew Cook, Senior Counsel, or Terri G. Jordan, Branch Chief, at (202) 551–6825 (Division of Investment Management, Chief Counsel's Office).

SUPPLEMENTARY INFORMATION: For Applicants' representations, legal analysis, and conditions, please refer to Applicants' application, dated October 5, 2022, which may be obtained via the Commission's website by searching for the file number at the top of this document, or for an Applicant using the Company name search field, on the SEC's EDGAR system. The SEC's EDGAR system may be searched at *https://www.sec.gov/edgar/searchedgar/legacy/companysearch.html.* You may also call the SEC's Public Reference Room at (202) 551–8090.

For the Commission, by the Division of Investment Management, under delegated authority.

J. Matthew DeLesDernier.

Deputy Secretary.

[FR Doc. 2022–25789 Filed 11–25–22; 8:45 am]

BILLING CODE 8011–01–P

SMALL BUSINESS ADMINISTRATION

[Disaster Declaration # 17677 and # 17678; Illinois Disaster Number IL–00071]

Presidential Declaration Amendment of a Major Disaster for the State of Illinois

AGENCY: U.S. Small Business Administration.

ACTION: Amendment 1.

SUMMARY: This is an amendment of the Presidential declaration of a major disaster for the State of Illinois (FEMA–4676–DR), dated 10/14/2022.

Incident: Severe Storm and Flooding.

Incident Period: 07/25/2022 through 07/28/2022.

DATES: Issued on 11/21/2022.

Physical Loan Application Deadline Date: 12/16/2022.

Economic Injury (EIDL) Loan Application Deadline Date: 07/14/2023.

ADDRESSES: Submit completed loan applications to: U.S. Small Business Administration, Processing and Disbursement Center, 14925 Kingsport Road, Fort Worth, TX 76155.

FOR FURTHER INFORMATION CONTACT: A. Escobar, Office of Disaster Assistance, U.S. Small Business Administration, 409 3rd Street SW, Suite 6050, Washington, DC 20416, (202) 205–6734.

SUPPLEMENTARY INFORMATION: The notice of the President's major disaster declaration for the State of Illinois, dated 10/14/2022, is hereby amended to extend the deadline for filing applications for physical damages as a result of this disaster to 12/16/2022.

All other information in the original declaration remains unchanged.

(Catalog of Federal Domestic Assistance Number 59008)

Rafaela Monchek,

Acting Associate Administrator for Disaster Assistance.

[FR Doc. 2022–25913 Filed 11–25–22; 8:45 am]

BILLING CODE 8026–09–P

SMALL BUSINESS ADMINISTRATION

Reporting and Recordkeeping Requirements Under OMB Review

AGENCY: Small Business Administration.

ACTION: 30-Day notice.

SUMMARY: The Small Business Administration (SBA) is seeking approval from the Office of Management and Budget (OMB) for the information collection described below. In accordance with the Paperwork Reduction Act and OMB procedures, SBA is publishing this notice to allow all interested member of the public an additional 30 days to provide comments on the proposed collection of information.

DATES: Submit comments on or before December 28, 2022.

ADDRESSES: Written comments and recommendations for this information collection request should be sent within 30 days of publication of this notice to *www.reginfo.gov/public/do/PRAMain.* Find this particular information collection request by selecting ''Small Business Administration''; ''Currently Under Review,'' then select the ''Only Show ICR for Public Comment'' checkbox. This information collection can be identified by title and/or OMB Control Number.

FOR FURTHER INFORMATION CONTACT: You may obtain a copy of the information collection and supporting documents from the Agency Clearance Office at *Curtis.Rich@sba.gov;* (202) 205–7030, or from *www.reginfo.gov/public/do/PRAMain.*

SUPPLEMENTARY INFORMATION: The collected information is submitted by small business concerns seeking to obtain and maintain certification as a certified HUBZone small business. SBA uses the information to verify a concern's eligibility for the HUBZone program, to maintain a database of certified HUBZone small business concerns, as well as for the recertification and examination of certified HUBZone small business concerns. Finally, SBA uses the information to prepare reports for the Executive and legislative branches.

Solicitation of Public Comments

Comments may be submitted on (a) whether the collection of information is necessary for the agency to properly perform its functions; (b) whether the burden estimates are accurate; (c) whether there are ways to minimize the burden, including through the use of automated techniques or other forms of information technology; and (d) whether there are ways to enhance the quality, utility, and clarity of the information.

OMB Control 3245–0320.

Title: HUBZone Program Electronic Application.

Description of Respondents: Small business concerns seeking to obtain and maintain certification as a certified HUBZone small business.

Estimated Number of Respondents: 6,951.

Estimated Annual Responses: 3,762.

Estimated Annual Hour Burden: 10,462.

Curtis Rich,

Agency Clearance Officer.

[FR Doc. 2022–25864 Filed 11–25–22; 8:45 am]

BILLING CODE 8026–09–P

SMALL BUSINESS ADMINISTRATION

[Disaster Declaration #17713 and #17714; SOUTH CAROLINA Disaster Number SC–00082]

Presidential Declaration of a Major Disaster for Public Assistance Only for the State of South Carolina

AGENCY: Small Business Administration.

ACTION: Notice.

SUMMARY: This is a Notice of the Presidential declaration of a major disaster for Public Assistance Only for the State of South Carolina (FEMA–4677–DR), dated 11/21/2022.

Incident: Hurricane Ian.

Incident Period: 09/25/2022 through 10/04/2022.

DATES: Issued on 11/21/2022.

Physical Loan Application Deadline Date: 01/20/2023.

Economic Injury (EIDL) Loan Application Deadline Date: 08/21/2023.

ADDRESSES: Submit completed loan applications to: U.S. Small Business Administration, Processing and Disbursement Center, 14925 Kingsport Road, Fort Worth, TX 76155.

FOR FURTHER INFORMATION CONTACT: A. Escobar, Office of Disaster Assistance, U.S. Small Business Administration, 409 3rd Street SW, Suite 6050, Washington, DC 20416, (202) 205–6734.

SUPPLEMENTARY INFORMATION: Notice is hereby given that as a result of the President's major disaster declaration on 11/21/2022, Private Non-Profit organizations that provide essential services of a governmental nature may file disaster loan applications at the address listed above or other locally announced locations.

The following areas have been determined to be adversely affected by the disaster:

Primary Counties: Berkeley, Charleston, Clarendon, Georgetown, Horry, Jasper, Williamsburg.

The Interest Rates are:

	Percent
For Physical Damage:	
Non-Profit Organizations with Credit Available Elsewhere ...	1.875
Non-Profit Organizations without Credit Available Elsewhere	1.875
For Economic Injury:	
Non-Profit Organizations without Credit Available Elsewhere	1.875

The number assigned to this disaster for physical damage is 17713 8 and for economic injury is 17714 0.

(Catalog of Federal Domestic Assistance Number 59008)

Rafaela Monchek,

Acting Associate Administrator for Disaster Assistance.

[FR Doc. 2022–25916 Filed 11–25–22; 8:45 am]

BILLING CODE 8026–09–P

SMALL BUSINESS ADMINISTRATION

Data Collection Available for Public Comments

ACTION: 60-day notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, this notice announces the Small Business Administration's (SBA) intentions to request approval for reinstatement with modification of a previously approved information collection.

DATES: Submit comments on or before January 27, 2023.

ADDRESSES: Send all comments regarding whether this information collection is necessary for the proper performance of the function of the agency, whether the burden estimates are accurate, and if there are ways to minimize the estimated burden and enhance the quality of the collections, to Louis Cupp, New Markets Policy Analyst, Office of Investment and Innovation, Small Business Administration, 409 3rd Street, 6th Floor, Washington, DC 20416.

FOR FURTHER INFORMATION CONTACT: Louis Cupp, New Markets Policy Analyst, 202–619–0511, *louis.cupp@sba.gov;* Curtis B. Rich, Agency Clearance Officer, 202–205–7030, *curtis.rich@sba.gov.*

SUPPLEMENTARY INFORMATION: SBA Forms 2181, 2182 and 2183 provide SBA with the necessary information to make decisions regarding the approval or denial of an applicant for a small business investment company (SBIC) license. SBA uses this information to assess an applicant's ability to successfully operate an SBIC within the scope of the Small Business Investment Act of 1958, as amended.

Solicitation of Public Comments

SBA is requesting comments on (a) Whether the collection of information is necessary for the agency to properly perform its mission and functions with respect to the SBIC program; (b) whether the burden estimates are accurate; (c) whether there are ways to minimize the burden, including through the use of automated techniques or other forms of information technology; and (d) whether there are ways to enhance the quality, utility, and clarity of the information.

OMB Control Number 3245:0062

Title: SBIC Management Assessment Questionnaire & License Application; Exhibits to Management Assessment Questionnaire & SBIC License Application.

Frequency: On occasion.

SBA Form Numbers: 2181, 2182, and 2183.

Description of Respondents: Small Business Investment Company (SBIC) applicants.

Responses: 375.

Annual Burden: 24,625.

Curtis Rich,

Agency Clearance Officer.

[FR Doc. 2022–25785 Filed 11–25–22; 8:45 am]

BILLING CODE 8026–09–P

SMALL BUSINESS ADMINISTRATION

[Disaster Declaration #17644 and #17645; FLORIDA Disaster Number FL–00178]

Presidential Declaration Amendment of a Major Disaster for the State of Florida

AGENCY: U.S. Small Business Administration.

ACTION: Amendment 8.

SUMMARY: This is an amendment of the Presidential declaration of a major disaster for the State of Florida (FEMA–4673–DR), dated 09/29/2022.

Incident: Hurricane Ian.

Incident Period: 09/23/2022 through 11/04/2022.

DATES: Issued on 11/21/2022.

Physical Loan Application Deadline Date: 01/12/2023.

Economic Injury (EIDL) Loan Application Deadline Date: 06/29/2023.

ADDRESSES: Submit completed loan applications to: U.S. Small Business Administration, Processing and Disbursement Center, 14925 Kingsport Road, Fort Worth, TX 76155.

FOR FURTHER INFORMATION CONTACT: A. Escobar, Office of Disaster Assistance, U.S. Small Business Administration, 409 3rd Street SW, Suite 6050, Washington, DC 20416, (202) 205–6734.

SUPPLEMENTARY INFORMATION: The notice of the President's major disaster declaration for the State of Florida, dated 09/29/2022, is hereby amended to extend the deadline for filing applications for physical damages as a result of this disaster to 01/12/2023.

All other information in the original declaration remains unchanged.

(Catalog of Federal Domestic Assistance Number 59008)

Rafaela Monchek,

Acting Associate Administrator for Disaster Assistance.

[FR Doc. 2022–25903 Filed 11–25–22; 8:45 am]

BILLING CODE 8026–09–P

SURFACE TRANSPORTATION BOARD

[Docket No. EP 772]

Oversight Hearing Pertaining to Union Pacific Railroad Company's Embargoes

AGENCY: Surface Transportation Board.

ACTION: Notice of public hearing.

SUMMARY: The Surface Transportation Board (Board) will hold an in-person public hearing on December 13 and 14, 2022, with Union Pacific Railroad Company (UP), pertaining to the significant increase in its use of

embargoes. The hearing will be held in the Hearing Room of the Board's headquarters, located at 395 E Street SW, Washington, DC 20423–0001. The Board will direct the following executive-level officials of UP to appear in person: Lance M. Fritz, Chairman, President, and Chief Executive Officer; Kenny Rocker, Executive Vice President—Marketing and Sales; Eric Gehringer, Executive Vice President—Operations; and Bradley Moore, Vice President—Customer Care and Support. UP may bring additional personnel to the hearing who may be able to provide helpful information to the Board. In addition, the Board invites testimony from shippers and other stakeholders who can contribute to the Board's understanding of the cause and/or impact of the embargoes.

DATES: The hearing will be held on December 13 and 14, 2022, beginning at 9:30 a.m. ET, in the Hearing Room of the Board's headquarters and will be open for public observation. Interested stakeholders who wish to provide testimony at the hearing about the topics described in this notice should file with the Board a notice of intent to participate (identifying the party, proposed speaker, and amount of time requested) as soon as possible but no later than December 5, 2022. UP may bring other persons in addition to the executive-level officials directed to appear, and they may also provide testimony. If UP intends for any additional persons to appear, it should notify the Board by December 5, 2022. Furthermore, by December 6, 2022, UP is directed to file certain information and documents, detailed below, pertaining to its embargoes and how UP is using and plans to use the Customer Inventory Management System (CIMS) as a tool to reset inventory levels in the short-term and for continual maintenance in the long-term. Interested stakeholders may file written testimony or comment about the topics described in this Notice by December 14, 2022.

ADDRESSES: All filings should be submitted via e-filing on the Board's website at *www.stb.gov.* Filings will be posted to the Board's website and need not be served on any other party to the proceeding.

FOR FURTHER INFORMATION CONTACT: Nathaniel Bawcombe at (202) 245–0376. Assistance for the hearing impaired is available through the Federal Relay Service at (800) 877–8339.

SUPPLEMENTARY INFORMATION: Rail network reliability is essential to the Nation's economy and is a foremost priority of the Board. As discussed in prior decisions in Docket No. EP 770 and Docket No. EP 770 (Sub-No. 1), the Board has heard from a broad range of stakeholders about the significant challenges they have experienced because of inconsistent and unreliable rail service from BNSF Railway Company; CSX Transportation, Inc.; Norfolk Southern Railway Company; and UP, including substantial increases in problems arising from tight car supply and unfilled car orders, delays in transportation for carload and bulk traffic, increased origin dwell time for released unit trains, missed switches, and ineffective customer assistance. The Board has received reports, from the Secretary of Transportation, the Secretary of Agriculture, members of the U.S. Congress, and other stakeholders, about the serious impact of these service trends on rail users, particularly shippers of agricultural and energy products.[1]

As a Class I rail carrier, UP occupies a major and essential role in the movement of goods across the country. It carries approximately 26.8% of freight served by rail [2] and approximately 10.7% of all long-distance freight volume.[3] Therefore, disruptions in UP's service levels have a significant detrimental impact on the supply chain and the economy of the United States. As such, the Board has been closely monitoring UP's recent use of embargoes [4] and has observed a disturbing upward trend in their usage. In recent years, there has been a significant increase in UP's use of embargoes, and congestion is the stated cause for almost of all of the embargoes, as shown in the below chart.[5]

Year	Number of embargoes	Percentage caused by congestion	Percentage caused by weather	Percentage caused by catastrophic event	Percentage caused by other
2017	27	19	70	11	22
2018	140	99	.....	1	.....
2019	413	74	21	.....	5
2020	251	85	.....	9	6
2021	662	94	6	.....	.....
2022	886 (as of October 2022)	98	.....	.....	2

[1] *See* Letter from Hon. Jim Costa, Ralph Norman, Mary E. Miller, Charles J. Fleischmann, James R. Baird, Kat Cammack, W. Gregory Steube, Glenn Grothman, John Rose, Austin Scott, Trent Kelly, Rick W. Allen, Dan Newhouse, Mark E. Green, M.D., Louie Gohmert, Frank D. Lucas, Tracey Mann, Vicky Hartzler, Mike Thompson, Jimmy Panetta, Clay Higgins, David Rouzer, Byron Donalds, Tim Burchett, Darin LaHood, Josh Harder, Salud Carbajal, Cynthia Axne, Kim Schrier, M.D., David G. Valadao, Randy Feenstra, Julia Letlow, Sanford D. Bishop, Jr., Lisa C. McClain, Mariannette Miller-Meeks, M.D., Robert E. Latta, Daniel Meuser, Bob Gibbs, Cathy McMorris Rodgers, Jefferson Van Drew, Ashley Hinson, Daniel T. Kildee, Sharice L. Davids, Ro Khanna, John R. Moolenaar, David Kustoff, Al Lawson, Tom O'Halleran, Andrew S. Clyde, Michael Cloud, & Angie Craig, June 29, 2022, *Urgent Issues in Freight Rail Serv.,* EP 770; Letter from Hon. Jim Costa, June 21, 2022, *Urgent Issues in Freight Rail Serv.,* EP 770; Letter from Hon. Alex Padilla & Dianne Feinstein to Chairman Martin J. Oberman, June 1, 2022, *Urgent Issues in Freight Rail Serv.,* EP 770; Letter from Hon. Kevin Cramer, Tammy Baldwin, Chuck Grassley, Shelley Moore Capito, Sherrod Brown, M. Michael Rounds, Patty Murray, Joni Ernst, Marco Rubio, Tammy Duckworth, Mike Crapo, James Risch, Tina Smith, Mark Kelly, John Hoeven, John Kennedy, Joe Manchin III, Roger Marshall M.D., Amy Klobuchar, Mike Braun, & Richard J. Durbin to Chairman Martin J. Oberman, May 24, 2022, *Urgent Issues in Freight Rail Serv.,* EP 770; Letter from SMART-Transp. Div. to Chairman Martin J. Oberman (Apr. 1, 2022), available at *www.stb.gov* (open tab ''News & Communications'' & select ''Non-Docketed Public Correspondence''); Letter from Hon. Thomas J. Vilsack, U.S. Dep't of Agric., Mar. 30, 2022, *Reciprocal Switching,* EP 711 (Sub-No. 1); Letter from Hon. Shelley Moore Capito to Board Members Martin J. Oberman, Michelle A. Schultz, Patrick J. Fuchs, Robert E. Primus, & Karen J. Hedlund (Mar. 29, 2022), *available at www.stb.gov* (open tab ''News & Communications'' & select ''Non-Docketed Public Correspondence''); Letter from the Nat'l Grain & Feed Ass'n to Board Members Martin J. Oberman, Michelle A. Schultz, Patrick J. Fuchs, Robert E. Primus, & Karen J. Hedlund (Mar. 24, 2022), *available at www.stb.gov* (open tab ''News & Communications'' & select ''Non-Docketed Public Correspondence'').

[2] This figure is derived from the Class I railroads' Annual Report of Operations and Finances, known as R–1 reports, submitted to the Board.

[3] This figure is derived from the Association of American Railroads (AAR) at *www.aar.org/facts-figures.*

[4] According to AAR Circular No. TD–1, an embargo is ''a method of controlling Traffic movements when, in the judgment of the serving railroad, an actual or threatened Physical or Operational Impairment, of a temporary nature, warrants restrictions against such movements.''

[5] This information was obtained from the AAR Embargo System at *https://embargo.railinc.com/#/home.*

This pattern shows no signs of abating. Between November 1, 2022, and November 17, 2022, UP issued an additional 126 embargoes with congestion as the stated cause. Of those 126 embargoes, 89 were issued on November 16, 2022; as of November 17, 2022, UP had 128 active embargoes in place and, for all, congestion was the stated cause. The Board understands that embargoes may vary in scope and that all carriers do not report and use embargoes in the same way. Nevertheless, the use of embargoes by all other Class I carriers, combined, pales in comparison to the number of embargoes issued by UP. Given UP's sizeable role in freight rail, its increased use of embargoes in recent years, and the considerable increase just this month, it is imperative that the Board hear from UP directly about this matter and how UP plans to reduce, if not eliminate, the use of embargoes to control congestion.

The Board will hold a public hearing on December 13 and 14, 2022, beginning at 9:30 a.m. ET, at its offices in Washington, DC, to hear firsthand from senior officials of UP about the substantial increase in the use of embargoes in recent years. The Board will direct the following executive-level officials of UP to appear at the hearing: Lance M. Fritz, Chairman, President, and Chief Executive Officer; Kenny Rocker, Executive Vice President—Marketing and Sales; Eric Gehringer, Executive Vice President—Operations; and Bradley Moore, Vice President—Customer Care and Support. UP is directed to ensure that its representatives can provide the Board with detailed information pertaining to UP's embargoes. Accordingly, in addition to those directed, UP may bring additional personnel to the hearing that may be able to provide helpful information to the Board. If UP intends to have any other persons appear, UP should notify the Board by December 5, 2022.

At the hearing, UP should be prepared to discuss in detail the following topics:

- UP's decision-making process in determining to issue an embargo, including underlying causes (*e.g.,* network issues and crew shortages), whether UP's market power plays a role in the decision making, and UP's consideration of alternatives to embargoes;
- How UP measures congestion and total excess cars throughout its system;
- The explanations for the dramatic increase in embargoes since 2017, including whether UP has maintained sufficient resources during that time period;
- UP's practices and policies with respect to notification and outreach to shippers;
- UP's consideration of shippers' operational needs, including alternative avenues to meet their shipping requirements;
- UP's implementation and use of the CIMS;
- Whether UP has considered the impact of its embargoes on its common carrier and other legal obligations, and if so, the specifics of that consideration; and
- UP's plans, if any, to decrease the need for embargoes going forward.

Additionally, in advance of the hearing, UP is directed to file with the Board information and documents in support of the above topics so that the Board may understand UP's processes for deciding when and how to use embargoes. Furthermore, UP is directed to file with the Board information and documents so that the Board may understand how UP is using and intends to use the CIMS as a tool to reset inventory levels in the short-term and for continual maintenance in the long-term.

UP is also directed to preserve all paper and electronic records, including all correspondence, related to its embargoes and the CIMS.

In addition to directing UP's participation at the hearing, the Board will invite shippers and other stakeholders who can contribute to the Board's understanding of the cause and/or impact of UP's embargoes and the CIMS to testify.[6]

Board Releases and Transcript Availability: Decisions and notices of the Board, including this notice, are available on the Board's website at *www.stb.gov*. The Board will issue a separate notice containing the schedule of appearances. A transcript of the hearing will be posted on the Board's website once it is available.

It is ordered:

1. A public hearing will be held on December 13 and 14, 2022, beginning at 9:30 a.m. ET, in the Hearing Room of the Board's headquarters, located at 395 E Street SW, Washington, DC 20423–0001.

2. The following executive-level officials of UP are directed to appear at the public hearing: Lance M. Fritz, Chairman, President, and Chief Executive Officer; Kenny Rocker, Executive Vice President—Marketing and Sales; Eric Gehringer, Executive Vice President—Operations; and Bradley Moore, Vice President—Customer Care and Support. By December 5, 2022, UP must notify the Board if it intends to bring additional persons to appear.

3. By December 5, 2022, interested stakeholders who wish to provide testimony at the hearing about the topics described in this Notice shall file with the Board a notice of intent to participate identifying the party, the proposed speaker(s), and the time requested. Interested stakeholders may file written testimony or comment about the topics described in this Notice by December 14, 2022.

4. By December 6, 2022, UP is directed to file information with the Board, as discussed above.

5. UP is directed to preserve all records, including all correspondence, pertaining to its embargoes and the CIMS.

6. Filings will be posted to the Board's website and need not be served on any other party to the proceeding.

7. This decision is effective on its service date.

8. This decision will be published in the **Federal Register**.

Decided: November 22, 2022.

By the Board, Board Members, Fuchs, Hedlund, Oberman, Primus, and Schultz.

Eden Besera,

Clearance Clerk.

[FR Doc. 2022–25855 Filed 11–25–22; 8:45 am]

BILLING CODE 4915–01–P

[6] The Board's public hearing is not intended to replace the informal and confidential dispute resolution process facilitated by the Board's Rail Customer and Public Assistance, and stakeholders are encouraged to continue communicating through that office.

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

[Docket No. FRA–2022–0004]

Equivalent Protective Arrangements for Railroad Employees

AGENCY: Federal Railroad Administration (FRA), Department of Transportation (DOT).

ACTION: Notice of final guidance.

SUMMARY: This is a notice of final guidance issued by the Federal Railroad Administration (FRA) in connection with statutorily required protective arrangements for employees impacted by certain projects financed by the Federal government.

DATES: The final guidance is effective December 28, 2022.

FOR FURTHER INFORMATION CONTACT: Kevin MacWhorter, Attorney Advisor, Office of the Chief Counsel, telephone: (202) 641–8727, email: *kevin.macwhorter@dot.gov*.

SUPPLEMENTARY INFORMATION:

I. Summary

The final guidance (FRA Guidance) is available at *https://www.regulations.gov* under docket number FRA–2022–0004 and on the FRA website at *https://railroads.dot.gov/elibrary/equivalent-labor-protections*.

The FRA Guidance is intended to facilitate compliance with statutorily required protective arrangements under 49 U.S.C. 22905(c)(2)(B) for employees impacted by certain projects financed by the Federal government. The FRA Guidance describes both procedural and substantive protections. The substantive protections include dismissal and displacement allowances and moving assistance, among other things. The procedural protections include opportunities for employees (or their representatives) to engage in negotiations with respect to application of the protections.

FRA intends to include the FRA Guidance as an appendix to all new grant and cooperative agreements subject to section 22905(c)(2)(B), and grantees will be required to ensure the inclusion of the FRA Guidance, as applicable, in all contracts for the FRA-funded project. Costs incurred to comply with the FRA Guidance and in a manner consistent with 2 CFR part 200 are eligible for reimbursement under the applicable grant.

II. Background

In 1976, pursuant to the Railroad Revitalization and Regulatory Reform Act of 1976 (4R Act), representatives of the railroads and their employees agreed on ''[f]air and equitable arrangements'' to protect employees impacted by certain projects financed by the Federal government. The Secretary of Labor adopted these protections in a letter to the Secretary of Transportation dated July 6, 1976. FRA has placed a copy of this letter and the accompanying protections in the docket for this FRA Guidance. In general, these protections provide that a railroad employee who is adversely affected by a project receiving certain financing from the Federal government may be entitled to a displacement allowance or a dismissal allowance, among other benefits.

Many of FRA's current discretionary grant programs, including the Consolidated Rail Infrastructure and Safety Improvements Program and the Federal-State Partnership for Intercity Passenger Rail Program, are subject to the grant conditions described in 49 U.S.C. 22905(c). As relevant here, section 22905(c)(2)(B), requires grant applicants, for any grant for a project that uses rights-of-way owned by a railroad, to agree to comply with ''the protective arrangements that are equivalent to the protective arrangements established under'' the 4R Act. While this requirement is a condition of many FRA grants, it is not often applicable (as FRA's grants do not typically cause an adverse impact to railroad employees). With that said, FRA developed the FRA Guidance to assist grantees and to facilitate compliance with these important protections.

As a condition of receiving funding for a project subject to section 22905(c), FRA grantees must comply with protective arrangements equivalent to those provided under the 4R Act. FRA includes this requirement in the binding and enforceable grant agreement between FRA and the grant recipient. As described above, FRA grant agreements will be supplemented by the FRA Guidance, which clarifies the application of the protections to FRA grant programs. Because section 22905(c)(2)(B) specifically requires protective arrangements ''equivalent'' to those established under the 4R Act, FRA did not change the protections adopted by the Secretary of Labor in 1976. The FRA Guidance provides the same protections to railroad employees as provided under the 4R Act.

While providing the same substantive and procedural protections as the 4R Act, the FRA Guidance also recognizes important differences between the financial assistance provided under the 4R Act and FRA's existing grant programs. Whereas the 4R Act provided financial assistance directly to railroads, many of FRA's grant programs provide funding to non-railroad grantees (who are often public entities). FRA believes this difference is best addressed by expressly requiring grantees to flow down the required protections to the applicable railroad. This approach both ensures that the railroad employees are accorded the appropriate protections and aligns with the 4R Act framework that sets forth protections as between a railroad and its employees. In addition, railroads and their employees are best positioned to ensure compliance with these protections as they specifically understand what, if any, adverse impacts may arise as a result of a Federally financed project, and are of course, well versed in negotiating labor protections. Public entities, on the other hand, are not well positioned to understand the impacts to rail employees resulting from a Federally financed project. With that said, grantees are able to enforce the employee protections through their contract with the relevant railroad (the FRA Guidance also recognizes that railroad employees, or their representatives, may notify a grantee of a dispute or controversy relating to the protections). As such, the FRA Guidance's flow down requirement allocates responsibility for the protections in a manner that maximizes compliance.

III. Comments

On March 4, 2022, FRA published a notice of proposed guidance in connection with the equivalent protective arrangements for railroad employees and sought public comment. 87 FR 12527. In preparing the FRA Guidance, FRA considered all public comments submitted to the **Federal Register**. The following commenters submitted comments in connection with the proposed guidance: the Transportation Trades Department AFL–CIO; the Brotherhood of Maintenance of Way Employees/IBT; the Brotherhood of Railroad Signalmen; the International Association of Sheet Metal, Air, Rail and Transportation Workers Mechanical Division; and the National Conference of Firemen And Oilers, 32BJ/SEIU. Comments are summarized and briefly addressed below.

The commenters stated that it was not sufficient for the FRA Guidance to require a grant recipient to flow down the requirements while making the railroad responsible for the actions necessary to implement the protections. Instead, the commenters stated that the FRA Guidance should provide that any grant recipient, whether a railroad or a non-railroad, of Federal financial assistance subject to 49 U.S.C. 22905(c) must take the actions necessary to provide and enforce the employee protective arrangements. Similarly, commenters also stated that the FRA Guidance did not sufficiently address the scenario in which a grant recipient contracts with a third party (and not the railroad itself) to perform railroad work activities. These comments requested that FRA revise the proposed guidance to require all grant recipients to provide the protections directly to the adversely impacted railroad employees. FRA disagrees. As described above, section 2 of the FRA Guidance requires all non-railroad grant recipients to flow down the protective arrangement requirements to subsequent contracting parties, including railroads. As discussed above, FRA believes the flow-down requirement ensures that railroads and their employees comply with the required employee protections, when applicable, which is consistent with

(and equivalent to) the 4R Act protections.

However, in consideration of these comments, FRA has made four modifications to the FRA Guidance. First, section 2 of the FRA Guidance now includes a sentence clearly stating that a grant recipient is responsible for ensuring compliance with the employee protections. Second, a new section 2(b) of the FRA Guidance requires a grant recipient to incorporate into an agreement, new or existing, with a railroad owning rights-of-way the requirement that the railroad notify its employees (and their representatives) of the project funded with financial assistance subject to 49 U.S.C. 22905(c) and the applicability of the employee protections. Third, a new section 2(c) of the FRA Guidance permits any railroad employee (or their representatives) to notify the grant recipient of a dispute or controversy related to these employee protections. Fourth, FRA has modified subsection 8(a) and section 9 to provide a clear mechanism for a railroad employee (or its representative) to dispute whether it would be affected by a project, including the ability to refer the dispute to arbitration. FRA believes this clarification will help address comments regarding the applicability of the protections in instances where a grant recipient contracts directly with a third party (and not the applicable railroad). Together, these four changes clarify the grant recipient's obligations to: ensure compliance with the employee protections; ensure railroad employees and their representatives are on notice of projects subject to the protections; ensure railroad employees and their representatives can notify the grant recipient of any dispute relating to the protections; and provide a mechanism to resolve disputes as to whether a railroad employee is affected by a project.

A commenter suggested that the FRA Guidance should also apply to post-construction maintenance activities relating to Federally financed construction projects subject to the grant conditions described in section 22905(c). FRA disagrees. Pursuant to section 22905(c)(2)(B), the protections apply to those actions ''taken in connection'' with the project. FRA understands this language to limit the protections to the activities necessary to complete the project funded with FRA financial assistance. The protections do not extend to activities, like maintenance, that follow the completion of the project and which are not funded by FRA's financial assistance.

FRA made several additional revisions to the proposed guidance. One commenter requested that the ''Average Monthly Time'' used to calculate displacement allowances be based on hours worked rather than days worked. FRA agrees with this change and modified subsection 1(b) accordingly. A commenter also requested that FRA revise the definition of the term ''Dismissed Employee'' to include employees who are ''unable to secure another position by exercise of their seniority rights,'' rather than the proposed language that excluded employees who ''can secure another position by exercise of their seniority rights.'' FRA agrees with this change and modified subsection 1(c) accordingly. A commenter also requested that FRA revise subsection 4(b)(ii) of the FRA Guidance, titled ''Subject of Negotiations,'' to clarify that changes to infrastructure, including rights-of-way, track, and signal and crossing systems, that may result in dismissal or displacement of protected employees or rearrangement of forces involving such employees shall be subject to review and negotiation by the parties to the extent necessary to ensure compliance with the FRA Guidance. FRA agrees with this proposed change and modified subsection 4(b)(ii) accordingly.

Issued in Washington, DC

Allison Ishihara Fultz,

Chief Counsel.

[FR Doc. 2022–25882 Filed 11–25–22; 8:45 am]

BILLING CODE 4910–06–P

DEPARTMENT OF TRANSPORTATION

Federal Transit Administration

Safety Advisory 22–3 Steering Gearbox Bolt Failure

AGENCY: Federal Transit Administration (FTA), U.S. Department of Transportation (DOT).

ACTION: Notice of Safety Advisory.

SUMMARY: The Federal Transit Administration (FTA) is issuing Safety Advisory 22–3 to recommend that transit agencies identify Nova Bus models manufactured in 2018 or later that use a Bosch steering gearbox affixed to the vehicle frame through a mounting plate and perform inspections, as recommended by Nova Bus. In addition, FTA recommends that any transit agency that identifies buses equipped with this mounting plate assembly submit a summary of their findings to FTA. FTA Safety Advisory 22–3 ''Steering Gearbox Bolt Failure'' is available in its entirety on FTA's Safety Advisory website: (*https://www.transit.dot.gov/regulations-and-guidance/safety/fta-safety-advisories*).

DATES: FTA recommends that transit agencies perform the actions described in SA 22–3 by December 13, 2022. In addition, FTA recommends that affected transit agencies submit a summary of their findings to FTA via email at *FTASystemSafety@dot.gov* by January 12, 2023.

FOR FURTHER INFORMATION CONTACT: Joseph DeLorenzo, Associate Administrator for Transit Safety and Oversight and Chief Safety Officer, telephone (202) 366–1783 or *Joseph.DeLorenzo@dot.gov*.

Authority: 49 U.S.C. 5329; 49 CFR 1.91 and 670.29.

Veronica Vanterpool,

Deputy Administrator.

[FR Doc. 2022–25896 Filed 11–25–22; 8:45 am]

BILLING CODE 4910–57–P

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

[Docket No. DOT–OST–OST–2022–0131]

Privacy Act of 1974; System of Records

AGENCY: Office of the Departmental Chief Information Officer, Office of the Secretary of Transportation, DOT.

ACTION: Notice of a new system of records.

SUMMARY: In accordance with the Privacy Act of 1974, the Department of Transportation (DOT) proposes to establish a new system of records (hereafter referred to as ''Notice'') titled, ''Department of Transportation, Federal Aviation Administration DOT/FAA 855 Science, Technology, Engineering, and Math (STEM) Aviation and Space Education (AVSED) Outreach Program.'' This system of records allows the Federal Aviation Administration (FAA) to collect, use, maintain, and disseminate the records needed for students, parents, teachers, and other similar educators to register for outreach events and contests that are hosted by the FAA. This includes collecting, using, maintaining, and disseminating information when complying with the Children's Online Privacy Protection Act of 1998 (COPPA), 15 U.S.C. 6501–6506 (2001) requirement to obtain parental consent. Additionally, this system of records will provide FAA with a means to document participation, and completion of FAA outreach events and contests.

DATES: Submit comments on or before December 28, 2022. The Department

may publish an amended Systems of Records Notice considering any comments received. This new system will be effective immediately upon publication. The routine uses will be effective December 28, 2022.

ADDRESSES: You may submit comments, identified by docket number OST–2022–0131 by any of the following methods:

- *Federal e-Rulemaking Portal: http://www.regulations.gov.* Follow the 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.
- *Fax:* (202) 493–2251. Instructions: You must include the agency name and docket number OST–2022–0131. All comments received will be posted without change to *http://www.regulations.gov,* including any personal information provided.

Privacy Act: Anyone is able to 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.).

Docket: For access to the docket to read background documents or comments received, go to *http://www.regulations.gov* or to the street address listed above. Follow the online instructions for accessing the docket.

FOR FURTHER INFORMATION CONTACT: For questions, please contact Karyn Gorman, Acting Departmental Chief Privacy Officer, Privacy Office, Department of Transportation, Washington, DC 20590; *privacy@dot.gov;* or 202–366–3140.

SUPPLEMENTARY INFORMATION:

Background

In accordance with the Privacy Act of 1974, 5 U.S.C. 552a, the DOT FAA proposes to issue a new system of records notice titled, ''DOT/FAA 855 Science, Technology, Engineering, and Math (STEM) Aviation and Space Education (AVSED) Outreach Program.'' The STEM AVSED Program has been an integral part of FAA outreach and the national education system for decades. The program was established to expose students to aviation and aerospace careers and to promote STEM education and outreach events.

One example of these outreach events is the recently established Airport Design Challenge (ADC). The ADC is a program that teaches children how to build an airport to FAA specifications using Minecraft gaming software as an online design platform. The program, like many of the FAA's STEM education and outreach programs, is open to children in grades K–12. In order to enter into an outreach event or contest, students, parents or legal guardians, teachers, and other similar educators need to create a user account, for themselves or for students they wish to register. The student's name, username, and password, grade category (kindergarten through 6th or 7th through 12th), email address, and country that the student resides in will be provided by student, parent, teachers or other similar educators. The parent or legal guardian of the minor student will provide the information and in addition to the child's information, provide their name, email address, home address, and phone number (optional).

Some of STEM AVSED's outreach events, including the ADC, may involve collection of personal information from children; in these instances, the FAA collects additional information from parents and legal guardians in accordance with the Children's Online Privacy Protection Act of 1998 (COPPA), 15 U.S.C. 6501–6506 (2001). Specifically, under COPPA, parents or legal guardians of children under thirteen years of age must provide consent for the collection, use, or disclosure of the personal information of their children collected on FAA websites and other online services. To ensure parents are aware of and have control of information collected from their children, the FAA obtains verifiable parental consent from the child's parent prior to collecting any information online from the child. At times, to ensure full transparency, the FAA obtains verifiable parental consent for student users who are thirteen and over as well as those under thirteen.

The FAA at times may use third party vendors to verify parents' identities and facilitate the process of obtaining parental consent. The third-party vendor's platform streamlines the consent process by using automated process to verify the identity of a person designated as the parent of any child enrolled in our program. The FAA will collect the parent's email address, student grade category (kindergarten through 6th or 7th through 12th), and country the child currently resides in, and provide the information to the third-party vendor. The third-party vendor will use the information provided to send the parent an email in order to confirm the identity of the parent/legal guardian and verify that the parent/legal guardian consents to the collection, use, or disclosure of the personal information of any child that they wish to enroll in the STEM AVSED Program. The third-party vendor will notify the FAA if verifiable parental consent is confirmed.

Parents and legal guardians can opt out of having their identity verified by the third-party vendor. In those instances, the FAA will obtain the parent's or legal guardian's consent through a form that parents will print, sign, and then scan and email back to the FAA. No information in addition to what is referenced above will be collected.

Once verifiable parental consent is confirmed, all students will complete the outreach event or contest in which they have selected to attend. However, this system of record will maintain records on contest completion, the students' placement in the contest, awards earned and/or received, and certificate of completion.

Privacy Act

The Privacy Act (5 U.S.C. 552a) governs the means by which the Federal Government collects, maintains, and uses personally identifiable information (PII) in a System of Records. A ''System of Records'' is a group of any records under the control of a Federal agency from which information about individuals is retrieved by name or other personal identifier. The Privacy Act requires each agency to publish in the **Federal Register** a System of Records Notice (SORN) identifying and describing each System of Records the agency maintains, including the purposes for which the agency uses PII in the system, the routine uses for which the agency discloses such information outside the agency, and how individuals to whom a Privacy Act record pertains can exercise their rights under the Privacy Act (*e.g.,* to determine if the system contains information about them and to contest inaccurate information). In accordance with 5 U.S.C. 552a(r), DOT has provided a report of this system of records to the Office of Management and Budget and to Congress.

SYSTEM NAME AND NUMBER:

Department of Transportation, Federal Aviation Administration, DOT/FAA 855 Science, Technology, Engineering, and Math (STEM) Aviation and Space Education (AVSED) Outreach Program.

SECURITY CLASSIFICATION:

Sensitive, unclassified

SYSTEM LOCATION(S):

FAA Office of Human Resource Management (AHR) 1350 Duane Avenue Santa Clara, CA 95054. Blackboard Managed Hosting (BMH) facility in the Chantilly, VA backup site at Equinix, c/o Blackboard, Inc., 1350 Duane Avenue Santa Clara, CA 95054.

SYSTEM MANAGER(S):

Office of Human Resource Management (AHR) 1350 Duane Avenue Santa Clara, CA 95054. Contact information for system manager is *avsed.challenge@faa.gov.*

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Children's Online Privacy Protection Act of 1998 (COPPA), 15 U.S.C. 6501–6506 (2001); Airport and Airway Development Act of 1970, Public Law 94–353; National and Community Service Act of 1990, 49 U.S.C. 12501; and Title VI: Aviation Workforce of the FAA Reauthorization Act of 2018 (Pub. L. 115–254).

PURPOSE(S) OF THE SYSTEM:

The purpose of this system of record notice is for students, parents, teachers, and other similar educators to register students for outreach events and contests that are hosted or organized by the FAA; document participation, and completion of FAA outreach events and contest; and obtain verifiable parental consent so that the FAA complies with COPPA requirements.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

This system contains information on individuals and participants that are enrolled or wishing to participate in FAA contests and events, such as the Airport Design Challenge Contest, to include but are not limited to the students, parents, legal guardians, or teachers of minor children enrolled.

CATEGORIES OF RECORDS IN THE SYSTEM:

Categories of records include name, username and password, grade category (kindergarten through 6th or 7th through 12th), email address, student's country of residence, home address, and phone number (optional). In addition, course completions, grade (pass/fail), and certificate of completion will also be included in the categories of records.

RECORD SOURCE CATEGORIES:

Sources of records includes students, parents, legal guardians, teachers or other similar educators and third-party vendors.

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 5 U.S.C. 552a(b) of the Privacy Act, all or a portion of the records or information contained in this system may be disclosed outside of DOT FAA as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows:

System Specific Routine Uses:

1. The FAA will share the parent or legal guardian's email address, student grade category (kindergarten through 6th or 7th through 12th) and country that the student lives with any vendor performing verifiable parental consent. This information will be used to identify, verify, and obtain consent of the parent or legal guardian for their child to attend an educational program. If parents or legal guardians opt out of using the third-party vendor for this process, the FAA will not disclose their information to the third party vendor.

2. To other individuals or organizations, including Federal, State, or local agencies, and nonprofit, educational, or private entities, who are participating in FAA STEM programs as necessary for the purpose of assisting FAA in the efficient administration of its program.

3. To educational institutions or training providers as evidence of participation or successful completion, as needed to continue education.

Departmental Routine Uses:

4. In the event that a system of records maintained by DOT to carry out its functions indicates a violation or potential violation of law, whether civil, criminal or regulatory in nature, and whether arising by general statute or particular program pursuant thereto, the relevant records in the system of records may be referred, as a routine use, to the appropriate agency, whether Federal, State, local or foreign, charged with the responsibility of investigating or prosecuting such violation or charged with enforcing or implementing the statute, or rule, regulation, or order issued pursuant thereto.

5. A record from this system of records may be disclosed, as a routine use, to a Federal, State, or local agency maintaining civil, criminal, or other relevant enforcement information or other pertinent information, such as current licenses, if necessary to obtain information relevant to a DOT decision concerning the hiring or retention of an employee, the issuance of a security clearance, the letting of a contract, or the issuance of a license, grant or other benefit.

6. A record from this system of records may be disclosed, as a routine use, to a Federal agency, in response to its request, in connection with the hiring or retention of an employee, the issuance of a security clearance, the reporting of an investigation of an employee, the letting of a contract, or the issuance of a license, grant, or other benefit by the requesting agency, to the extent that the information is relevant and necessary to the requesting agency's decision on the matter.

7a. Routine Use for Disclosure for Use in Litigation. It shall be a routine use of the records in this system of records to disclose them to the Department of Justice or other Federal agency conducting litigation when (a) DOT, or any agency thereof, or (b) Any employee of DOT or any agency thereof, in his/her official capacity, or (c) Any employee of DOT or any agency thereof, in his/her individual capacity where the Department of Justice has agreed to represent the employee, or (d) The United States or any agency thereof, where DOT determines that litigation is likely to affect the United States, is a party to litigation or has an interest in such litigation, and the use of such records by the Department of Justice or other Federal agency conducting the litigation is deemed by DOT to be relevant and necessary in the litigation, provided, however, that in each case, DOT determines that disclosure of the records in the litigation is a use of the information contained in the records that is compatible with the purpose for which the records were collected.

7b. Routine Use for Agency Disclosure in Other Proceedings. It shall be a routine use of records in this system to disclose them in proceedings before any court or adjudicative or administrative body before which DOT or any agency thereof, appears, when (a) DOT, or any agency thereof, or (b) Any employee of DOT or any agency thereof in his/her official capacity, or (c) Any employee of DOT or any agency thereof in his/her individual capacity where DOT has agreed to represent the employee, or (d) The United States or any agency thereof, where DOT determines that the proceeding is likely to affect the United States, is a party to the proceeding or has an interest in such proceeding, and DOT determines that use of such records is relevant and necessary in the proceeding, provided, however, that in each case, DOT determines that disclosure of the records in the proceeding is a use of the information contained in the records that is compatible with the purpose for which the records were collected.

8. The information contained in this system of records will be disclosed to the Office of Management and Budget,

OMB in connection with the review of private relief legislation as set forth in OMB Circular No. A–19 at any stage of the legislative coordination and clearance process as set forth in that Circular.

9. Disclosure may be made to a Congressional office from the record of an individual in response to an inquiry from the Congressional office made at the request of that individual. In such cases, however, the Congressional office does not have greater rights to records than the individual. Thus, the disclosure may be withheld from delivery to the individual where the file contains investigative or actual information or other materials which are being used, or are expected to be used, to support prosecution or fines against the individual for violations of a statute, or of regulations of the Department based on statutory authority. No such limitations apply to records requested for Congressional oversight or legislative purposes; release is authorized under 49 CFR 10.35(9).

10. One or more records from a system of records may be disclosed routinely to the National Archives and Records Administration in records management inspections being conducted under the authority of 44 U.S.C. 2904 and 2906.

11. DOT may make available to another agency or instrumentality of any government jurisdiction, including State and local governments, listings of names from any system of records in DOT for use in law enforcement activities, either civil or criminal, or to expose fraudulent claims, regardless of the stated purpose for the collection of the information in the system of records. These enforcement activities are generally referred to as matching programs because two lists of names are checked for match using automated assistance. This routine use is advisory in nature and does not offer unrestricted access to systems of records for such law enforcement and related antifraud activities. Each request will be considered on the basis of its purpose, merits, cost effectiveness and alternatives using Instructions on reporting computer matching programs to the Office of Management and Budget, OMB, Congress, and the public, published by the Director, OMB, dated September 20, 1989.

12a. To appropriate agencies, entities, and persons when (1) DOT suspects or has confirmed that there has been a breach of the system of records; (2) DOT has determined that as a result of the suspected or confirmed breach there is a risk of harm to individuals, DOT (including its information systems, programs, and operations), the Federal Government, or national security; and (3) the disclosure made to such agencies, entities, and persons is reasonably necessary to assist in connection with DOT's efforts to respond to the suspected or confirmed breach or to prevent, minimize, or remedy such harm.

12b. To another Federal agency or Federal entity, when DOT determines that information from this system of records is reasonably necessary to assist the recipient agency or entity in (1) responding to a suspected or confirmed breach or (2) preventing, minimizing, or remedying the risk of harm to individuals, the recipient agency or entity (including its information systems, programs, and operations), the Federal Government, or national security, resulting from a suspected or confirmed breach.

13. DOT may disclose records from this system, as a routine use, to the Office of Government Information Services for the purpose of (a) resolving disputes between FOIA requesters and Federal agencies and (b) reviewing agencies' policies, procedures, and compliance in order to recommend policy changes to Congress and the President.

14. DOT may disclose records from this system, as a routine use, to contractors and their agents, experts, consultants, and others performing or working on a contract, service, cooperative agreement, or other assignment for DOT, when necessary to accomplish an agency function related to this system of records.

15. DOT may disclose records from this system, as a routine use, to an agency, organization, or individual for the purpose of performing audit or oversight operations related to this system of records, but only such records as are necessary and relevant to the audit or oversight activity. This routine use does not apply to intra-agency sharing authorized under Section (b)(1) of the Privacy Act.

POLICIES AND PRACTICES FOR STORAGE OF RECORDS:

Records are stored in a hard copy format and electronically in databases.

POLICIES AND PRACTICES FOR RETRIEVAL OF RECORDS:

Records are primarily retrievable by name and email address.

POLICIES AND PRACTICE FOR RETENTION AND DISPOSAL OF RECORDS:

Personal information collected by FAA for the purpose of participating in contests and outreach events are maintained only as long as necessary for participation in and administration of the outreach activity. Student, parent or legal guardian, or teacher account registration information is maintained in accordance with National Archives and Records Administration (NARA) General Records Schedules (GRS) 6.5 item 20 (DAA–GRS–2017–0002–0002) and is destroyed after six months after account inactivity. Other information collected for participation in an outreach program is maintained in accordance with NARA schedule GRS 5.2 item 10 (DAA–GRS–2017–0003–0001). These records are typically destroyed no more than 90 days after the conclusion of the outreach program. Information collected from children may be deleted at the request of their parent or guardian. Additionally, the FAA is developing a new records retention and disposition schedule for STEM AVSED Program de-identified statistical records. FAA proposes to maintain these records for 10 years. The new records retention and disposition schedule is pending approval of NARA, and FAA will maintain the records indefinitely until NARA's approval.

ADMINISTRATIVE, TECHNICAL, AND PHYSICAL SAFEGUARDS:

Records in this system are safeguarded in accordance with applicable rules and policies, including all applicable DOT FAA automated systems security and access policies. Strict controls have been imposed to minimize the risk of compromising the information that is being stored. Access to the computer system containing the records in this system is limited to individuals who have a need to know the information for the performance of their official duties and who have appropriate clearances or permissions.

RECORD ACCESS PROCEDURES:

Individuals seeking notification of whether this system of records contains information about them may contact the System Manager at the address provided in the section ''System Manager''. When seeking records about yourself from this system of records or any other Departmental system of records your request must conform to the Privacy Act regulations set forth in 49 CFR part 10. You must sign your request and your signature must either be notarized or submitted under 28 U.S.C. 1746, a law that permits statements to be made under penalty of perjury as a substitute for notarization. If your request is seeking records pertaining to another living individual, you must include a statement from that individual certifying his/her agreement for you to access his/her records.

CONTESTING RECORDS PROCEDURE:

See ''Record Access Procedures'' above.

NOTIFICATION PROCEDURE:

See ''Record Access Procedures'' above.

EXEMPTIONS PROMULGATED FOR THE SYSTEM:

None.

HISTORY:

None.

Issued in Washington, DC.

Karyn Gorman,

Acting Chief Privacy Officer.

[FR Doc. 2022–25847 Filed 11–25–22; 8:45 am]

BILLING CODE P

DEPARTMENT OF THE TREASURY

Community Development Financial Institutions Fund

Notice of Information Collection and Request for Public Comment

ACTION: Notice and request for public comment.

SUMMARY: The U.S. Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995. Currently, the Community Development Financial Institutions Fund (CDFI Fund), U.S. Department of the Treasury, is soliciting comments concerning the New Markets Tax Credit Program (NMTC Program) Allocation and Qualified Equity Investment Tracking System (AQEI).

DATES: Written comments must be received on or before January 27, 2023 to be assured of consideration.

ADDRESSES: Submit your comments via email to Heather Hunt, Program Manager for the Office of Compliance Monitoring and Evaluation (OCME), CDFI Fund at *CCME@cdfi.treas.gov.*

FOR FURTHER INFORMATION CONTACT: Requests for additional information should be directed to Heather Hunt, OCME Program Manager, CDFI Fund, U.S. Department of the Treasury, 1500 Pennsylvania Avenue NW, Washington, DC 20220, (202) 653–0423 (not a toll-free number). Other information regarding the CDFI Fund and its programs may be obtained on the CDFI Fund website at *https://www.cdfifund.gov.*

SUPPLEMENTARY INFORMATION:

Title: Allocation and Qualified Equity Investment Tracking System.

OMB Number: 1559–0024.

Abstract: Title I, subtitle C, section 121 of the Community Renewal Tax Relief Act of 2000 (the Act), as enacted by section 1(a)(7) of the Consolidated Appropriations Act, 2001 (Pub. L. 106–554, December 21, 2000), amended the Internal Revenue Code (IRC) by adding IRC sec. 45D, New Markets Tax Credit. Pursuant to IRC sec. 45D, the Department of the Treasury, through the CDFI Fund, administers the NMTC Program, which provides an incentive to investors in the form of tax credits over seven years and stimulates the provision of private investment capital that, in turn, facilitates economic and community development in low-income communities. In order to qualify for an allocation of NMTC Program authority, an entity must be certified as a qualified Community Development Entity and submit an allocation application to the CDFI Fund. Upon receipt of such applications, the CDFI Fund conducts a competitive review process to evaluate applications for the receipt of NMTC Program allocations. Entities selected to receive an NMTC Program allocation must enter into an Allocation Agreement with the CDFI Fund. The Allocation Agreement contains the terms and conditions, including all reporting requirements, associated with the receipt of a NMTC Program allocation. The CDFI Fund requires each Allocatee to use an electronic data collection and submission system, known as the Allocation and Qualified Equity Investment Tracking System (AQEI), to report on the information related to its receipt of a Qualified Equity Investment. The CDFI Fund developed the AQEI to, among other things: (1) enhance the Allocatee's ability to report to the CDFI Fund timely information regarding the issuance of its Qualified Equity Investments; (2) enhance the CDFI Fund's ability to monitor the issuance of Qualified Equity Investments to ensure that no Allocatee exceeds its allocation authority and to ensure that Qualified Equity Investments are issued within the timeframes required by the Allocation Agreement and IRC § 45D; (3) provide the CDFI Fund with basic investor data that can be aggregated and analyzed in connection with NMTC Program evaluation efforts; and (4) provide the CDFI Fund with information about the status of Qualified Active Low-Income Community Businesses and Qualified Low-Income Community Investments at the end to the tax credit compliance period.

Current Actions: Renewal of Existing Information Collection.

Type of Review: Regular.

Affected Public: NMTC Program Allocatees.

Estimated Number of Respondents: 104.

Frequency of Responses: Annually.

Estimated Total Number of Annual Responses: 104.

Estimated Annual Time per Respondent: 20 hours.

Estimated Total Annual Burden Hours: 2,080 hours.

Requests for Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information has practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services required to provide information. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collections of information displays a valid OMB control number. Current reporting requirements are on the CDFI Fund website at *https://www.cdfifund.gov/.* Current versions of the AQEI and QEI Closeout Report guidance is available at *https://www.cdfifund.gov/amis-reporting.*

Authority: 12 U.S.C. 4701 *et seq.;* 26 U.S.C. 45D, 44 U.S.C. 3501 *et seq.*).

Jodie L. Harris,

Director, Community Development Financial Institutions Fund.

[FR Doc. 2022–25781 Filed 11–25–22; 8:45 am]

BILLING CODE 4810–70–P

DEPARTMENT OF THE TREASURY

Office of Foreign Assets Control

Notice of OFAC Sanctions Actions

AGENCY: Office of Foreign Assets Control, Treasury.

ACTION: Notice.

SUMMARY: The 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 Specially Designated Nationals and Blocked Persons List (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(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 Specially Designated Nationals and Blocked Persons 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 November 9, 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 authorities listed below.

Individuals

1. DE KONING, Martinus Pterus Henrikus (a.k.a. DE KONING, Martinus Pterus Henri; a.k.a. ''DE KONING, Martijns''; a.k.a. ''DE KONING, Mph''), Boxtel, Netherlands; DOB 07 Jan 1987; POB Netherlands; nationality Netherlands; Email Address *mdk1987@hotmail.nl*; Gender Male; Passport NNJ8FR670 (Netherlands) (individual) [ILLICIT–DRUGS–EO14059]. Sanctioned pursuant to section 1(b)(i) of Executive Order 14059 of December 15, 2021, ''Imposing Sanctions on Foreign Persons Involved in the Global Illicit Drug Trade,'' (the ''Order''), for having provided, or attempted to provide, financial, material, or technological support for, or goods or services in support of PEIJNENBURG, Alex Adrianus Martinus, a sanctioned person.

2. PEIJNENBURG, Alex Adrianus Martinus (a.k.a. PEIJNENBURG, Alex Adrianus Martin; a.k.a. ''PEIJNENBURG, Aam''), Boxtel, Netherlands; DOB 06 Jan 1987; POB Boxtel, Netherlands; citizen Netherlands; website *therealrc.com*; Gender Male; Digital Currency Address—XBT 15UdZbmGPa2LatD3abt GpphgkHLFWftV4R; alt. Digital Currency Address—XBT 1DbvK8P6imBuLcwh2 Vruis4xsUb8YAwJQF; alt. Digital Currency Address—XBT 1G6DuwDKNHiUWqks2Lgu 44cesu7ffFbLK7; alt. Digital Currency Address—XBT 3AQSmMk5n3c6TKEg9B2 WyzYAPm33gJJAA4; alt. Digital Currency Address—XBT 129zKFLoVad9JtxSmDK eJoLCsjhGR7b3vr; alt. Digital Currency Address—XBT 12YyR9EpvHxBjj KjTWqfKqeyoWnvcraxpW; alt. Digital Currency Address—XBT 1G9A8WRjGXdnYY4TNEVR rcaHsMtana4ncF; alt. Digital Currency Address—XBT 1KctQENEX5QkQMpn MC3Zh9yRAzkMBLpPcr; alt. Digital Currency Address—XBT 3HqA7i3ttECL vgqvq69HNxxUP5BL7Z5YgA; alt. Digital Currency Address—XBT 1Js6goCey2NaqPQ ptiLANLQGuk4d6mowjP; alt. Digital Currency Address—XBT 13RH4JaFhaCxDGPyYE9emjp2aDxdX18uBA; alt. Digital Currency Address—XBT 1FE2cuvkq8n5VGwj5hi8YYQxskwJpovPyV; alt. Digital Currency Address—XBT 1DJoEMvp95yJYWyxAZy8DDBzuvjnrTVrsN; alt. Digital Currency Address—XBT 1N6XqSf3ULpNjko9LrJmHudRoLitjwkETN; alt. Digital Currency Address—XBT bc1qwa6zu6qhl6wq nlxp642vcf89nptsassle25ulf; alt. Digital Currency Address—XBT 386wa1UM6nA798 AWNh64jdrejZyedeXgUN; alt. Digital Currency Address—XBT 16tByCYzxuWiN8kF9FrK9jJy6eQYLVkQ1i; alt. Digital Currency Address—XBT 1NpHuti9NSM9fVTXLkv SDU4AnhqGQ5N53d; Digital Currency Address—ETH 0x83E5bC4Ffa856BB84B b88581f5Dd62A433A25e0D; alt. Digital Currency Address—ETH 0x08b2eFdcdB8822E fE5ad0Eae55517cf5DC544251; alt. Digital Currency Address—ETH 0x04DBA1194ee10112fE 6C3207C0687DEf0e78baCf; alt. Digital Currency Address—ETH 0x0Ee5067b06776A89CcC7d C8Ee369984AD7Db5e06; alt. Digital Currency Address—ETH 0x502371699497d08D5339c 870851898D6D72521Dd; alt. Digital Currency Address—ETH 0x5A14E72060c11313E38 738009254a90968F58f51; alt. Digital Currency Address—ETH 0xEFE301d259F525cA1ba74 A7977b80D5b060B3ccA; Digital Currency Address—BCH qpusmp64rajses77x95g9ah825 mtyyv74smwwkxhx3; Passport NK6788642 (Netherlands) (individual) [ILLICIT–DRUGS–EO14059]. Sanctioned pursuant to section 1(a)(i) of Executive Order 14059 of December 15, 2021, ''Imposing Sanctions on Foreign Persons Involved in the Global Illicit Drug Trade,'' (the ''Order''), for having engaged in, or attempted to engage in, activities or transactions that have materially contributed to, or pose a significant risk of materially contributing to, the international proliferation of illicit drugs or their means of production.

3. GRIMM, Matthew Simon, Bristol, United Kingdom; Amsterdam, Netherlands; DOB 05 Sep 1974; POB Southmead, England; nationality United Kingdom; citizen United Kingdom; website *smokeyschemsite.com*; alt. website *gr8researchchemicals-eu.com*; Gender Male; alt. Digital Currency Address—XBT 1LpYKb3SXZPve9hs H2QEJZFX279wJVGowi; alt. Digital Currency Address—XBT 15uqdxqNXQwV f5H7yZPz4TmEGeSccCwdor; alt. Digital Currency Address—XBT 1FjubFHV4mpYjBmvjsEhZssyiiA4TNmnm2; alt. Digital Currency Address—XBT 1LAh7P Qwpd1uGiLHae5C5Xz9QXse3y2phq; alt. Digital Currency Address—XBT 15yqWQ4sqr 7jzCwDtZ3U1KaCa8WMEy7Mm2; alt. Digital Currency Address—XBT 19GrL5jnUkGm HXVcraB1Etv5rXCANeLWpq; alt. Digital Currency Address—XBT 39NG2LcGRHXxSr1irpEVnJMw4ydL231sEn; alt. Digital Currency Address—XBT 3He6EyDaCUgmdr4GXq hxbeTQukaGLCByU2; alt. Digital Currency Address—XBT 12NpCkhddSNiDkD9r RYUCHsTT9ReMNiJjG; alt. Digital Currency Address—XBT 32jgFkZsTEjMFaBvx JnYvJEeTNKTmq5b32; alt. Digital Currency Address—XBT 1Hpj6qm9i7nMF3Vk KfBFtjhEDpEjxHWvgv; alt. Digital Currency Address—XBT 194xmrZA53UBs Zau2PnJLdmVVW9m5feeS; alt. Digital Currency Address—XBT 361NP7YcBPQ4KkLT3Y 2QZeDEV4M3yi65Ar; alt. Digital Currency Address—XBT 1LuDiMd95Df4i2bcvr fw47t2GKpLLXAQMZ; alt. Digital Currency Address—XBT 3A1HH3PseYMkh2nSr Bb4kkVt3815kUNVVC; alt. Digital Currency Address—XBT 1F317n2eJEMaEMG iwCqtd5XCU3wF7jzPEW; alt. Digital Currency Address—XBT 3HWjh69cVQvcPeLWVC yVmXEq72nyDSj5zP; alt. Digital Currency Address—XBT 1r6S9vpUZPS5rb6g SdwV2bvSFcN3uSq4q; alt. Digital Currency Address—XBT 3Jpf9B5P8cvEKSSGp9cES3 Upbms8VRnXUb; alt. Digital Currency Address—XBT 3EL5vcYeu1cnivLtR7 tnAX3bBirr9ATNAL; alt. Digital Currency Address—XBT 1LBQd4ZxtQYYsDWrCz K4uMxHBJVxmyzs3M; alt. Digital Currency Address—XBT 1LQV6yUBcfTjAWvFu 3XPhdTgjqihss7i1z; alt. Digital Currency Address—XBT 1MiQRekg4BatJ12qbi SGnNakLLd8xbLMCG; alt. Digital Currency Address—XBT 12mNKr2YP4M3CEQ vCvVqZsvxuCG47LHMu1; alt. Digital Currency Address—XBT 1J6cgUVEZRKyJhpXJg HWX7YmzkdnHRaLhF; alt. Digital Currency Address—XBT 3PUmTuVAW3LkKg53 FZ7F97VDBitW4ugwnM; alt. Digital Currency Address—XBT 3H4qaWi5DS6FMwyZrG9 xRRud3Qc5dUVn2U; alt. Digital Currency Address—XBT 13ViCDZyJxxv5cZzp DDsE7aDQ3Y552zpAH; alt. Digital Currency Address—XBT 1Juv2Ks3jJFUes8jEG xwgt6T6csBRQmmRw; alt. Digital Currency Address—XBT 35vypiSvQsxRiT3YZ zGRGVaduUSx67ysZb; alt. Digital Currency Address—XBT 3LLUnf3ezw6mCbQ2zCZm Gu5rZULzkhxQi7; alt. Digital Currency Address—XBT 3QrukkUiBrn23rFUKU gasNd1wYWNk7WdSV; alt. Digital Currency Address—XBT 3B3vmabBbeDRnVrjvvq 3hm85zVB4v5bWFC; alt. Digital Currency Address—XBT 31nadacWrgPeAQxKRM abhn3fPhnhi3hjKa; alt. Digital Currency Address—XBT 343w3Xh64q5UpgpvAP qmsUzxrknde8PQHb; alt. Digital Currency Address—XBT 1C7RpJNE19HgefzWVCSaUq RTHAwGAFkbYV; Digital Currency Address—ETH 0xd0975b32cea532eadddfc9 c60481976e39db3472; alt. Digital Currency

Address—ETH 0x1967d8af5bd86a497 fb3dd7899a020e47560daaf; Digital Currency Address—BCH qqyuc9s700plhzr6aw zru7g5z2d2p906uyrm6ht0r0; alt. Digital Currency Address—BCH qz9f2vz3033sg5vc5mf7m7xshmj 0jugy4ummf05jk8 (individual) [ILLICIT–DRUGS–EO14059]. Sanctioned pursuant to section 1(a)(i) of Executive Order 14059 of December 15, 2021, ''Imposing Sanctions on Foreign Persons Involved in the Global Illicit Drug Trade,'' (the ''Order''), for having engaged in, or attempted to engage in, activities or transactions that have materially contributed to, or pose a significant risk of materially contributing to, the international proliferation of illicit drugs or their means of production.

Entities

1. A.A.M. PEIJNENBURG HOLDING B.V., Huygensstraat 42, JM, Boxtel 5283, Netherlands; Organization Established Date 31 Jul 2017; Tax ID No. 857833169 (Netherlands) [ILLICIT–DRUGS–EO14059] (Linked To: PEIJNENBURG, Alex Adrianus Martinus). Sanctioned pursuant to section 1(b)(iii) of the Order for being owned, controlled, or directed by, or having acted or purported to act for or on behalf of, directly or indirectly, PEIJNENBURG, Alex Adrianus Martinus, a sanctioned person.

2. BELLIZO, Huygensstraat 42, JM, Boxtel 5283, Netherlands; website *www.bellizo.nl;* Organization Established Date 01 Jan 2020; Trade License No. 76856291 (Netherlands) [ILLICIT–DRUGS–EO14059] (Linked To: PEIJNENBURG, Alex Adrianus Martinus). Sanctioned pursuant to section 1(b)(iii) of the Order for being owned, controlled, or directed by, or having acted or purported to act for or on behalf of, directly or indirectly, PEIJNENBURG, Alex Adrianus Martinus, a sanctioned person.

3. BEST SPORT COMPANY, Purcellstraat 4, GZ, Boxtel 5283, Netherlands; website *www.bodylab.company*; Organization Established Date 15 Jul 2019; Tax ID No. 860622253 (Netherlands) [ILLICIT–DRUGS–EO14059] (Linked To: DE KONING, Martinus Pterus Henrikus). Sanctioned pursuant to section 1(b)(iii) of the Order for being owned, controlled, or directed by, or having acted or purported to act for or on behalf of, directly or indirectly, DE KONING, Martinus Pterus Henrikus, a sanctioned person.

4. BEST SPORT COMPANY B.V, Purcellstraat 4, GZ, Boxtel 5283, Netherlands; Organization Established Date 31 Mar 2021; Tax ID No. 862457051 (Netherlands) [ILLICIT–DRUGS–EO14059] (Linked To: A.A.M. PEIJNENBURG HOLDING B.V.; Linked To: PEIJNENBURG, Alex Adrianus Martinus). Sanctioned pursuant to section 1(b)(iii) of the Order for being owned, controlled, or directed by, or having acted or purported to act for or on behalf of, directly or indirectly, PEIJNENBURG, Alex Adrianus Martinus and A.A.M. PEIJNENBURG HOLDING B.V., sanctioned persons.

5. GREEN DISTRICT B.V. (f.k.a. RESEARCH GROUP NEDERLAND B.V.), Huygensstraat 42, JM, Boxtel 5283, Netherlands; website *www.researchgroupnederland.com;* Organization Established Date 12 Jan 2017; Tax ID No. 857833340 (Netherlands) [ILLICIT–DRUGS–EO14059] (Linked To: PEIJNENBURG, Alex Adrianus Martinus; Linked To: ORGANIC DISTRICT B.V.). Sanctioned pursuant to section 1(b)(iii) of the Order for being owned, controlled, or directed by, or having acted or purported to act for or on behalf of, directly or indirectly, PEIJNENBURG, Alex Adrianus Martinus and ORGANIC DISTRICT B.V., sanctioned persons.

6. KING TRADE B.V., Purcellstraat 4, GZ, Boxtel 5283, Netherlands; Organization Established Date 31 Mar 2021; Tax ID No. 862449704 (Netherlands) [ILLICIT–DRUGS–EO14059] (Linked To: DE KONING, Martinus Pterus Henrikus). Sanctioned pursuant to section 1(b)(iii) of the Order for being owned, controlled, or directed by, or having acted or purported to act for or on behalf of, directly or indirectly, DE KONING, Martinus Pterus Henrikus, a sanctioned person.

7. ORGANIC DISTRICT B.V., Huygensstraat 42, JM, Boxtel 5283, Netherlands; Organization Established Date 31 Mar 2021; Tax ID No. 862449091 (Netherlands) [ILLICIT–DRUGS–EO14059] (Linked To: PEIJNENBURG, Alex Adrianus Martinus). Sanctioned pursuant to section 1(b)(iii) of the Order for being owned, controlled, or directed by, or having acted or purported to act for or on behalf of, directly or indirectly, PEIJNENBURG, Alex Adrianus Martinus, a sanctioned person.

8. ERJM LIMITED (a.k.a. ''ERJM LTD''), 18 Regent Street Kingswood, Bristol, Avon BS15 8JS, United Kingdom; website *www.erjmltd.com;* Organization Established Date 08 Jul 2016; V.A.T. Number GB264205718 (United Kingdom) [ILLICIT–DRUGS–EO14059] (Linked To: GRIMM, Matthew Simon). Sanctioned pursuant to section 1(b)(iii) of the Order for being owned, controlled, or directed by, or having acted or purported to act for or on behalf of, directly or indirectly, Grimm, Matthew Simon, a sanctioned person.

9. NATURAL GIFTS B.V., Keizersgracht 62, CS, Amsterdam 1015, Netherlands; website *www.cbde-liquids.co.uk;* Organization Established Date 27 Mar 2017; Tax ID No. 857425493 (Netherlands) [ILLICIT–DRUGS–EO14059] (Linked To: GRIMM, Matthew Simon). Sanctioned pursuant to section 1(b)(iii) of the Order for being owned, controlled, or directed by, or having acted or purported to act for or on behalf of, directly or indirectly, Grimm, Matthew Simon, a sanctioned person.

Dated: November 8, 2022.

Andrea Gacki,

Director, Office of Foreign Assets Control, U.S. Department of the Treasury.

[FR Doc. 2022–25808 Filed 11–25–22; 8:45 am]

BILLING CODE 4810–AL–P

DEPARTMENT OF THE TREASURY

Office of Foreign Assets Control

Notice of OFAC Sanctions Actions

AGENCY: Office of Foreign Assets Control, Treasury.

ACTION: Notice.

SUMMARY: The 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 Specially Designated Nationals and Blocked Persons List (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(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 Specially Designated Nationals and Blocked Persons 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 November 18, 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. KUDRYAKOV, Dmitry; DOB 11 Dec 1964; POB Irkutsk, Russia; nationality Russia; Gender Male; Passport 531079231 (Russia) expires 24 Mar 2026; NIT # 79478034 (Guatemala); C.U.I. 3749997750101 (Guatemala) (individual) [GLOMAG].

Designated pursuant to section 1(a)(iii)(A)(1) of Executive Order 13818 of December 20, 2017, ''Blocking the Property of Persons Involved in Serious Human Rights Abuse or Corruption,'' 82 FR 60839, 3 CFR, 2018 Comp., p. 399, (E.O. 13818) for having materially assisted, sponsored, or provided financial, material, or technological support for, or goods or services to or in support of, corruption, including the misappropriation of state assets, the expropriation of private assets for personal gain, corruption related to government contracts or the extraction of natural resources, or bribery that is conducted by a foreign person.

2. LITVINIUK, Iryna (a.k.a. LITVINIUK, Hennadzievna; a.k.a. LITVINIUK, Irina Gennadievna), Mihaila Ptashuka 11–72, Minsk, Belarus; DOB 19 Nov 1990; POB

Kobrin, Belarus; nationality Belarus; Gender Female; Passport MP4622471 (Belarus) expires 05 Jul 2031; alt. Passport MP3974861 (Belarus) expires 18 Apr 2027; alt. Passport AB2727384 (Belarus) expires 09 Jul 2023; National ID No. 4191190C002PB3 (Belarus) (individual) [GLOMAG].

Designated pursuant to section 1(a)(iii)(A)(1) of E.O. 13818 for having materially assisted, sponsored, or provided financial, material, or technological support for, or goods or services to or in support of, corruption, including the misappropriation of state assets, the expropriation of private assets for personal gain, corruption related to government contracts or the extraction of natural resources, or bribery that is conducted by a foreign person.

Entities

1. COMPANIA GUATEMALTECA DE NIQUEL, SOCIEDAD ANONIMA (a.k.a. ''CGN''; a.k.a. COMPANIA GUATEMALTECA DE NIQUEL; a.k.a. GUATEMALAN NICKEL COMPANY), 9–55 Avenida Reforma Z.10, Guatemala City, Guatemala; Organization Established Date 22 Jun 1960; NIT # 335886 (Guatemala) [GLOMAG].

Designated pursuant to section 1(a)(iii)(B) of E.O. 13818 for being owned or controlled by, or for having acted or purported to act for or on behalf of, directly or indirectly, KUDRYAKOV, Dmitry, a person whose property and interests in property are blocked pursuant to this order.

2. COMPANIA PROCESADORA DE NIQUEL DE IZABAL, S.A. (a.k.a. COMPANIA PROCESADORA DE NIQUEL; a.k.a. COMPANIA PROCESADORA DE NIQUEL DE IZABAL, SOCIEDAD ANONIMA; a.k.a. ''PRONICO''), 9–55 Avenida Reforma Z.10, Guatemala City, Guatemala; Organization Established Date 03 Sep 2013; NIT # 83557008 (Guatemala) [GLOMAG].

Designated pursuant to section 1(a)(iii)(B) of E.O. 13818 for being owned or controlled by, or for having acted or purported to act for or on behalf of, directly or indirectly, KUDRYAKOV, Dmitry, a person whose property and interests in property are blocked pursuant to this order.

3. MAYANIQUEL, SOCIEDAD ANONIMA, 12 Calle 2–25 Z.10, Guatemala City, Guatemala; Organization Established Date 03 Oct 1996; NIT # 8252149 (Guatemala) [GLOMAG].

Designated pursuant to section 1(a)(iii)(B) of E.O. 13818 for being owned or controlled by, or for having acted or purported to act for or on behalf of, directly or indirectly, KUDRYAKOV, Dmitry, a person whose property and interests in property are blocked pursuant to this order.

Dated: November 18, 2022.

Andrea Gacki,

Director, Office of Foreign Assets Control, U.S. Department of the Treasury.

[FR Doc. 2022–25791 Filed 11–25–22; 8:45 am]

BILLING CODE 4810–AL–P

DEPARTMENT OF THE TREASURY

Office of Foreign Assets Control

Notice of OFAC Sanctions Actions

AGENCY: Office of Foreign Assets Control, Department of the Treasury.

ACTION: Notice.

SUMMARY: The U.S. Department of the Treasury's Office of Foreign Assets Control (OFAC) is publishing the names of persons that have been placed on OFAC's Specially Designated Nationals and Blocked Persons 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 FURTHER INFORMATION CONTACT: OFAC: 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 Assistant Director for Sanctions Compliance & Evaluation, tel.: 202–622–2490.

SUPPLEMENTARY INFORMATION:

Electronic Availability

The Specially Designated Nationals and Blocked Persons List (SDN List) and additional information concerning OFAC sanctions programs are available on OFAC's website (*https://www.treasury.gov/ofac*).

Notice of OFAC Actions

On October 7, 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.

Individual

1. CHING, Teo Boon (a.k.a. CHING, Dato Sri Teo Boon), No. 65 Jalan Ledang, Taman Johor Tampoi, Johor Bahru, Johor 81200, Malaysia; DOB 24 Nov 1964; nationality Malaysia; Gender Male; National ID No. 641124015977 (Malaysia) (individual) [TCO] (Linked To: TEO BOON CHING WILDLIFE TRAFFICKING TRANSNATIONAL CRIMINAL ORGANIZATION).

Entities

1. SUNRISE GREENLAND SDN. BHD., No. 164–A, Room 1, Jalan Layang 16, Taman Perling, Johor Bahru, Johor 81200, Malaysia; 533 A, Jalan Persiaran Perling 1, Taman Perling, Johor Bahru, Johor 81200, Malaysia; Organization Established Date 16 Dec 2011; Company Number 971882–V (Malaysia); alt. Company Number 201101043762 (Malaysia) [TCO] (Linked To: CHING, Teo Boon).

2. TEO BOON CHING WILDLIFE TRAFFICKING TRANSNATIONAL CRIMINAL ORGANIZATION, Malaysia; Thailand; Laos; Vietnam; China; Hong Kong, China; Target Type Criminal Organization [TCO].

Dated: October 7, 2022.

Andrea Gacki,

Director, Office of Foreign Assets Control.

[FR Doc. 2022–25881 Filed 11–25–22; 8:45 am]

BILLING CODE 4810–AL–P

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–0018]

Agency Information Collection Activity: Application for Accreditation as Service Organization Representative

AGENCY: Office of General Counsel, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: The Office of General Counsel (OGC), Department of Veterans Affairs (VA), is announcing an opportunity for public comment on the proposed collection of certain information by the agency. Under the Paperwork Reduction Act (PRA) of 1995, Federal agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of a currently approved collection, and allow 60 days for public comment in response to the notice.

DATES: Written comments and recommendations on the proposed collection of information should be received on or before January 27, 2023.

ADDRESSES: Submit written comments on the collection of information through Federal Docket Management System (FDMS) at *www.Regulations.gov* or to Jonathan Taylor, Office of the General Counsel (022D), Department of Veterans Affairs, 810 Vermont Avenue NW, Washington, DC 20420 or email to *jonathan.taylor2@va.gov.* Please refer to ''OMB Control No. 2900–0018'' 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. 2900–0018'' 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, OGC invites comments on: (1) whether the proposed collection of information is necessary for the proper performance of OGC's functions, including whether the information will have practical utility; (2) the accuracy of OGC'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: 38 U.S.C. 5901, 5902, 5904; 38 CFR 14.629, 14.633.

Title: Application for Accreditation as Service Organization Representative.

OMB Control Number: 2900–0018.

Type of Review: Extension of a currently approved collection.

Abstract: Service organizations are required to file an application with VA to establish eligibility for accreditation for representatives of that organization to represent benefit claimants before VA. VA Form 21 is completed by service organizations to establish accreditation for representatives and recertify the qualifications of accredited representatives.

Organizations requesting cancellation of a representative's accreditation based on misconduct, incompetence, or resignation to avoid cancellation of accreditation based upon misconduct or incompetence are required to inform VA of the specific reason for the cancellation request. VA will use the information collected to determine whether service organizations' representatives continue to meet regulatory eligibility requirements to ensure claimants have qualified representatives to assist in the preparation, presentation, and prosecution of their claims for benefits.

Affected Public: Individuals, not-for-profit institutions, and State, local, or Tribal governments.

Estimated Annual Burden: 1,010 hours (750 hours for new applicants, 250 hours for recertifications, and 10 hours for accreditation cancellation information responses).

Estimated Average Burden per Respondent: 13 minutes (15 minutes for new applicants, 10 minutes for recertifications, and 60 minutes for accreditation cancellation information responses).

Frequency of Response: One time.

Estimated Number of Respondents: 4,510 (3,000 new applicants, 1,500 recertifications, and 10 accreditation cancellation information responses).

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. 2022–25809 Filed 11–25–22; 8:45 am]

BILLING CODE 8320–01–P

FEDERAL REGISTER

Vol. 87 Monday,
No. 227 November 28, 2022

Part II

Securities and Exchange Commission

17 CFR Parts 229, 232, et al.
Listing Standards for Recovery of Erroneously Awarded Compensation; Final Rule

SECURITIES AND EXCHANGE COMMISSION

17 CFR Parts 229, 232, 240, 249, 270, and 274

[Release Nos. 33–11126; 34–96159; IC–34732; File No. S7–12–15]

RIN 3235–AK99

Listing Standards for Recovery of Erroneously Awarded Compensation

AGENCY: Securities and Exchange Commission.

ACTION: Final rule.

SUMMARY: We are adopting a new rule and rule amendments to implement Section 954 of the Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010 (''Dodd-Frank Act''), which added Section 10D to the Securities Exchange Act of 1934 (''Exchange Act''). In accordance with Section 10D of the Exchange Act, the final rules direct the national securities exchanges and associations that list securities to establish listing standards that require each issuer to develop and implement a policy providing for the recovery, in the event of a required accounting restatement, of incentive-based compensation received by current or former executive officers where that compensation is based on the erroneously reported financial information. The listing standards must also require the disclosure of the policy. Additionally, the final rules require a listed issuer to file the policy as an exhibit to its annual report and to include other disclosures in the event a recovery analysis is triggered under the policy.

DATES: The amendments are effective January 27, 2023.

FOR FURTHER INFORMATION CONTACT: Steven G. Hearne, Senior Special Counsel, at (202) 551–3430, in the Office of Rulemaking, Division of Corporation Finance, U.S. Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549.

SUPPLEMENTARY INFORMATION: We are adopting amendments to:

Commission reference	CFR citation (17 CFR)
Regulation S–K.	
Item 10 through 1406	§§ 229.10 through 229.1406.
Item 402	§ 229.402.
Item 404	§ 229.404.
Item 601	§ 229.601.
Rule 10 through 903	§§ 232.10 through 232.903.
Rule 405	§ 232.405.
Exchange Act [1].	
Rule 10D–1	§ 240.10D–1.
Schedule 14A	§ 240.14a–101.
Form 20–F	§ 249.220f.
Form 40–F	§ 249.240f.
Form 10–K	§ 249.310.
Exchange Act and Investment Company Act of 1940 (''Investment Company Act'')[2].	
Form N–CSR	§§ 249.331 and 274.128.
Investment Company Act.	
Rule 30a–2	§ 270.30a–2.

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I. Introduction and Background

Section 954 of the Dodd-Frank Act added 15 U.S.C. 78j–4 (''Section 10D'') to the Exchange Act. Title 15 Section 78j–4 (a) of the U.S. Code (''Section 10D(a)'') requires the Securities and Exchange Commission (the ''Commission'') to adopt rules directing the national securities exchanges [3]

[1] 15 U.S.C. 78a *et seq.*

[2] 15 U.S.C. 80a–1 *et seq.*

[3] A ''national securities exchange'' is an exchange registered as such under 15 U.S.C. 78f (''Section 6 of the Exchange Act''). Certain exchanges are registered with the Commission through a notice filing under Section 6(g) of the Exchange Act for the purpose of trading security futures. As discussed in Section II.A.2, because the final rules exempt security futures products and standardized options from their scope, any registered national securities exchange that lists and trades only security futures

(''exchanges'') and the national securities associations [4] (''associations'') to prohibit the listing of any security of an issuer that is not in compliance with the requirements of 15 U.S.C. 78j–4(b) (''Section 10D(b)''). Section 10D(b) of the Exchange Act requires the Commission to adopt rules directing the exchanges to establish listing standards that require each issuer to develop and implement a policy providing:

- For the disclosure of the issuer's policy on incentive-based compensation that is based on financial information required to be reported under the securities laws; and
- That, in the event that the issuer is required to prepare an accounting restatement due to the issuer's material noncompliance with any financial reporting requirement under the securities laws, the issuer will recover from any of the issuer's current or former executive officers incentive-based compensation (including stock options awarded as compensation) that was received during the three-year period preceding the date the issuer is required to prepare the accounting restatement, based on the erroneous data, in excess of what would have been paid to the executive officer under the accounting restatement.

In seeking to implement this statutory mandate, we have been guided by the language, structure, and legislative history of Section 10D. As a part of the Dodd-Frank Act legislative process, in a 2010 report, the Senate Committee on Banking, Housing and Urban Affairs stated that ''Section 954 [Section 10D] requires public companies to have a policy to recover money that they erroneously paid in incentive compensation to executive officers as a result of material noncompliance with accounting rules.'' [5] The Senate Report further clarified that application of the recovery policy mandated by Section 10D ''does not require adjudication of misconduct in connection with the problematic accounting that required restatement.'' [6]

The Senate Report highlighted the Committee's belief that it is ''unfair to shareholders for corporations to allow executive officers to retain compensation that they were awarded erroneously.'' [7] The language and legislative history of the Dodd-Frank Act make clear that Section 10D is premised on the notion that an executive officer should not retain incentive-based compensation that, had the issuer's accounting been correct in the first instance, would not have been received by the executive officer, regardless of any fault of the executive officer for the accounting errors. The Senate Report also indicates that shareholders should not ''have to embark on costly legal expenses to recoup their losses'' and that ''executives must return monies that should belong to the shareholders.'' [8]

Informed by this legislative history, we read Section 10D to express a simple proposition: executive officers of exchange-listed issuers should not be entitled to retain incentive-based compensation that was erroneously awarded on the basis of materially misreported financial information that requires an accounting restatement. The statute thus mandates that exchange-listed issuers maintain policies to recover such compensation for the benefit of the issuers' owners—their shareholders. In light of the straightforward nature of the goal Congress sought to achieve, we have approached implementation of the statute with the view that discretion to implement and execute these mandated recovery policies generally should be limited.

For similar reasons, we believe Section 10D's mandated recovery policies were intended to apply broadly. Because Congress specifically referenced ''incentive-based compensation (including stock options awarded as compensation),'' we infer that it intended the provision to cover any incentive-based compensation that may be impacted by financial reporting. Further, Congress did not define ''executive officers'' narrowly by limiting the term to include only the named executive officers or another subset of executives; rather it appears that Congress intended the scope of the statute to reach more broadly to include all of an issuer's executive officers.[9] While this scope may result in recovery from officers who did not play a direct role in an accounting error or who did not help to set a ''tone at the top'' that affects financial reporting accuracy, we understand that effect to be consistent with the statutory purpose of recovering compensation erroneously paid to executive officers regardless of whether the executive officer directly contributed to the error.

In addition to the benefits and purposes that Congress identified when enacting Section 10D, our implementation of the statute has been informed by certain additional benefits of the recovery requirement. As discussed in Section IV.B., the recovery requirement may provide executive officers with an increased incentive to take steps to reduce the likelihood of inadvertent misreporting and will reduce the financial benefits to executive officers who choose to pursue impermissible accounting methods, which we expect will further discourage such behavior. These increased incentives may improve the overall quality and reliability of financial reporting, which further benefits investors. These additional benefits further support our view that the most appropriate means of implementing the Section 10D mandate is to require robust recovery policies that will help to ensure that executive officers at exchange-listed issuers do not retain the benefits of erroneously awarded incentive-based compensation.

On July 1, 2015, the Commission proposed a new rule, and rule and form amendments [10] to implement the provisions of Section 10D.[11] On October 14, 2021, the Commission reopened the comment period for the Proposing Release to allow interested persons further opportunity to analyze and comment upon the proposed rules in light of developments since the publication of the Proposing Release and the Commission's further consideration of the statutory mandate.[12] In the Reopening Release, the Commission stated that it was considering, and requested public comment on, certain revisions to the proposals included in the Proposing Release, including a broader

products or standardized options is not required to file a rule change in order to comply.

[4] A ''national securities association'' is an association of brokers and dealers registered as such under 15 U.S.C. 78o–3 (''Section 15A of the Exchange Act''). The Financial Industry Regulatory Authority (''FINRA'') is the only association registered with the Commission under Section 15A(a) of the Exchange Act. Because FINRA does not list securities, generally we refer only to exchanges in this release. However, if any associations were to list securities, the rules would apply to them.

[5] *See* Report of the Senate Committee on Banking, Housing, and Urban Affairs, S.3217, Report No. 111–176 at 135–36 (Apr. 30, 2010) (''Senate Report'') at 135.

[6] *Id.*

[7] *Id.*

[8] *Id.*

[9] While Section 10D applies broadly to all executive officers and Congress did not specify a subset of executive officers, the Senate Report makes clear it is not intended to apply to rank-and-file employees. *See* Senate Report at 136 (''This policy is required to apply to executive officers, a very limited number of employees, and is not required to apply to other employees'').

[10] *See Listing Standards for Recovery of Erroneously Awarded Compensation,* Release No. 34–75342 (Jul. 1, 2015) [80 FR 41144 (July 14, 2015)] (''Proposing Release'').

[11] Public Law 111–203, 124 Stat. 1900 (2010).

[12] *See Reopening of Comment Period for Listing Standards for Recovery of Erroneously Awarded Compensation,* Release No. 34–93311 (Oct. 14, 2021) [86 FR 58232 (Oct. 21, 2021)] (''Reopening Release'').

interpretation of the statutory term ''an accounting restatement due to material noncompliance.'' [13] The Commission re-opened the comment period again on June 8 2022, in connection with the addition to the comment file of a memorandum prepared by Commission staff providing additional analysis on compensation recovery policies and accounting restatements.[14] We have received numerous comment letters pursuant to our initiative to receive advance public comment in implementing the Dodd-Frank Act,[15] in response to the Proposing Release, and in response to the reopening releases.[16] Commenters broadly supported the objectives of the proposed rules, although commenters offered various recommendations and expressed various concerns regarding the proposed implementation. As discussed further below, after reviewing and considering the public comments and recommendations and guided by our understanding of the goal Congress was trying to achieve, we are adopting the proposed rules substantially as proposed, but with certain modifications to broaden the scope of covered restatements, clarify the rules, and address comments received on the proposals.

II. Discussion of Final Amendments

New Exchange Act Rule 10D–1 sets forth the listing requirements that exchanges and associations that list securities are directed to establish pursuant to Section 10D of the Exchange Act. Amendments to Regulation S–K, Form 10–K, Form 20–F, Form 40–F, and for certain investment companies, Form N–CSR and Schedule 14A, require disclosure of the listed issuer's policy on recovery of incentive-based compensation and information about actions taken pursuant to such recovery policy.

New Exchange Act Rule 10D–1 and the rule amendments adopted in this release supplement existing provisions [17] by directing the exchanges to establish listing standards that require issuers to: [18]

- Develop and implement written policies for recovery of incentive-based compensation based on financial information required to be reported under the securities laws, applicable to the issuers' executive officers, during the three completed fiscal years immediately preceding the date that the issuer is required to prepare an accounting restatement; and
- Disclose those compensation recovery policies in accordance with Commission rules, including providing the information in tagged data format.

To assure that issuers listed on different exchanges are subject to the same disclosure requirements regarding erroneously awarded compensation recovery policies, amendments to the Commission's disclosure rules require all issuers listed on any exchange to file their written compensation recovery policy as an exhibit to their annual reports,[19] to indicate by check boxes on their annual reports whether the financial statements of the registrant included in the filing reflect a correction of an error to previously issued financial statements and whether any such corrections are restatements that required a recovery analysis,[20] and to disclose any actions an issuer has taken pursuant to such recovery policy.[21]

A. Issuers and Securities Subject To Exchange Act Rule 10D–1

Section 10D of the Exchange Act provides that the Commission shall, by rule, direct the exchanges to prohibit the listing of any security of an issuer that does not comply with the requirements of Section 10D. Section 10D does not distinguish among issuers or types of securities and does not specifically instruct the Commission to exempt any particular types of issuers or securities or direct the Commission to permit the exchanges to provide such exemptions.[22]

1. Proposed Amendments

The Commission proposed to require exchanges to apply the disclosure and recovery policy requirements to all listed issuers, with only limited exceptions. As Section 10D refers to ''any security'' of an issuer, the Commission proposed that the listing

[13] *See generally,* Reopening Release.

[14] *See Reopening of Comment Period for Listing Standards for Recovery of Erroneously Awarded Compensation,* Release No. 34–95057 (June 8, 2022) [87 FR 35938 (June 14, 2022)] (''Second Reopening Release''). *See also* Memorandum from the Division of Economic and Risk Analysis (June 8, 2022) (submitted to the comment file in connection with Second Reopening Release) (''2022 staff memorandum'').

[15] Comment letters related to the executive compensation provisions of the Dodd-Frank Act provided prior to the Proposing Release are *available at http://www.sec.gov/comments/df-title-ix/executive-compensation/executive-compensation.shtml.*

[16] Comment letters related to the Proposing Release, the Reopening Release, and the Second Reopening Release are *available at https://www.sec.gov/comments/s7-12-15/s71215.htm.* A comment letter from two members of Congress raised concerns about the Reopening Release. *See* comment letter from Sen. Pat Toomey and Sen. Richard Shelby, dated Feb. 1, 2022 (''Toomey/Shelby''). Specifically, the letter criticized the Commission for reopening the comment period on the Proposing Release and seeking comment on a number of regulatory alternatives without updating the cost-benefit analysis and analysis required by 44 U.S.C. 3501 *et seq.* (''Paperwork Reduction Act'' or ''PRA'') and 5 U.S.C. 601 *et seq.* (''Regulatory Flexibility Act'' or ''RFA'') and urged the Commission to repropose the rulemaking. The letter asserted that the approach taken in the Reopening Release significantly impaired the public's ability to comment thoughtfully on the proposals and was inconsistent with 5 U.S.C. 551 through 559 (''Administrative Procedure Act''). In response to these concerns, we note that the Reopening Release included a robust discussion of the broader interpretation of the statutory term under consideration and certain potential changes and solicited comment on that interpretation and those potential changes. The 2022 staff memorandum in connection with the Second Reopening Release analyzed the benefits and costs of the potential changes. The 2022 staff memorandum also considered the impact on smaller registrants. Given the discussion included in the Proposing Release, the Reopening Release, the Second Reopening Release, and the 2022 staff memorandum, and in this adopting release, we believe the final rules satisfy the requirements of the Administrative Procedure Act and other applicable statutes and that a reproposal is unnecessary. Moreover, in response to both the Reopening and Second Reopening Releases, we received numerous comments from members of the public on the potential changes and additional disclosures, including comments on their economic effects, and we have considered those comments in adopting the final rules.

[17] *See* 15 U.S.C. 7243 (providing that the chief executive officer (''CEO'') and chief financial officer (''CFO'') of an issuer must reimburse the issuer for bonus or other incentive-based or equity-based compensation resulting from an accounting restatement due to the material noncompliance of the issuer, as a result of misconduct) and 17 CFR 229.402(b) (requiring disclosure of company policies and decisions regarding the adjustment or recovery of awards or payments to named executive officers in the issuer's Compensation Discussion and Analysis (''CD&A'')). The CD&A disclosure requirement is principles-based in that it identifies the disclosure concept and provides several non-exclusive examples. Under 17 CFR 229.402(b)(1), companies must explain all material elements of their named executive officers' compensation by addressing mandatory principles-based topics in CD&A. 17 CFR 229.402(b)(2) sets forth nonexclusive examples of the kind of information that should be addressed in CD&A, if material.

[18] Exchanges may adopt listing standards with requirements that are more extensive than those of Rule 10D–1. Listed issuers may, of course, adopt policies more extensive than those called for by the listing standards, so long as those policies at a minimum satisfy the listing standards.

[19] *See* 17 CFR 229.601(b)(97), 17 CFR 240.14a–101, 17 CFR 249.220f, 17 CFR 249.240f, and 17 CFR 274.128 Item 19(a)(2).

[20] *See* 17 CFR 249.220f, 17 CFR 249.240f, and 17 CFR 249.310. *But see* Section II.D.3. regarding check box disclosure on 17 CFR 274.128.

[21] *See* 17 CFR 229.402(w) (''Item 402(w) of Regulation S–K''), 17 CFR 240.14a–101(b)(20), 17 CFR 249.220f Item 6.F., 17 CFR 249.240f Item 19, and 17 CFR 274.128 Item 18.

[22] In this regard, Section 10D differs from other Dodd Frank Act governance-related provisions, such as Section 951 Shareholder Vote on Executive Compensation Disclosure (amending the Exchange Act to add Section 14A) and Section 952 Compensation Committee Independence (amending the Exchange Act to add Section 10C), which include specific direction for either the Commission or the exchanges to consider exemptions for classes of issuers, to provide exemptions, or to take into account whether the requirements disproportionately burden small issuers.

standards and other requirements apply without regard to the type of securities issued, including to issuers of listed debt or preferred securities that do not have listed equity.[23] The Commission did however propose to exempt security futures products and standardized options because the Commission recognized that information about the compensation practices at the clearing agencies that issue these securities is less relevant to investors,[24] and to exempt the securities of certain registered investment companies from the proposed listing standards because the Commission recognized that the compensation structures of issuers of these securities render application of the rules unnecessary.[25]

The Commission did not propose to otherwise exempt categories of listed issuers, such as emerging growth companies (''EGCs''),[26] smaller reporting companies (''SRCs''),[27] foreign private issuers (''FPIs''),[28] and controlled companies.[29] The Commission further did not propose to grant the exchanges discretion to decide whether certain categories of securities should be exempted from the Section 10D listing standards.

2. Comments

We received substantial comment on whether certain classes of issuers and securities should be subject to the proposal. Some commenters supported the scope of issuers covered by the proposal.[30] Other commenters recommended that the Commission exercise its exemptive authority to exclude certain issuers and classes of securities from the requirements.[31]

A number of commenters expressed concern regarding application of the rules to FPIs,[32] and suggested that application of the rules could impose inconsistent standards [33] and questioned the feasibility of implementation by FPIs.[34] Some of these commenters recommended that the Commission unconditionally exempt FPIs,[35] noting that FPIs have been exempted from many of the Commission's executive compensation regulations and are not subject to Section 16 of the Exchange Act,[36] and that other U.S. listing standards permit FPIs to comply with home country standards rather than the U.S. listing standard requirements.[37] Commenters alternatively recommended that the Commission exempt FPIs where the home country has an appropriate governance regime or law governing erroneously awarded compensation.[38]

One commenter urged the Commission to exempt all registered investment companies unconditionally, rather than the proposed exemption for registered unit investment trusts (''UITs'') and for registered management

[23] As proposed, an exchange would not be permitted to list an issuer that it has delisted or that has been delisted from another exchange for failing to comply with its recovery policy until the issuer comes into compliance with that policy. *See* proposed Rule 10D–1(b)(1)(vi).

[24] ''Equity security'' as defined in 15 U.S.C. 78c(a)(11) includes any security future on any stock or similar security. A ''security future'' as defined in 15 U.S.C. 78c(a)(55) means ''a contract of sale for future delivery of a single security or of a narrow-based security index.'' ''Security futures product'' as defined in 15 U.S.C. 78c(a)(56) and 7 U.S.C. 1a(32) include a security future or any put, call, straddle, option or privilege on any security future. Security futures products may be traded on exchanges registered under 15 U.S.C. 78f and associations registered under 15 U.S.C. 78o–3 without such securities being subject to the registration requirements of the Securities Act and the Exchange Act so long as they are cleared by a clearing agency that is registered under 15 U.S.C. 78q–1 or that is exempt from registration under 15 U.S.C. 78q–1(b)(7). *See* 15 U.S.C. 77c(a)(14), 15 U.S.C. 78*l*(a), 17 CFR 240.12h–1(e). Comparable regulatory treatment exists for standardized options, which are defined in 17 CFR 240.9b–1(a)(4) as option contracts trading on an exchange, an automated quotation system of a registered association, or a foreign securities exchange which relate to option classes the terms of which are limited to specific expiration dates and exercise prices, or such other securities as the Commission may, by order, designate. *See* 17 CFR 230.238, 17 CFR 240.12a–9, 17 CFR 240.12h–1(d).

[25] The Commission proposed to exempt the listing of any security issued by a registered management investment company if such company has not awarded incentive-based compensation to any executive officer of the registered management investment company in any of the last three fiscal years or, in the case of a company that has been listed for less than three fiscal years, since the initial listing. The Commission additionally proposed to exempt the listing of any security issued by a unit investment trust.

[26] *See* 15 U.S.C. 77b(a)(19) and 15 U.S.C. 78c(a)(80).

[27] *See* 17 CFR 240.12b–2.

[28] *See* 17 CFR 240.3b–4(c). The Commission did propose to permit a FPI to make a determination regarding impracticability to recover in limited circumstances where doing so would violate home country law. *See* Section II.C.3.b, of the Proposing Release and Section II.C.3.b. for a discussion of impracticability of recovery.

[29] Under New York Stock Exchange Rule 303A.00 and NASDAQ Stock Market LLC Rule 5615(c) a ''controlled compan[y]'' is defined as a company of which more than 50% of the voting power for the election of directors is held by an individual, group or another company.

[30] *See, e.g.,* comment letters from American Federation of Labor and Congress of Industrial Organizations (''AFL–CIO''); Americans for Financial Reform (Sept. 14, 2015) (''AFR 1''); Better Markets, Inc. (Sept. 14, 2015) (''Better Markets 1''); Council of Institutional Investors (Aug. 27, 2015) (''CII 1''); California Public Employees' Retirement System (Sept. 14, 2015) (''CalPERS 1''); CFA Institute (Sept. 14, 2015) (''CFA Institute 1''); Robert E. Rutkowski (Sept. 15, 2015) (''Rutkowski 1''); and State Board of Administration (''SBA''). Some of these commenters contended that investors deserve the same protections regardless of the category of listed issuer. *See* comment letters from AFL–CIO; CII 1; the Office of the Comptroller of the State of New York; and Public Citizen (Nov. 19, 2021) (''Public Citizen 2'').

[31] *See, e.g.,* comment letters from American Bar Association Committee on Federal Regulation of Securities of the Section of Business Law (Feb. 11, 2016) (''ABA 1''); Davis Polk & Wardwell LLP (Sept. 11, 2015) (''Davis Polk 1''); Duane Morris LLP (''Duane''); Financial Services Roundtable (''FSR''); Freshfields Bruckhaus Deringer (''Freshfields''); Japanese Bankers Association (''Japanese Bankers''); Kaye Scholer LLP (''Kaye Scholer''); SAP SE (''SAP''); Sullivan & Cromwell LLP (Sept. 22, 2015) (''S&C 1''); TELUS Corporation (''TELUS''); and UBS Group AG (''UBS'').

[32] *See, e.g.,* comment letters from ABA 1 (suggesting that the general presumption against the extraterritorial application of United States law, as well as the general principle of international comity, should apply); Davis Polk 1; Duane; FSR (noting the burden of having to comply with U.S.-based executive compensation governance in addition to home country laws); Freshfields; Japanese Bankers (suggesting that ''a penalty on restatement of financial statements prepared in accordance with the home country accounting standard should be determined by judicial ruling of the home country, and should not be governed by the U.S. listing rules''); Kaye Scholer; SAP; S&C 1; TELUS; and UBS.

[33] *See, e.g.,* comment letters from the U.S. Chamber of Commerce Center for Capital Markets Competitiveness (Sept. 14, 2015) (''CCMC 1'') (suggesting that ''affected [issuers] may find themselves endeavoring to comply with contradictory laws in multiple jurisdictions creating conflicts that cannot be addressed with a single solution''); Freshfields (expressing concerns regarding potential conflicts between the proposed listing standard and home country rules and noting potential conflicts with home country laws, stock exchange requirements, or corporate governance arrangements); and S&C 1 (stating that ''[r]equiring a non-U.S. issuer to comply with U.S. and home country requirements would upset the regulatory framework established by the home country and potentially impose inconsistent standards''). *See also* comment letter from Duane (suggesting the rule could force issuers to choose between violating home country law or the listing standards).

[34] *See* comment letters from CCMC 1; and Kaye Scholer (suggesting that an issuer's home country has a more appropriate interest in determining whether companies domiciled there should be subject to a compensation recovery requirement). *See also* comment letters from ABA 1 (noting that such issuers generally adhere to IFRS, which sets forth criteria for determining when a restatement is required that differ from GAAP, such that applying the rule to FPIs may lead to inconsistent treatment among issuers); and Davis Polk 1.

[35] *See* comment letters from ABA 1; Davis Polk 1; Duane; FSR; Freshfields; Japanese Bankers; Kaye Scholer; SAP; S&C 1; TELUS; and UBS.

[36] *See, e.g.,* comment letter from FSR (noting that FPIs have been exempted from many of the executive compensation regulations enacted under the Dodd-Frank Act, as well as disclosure requirements under Item 402 of Regulation S–K, and further stating that because such issuers are not subject to Section 16, the proposed rules would require such issuers to design and implement new executive compensation governance structures).

[37] *See* comment letters from UBS (citing the NYSE Group, Inc. (''NYSE'') audit committee independence rule); and Duane (citing Exchange Act Section 10C). *See also* comment letter in response to the Reopening Release from Cravath, Swaine & Moore LLP (''Cravath'') (noting the burden placed on FPIs that may be subject to different corporate governance standards in their home countries).

[38] *See, e.g.,* comment letters from Freshfields; and TheCityUK (suggesting permitting compliance with home country provisions that provide for similarly rigorous disciplines meeting the same goals).

investment companies (''listed funds'') that have not awarded incentive-based compensation in the last three fiscal years.[39] The commenter asserted that the legislative history of the Dodd-Frank Act does not indicate that the purpose of Section 10D was to address abuses with respect to listed funds; that listed funds have been exempted from certain prior compensation-related rulemakings; and that listed fund financial statements are less complex than operating company financial statements, resulting in accounting restatements being rare for listed funds.[40] The commenter therefore believed that the costs to affected listed funds would outweigh the benefits. The commenter also stated that the proposal could affect more than the small number of internally managed listed funds that the Commission estimated in the proposal, because some externally managed listed funds may pay some or all of the funds' chief compliance officers' compensation.

Another commenter urged the Commission to extend the proposed conditional exemption to externally managed business development companies (''BDCs'').[41] The commenter asserted that the same policy considerations supporting the conditional exemption for listed funds apply to externally managed BDCs, and that provisions of the Investment Advisers Act of 1940[42] and the Investment Company Act effectively prohibit these BDCs from offering certain incentive compensation plans to their officers.[43]

We received limited comment on the Commission's proposal to exempt security futures products and standardized options. One commenter generally supported the proposed exemption and no other commenters objected to the proposal to exempt security futures products and standardized options, or otherwise addressed this aspect of the proposal.[44] Some commenters recommended exemptions for debt-only issuers[45] and controlled companies.[46]

Some commenters expressed support for requiring recovery by SRCs and EGCs as proposed,[47] while others recommended that the Commission exempt SRCs and EGCs, citing the costs and burdens associated with imposing compensation recovery policies containing the detail and scope contemplated by the proposal.[48] As an alternative to exemption, these commenters recommended deferring compliance for these issuers.[49] In response to the Reopening Release, a number of commenters additionally noted the burdens on smaller issuers and recommended accommodations.[50]

3. Final Amendments

After considering the comments, we are adopting rules to require exchanges to apply the disclosure and compensation recovery policy requirements to all listed issuers,[51] with only limited exceptions, substantially as proposed.[52] Under the final rules, an issuer would be subject to delisting if it does not adopt and comply with its compensation recovery policy.[53] In a clarification to the proposal, 17 CFR 240.10D–1(a) as adopted provides that the requirements of Section 10D apply to each exchange and association to the extent such exchange or association lists securities. Accordingly, the requirements will not apply to exchanges that only trade securities pursuant to unlisted trading privileges but do not list securities.[54] We are exempting the listing of certain security futures products, standardized options, securities issued by unit investment trusts, and the securities issued by certain registered investment companies from the mandated listing standards, as proposed.[55]

As the Commission stated in the Proposing Release, Section 10D does not distinguish among issuers or types of

[39] *See* comment letter from Investment Company Institute (Sept. 14, 2015). ICI submitted a comment letter on the original proposal in 2015 as well as on the Reopening Release (Nov. 22, 2021). Because the letters largely made the same points, the letters are referred to collectively as if they were a single letter (''ICI''). Another commenter supported the Commission's proposed conditional exemption for listed funds, while also urging the Commission to exempt them and certain other issuers unconditionally, but without any further analysis supporting this recommendation for listed funds. *See* comment letter from FSR.

[40] *See* comment letter from ICI.

[41] *See* comment letter from Clifford Chance *et al.*

[42] 15 U.S.C. 80b–1 through 15 U.S.C. 80b–21.

[43] *See* comment letter from Clifford Chance *et al.*

[44] *See* comment letter from ABA 1.

[45] *See, e.g.,* comment letters from ABA 1; Davis Polk 1 (noting protections from the indenture contract and Trust Indenture Act, the ability to negotiate for indenture covenants, and that a wholly-owned subsidiary of a reporting company are not required to provide executive compensation disclosure); FSR (suggesting that the harm that the proposal is designed to address is immaterial to such investors and that a public parent issuer would have oversight over its executive compensation and financial statements); Jesse M. Fried (''Fried''); and Society for Corporate Governance (formerly Society of Corporate Secretaries & Governance Professionals) (Sept. 18, 2015) (''SCG 1''). *See also* comment letter in response to the Reopening Release from Davis Polk (Nov. 22, 2021) (''Davis Polk 3'') (further noting that debt-only issuers are exempt from many rules related to executive compensation). In contrast, one commenter specifically opposed such an exemption. *See* comment letter from Better Markets 1.

[46] *See* comment letters from Duane; and Fried (both suggesting that debt-only and controlled companies may have greater control over executive officers and can employ incentives, such as extra pay or threat of termination, that would dwarf the incentive effect of a potential compensation recovery).

[47] *See, e.g.,* comment letters from Better Markets 1; CalPERS 1 (noting small issuers may offer substantial incentive compensation packages); Public Citizen (Sept. 14, 2015) (''Public Citizen 1'') (suggesting such issuers lack the wider and potentially more vigilant shareholder base of larger companies); and SBA (recommending that strong governance practices should be applied at early growth stages). *See also* comment letter from CFA Institute 1 (suggesting it would not be appropriate or necessary to scale the proposed disclosure requirements for smaller or EGCs).

[48] *See, e.g.,* comment letters from ABA 1 (further suggesting that such issuers should not be required to disclose their reasons for not pursuing recovery or the aggregate amount of excess compensation remaining outstanding at fiscal year-end); Compensia; Mercer; and National Association of Corporate Directors (''NACD''). *See also* Annual Report for Fiscal Year 2021: Office of the Advocate for Small Business Capital Formation (''2021 OASB Annual Report''), available at *https://www.sec.gov/files/2021-OASB-Annual-Report.pdf,* at 68 (recommending generally that in engaging in rulemaking that impacts small businesses, the Commission tailor the disclosure and reporting framework to the complexity and size of operations of companies, either by scaling obligations or delaying compliance for the smallest of the public companies, particularly as it pertains to potential new or expanded disclosure requirements).

[49] *See, e.g.,* comment letters from ABA 1; Compensia; Mercer; and NACD.

[50] *See, e.g.,* comment letters in response to the Reopening Release from Committee on Federal Regulation of Securities of the Section of Business Law of the American Bar Association (Jan. 24, 2022) (''ABA 2''); CCMC (Nov. 22, 2021) (''CCMC 2''); and Hunton Andrews Kurth (''Hunton'').

[51] In a modification from the proposal, the rule refers to a national securities association that lists securities generally, rather than the more specific reference to an association that ''lists securities in an automated inter-dealer quotation system.'' In addition, we are simplifying the rule by not adopting proposed Rule 10D–1(b)(1)(vi), which would have specifically provided that an issuer that had been delisted for failing to comply with its recovery policy may not list its securities on an exchange, and an exchange would not be permitted to list a delisted issuer until the issuer comes into compliance with its recovery policy, because such a delisted issuer that remained out of compliance with the recovery policy would already not be permitted to list its securities on an exchange by function of 17 CFR 240.10D–1(a)(1), which requires exchanges to ''prohibit the initial or continued listing of any security of an issuer that is not in compliance with the requirements of any portion of this section.''

[52] *See* 17 CFR 240.10D–1(a)(3).

[53] Under the rule and rule amendments, it would also be subject to delisting if it does not disclose its compensation recovery policy in accordance with Commission rules. *See* Section II.D.3.

[54] Such exchanges may not list securities until their listing standards comply with the requirements of Rule 10D–1. Exchanges that do not list securities should consider updating any applicable listing standards to comply with the requirements of Rule 10D–1 or including an appropriate limitation acknowledging that they may only trade securities pursuant to unlisted trading privileges.

[55] *See* 17 CFR 240.10D–1(c)(1) through (4).

securities, and does not instruct the Commission to exempt any particular types of issuers or securities or direct the Commission to permit the exchanges to provide for such exemptions. In evaluating whether to exempt specific categories of issuers and securities, in addition to the views of commenters, we have considered whether providing exemptions from the requirements of Section 10D would be consistent with our understanding of the purpose of this statutory provision. We have also considered the incidence of restatements by different categories of issuers and whether, in light of such incidence, exempting these classes of issuers would be necessary or appropriate in the public interest and consistent with the protection of investors. Although we recognize commenters' concerns regarding application of the rule to FPIs, SRCs, and EGCs, as discussed more fully below, we have determined not to exempt these categories of issuers from the final rules.

With respect to application of the final amendments to FPIs, we note that Section 10D does not exempt FPIs. While the Commission could exercise its discretion to exempt such issuers by rule, we decline to do so. We acknowledge some of the practical concerns regarding implementation of the recovery policy raised by commenters, as discussed above; however, these concerns are not unique to FPIs and, in any event, do not in our view justify exempting such issuers from the obligation to recover incentive-based compensation that was erroneously awarded. We believe that shareholders of FPIs listed in the United States should benefit from recovery of erroneously awarded compensation in the same manner as shareholders of domestic issuers. Moreover, the recovery requirements will help to encourage reliable financial reporting by listed issuers, which is as important for investors in FPIs as for other issuers. Studies have shown that foreign companies present a similar risk of restatement as other companies [56] and that U.S. issuers who are non-accelerated filers [57] accounted for approximately 53% of restatements.[58] To the extent that recovery under Rule 10D–1 would be wholly inconsistent with a foreign regulatory regime, we have included an impracticability accommodation, as discussed in Section II.C.3.b., which may alleviate some of the implementation challenges faced by FPIs.

We also do not view the application of the final amendments to FPIs listed on U.S. national exchanges as an extraterritorial application of U.S. law. The statutory language generally identifies the types of conduct that trigger the relevant requirement and, by extension, the focus of the statute for the purpose of an extraterritoriality analysis.[59] Having identified the activity regulated by the statutory provision, we can determine whether a person is engaged in conduct that the statutory provision regulates and whether this conduct occurs within the United States. The statutory focus of Section 10D is on ''the listing of any security of an issuer'' on a national securities exchange. The recovery policies mandated by Section 10D apply only to those foreign issuers who have chosen to access the U.S. capital markets by listing on a U.S. national exchange. We thus do not view the final rules as an extraterritorial application of U.S. legal requirements.

With respect to the application of the rule to SRCs and EGCs, we note that, unlike in other provisions of the Dodd-Frank Act, Congress did not direct the Commission to consider differential treatment for certain classes of issuers, such as SRCs and EGCs.[60] Similar to our reasons for not exercising our discretion to exempt FPIs, we decline to exempt SRCs and EGCs from the final amendments. In our view, recovery of incentive-based compensation that was not earned and should not have been paid is as appropriate for smaller listed issuers as it is for larger issuers. We believe shareholders of smaller issuers should benefit from recovery of erroneously awarded compensation in the same manner as shareholders of larger issuers. Similarly, recovery encourages the preparation of reliable financial information, which may be even more important for smaller issuers and EGCs than for others because of their susceptibility to an increased likelihood of reporting an accounting error and to material weakness in internal control over financial reporting, as studies have found.[61]

We recognize, as some commenters asserted, that shareholders of controlled companies and certain private companies with listed debt may have a greater degree of control over executive officers than at other companies. We further recognize that debt holders of debt-only issuers receive certain protections from the Trust Indenture Act and indenture covenants governing such debt. Recovery of erroneously awarded compensation will encourage executive officers to reduce errors requiring restatements, which could benefit potential future investors and enhance the efficiency of the market as a whole. Further, while controlling shareholders generally face fewer difficulties in directing and incentivizing executive officers, the final amendments will help minimize any gaps that remain, such as those that could exist for an issuer's minority shareholders. Although a controlling majority shareholder may owe state law duties to minority shareholders, we do not believe that investors' confidence in the accuracy of financial reporting should depend on their assessment of the likelihood of successful litigation under state law to vindicate minority shareholder rights.

We are not granting the exchanges discretion to exempt certain categories of securities from the listing standards. In reaching these conclusions, in addition to the plain language of the statute and the fundamental inequity of permitting executive officers to retain compensation they did not earn, we

[56] *See* 2020 Financial Restatements: A Twenty-Year Review, Audit Analytics (2021) (''A Twenty-Year Review'') (analyzing data related to accounting restatements, including specific analysis for accelerated foreign filers, non-accelerated foreign filers, accelerated U.S. filers, and non-accelerated U.S. filers), and Financial Restatement Trends in the United States: 2003–2012, Professor Susan Scholz, University of Kansas, Study Commissioned by the Center for Audit Quality (comparing U.S. and foreign private issuers). Foreign companies in this study included both FPIs and foreign companies filing on Form 10–K.

[57] 17 CFR 240.12b–2.

[58] *See* A Twenty-Year Review.

[59] *See Morrison* v. *National Australia Bank, Ltd.,* 130 S. Ct. 2869, 2884 (2010) (identifying the focus of statutory language to determine what conduct was relevant in determining whether the statute was being applied to domestic conduct).

[60] In contrast, Section 952 of the Dodd-Frank Act directs the Commission to take ''into consideration the size of an issuer and any other relevant factors'' when providing exemption authority.

[61] *See, e.g.,* Jacquelyn Gillette, Sudarshan Jayaraman, and Jerold Zimmerman *Accounting Restatements: Malfeasance and/or Optimal Incompetence?* (working paper Mar. 2017), *available at https://pages.business.illinois.edu/accountancy/wp-content/uploads/sites/12/2017/02/YSS-2017-Gillette.pdf* (finding that ''larger and more profitable firms invest more in accounting resources'', and that ''accounting resources are negatively associated with the likelihood of a restatement''); *see also* Preeti Choudhary, Kenneth Merkley and Katherine Schipper, *Immaterial Error Corrections and Financial Reporting Reliability,* 38 Contemp. Acct. Rsch. 2423 (Winter 2021) (finding that future restatements are less likely for larger firms) (''Choudhary et al''). *See also* Jeong-Bon Kim, Jay Junghun Lee, and Jong Chool Park, *Internal Control Weakness and the Asymmetrical Behavior of Selling, General, and Administrative Costs,* (37) J. Acct. Auditing & Fin 259–292 (2022) (finding that firms with internal control weaknesses are significantly smaller in terms of sales revenue, selling, general and administrative costs, and total assets). *See also* discussion above and Section IV.A. discussing the number of restatements for smaller issuers as compared to other issuers.

considered the relative burdens of compliance on different categories of issuers and types of securities. As discussed more fully in Section IV, while we recognize that the listing standards could, in certain respects, impose burdens on particular categories of issuers, there is also reason to believe that these issuers, their shareholders, and the markets in general, may derive benefits from the listing standards. The compensation recovery requirements may reduce the financial benefits to executive officers when an issuer is required to prepare an accounting restatement, and thus may increase incentives for reporting accurate financial results.[62] Additionally, the recovery requirements may encourage issuers and their executive officers to devote more resources to the production of high-quality financial reporting. Shareholders of listed issuers will, in turn, benefit from improved financial reporting, and issuers may derive benefits in the form of reduced costs of capital. As with other categories of listed issuers, we believe that these benefits justify the costs imposed by the final amendments for specific categories of issuers, such as EGCs, SRCs, FPIs, controlled companies, and debt-only issuers.

We are adopting, as proposed, the exemptions for the listing of security futures products cleared by a registered clearing agency or a clearing agency that is exempt from the registration requirements of the Exchange Act and for standardized options issued by a registered clearing agency because the role of a clearing agency as the issuer of these securities is fundamentally different from that of other listed issuers.[63] Whereas in most cases the purchaser of a security is making an investment decision regarding the issuer of a security, the purchaser of security futures products and standardized options does not, except in the most formal sense, make an investment decision regarding the clearing agency, even though the clearing agency is the issuer of those securities. As a result, information about the clearing agency's business, its officers and directors and their compensation, and its financial statements is less relevant to investors in these securities than information about the issuer of the underlying security. Moreover, the investment risk in security futures products and standardized options is largely determined by the market performance of the underlying security rather than the performance of the clearing agency, which is a self-regulatory organization subject to regulatory oversight.[64] Accordingly, pursuant to our authority under Section 36 of the Exchange Act, we find that it is necessary or appropriate in the public interest, and consistent with the protection of investors, to exempt the listing of a security futures product and a standardized option from the requirements of Rule 10D–1 under the Exchange Act.[65]

Similarly, we are adopting the proposal to exempt the listing of any security issued by a listed fund on the condition that the fund has not awarded incentive-based compensation to any current or former executive officer of the fund in any of the last three fiscal years or, in the case of a fund that has been listed for less than three fiscal years, since the initial listing.[66] We make this conditional exemption pursuant to our authority under Section 36 of the Exchange Act, because we find that it is necessary or appropriate in the public interest, and consistent with the protection of investors. The conditional exemption would permit listed funds that do not pay incentive-based compensation to avoid the burden of developing recovery policies they may never use.[67] Listed funds that have paid incentive-based compensation in that time period, however, would be subject to the rule and rule amendments and be required to implement a compensation recovery policy like other listed issuers.[68]

We are not exempting listed funds unconditionally, as two commenters suggested. The final rules are designed to reflect the structure and compensation practice of listed funds by requiring funds to implement compensation recovery policies only when they in fact award incentive-based compensation covered by Section 10D. While listed funds' financial statements may in general be less complex than those of operating companies, restatements can and do still occur. To the extent that executive officers of listed funds receive incentive-based compensation on the basis of a financial reporting measure that is restated, we

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[62] As discussed more fully in Section IV, academic research finds that companies with strong compensation recovery provisions experience improved financial reporting, lower CEO turnover, and lower CEO compensation. *See* Michael H.R. Erkens, Ying Gan, and B. Burcin Yurtoglu, *Not all clawbacks are the same: Consequences of strong versus weak clawback provisions,* 66 J. Acct & Econ., 291 (2018). *See also* Lillian H. Chan *et al., The Effects of Firm-Initiated Clawback Provisions on Earnings Quality and Auditor Behavior* 54 J. Acct. & Econ. 180 (2012) (finding that after the adoption of clawback provisions, incidence of accounting restatements declines, firms' earnings response coefficients increase, and auditors are less likely to report material internal control weaknesses, charge lower audit fees, and issue audit reports with a shorter lag); Ed DeHaan, Frank Hodge, and Terry Shevlin, *Does Voluntary Adoption of a Clawback Provision Improve Financial Reporting Quality?,* 30 Contemp. Acct. Rsch. 1027 (2013) (finding improvements in financial reporting quality following clawback adoption, including decreases in meet-or-beat behavior and unexplained audit fees, a decrease in restatements, a significant increase in earnings response coefficients and a significant decrease in analyst forecast dispersion).

[63] *See Fair Administration and Governance of Self-Regulatory Organizations; Disclosure and Regulatory Reporting by Self-Regulatory Organizations; Recordkeeping Requirements for Self-Regulatory Organizations; Ownership and Voting Limitations for Members of Self-Regulatory Organizations; Ownership Reporting Requirements for Members of Self-Regulatory Organizations; Listing and Trading of Affiliated Securities by a Self-Regulatory Organization,* Release No. 34–50699 (Nov. 18, 2004) [69 FR 71126], at n. 260 (''Standardized options and security futures products are issued and guaranteed by a clearing agency'').

[64] The Commission has previously recognized these fundamental differences and provided exemptions for security futures products and standardized options when it adopted the audit committee listing requirements in 17 CFR 240.10A–3 and the compensation committee listing requirements in 17 CFR 240.10C–1. *See Listing Standards for Compensation Committees,* Release No. 33–9330 (June 20, 2012) [77 FR 38422 (June 27, 2012)].

[65] *See* 17 CFR 240.10D–1(c)(1) and (2).

[66] *See* 17 CFR 240.10D–1(c)(4). Listed funds, unlike most other issuers, are generally externally managed and often have few, if any, employees that are compensated by the fund (*i.e.,* the issuer). Instead, listed funds typically rely on employees of the investment adviser to manage fund assets and carry out other related business activities. Such employees are typically compensated by the investment adviser of the registered management investment company as opposed to the fund. In order to apply the new rules to listed funds, we are amending Form N–CSR as proposed to redesignate Item 18 as Item 19 and to add a new paragraph (a)(2) to this Item (with current paragraph (a)(2) redesignated as (a)(3)) to require any listed fund that would be subject to the requirements of Rule 10D–1 to include as an exhibit to its annual report on Form N–CSR its policy on recovery of incentive-based compensation. We are also adding new Item 18 to Form N–CSR as well as amending Item 22 of Schedule 14A of the Exchange Act to require listed funds that would be subject to Rule 10D–1 to provide information that would generally mirror the disclosure requirements of Item 402(w) of Regulation S–K.

[67] In addition, because the exemption applies to the listing of securities of registered investment companies, it would not apply to business development companies, which are a category of closed-end management investment company that is not registered under the Investment Company Act.

[68] One commenter observed that the rule would cover any incentive-based compensation paid to listed fund chief compliance officers (''CCOs'') if they are within the rule's definition of an ''executive officer.'' *See* comment letter from ICI. We agree that if a listed fund pays an executive officer incentive-based compensation within the time period specified in the final rule, then the fund would be required to implement a compensation-recovery policy. Although the commenter urged the Commission to interpret the executive officer definition to exclude a listed fund's CCO, we do not see a basis for this interpretation and the commenter did not provide one.

believe that the policy concerns underlying the rule apply equally to listed funds, regardless of whether they were specifically mentioned in the Dodd-Frank Act's legislative history or the treatment of registered investment companies for purposes of other compensation-related disclosure requirements.

We also are not exempting externally managed BDCs, as one commenter suggested. Although BDCs whose advisers receive certain forms of compensation are subject to certain limitations on their ability to offer equity compensation such as options, or to establish a profit-sharing plan, the definition of incentive-based compensation in Section 10D applies to a broader range of incentive-based compensation arrangements. In addition, BDCs are generally subject to other disclosure requirements in Regulation S–K, and the final rules treat all BDCs, whether managed externally or internally, in a consistent manner.[69]

As proposed, we are exempting the listing of any security issued by a UIT because, unlike listed funds, UITs are pooled investment entities without a board of directors, corporate officers, or an investment adviser to render investment advice during the life of the UIT, and they do not file a certified shareholder report. In addition, because the investment portfolio of a UIT is generally fixed, UITs are not actively managed. Accordingly, pursuant to our authority under Section 36 of the Exchange Act, we find that it is necessary or appropriate in the public interest, and consistent with the protection of investors, to exempt the listing of any security issued by a UIT from the requirements of Rule 10D–1 under the Exchange Act.[70]

B. Restatements

1. Restatements Triggering Application of Recovery Policy

Sections 10D(a) and 10D(b)(2) require the Commission to adopt rules directing exchanges and associations to establish listing standards that require issuers to develop and implement policies that require recovery ''in the event that the issuer is required to prepare an accounting restatement due to the material noncompliance of the issuer with any financial reporting requirement under the securities laws.'' The Senate Report indicated that Section 10D was intended to result in ''public companies [adopting policies] to recover money that they erroneously paid in incentive compensation to executives as a result of material noncompliance with accounting rules. This is money that the executive would not have received if the accounting was done properly . . . .'' [71]

a. Proposed Amendments

The Commission proposed to require that issuers adopt and comply with a written policy providing that in the event the issuer is required to prepare a restatement [72] to correct an error [73] that is material [74] to previously issued financial statements,[75] the obligation to prepare the restatement would trigger application of the compensation recovery policy. In connection with this proposed trigger, the Commission proposed to define an ''accounting restatement'' [76] and specifically noted that issuers should consider whether a series of immaterial error corrections, whether or not they resulted in filing amendments to previously filed financial statements, could be considered a material error when viewed in the aggregate.[77]

After the Commission issued the Proposing Release, some commentators expressed concerns that some issuers may not be making appropriate materiality determinations for errors identified [78] and may be seeking to avoid recovery under their compensation recovery policies.[79] In the Reopening Release, the Commission stated that it was considering whether to interpret the phrase ''an accounting restatement due to material noncompliance'' to include all required restatements made to correct an error in previously issued financial statements and sought public feedback on such an interpretation. In particular, the Commission requested comment on whether to provide that recovery is required with respect to both (1) restatements that correct errors that are material to previously issued financial statements (commonly referred to as ''Big R'' restatements), and (2) restatements that correct errors that are not material to previously issued financial statements, but would result in a material misstatement if (a) the errors were left uncorrected in the current

[69] A commenter suggested that the Commission had previously exempted externally managed BDCs from pay ratio disclosure requirements adopted in 2015. *See* comment letter of Clifford Chance *et al.* The rule did not provide an exemption for externally managed BDCs. Instead, the Commission observed that as a practical matter no externally managed BDCs would be subject to it. *See Pay Ratio Disclosure,* Release No. 33–9877 (Aug. 5, 2015) [80 FR 50103 (Aug. 18, 2015)] at n.90 (''Business development companies will be treated in the same manner as issuers other than registered investment companies and therefore will be subject to the pay ratio disclosure requirement'').

[70] *See* 17 CFR 240.10D–1(c)(3) and (4).

[71] *See* Senate Report at 135.

[72] Under U.S. Generally Accepted Accounting Principles (''GAAP''), a restatement is ''the process of revising previously issued financial statements to reflect the correction of an error in those financial statements.'' *See* Financial Accounting Standards Board Accounting Standards Codification Topic 250, *Accounting Changes and Error Corrections* (''ASC Topic 250''). Under International Financial Reporting Standards as issued by the International Accounting Standards Board (''IFRS''), a retrospective restatement is ''correcting the recognition, measurement and disclosure of amounts of elements of financial statements as if a prior period error had never occurred.'' *See* International Accounting Standard 8, *Accounting Policies, Changes in Accounting Estimates and Errors* (''IAS 8''), paragraph 5.

[73] Under GAAP, an error in previously issued financial statements is ''[a]n error in recognition, measurement, presentation, or disclosure in financial statements resulting from mathematical mistakes, mistakes in the application of generally accepted accounting principles (GAAP), or oversight or misuse of facts that existed at the time the financial statements were prepared. A change from an accounting principle that is not generally accepted to one that is generally accepted is a correction of an error.'' *See* ASC Topic 250. Under IFRS, prior period errors are ''omissions from, and misstatements in, the entity's financial statements for one or more prior periods arising from a failure to use, or misuse of, reliable information that: (a) was available when financial statements for those periods were authorised for issue; and (b) could reasonably be expected to have been obtained and taken into account in the preparation and presentation of those financial statements. Such errors include the effects of mathematical mistakes, mistakes in applying accounting policies, oversights or misinterpretations of facts, and fraud.'' *See* IAS 8, paragraph 5.

[74] The Commission did not propose any additional clarification about when an error would be considered material for purposes of the listing standards required by proposed Rule 10D–1 because materiality is a determination that must be analyzed in the context of particular facts and circumstances and has received extensive and comprehensive judicial and regulatory attention. *See, e.g., TSC Industries, Inc.* v. *Northway,* 426 U.S. 438 (1976); *Basic* v. *Levinson,* 485 U.S. 224 (1988).

[75] When we refer to financial statements, we mean the statement of financial position (balance sheet), statement of comprehensive income, statement of cash flows, statement of stockholders' equity, related schedules, and accompanying footnotes, as required by Commission regulations. When we refer to financial statements for registered investment companies and business development companies, we mean the statement of assets and liabilities (balance sheet) or statement of net assets, statement of operations, statement of changes in net assets, statement of cash flows, schedules required by 17 CFR 210. 6–10, financial highlights, and accompanying footnotes, as required by Commission regulations.

[76] The Commission proposed to define the term as ''the result of the process of revising previously issued financial statements to reflect the correction of one or more errors that are material to those financial statements.''

[77] *See* Section II.B.1 of the Proposing Release.

[78] *See* Choudhary *et al., supra* note 61.

[79] *See, e.g.,* Jean Eaglesham, *Shh! Companies Are Fixing Accounting Errors Quietly,* Wall St. J. (Dec. 5, 2019), *available at https://www.wsj.com/articles/shh-companies-are-fixing-accounting-errors-quietly-11575541981. See also* Rachel Thompson, *Reporting Misstatements as Revisions: An Evaluation of Managers' Use of Materiality Discretion* (working paper Sept. 17, 2021) *available at https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3450828* (*retrieved from SSRN Elsevier database*).

report or (b) the error correction was recognized in the current period (commonly referred to as ''little r'' restatements).[80] A ''little r'' restatement differs from a ''Big R'' restatement primarily in the reason for the error correction (as noted above), the form and timing of reporting, and the disclosure required. For example, a ''Big R'' restatement requires the issuer to file an Item 4.02 Form 8–K and to amend its filings promptly to restate the previously issued financial statements.[81] In contrast, a ''little r'' restatement generally does not trigger an Item 4.02 Form 8–K, and an issuer may make any corrections ''the next time the registrant files the prior year financial statements.'' [82] In connection with the Second Reopening Release, the Commission provided further opportunity to analyze and comment upon a memorandum prepared by Commission staff containing additional analysis and data on compensation recovery policies and accounting restatements.[83]

b. Comments

We received a range of comments on the proposals regarding restatements triggering application of the compensation recovery policy. In response to the Proposing Release, some commenters expressed support for the proposed use of the concept of a ''material error'' as the standard for the recovery trigger.[84] Some commenters suggested that the materiality standard was vague, or thought examples would be helpful.[85] Other commenters recommended that the Commission expressly provide that a restatement to correct immaterial errors would not trigger a compensation recovery,[86] or sought additional guidance for aggregating immaterial error corrections.[87] Some commenters recommended that recovery should not be limited to restatements for errors that were material to the previously issued financial restatements,[88] or recommended revisions to the proposed definition of ''accounting restatement.'' [89] Other commenters suggested that recovery should be triggered when *any* revision to previously issued financial statements occurred.[90] Other commenters, noting a decline in the number of formal accounting restatements, recommended that the Commission expand the scope of the rulemaking beyond implementation of Section 10D to require compensation recovery policies to address instances of misconduct by executive officers that do not result in a financial restatement.[91]

In response to the Reopening Release, we received a similar range of comments relating to the recovery trigger and the meaning of ''an accounting restatement due to material noncompliance.'' [92] A number of commenters supported the standard set forth in the Proposing Release that would apply recovery policies only when a restatement is required to correct errors that are material to previously issued financial statements and triggers disclosure under Item 4.02(a) of Form 8–K.[93] These commenters further contended that an ''accounting restatement due to material noncompliance'' should not include ''little r'' restatements.[94] Other commenters supported interpreting what it means to be required to prepare an accounting restatement due to material noncompliance in the manner described in the Reopening Release.[95]

[80] *See* Staff Accounting Bulletin No. 108, *Considering the Effects of Prior Year Misstatements when Quantifying Misstatements in Current Year Financial Statements* (Sept. 13, 2006). Studies cited and data included in this release on ''little r'' restatement frequency may define ''little r'' restatements differently than the definition used herein and are generally based on the total number of revisions to previously issued financial statements where the issuer did not file an Item 4.02 Form 8–K.

[81] An Item 4.02 Form 8–K is required to be filed when an issuer concludes that any of its previously issued financial statements should no longer be relied upon because of an error in such financial statements. It is due within four business days after the conclusion.

[82] See *supra* note 80.

[83] In the 2022 staff memorandum, the staff refers to ''little r'' restatements as restatements that correct errors that would only result in a material misstatement if the errors were left uncorrected in the current report or the error correction was recognized in the current period. This reference has the same meaning as the description of ''little r'' restatements in this release.

[84] *See* comment letters from Business Roundtable (Sept. 14, 2015) (''BRT 1''); Better Markets 1; Center On Executive Compensation (Sept. 14, 2015) (''CEC 1''); CFA Institute 1; Ernst & Young LLP (''EY'') (Sept. 15, 2015); NACD; PricewaterhouseCoopers LLP (''PWC''); SCG 1; and SBA.

[85] *See* comment letters from CalPERS 1; Exxon/Mobil Corporation (''Exxon'') (suggesting that recovery should only be triggered by a restatement that ''significantly altered the total mix of information available''); International Bancshares Corporation (''IBC'') (suggesting that recovery should only be triggered by a restatement if there is a substantial likelihood a reasonable investor would consider the restatement as important in deciding how to vote); Japanese Bankers; National Association of Manufacturers (''NAM'') (suggesting ambiguity could result in great variation among issuers in which restatements should trigger recovery); and SBA.

[86] *See* comment letters from CCMC 1; Chevron Corporation (''Chevron''); EY; and SCG 1. *See also* comment letter from PWC (suggesting that inclusion of the word ''material'' clarifies that the listing standard would not apply to restatements that reflect the correction of immaterial errors).

[87] *See* comment letters from ABA 1; Chevron; Corporate Governance Coalition for Investor Value (''Coalition''); Davis Polk 1; FSR; and IBC.

[88] *See* comment letters from AFL–CIO (Sept. 14, 2015) (expressing concern regarding ''revision restatements'' that would allow an issuer to avoid the application of the proposed compensation recovery provisions); As You Sow (Sept. 15, 2015) (''As You Sow 1''); CII 1; CalPERS 1; and SBA. *But see* comment letter from ABA 1 (noting ''that the analysis of an error's materiality takes into account the error's impact on executive compensation'').

[89] *See* comment letters from Chevron and SCG 1 (recommending that the definition include a specific reference to GAAP) and from ABA 1 (recommending that the definition refer to the applicable accounting standards). *See also* comment letter from PWC (noting that the proposed definition permits the listing standard to be applied regardless of the accounting framework a listed issuer follows).

[90] *See, e.g.,* comment letters from As You Sow 1; CII 1; and CalPERS 1.

[91] *See* comment letters from AFL–CIO; AFR 1; Plamen Kovachev (''Kovachev'') (recommending the rule include ethical misconduct triggers to more closely align the rule with executives' fiduciary duties); Rutkowski 1; and UAW Retiree Medical Benefits Trust, *et al.* (''UAW, *et al.*'').

[92] One commenter on the Reopening Release suggested ''it would be easier and more streamlined for issuers to rely on existing guidance, literature, and definitions concerning accounting errors rather than define the terms 'accounting restatement' and 'material noncompliance.' '' *See* comment letter in response to the Reopening Release from ABA 2.

[93] *See, e.g.,* comment letters in response to the Reopening Release from Davis Polk 3 (stating that ''immaterial errors should not trigger clawback policies'' and cautioning against creating a new materiality standard for disclosure of financial restatements solely for Rule 10D–1 purposes); Hunton; McGuireWoods, LLP and Brownstein Hyatt Farber Schreck LLP (''McGuireWoods'') (recommending that the Commission define ''material error'' as occurring when the issuer is required, by applicable accounting standards, to issue restated financial statements to correct one or more errors that are ''material'' to previously issued financial statements); S&C (contending that immaterial error corrections to the current period—commonly referred to as out-of-period adjustments—should not be included because they are not restatements or ''due to material noncompliance'') (Nov. 16, 2021) (''S&C 2''); and SCG (Nov. 29, 2021) (''SCG 3'').

[94] *See, e.g.,* comment letters in response to the Reopening Release from Davis Polk 3 (contending that Proposing Release facilitates the purpose of the recovery rule in being triggered on the basis of ''meaningful errors'' and that ''little r'' restatements do not meet this standard and would create costs due to the uncertainty of the standard); Hunton (suggesting that ''little r'' restatements are immaterial to investors and should not serve as a recovery policy trigger); McGuireWoods (suggesting that Section 10D intended that not all restatements should trigger recovery and, in particular, that immaterial restatements should be excluded from recovery); and SCG 3. As discussed below, we disagree with how a number of these commenters characterize ''little r'' restatements.

[95] *See, e.g.,* comment letters in response to the Reopening Release from Better Markets (Nov. 22, 2021) (''Better Markets 2'') (recommending including a definition in the final rule, such as one defining an accounting restatement as either a revision restatement or a re-issuance restatement, to avoid unintended, inconsistent interpretations, and other enforcement challenges that could result from reliance on guidance); CFA Institute (Nov. 22, 2021) (''CFA Institute 2'') (suggesting a broad interpretation may serve to mitigate the perception of misaligned motivations); Council of Institutional

Some of these commenters noted research suggesting that issuers may be deeming revisions to be immaterial even though the revisions meet at least one of the indicators of materiality described in Staff Accounting Bulletin No. 99.[96] Some of these commenters additionally suggested that the increasing prevalence of revisions may stem from management seeking to avoid restatements that would trigger an Item 4.02 Form 8–K filing or the application of a compensation recovery policy provision.[97] Some commenters further recommended expanding the recovery policy triggers.[98]

A few commenters supported a requirement for an issuer to disclose its evaluation that errors are immaterial,[99] while some other commenters opposed requiring this disclosure.[100] Another stated that ''involvement of the independent auditors in evaluating management's materiality analysis and concurring (through the audit opinion) with management's conclusion, with oversight from the company's audit committee, provides sufficient protection of investor interests that material errors do not go uncorrected by a company trying to avoid the clawback of incentive compensation.'' [101]

c. Final Amendments

After considering comments received on the Proposing Release and reopening releases, in a change from the proposal, we are adopting rules to require listed issuers to adopt and comply with a written compensation recovery policy that will be triggered in the event the issuer is required to prepare an accounting restatement that corrects an error in previously issued financial statements that is material to the previously issued financial statements, or that would result in a material misstatement if the error were corrected in the current period or left uncorrected in the current period.[102] While the proposed rules focused on restatements for errors that are material to the previously issued financial statements, after further consideration and input from commenters, the final rules reflect a broader construction of the phrase ''an accounting restatement due to the material noncompliance of the issuer with any financial reporting requirement under the securities laws'' based upon the fact that both types of restatements are caused by *material* misstatements that either already exist or would exist in the current period.

In our view, the statutory language of Section 10D—''an accounting restatement due to the material noncompliance of the issuer with any financial reporting requirement under the securities laws''—can appropriately be read to encompass both ''Big R'' and ''little r'' restatements. First, as a threshold matter, we disagree with those commenters who stated that ''little r'' restatements are not accounting restatements. We note that both are considered ''accounting restatements'' under U.S. GAAP and IFRS [103] because both result in revisions of previously issued financial statements for a correction of an error in those financial statements. In contrast, as noted by one commenter, sometimes the correction of an error is recorded instead in the current period financial statements—commonly referred to as an out-of-period adjustment—when the error is immaterial to the previously issued financial statements, and the correction of the error is also immaterial to the current period.[104] We agree with that commenter that an out-of-period adjustment should not trigger a compensation recovery analysis under the final rules, because it is not an ''accounting restatement.'' [105]

Second, both types of restatements address material noncompliance of the issuer with financial reporting requirements. In the case of a ''Big R'' restatement, the material noncompliance results from an error that was material to previously issued financial statements. In the case of a ''little r'' restatement, the material noncompliance results from an error that is material to the current period financial statements if left uncorrected or if the correction were recorded only in the current period.[106] Due to the materiality of the impact the error would have on the current period, the previously issued financial statements must be revised to correct it even

Investors (Nov. 18, 2021) (''CII 3'') (suggesting that Section 10D was not intended to narrowly limit the required recovery policy to exclude ''little r'' restatements); International Corporate Governance Network (''ICGN''); Occupy the SEC (''Occupy''); Ohio Public Employees Retirement System (Nov. 22, 2021) (''OPERS 2'') (recommending that the Commission clarify ''that its definition of 'accounting restatement' includes all required restatements made to correct an error in previously issued financial statements, regardless of whether they are formal restatements or revisions''); and Public Citizen 2. *See also* comment letters in response to the Second Reopening Release from Americans for Financial Reform (July 6, 2022) (''AFR 2'') (noting studies finding that ''little r'' restatements have been issued in lieu of ''Big R'' restatements to avoid compensation recovery provisions); and Council of Institutional Investors (June 24, 2022).

[96] *See, e.g.,* comment letters in response to the Reopening Release from CFA Institute 2 (further suggesting that lack of transparency in the issuer's materiality assessment and the reason for the method of correction may be contributing factors); and OPERS 2.

[97] *See, e.g.,* comment letters in response to the Reopening Release from Better Markets 2; and OPERS 2.

[98] *See, e.g.,* comment letters in response to the Reopening Release from New York City Retirement Systems (''NYCRS'') (recommending recouping compensation from executives responsible for detrimental conduct causing significant financial or reputational harm); and New York State Common Retirement Fund (''NYSCRF'') (recommending recouping compensation awarded to executives during periods of fraudulent activity, inadequate oversight, misbehavior, including discrimination and harassment of any kind, or gross negligence, which impacted or is reasonably expected to impact financial results or cause reputational harm).

[99] *See, e.g.,* comment letters from Better Markets 1; CalPERS 1; and CFA Institute 1. *See also* comment letter from CFA Institute 1 (noting that because of the inherent estimates, judgements, and complexity involved, issuers should disclose their evaluations, the process and assumptions used to determine whether the error(s) in question were material or immaterial, and why they decided the matter in this way and suggesting that thorough disclosure provides investors enough information to understand the material facts and the reasoning behind such determination, and thereby helps them to make appropriate decisions about the board's actions); and ICGN.

[100] *See, e.g.,* comment letters from BRT 1 (suggesting it is a tenet of the Federal securities laws that disclosure of immaterial information is not required); EY; NACD; and SCG 1.

[101] *See* comment letter from EY.

[102] *See* 17 CFR 240.10D–1(b)(1) (''Rule 10D–1(b)(1)'').

[103] *See supra* note 72.

[104] *See* comment letter from S&C 2.

[105] *See supra* note 93. In response to commenters who requested clarification about the statement in the Proposing Release that ''issuers should consider whether a series of immaterial error corrections, whether or not they resulted in filing amendments to previously filed financial statements, could be considered a material error when viewed in the aggregate,'' we do not think this is necessary. *See supra* note 87. Staff guidance on materiality is already available which specifically addresses the aggregation of misstatements that individually do not cause the financial statements taken as a whole to be materially misstated. *See infra* note 108. Furthermore, the scope of the final amendments includes ''little r'' restatements, which are sometimes required due to the cumulative effects of an error over multiple reporting periods. *See* more detailed discussion below.

[106] We note that certain errors may compound over time. While the initial error amount may not have been material to previously issued financial statements, it may become material due to its cumulative effect over multiple reporting periods. A material adjustment to the current period that relates to an error from previously issued financial statements would cause the current period financial statements to be materially misstated. An example of such error is an improper expense accrual (such as an overstated liability) that has built up over five years at $20 per year. Upon identification of the error in year five, the issuer evaluated the misstatement as being immaterial to the financial statements in years one through four. To correct the overstated liability in year five a $100 credit to the statement of comprehensive income would be necessary; however, $80 of it would relate to the previously issued financial statements for years one through four. During the preparation of its annual financial statements for year five, the issuer determines that, although a $20 annual misstatement of expense would not be material, the adjustment to correct the $80 cumulative error from previously issued financial statements would be material to comprehensive income for year five. Accordingly, the issuer must correct the financial statements for years one through four.

though the error may not have been material to those financial statements. We note that the plain language of Section 10D does not limit the concept of ''an accounting restatement due to material noncompliance'' to effects on previously issued financial statements, and thus the final rules require compensation recovery analysis for both ''Big R'' and ''little r'' restatements.

We also disagree with those commenters who asserted that including ''little r'' restatements would make it difficult to comply with the rule. Issuers are already required to perform a materiality analysis on each error that is identified in order to determine how to account for and report the correction of that error. Thus, issuers will have already performed the analysis necessary to identify these additional accounting restatements. Furthermore, the final rules reduce uncertainty regarding their scope by expressly identifying the types of restatements that are required to be included within an issuer's recovery policy.

In addition to being clear and consistent with applicable accounting literature, guidance, and the plain language of Section 10D, this construction of the statutory language addresses concerns that issuers could manipulate materiality and restatement determinations to avoid application of the compensation recovery policy.[107] In this regard, we note that Commission staff has provided guidance to assist issuers in making materiality determinations. The staff guidance emphasizes that an issuer's materiality evaluation of an identified unadjusted error should consider the effects of the identified unadjusted error on the applicable financial statements and related footnotes, and evaluate quantitative and qualitative factors.[108] Registrants, auditors, and audit committees should already be aware of the need to assess carefully whether an error is material by applying a well-reasoned, holistic, objective approach from a reasonable investor's perspective based on the total mix of information. Further, whether the misstatement has the effect of increasing management's compensation, for example, by satisfying requirements for the award of bonuses or other forms of incentive compensation, is a qualitative factor that should be considered when making a materiality determination.

Requiring recovery analysis for both ''Big R'' and ''little r'' accounting restatements does not eliminate the risk that an issuer could avoid a recovery obligation by manipulating its materiality analysis of an error.[109] While this is an inherent risk, we note the involvement of an independent auditor in evaluating management's materiality analyses, with the oversight of the audit committee, protects investor interests by helping ensure that material errors do not go uncorrected by an issuer seeking to avoid the recovery of erroneously awarded compensation. Furthermore, we note the potential serious consequences, including but not limited to Commission enforcement action and private litigation, of mischaracterizing material accounting errors as immaterial.

For similar reasons, we are not adopting a requirement for an issuer to disclose the materiality analysis of an error when the error is determined to be immaterial, as recommended by some commenters. Inclusion of ''little r'' restatements in the scope of restatements triggering recovery, the involvement of independent auditors and oversight of audit committees, and the serious potential consequences of deliberate mischaracterizations of accounting errors, should mitigate the risk that some errors will be incorrectly determined to be immaterial. Further, many assessments of materiality are complex and highly sensitive to particular facts and circumstances. Requiring issuers to disclose sufficient information to make these assessments meaningful to investors would likely entail lengthy disclosures that may be of limited use for investors. Instead, we are adopting a disclosure requirement, discussed in Section II.D., for issuers to clearly identify on the cover page of their annual reports when the financial statement periods presented contain restatements, which should provide additional transparency regarding such restatements.

In a change from the proposal, Rule 10D–1 will not provide separate definitions of ''accounting restatement'' or ''material noncompliance'' as proposed. Existing accounting standards and guidance already set out the meaning of those terms.[110] This rule is not intended to affect that guidance. While we acknowledge that a number of commenters supported the proposed definitions of ''accounting restatement'' and ''material noncompliance,'' in light of the modifications discussed above, we agree with the commenter that suggested that it will be easier for issuers to look to existing guidance, literature, and definitions when assessing accounting errors[111] and that such an approach will help ensure that those standards are consistently applied both across different issuers and over time.

As indicated in the Proposing Release, we understand that under current accounting standards the following types of changes to an issuer's financial statements do not represent error corrections, and therefore would likewise not trigger application of the issuer's compensation recovery policy under the listing standards:

- Retrospective application of a change in accounting principle;[112]
- Retrospective revision to reportable segment information due to a change in the structure of an issuer's internal organization;[113]

[107] We note evidence supporting the materiality manipulation concern. *See, e.g.,* Brian Hogan and Gregory A. Jonas, *The association between executive pay structure and the transparency of restatement disclosures,* Acct. Horizons (Sept. 2016) (finding that CFO pay structure is correlated with the transparency of restatement disclosure (''Big R'' vs. ''little r'')). *See also* Thompson, *supra* note 69 (finding that issuers with compensation recovery provisions are more likely to report misstatements as ''little r'' restatements instead of ''Big R'' restatements).

[108] *See* Staff Accounting Bulletin No. 99, *Materiality* (Aug. 12, 1999) and Staff Accounting Bulletin No. 108, *Considering the Effects of Prior Year Misstatements when Quantifying Misstatements in Current Year Financial Statements* (Sept. 13, 2006). (This guidance and any other staff statement cited in this release is not a rule, regulation, or statement of the Commission and the Commission has neither approved nor disapproved its content. This guidance, like all staff statements, has no legal force or effect: it does not alter or amend applicable law, and it creates no new or additional obligations for any person.) We note that Commission staff have observed that some materiality analyses appear to be biased toward supporting an outcome that an error is not material to previously issued financial statements. *See id.* Relatedly, it has been reported that, while the total number of accounting restatements by issuers declined each year from 2013 to 2020, the percentage of ''little r'' restatements increased to approximately 76% of restatements in 2020. *See* Audit Analytics, *2020 Financial Restatements: A Twenty-Year Review* (November 2021).

[109] This could occur if an issuer were to inappropriately conclude that an identified error was not material to its previously issued financial statements or the current period.

[110] Rule 10D–1 clarifies the meaning of an ''accounting restatement due to the material noncompliance of the issuer with any financial reporting requirement under the securities laws.''

[111] *See* comment letter in response to the Reopening Release from ABA 2.

[112] A change in accounting principle is ''[a] change from one generally accepted accounting principle to another generally accepted accounting principle when there are two or more generally accepted accounting principles that apply or when the accounting principle formerly used is no longer generally accepted. A change in the method of applying an accounting principle also is considered a change in accounting principle.'' *See* ASC Topic 250. IAS 8 has similar guidance. A change from an accounting principle that is not generally accepted to one that is generally accepted, however, would be a correction of an error.

[113] If an issuer changes the structure of its internal organization in a manner that causes the composition of its reportable segments to change, the corresponding information for earlier periods,

• Retrospective reclassification due to a discontinued operation; [114]
• Retrospective application of a change in reporting entity, such as from a reorganization of entities under common control; [115]
• Retrospective adjustment to provisional amounts in connection with a prior business combination (IFRS filers only); [116] and
• Retrospective revision for stock splits, reverse stock splits, stock dividends or other changes in capital structure.

2. Date the Issuer Is Required To Prepare an Accounting Restatement

Section 10D(b)(2) requires recovery of erroneously awarded compensation ''during the 3-year period preceding the date on which the issuer is required to prepare an accounting restatement.'' Section 10D does not specify when an issuer is ''required to prepare an accounting restatement'' for purposes of this provision.

a. Proposed Amendments

The Commission proposed that the date on which an issuer is required to prepare an accounting restatement is the earlier to occur of:
• The date the issuer's board of directors, a committee of the board of directors, or the officer or officers of the issuer authorized to take such action if board action is not required, concludes, or reasonably should have concluded, that the issuer's previously issued financial statements contain a material error; or
• The date a court, regulator or other legally authorized body directs the issuer to restate its previously issued financial statements to correct a material error.

A note to the proposed rule indicated that the first proposed date generally is expected to coincide with the occurrence of the event described in Item 4.02(a) of Exchange Act Form 8–K, although neither proposed date would be predicated on if or when a Form 8–K was filed. In the Reopening Release, the Commission solicited further comment as to whether to remove the ''reasonably should have concluded'' language in light of concerns that the language adds uncertainty to the determination.

b. Comments

We received a range of comments on the proposed specification of the date the issuer is required to prepare an accounting restatement (referred to in this release as the ''trigger date''). Some commenters supported including ''reasonably should have concluded'' as an objective standard that provides certainty and prevents manipulation or the potential for evasion,[117] while others expressed concern that use of ''reasonably should have concluded'' could introduce elements of uncertainty and subjectivity into the determination.[118] Some commenters recommended a bright-line standard involving a single date, such as the date of the Item 4.02(a) Form 8–K filing.[119] Other commenters recommended including as a trigger the filing of an Item 4.02(b) Form 8–K disclosing that independent accountants have advised the issuer that the financial statements can no longer be relied upon.[120] Some commenters, however, did not believe that receipt of such a notification from the auditor should be conclusive.[121]

Some commenters expressed the view that existing legal requirements provide sufficient deterrents against intentionally delaying issuance of a restatement.[122] Other commenters expressed concerns about the potential for delay,[123] and one suggested the proposed ''reasonably should have concluded'' language would discourage issuers from improperly delaying filing a restatement to avoid recovery.[124]

In response to the Reopening Release, a number of commenters expressed support for the inclusion of ''reasonably should have concluded'' language in the proposed rule because in their view it would create a more objective standard and appropriately limit board discretion.[125] In contrast, other commenters supported using the date the issuer's board of directors (or a committee of the board of directors or the officer or officers of the issuer authorized to take such action if board action is not required) ''concludes that the issuer's previously issued financial statements contain a material error. Some of these commenters expressed concern about uncertainty or ambiguity associated with the ''reasonably should have concluded'' determination.[126]

Some commenters on the proposal additionally sought guidance as to the types of facts that would support a finding that the issuer reasonably should have concluded that its previously issued financial statements contain a material error.[127] Some

including interim periods, should be revised unless it is impracticable to do so. *See* ASC Topic 280–10–50–34. IFRS 8 has similar guidance.

[114] *See* ASC Topic 205–20. IFRS 5 has similar guidance.

[115] *See* ASC Topic 250–10–45–21. IFRS does not have specific guidance addressing this reporting matter.

[116] *See* IFRS 3, paragraph 45.

[117] *See* comment letters from Better Markets 1; and Compensia. Some commenters specifically supported using the earlier to occur of the alternative dates, as proposed. *See, e.g.,* letters from CalPERS 1; CII 1; and CFA Institute 1.

[118] *See, e.g.,* comment letters from ABA 1; BRT 1; CEC 1; Exxon; and SCG 1. Some of these commenters further suggested that the language could invite disputes or lead to litigation. *See, e.g.,* comment letters from Exxon; and SCG 1.

[119] *See, e.g.,* comment letters from Davis Polk 1; Mercer; and NACD. *See also* comment letters from Exxon (recommending the actual issuance of a restatement); and Public Citizen 1 (recommending the date the erroneous financial statement is filed).

[120] *See* comment letters from CFA Institute 1; and EY.

[121] *See* comment letters from ABA 1; and SCG 1.

[122] *See, e.g.,* comment letters from ABA 1 (noting that other existing laws, including the certification requirements and anti-fraud provisions of the Exchange Act as well as applicable corporate law, provide the appropriate incentives to make timely financial reporting determinations in connection with Commission filings); and Exxon (noting Commission and private litigation liabilities likely to accrue while a material error in an issuer's financial reporting remains uncorrected, the personal certification requirements applicable to the principal executive and financial officers, and the risk that an issuer's independent auditors will refuse to give an opinion on financial statements containing an uncorrected material error).

[123] *See* comment letters from Public Citizen 1; and CFA Institute 1 (noting that considerable time can pass between the time an error is detected and the time a court or regulator requires the issuer to take action).

[124] *See* comment letter from CII 1.

[125] *See, e.g.,* comment letters in response to the Reopening Release from Better Markets 2 (suggesting the ''reasonably should have concluded'' language imposes an enforceable obligation on the issuer and reduces the likelihood of litigation by inducing issuers to act prudently to avoid the risk); CFA Institute 2 (suggesting the language would mitigate concerns about internal investigations taking longer than necessary, unreasonable delays in reaching a conclusion, or misalignment of executives' incentives impacting the timeliness or accuracy of the financial reporting); and ICGN. *See also* comment letters in response to the Reopening Release from Eileen Morrell; Public Citizen 2; Occupy; and OPERS 2 (supporting the use of the ''reasonably should have concluded'' language); and comment letter in response to the Second Reopening Release from AFR 2 (suggesting that the ''reasonably should have concluded'' language discourages issuers from delaying actions necessary to fix erroneous financial statements).

[126] *See, e.g.,* comment letters in response to the Reopening Release from ABA 2 (suggesting the ''reasonably should have concluded'' language would add subjectivity by using a triggering event that differs from Form 8–K and would be open to second-guessing and litigation); CEC (Nov. 17, 2021) (''CEC 2'') (suggesting the language creates excessive uncertainty and excessive legal risk based on the board's view of when the look back period should commence versus the view of an impacted shareholder or an executive who disputes that timing); Davis Polk 3; and McGuireWoods (suggesting the standard would be ambiguous and overly broad and noting that Item 4.02 of Form 8–K relies on when the board concludes a restatement is required). *See also* comment letter in response to the Reopening Release from SCG 1 (noting that knowingly, recklessly, or negligently misreporting false or misleading financial information already subjects the issuer to liability).

[127] *See* comment letters from CEC 1; Compensia; and SCG 1 (seeking clarification that a restatement

Continued

commenters also sought clarification regarding when a regulator or other legally authorized body directs an issuer to restate its previously issued financial statements to correct a material error.[128]

c. Final Amendments

After considering the comments, we are adopting the rules substantially [129] as proposed to provide that under the listing standards the date on which an issuer is required to prepare an accounting restatement is the earlier to occur of:

- The date the issuer's board of directors, a committee of the board of directors, or the officer or officers of the issuer authorized to take such action if board action is not required, concludes, or reasonably should have concluded, that the issuer is required to prepare an accounting restatement due to the material noncompliance of the issuer with any financial reporting requirement under the securities laws as described in Rule 10D–1(b)(1); or
- The date a court, regulator or other legally authorized body directs the issuer to prepare an accounting restatement.[130]

We believe the final rule provides reasonable certainty for issuers, shareholders, and exchanges while minimizing incentives for issuers to delay their restatement conclusions. While we acknowledge some commenters' assertion that a bright-line or single-date standard might be easier to apply, we continue to have concerns that such an approach would not address the potential for delay of a restatement determination in order to manipulate the recovery date.

As noted in the Proposing Release,[131] using the date the erroneous financial statements were filed as the triggering date would be inconsistent with the three-year look-back period because if the date of filing of the erroneous financial statements were used, recovery would not apply to any incentive-based compensation received after that date, even when the amount was affected by the erroneous financial statements. As a result, we disagree with the suggestion that the look-back period should be triggered by the date the issuer files the accounting restatement. The issuer will necessarily determine that it is ''required to prepare'' a restatement on or before the day it files the restatement. We have not adopted this suggestion because it would allow an issuer to delay the recovery period, and potentially reduce the amount of compensation subject to recovery, by delaying the filing of a restatement it had already determined it was required to prepare.

Rather, we agree with the commenters that indicated that the timing standard we are adopting is sufficiently certain and appropriately limits board discretion. The standard promotes compliance with the rule by making evasion of the application of a recovery policy more difficult.[132] The ''reasonably should have concluded'' concept reduces the incentive for an issuer to delay the investigation of a known error and the decision that a restatement is necessary, because the delayed decision date would not determine the beginning of the recovery period. We recognize that, as some commenters indicated, establishing the trigger date as the date that the issuer's board concludes, or reasonably should have concluded, that the issuer is required to prepare an accounting restatement creates some risk that the board's conclusions will be subject to litigation. We believe this risk is acceptable in light of the benefit of deterring issuers from manipulating the timing of their conclusions to avoid or delay a recovery obligation. In order to trigger application of the recovery policy, an issuer merely needs to have concluded that it is required to prepare an accounting restatement, which may occur before the precise amount of the error has been determined.[133] We further note that applying a reasonableness standard to the determination of the three-year look-back supports an exchange's ability to enforce the recovery provision by providing the exchange a standard by which to review an issuer's conclusion.

To the extent that an issuer is required to file an Item 4.02(a) Form 8–K, the conclusion that it is required to prepare an accounting restatement is expected to coincide with the occurrence of the event disclosed in the Form 8–K.[134] In addition, in applying a reasonableness standard to the determination of a three-year look-back period, while not dispositive, one factor that an issuer would have to consider carefully would be any notice that it may receive from its independent auditor that previously issued financial statements contain a material error.[135]

While we anticipate that most issuers will make their determination regarding the three-year look-back trigger based on the standard in 17 CFR 240.10D–1(b)(1)(ii)(A), some issuers may not conclude they are required to prepare an accounting restatement and instead may choose to contest whether an accounting restatement is required. While we expect these occurrences to be rare, 17 CFR 240.10D–1(b)(1)(ii)(B) (''Rule 10D–

by an issuer's peer group member does not trigger recovery when an issuer's incentive-based compensation is based on performance relative to the peer group).

[128] *See* comment letter from EY (suggesting that it may be unclear whether a request for a restatement from a regulator would be a trigger, given the lack of finality of the determination). *See also* comment letters from CEC 1 (recommending that the date not be established until a court order is final and non-appealable); and SCG 1 (recommending that the date of the initial court or agency restatement order should be designated as the starting point of the three-year look-back period, but only after the order is final and non-appealable).

[129] In a nonsubstantive change from the proposal, we have incorporated the standard for the date the issuer is required to prepare an accounting restatement into 17 CFR 240.10D–1(a)(1)(ii) rather than separately defining the term ''date on which an issuer is required to prepare an accounting restatement'' in paragraph (c) as proposed.

[130] *See* 17 CFR 240.10D–1(b)(1)(ii) (''Rule 10D–1(b)(1)(ii)'').

[131] *See* Proposing Release at Section II.B.2 (''For example, if 2014 net income was materially misstated, and a 2014–2016 long-term incentive plan had a performance measure of three-year cumulative net income, a look-back period that covered only the three years before the erroneous filing would not capture the compensation earned under that plan.'').

[132] Rule 10D–1(b)(1)(ii) is being established specifically for purposes of determining the relevant recovery period under Rule 10D–1. The ''reasonably should have concluded'' language applies only with respect to the determination of the three-year look-back timing for purposes of compensation recovery. It does not apply with respect to a conclusion under applicable accounting rules and standards as to whether there is an error that requires a restatement.

[133] We disagree with commenters that asserted that the reasonableness standard increases uncertainty or ambiguity. While we acknowledge that the standard is not a fixed date in time, it is intended to allow an exchange to assess, based on the facts available to the issuer, the point at which a reasonable person would have concluded that an accounting restatement is required. Contrary to a subjective determination, this standard provides for an objective assessment based on the facts available as to the determination of the timing of the lookback.

[134] In a modification from the proposal, we are no longer including a note indicating that the date generally is expected to coincide with the occurrence of the event described in Item 4.02(a) of Exchange Act Form 8–K because we are expanding the circumstances that would trigger the analysis to include ''little r'' restatements which generally do not require reporting on a Form 8–K.

[135] We are not, however, adopting the suggestion of some commenters that the filing of an Item 4.02(b) Form 8–K disclosing that independent accountants have advised the issuer that the financial statements can no longer be relied upon be included as a trigger. *See supra* note 120. As noted by another commenter, such a date may not be conclusive. *See* comment letter from ABA 1. However, if a listed issuer files an Item 4.02(b) Form 8–K because it is advised by, or receives notice from, its independent accountant that disclosure should be made or action should be taken to prevent future reliance on a previously issued audit report or completed interim review related to previously issued financial statements that contain a material error, the triggering event for the recovery policy occurs, at the latest, when the listed issuer determines to restate its financial statements, even if it subsequently neglects to file an Item 4.02(a) Form 8–K to report that decision.

1(b)(1)(ii)(B)'') clarifies that in these circumstances, the trigger date will be *no later than* the date a court, regulator, or other legally authorized body directs the issuer to prepare an accounting restatement. In the event that such date is different than the date an issuer reasonably should have concluded that an accounting restatement is required, Rule 10D–1(b)(1)(ii) mandates that the trigger date be the earlier date. In response to questions raised by a commenter, we are clarifying that for purposes of Rule 10D–1(b)(1)(ii)(B), the date of the initial court order or agency action would be the trigger date for the three-year look-back period, but that the determination and application of the recovery policy would occur only after the order is final and non-appealable.

Incorporating the triggering events into the rule rather than leaving the determination solely to the issuer will better realize the objectives of Section 10D while providing clarity about when a recovery policy, and specifically the determination of the three-year look-back period, is triggered for purposes of the listing standards. In this regard, we note that the rule also states that an issuer's obligation to recover erroneously awarded compensation is not dependent on if or when the restated financial statements are filed with the Commission.[136]

C. Application of Recovery Policy

1. Executive Officers Subject to Recovery Policy

Section 10D identifies the class of persons and the time frame during which that class of persons is subject to recovery of erroneously awarded incentive-based compensation. Specifically, Section 10D(b)(2) requires exchanges and associations to adopt listing standards that require issuers to adopt and comply with policies that provide for recovery of erroneously awarded compensation from ''any current or former executive officer of the issuer who received incentive-based compensation'' during the three-year look back period.[137]

a. Proposed Amendments

The Commission proposed to include in the listing standards a definition of ''executive officer'' modeled on the definition of ''officer'' in 17 CFR 240.16a–1(f) (''Rule 16a–1(f)''). For purposes of Section 10D, the proposed definition of ''executive officer'' included the issuer's president, principal financial officer, principal accounting officer (or if there is no such accounting officer, the controller), any vice-president of the issuer in charge of a principal business unit, division or function (such as sales administration or finance), any other officer who performs a policy-making function, or any other person who performs similar policy-making functions for the issuer. The proposed definition expressly included the principal financial officer and the principal accounting officer (or if there is no such accounting officer, the controller), reflecting the view that their responsibility for financial information justifies their inclusion in the definition of ''executive officer'' for this purpose. As proposed, executive officers of the issuer's parents or subsidiaries would be deemed executive officers of the issuer if they perform such policy making functions for the issuer.[138]

The Commission additionally proposed that the rules require recovery of excess incentive-based compensation received by an individual who served as an executive officer of the listed issuer at any time during the performance period. This would include incentive-based compensation derived from an award authorized before the individual becomes an executive officer, and inducement awards granted in new hire situations, as long as the individual served as an executive officer of the listed issuer at any time during the award's performance period.[139]

b. Comments

Commenters provided varying recommendations on the appropriate definition of ''executive officer.'' Some commenters expressly supported the proposed definition,[140] and one recommended expanding the definition.[141] Other commenters suggested that the proposed definition was too broad.[142] Some of these commenters contended that Section 10D does not require the breadth of the proposed definition,[143] and some further recommended various other limits on covered executive officers.[144] In contrast, some commenters noted that a narrower definition would exclude individuals with a significant executive role at an issuer and could be contrary to the interests of investors.[145]

We received limited comment specific to our proposal to base the definition on the Rule 16a–1(f) definition of ''officer,'' instead of the 17 CFR 240.3b–7 (''Rule 3b–7'') definition of ''executive officer.'' [146] A few commenters suggested that including all Section 16 officers, without providing the compensation committee discretion in enforcing recovery, may affect issuers' practices in identifying their executive officers.[147]

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[136] *See* 17 CFR 240.10D–1(b)(1)(i)(B) (''Rule 10D–1(b)(1)(i)(B)'').

[137] Section 10D does not define ''executive officer'' for purposes of the recovery policy. The Senate Committee on Banking, Housing, and Urban Affairs noted that ''[t]his policy is required to apply to executive officers, a very limited number of employees, and is not required to apply to other employees.'' Senate Report at 136.

[138] The proposed definition also contained specific provisions with respect to limited partnerships and trusts, and a note providing that ''policy-making function'' is not intended to include policy making functions that are not significant and that persons identified as ''executive officers'' pursuant to 17 CFR 229.401(b) are presumed to be executive officers for purposes of the proposed rule.

[139] As proposed, recovery would not apply to an individual who is an executive officer at the time recovery is required if that individual had not been an executive officer at any time during the performance period for the incentive-based compensation subject to recovery.

[140] *See, e.g.,* comment letters from AFL–CIO; AFR 1; As You Sow 1; Better Markets 1; CEC 1; CFA Institute 1; CII 1; OPERS (Sept. 14, 2015) (''OPERS 1'') (supporting the focus on policy-making functions); Public Citizen 1; Rutkowski 1; and UAW, *et al.*

[141] *See* comment letter from Better Markets 1 (recommending including the principal legal officer, the chief compliance officer, and the chief information officer). *But see* comment letter from CEC 1 (suggesting that expanding the pool of executives beyond Section 16 officers would go beyond Congress' intended purpose).

[142] *See, e.g.,* comment letters from ABA 1; American Vanguard Corporation (''American Vanguard''); CCMC 1; Chevron; Coalition; Compensia; Duane; FedEx Corporation (Sept. 14, 2015) (''FedEx 1''); Fried; Hay Group, Inc. (''Hay Group''); IBC; Japanese Bankers; Kovachev; NAM; Pay Governance LLC (''Pay Governance''); S&C 1; SCG 1; Steven Hall & Partners (''SH&P''); and WorldatWork (''WAW''). *See also* comment letters in response to the Reopening Release recommending limiting the term to executives who had a meaningful role or responsibility over the issuer's financial reporting from ABA 2; CCMC 2; McGuireWoods; and SCG (Nov. 3, 2021) (''SCG 2'').

[143] *See, e.g.,* comment letters from CCMC 1; Chevron; Compensia; NAM; and SCG 1.

[144] Some commenters recommended limiting the definition to the issuer's named executive officers as defined in 17 CFR 229.402(a)(3). *See, e.g.,* comment letter from Duane; FedEx 1; Fried; Hay Group; and NACD. Other commenters recommended limiting the definition to only the principal executive officer, principal financial officer, principal accounting officer (or if there is no such accounting officer, the controller), and, in addition, any officer in charge of a principal business unit, division, or function or who performs a policy-making function and whom the board of directors or compensation committee determines to have had an important role in contributing to the events leading to a financial restatement. *See, e.g.,* comment letters from ABA 1; Chevron; and SCG 1. Still other commenters recommended various forms of scienter requirements. *See, e.g.,* comment letters from American Vanguard; CCMC 1; Coalition; Compensia; and SH&P.

[145] *See, e.g.,* comment letters from AFL–CIO; AFR 1; and Rutkowski 1.

[146] *See* comment letters from Keith Paul Bishop (''Bishop'') (recommending use of the Rule 3b–7 definition) and CalPERS 1 (supporting use of the Rule 3b–7 definition as an alternative to the proposal).

[147] *See* comment letters from ABA 1 (suggesting that some issuers may have an incentive to

Continued

Several commenters recommended limiting recovery only to incentive-based compensation earned during the portion of the look-back period when the individual was an executive officer of the issuer.[148] Some questioned whether recovery for periods when the individual was serving in non-executive capacities would be consistent with the statute.[149] Others questioned the fairness of applying recovery to periods when an officer was not serving in an executive capacity.[150] Some commenters further expressed concern that this aspect of the proposal would discourage employees from serving as executive officers, with a detrimental impact on corporate governance and the issuer's ability to provide for smooth transitions.[151] In contrast, one commenter expressly supported the proposal.[152]

c. Final Amendments

After considering the comments, we are adopting the rules defining executive officers subject to recovery substantially as proposed, with modifications in response to commenters.[153] Section 10D uses the term ''executive officer'' to identify the persons who are to be subject to the rules without reference to a specific scope or defined term. As described above, while Congress did not intend to cover rank-and-file employees, it also did not limit the scope of recovery to those officers who may be ''at fault'' for accounting errors that led to a restatement, nor to those who are directly responsible for the preparation of the financial statements.

In developing the definition of ''executive officer'' for purposes of Rule 10D–1, we considered the statutory purpose of the rule. First, Section 10D seeks to recover erroneously awarded incentive-based compensation, reducing a potential form of unjust enrichment, in which executive officers would gain from accounting errors at the expense of shareholders. The statute thus protects shareholders from bearing the economic burden of erroneously awarded compensation derived from material noncompliance with financial reporting requirements. The statute also helps to maintain investor confidence in markets and improve liquidity by incentivizing executive officers to provide more accurate financial reporting. While some commenters recommended that we use our discretion to apply Section 10D to a limited set of executive officers, such as named executive officers, executive officers who had a role in preparing the financial statements, or executive officers who had a role in the accounting error leading to the restatement, we are not persuaded that such limitations would be consistent with Congress' goals. Further, Congress' use of the unqualified term ''executive officer'' in Section 10D, compared to its application of qualifiers to that term elsewhere in the Dodd-Frank Act, suggests that it did not intend to limit the group of executive officers subject to recovery.'' [154]

We also acknowledge commenters who recommended that we base the definition on Rule 3b–7.[155] The term ''executive officer'' as defined in 17 CFR 240.3b–7 and the term we are adopting are similar. However, we determined to establish a definition of ''executive officer'' in Rule 10D–1 in order to expressly include officers with an important role in financial reporting. This includes an issuer's president, principal financial officer, and principal accounting officer (or if there is no such accounting officer, the controller), which we note is consistent with the term ''officer'' as defined in Rule 16a–1(f). Although the compensation recovery provisions of Section 10D apply without regard to an executive officer's responsibility for preparing the issuer's financial statements, we believe that it is essential that officers with an important role in financial reporting be subject to the recovery policy, which is expected to further incentivize high-quality financial reporting.

At the same time, because Congress broadly intended Section 10D to ensure that erroneously awarded compensation be returned to the issuer, we do not agree with commenters who suggested that the scope of the rule should be limited to only officers with a direct role in financial reporting. Further, including officers with policy-making functions or important roles in the preparation of financial statements in the definition of ''executive officer'' for purposes of Rule 10D–1 will ensure that the recovery policy requirements have the additional benefits of providing executive officers with an increased incentive to reduce the likelihood of inadvertent misreporting and of reducing the financial benefits to executive officers from failures to accurately account for the issuer's results. Because officers with policy making functions or important roles in the preparation of financial statements play an important managerial role and help set the tone at the top, ensuring that the required recovery policy will apply to any such officers may enhance these benefits. Further, requiring the issuer to establish a direct connection between an executive officer and a material error would add significant time, uncertainty, and litigation risk to recovery determinations, which in turn would increase costs to the issuer and its shareholders.

Further, the definition of ''executive officer'' we are adopting, like the Rule 16a–1(f) definition of ''officer,'' provides that executive officers of the issuer's parents or subsidiaries may be deemed executive officers of the issuer if they perform policy making functions for the issuer. Identification of an executive officer for purposes of this section would include, at a minimum, executive officers identified pursuant to 17 CFR 229.401(b).[156] With respect to commenters who indicated that issuers may have an incentive to mischaracterize an officer determination, we remind issuers that such a determination must be an objective determination without regard to whether that officer is subject to a recovery policy.

We also concluded that applying additional scienter or responsibility requirements as suggested by some commenters would run counter to the intent of the statute. Section 10D does not require the issuer to establish scienter before it may recover erroneously awarded incentive-based compensation, nor does the statute limit recovery to executive officers who were directly involved with the accounting error. This suggests that Congress intended that the recovery policy be

reevaluate the identification of their ''corporate insiders'' to see whether they should reduce the number of individuals subject to those rules—particularly where the individual has little or no responsibility for accounting and finance matters); and Pearl Meyer (suggesting the definition may lead some issuers to redefine duties of executive officers in order to limit those subject to recovery). *See also* Compensia.

[148] *See, e.g.,* comment letters from ABA 1; CCMC 1; CEC 1; Chevron; Compensia; Davis Polk 1; Duane; Ensco, PLC (''Ensco''); Exxon; FSR; FedEx 1; IBC; Mercer; NACD; and S&C 1. *See also* comment letters in response to the Reopening Release from Davis Polk 3; and McGuireWoods. One commenter additionally suggested granting the board discretion to recover only for the portion of the look-back period when the person was an executive officer. *See* comment letter from Ensco.

[149] *See* comment letters from Exxon; and FSR.

[150] *See* comment letters from FSR; and SH&P.

[151] *See* comment letters from Davis Polk 1; IBC; and S&C 1.

[152] *See* comment letter from CalPERS 1.

[153] *See* 17 CFR 240.10D–1(b)(1)(i) (''Rule 10D–1(b)(1)(i)'') and the definition of ''executive officer'' in 17 CFR 240.10D–1(d) (''Rule 10D–1(d)'').

[154] We note, for example, that Section 952 of the Dodd-Frank Act uses the term ''named executive officer'' and Section 953 directly refers to 17 CFR 229.402, which makes extensive use of the term ''named executive officer''.

[155] *See supra* note 146.

[156] *See* Rule 10D–1(d), modeled on the Note to Rule 16a–1(f).

implemented without regard to the fault of the executive officers for the accounting errors. In this regard, we believe Section 10D was established not to punish wrongdoing, but to require executive officers to return monies that rightfully belong to the issuer and its shareholders.

The statute specifically requires recovery from any current or former executive officers of the issuer who received incentive-based compensation in excess of what would have been paid to the executive officer under the accounting restatement. Section 10D(b)(2) expressly states that the recovery policy must apply to ''any current or former executive officer of the issuer.'' We believe recovery from former executive officers is appropriate because otherwise, such individuals would be in a position to improperly benefit from material errors that occurred during their tenure as executive officers at the issuer.[157]

We agree, however, with commenters who suggested that requiring recovery from individuals for incentive-based compensation received prior to the period when they became an executive officer may not serve the goals of the statute.[158] Therefore, in a change from the proposal, the final rule will only require recovery of incentive-based compensation received by a person (i) after beginning service as an executive officer and (ii) if that person served as an executive officer at any time during the recovery period.[159] Recovery of compensation received while an individual was serving in a non-executive capacity prior to becoming an executive officer will not be required.[160]

We further note that the recovery requirement also does not apply to an individual who is an executive officer at the time recovery is required if that individual was not an executive officer at any time during the period for which the incentive-based compensation is subject to recovery. Nevertheless, nothing in the rule would limit an issuer's compensation recovery policy from requiring recovery more broadly.

2. Incentive-Based Compensation

a. Incentive-Based Compensation Subject to Recovery Policy

Section 10D(b)(2) requires exchanges and associations to adopt listing standards that require issuers to adopt and comply with recovery policies that apply to ''incentive-based compensation (including stock options awarded as compensation)'' that is received, based on the erroneous data, in ''excess of what would have been paid to the executive officer under the accounting restatement.'' Implicit in these statutory requirements is that the amount of such compensation received in the three-year look-back period would have been less if the financial statements originally had been prepared as later restated.

i. Proposed Amendments

The Commission proposed to define ''incentive-based compensation'' in a principles-based manner as ''any compensation that is granted, earned or vested based wholly or in part upon the attainment of any financial reporting measure.'' The proposed definition further provided that ''financial reporting measures'' are measures that are determined and presented in accordance with the accounting principles used in preparing the issuer's financial statements, any measures derived wholly or in part from such financial information, and stock price and total shareholder return (''TSR''). As proposed, ''incentive-based compensation'' would include options and other equity awards whose grant or vesting is based wholly or in part upon the attainment of any measure based upon or derived from financial reporting measures.

ii. Comments

We received a range of comments relating to the proposed definition of ''incentive-based compensation.'' Some commenters endorsed the proposed principles-based approach to defining ''incentive-based compensation.[161] Other commenters recommended that the definition leverage existing executive compensation disclosure requirements and look to the existing definition of ''incentive plan.'' [162] We also received a range of comments relating to the types of awards that should be covered. Some commenters recommended that the Commission expand the definition to include subjective awards as covered incentive-based compensation,[163] while others objected to recovering compensation based on qualitative or discretionary standards.[164] Similarly, a number of commenters expressed concern about excluding, or recommended including, time- or service-based awards.[165] Other

[157] The final amendments do not distinguish between former executive officers that leave a company, retire, or transition to an employee role (including after serving as an executive officer in an interim capacity) during the recovery period. We disagree with commenters who suggest that an individual who serves as an executive officer and then transitions to an employee role should not be subject to recovery of incentive based compensation received while serving as an employee. Section 10D–1 specifically applies to ''former executive officers'' and does not distinguish among types of former executive officers. Moreover, any former executive officer who is now an employee who receives incentive-based compensation that would be affected by the recovery policy is receiving compensation that, had the issuer's financial statements not been in error, the individual would not have received. Similarly, while we acknowledge commenters' concerns regarding the application of the statute and the rules to interim executive officers, the recovery policy would only apply if such interim (and former interim) executive officers received erroneously awarded compensation as a result of errors in the financial statements. Like retired executives, such individuals would be in a position to benefit from erroneously awarded compensation as a result of such errors. The potential for such benefit would weaken the individual's incentives to ensure accurate financial statements while they were serving as an executive.

[158] *See supra* note 150.

[159] *See* 17 CFR 240.10D–1(b)(1)(i)(A) and (B). The rule further provides that the recovery policy applies to incentive-based compensation received while the issuer has a class of securities listed on an exchange and during the three completed fiscal years immediately preceding the date that the issuer is required to prepare an accounting restatement. *See* 17 CFR 240.10D–1(b)(1)(i)(C) and (D).

[160] *Id.* Note that an award of incentive-based compensation granted to an individual before the individual becomes an executive officer will be subject to the recovery policy, so long as the incentive-based compensation was received by the individual at any time during the performance period after beginning service as an executive officer.

[161] *See, e.g.,* comment letters from Better Markets 1; CalPERS 1; CFA Institute 1; and OPERS 1. Commenters generally did not see the need for anti-evasion provisions. *See, e.g.,* comment letters from Better Markets 1; CalPERS 1; and NACD. *But see* comment letter from OPERS 1.

[162] *See, e.g.,* comment letters from ABA 1 (recommending including only awards already reported in an issuer's executive compensation disclosure and reported in the equity incentive plan and non-equity incentive plan awards columns of the Grants of Plan-Based Awards Table pursuant to 17 CFR 229.402(d) that are granted, earned or vested based wholly or in part upon attainment of a financial reporting measure); and Kovachev (recommending reference to the 17 CFR 229.402(a)(6)(ii) definition of ''incentive plan,'' excluding compensation determined by metrics such as market share or customer satisfaction).

[163] *See, e.g.,* comment letters from Better Markets 1 (recommending a presumption that all incentive-based compensation is based in whole or in part on financial reporting measures); and Public Citizen 1 (recommending similar levels of recovery of all incentive-based compensation). *See also* comment letter from CFA Institute 1 (recommending board discretion to recover compensation based on satisfying subjective standards to the extent the subjective standards are satisfied in whole or in part by meeting a financial reporting measure performance goal) and comment letter in response to the Reopening Release form ICGN (recommending including ESG-related metrics).

[164] *See, e.g.,* comment letters from FSR; Kovachev (contending that including discretionary bonuses would be beyond the scope of the statute); and NACD. *See also* comment letter from ABA 1 (noting that subjective awards do not lend themselves to formulaic re-creation).

[165] *See, e.g.,* comment letters from AFL–CIO (recommending that for stock options awarded as compensation the board make reasonable estimates of the effect on stock price); and Pay Governance (suggesting that excluding service-based equity awards could create an incentive to grant more such awards, thus shifting away from pay-for-performance).

commenters supported excluding time- or service-based awards [166] and awards based on attaining nonfinancial measures.[167] Some of these commenters requested specific confirmation that time-based equity awards are not considered incentive-based compensation for purposes of the rule.[168] Some commenters supported having the rule also apply to deferred compensation as proposed; [169] however, several other commenters expressed concern that application to deferred compensation plans and pension plans could violate the Internal Revenue Code or Employee Retirement Income Security Act (''ERISA'').[170]

We received a number of comments on the proposed inclusion of TSR/stock price metrics. Some commenters expressly supported inclusion of these metrics,[171] some commenters expressed qualifications or reservations but did not object to their inclusion,[172] and other commenters expressly opposed inclusion of stock price/TSR metrics.[173] Commenters opposed to inclusion of these metrics noted the costs, uncertainty, and subjectivity of calculating recoverable amounts,[174] questioned the proposed definition of ''incentive-based compensation,'' [175] expressed concern over the potential for litigation from shareholders or executive officers challenging the amount determined,[176] questioned the statutory authority to cover the metrics,[177] and suggested that the metrics' inclusion could discourage the use of TSR as a performance measure.[178] Another commenter recommended providing a safe harbor for determining the amount subject to recovery if stock price and TSR metrics are included.[179]

iii. Final Amendments

After considering the statutory language of Section 10D, the views of commenters, and the administrability of any mandatory recovery policy that encompasses incentive-based compensation, we are adopting substantially as proposed the defined term ''incentive-based compensation.'' [180] Specifically, for purposes of Rule 10D–1, we are defining ''incentive-based compensation'' to be ''any compensation that is granted, earned, or vested based wholly or in part upon the attainment of any financial reporting measure.'' [181] We determined to define the term in a principles-based manner so that the rule will capture new forms of compensation that are developed and new measures of performance upon which compensation may be based. As noted above, any incentive-based compensation recovered under the final rules is compensation that an executive officer would not have been entitled to receive had the financial statements been accurately presented. A number of the alternatives recommended by commenters would omit incentive-based compensation received outside of an incentive plan. Allowing executive officers to retain such incentive-based pay when it was erroneously awarded based on material accounting errors would undermine the statutory purpose of Section 10D to recover these amounts for the benefit of issuers and their shareholders. Absent recovery of such compensation, executive officers would still be in a position to benefit from

[166] *See, e.g.,* comment letters from ABA 1; CEC 1; Chevron; Compensia; Davis Polk 1; FedEx 1; Japanese Bankers; Kovachev; and SCG 1.

[167] *See* comment letter from FedEx 1. *See also* Kovachev (recommending defining covered equity awards by referencing compensation reported in the Estimated Future Payouts Under Equity Incentive Plan Awards column of the Grants of Plan-Based Awards table provided pursuant to 17 CFR 229.402(c)).

[168] *See, e.g.,* comment letters from Chevron; Compensia; and SCG 1. These commenters were concerned that the stock price metric included in the proposed definition could be read to include an equity award for which value is determined based on stock price but vests solely upon completion of a specified employment period or passage of time.

[169] *See* comment letters from AFR 1; and Rutkowski 1.

[170] *See, e.g.,* comment letters from ABA 1; Exxon; FSR; IBC; Mercer; SCG 1; Sutherland Asbill & Brennan LLP (''Sutherland''); and WAW. *But see* comment letter from ABA 1 (noting that the forfeiture of excess incentive-based compensation deferred into a holdback plan as a recovery mechanism would be permissible and would not result in an accelerated payment under Section 409A of the Internal Revenue Code). *See* discussion relating to the exemption for tax-qualified retirement plans in Section II.B.3.b.iii.

[171] *See, e.g.,* comment letters from AFR 1; Better Markets 1 (suggesting that these metrics fall within the ambit of the statutory formulation, which broadly encompasses all compensation ''based on financial information required to be reported under the securities laws'' and provides for recovery of excessive compensation ''based on'' erroneous data and that because stock price and TSR are widely used in calculating executive compensation their exclusion would substantially undermine the attainment of the objectives underlying Section 10D); CalPERS 1; and Rutkowski 1 (suggesting that inclusion is appropriate because stock price is based on investor expectation of cash flows, which are in turn deeply informed by accounting metrics).

[172] See, *e.g.,* comment letters from CFA Institute 1 (noting that establishing a link between financial errors and a change in stock price would be easier in cases of fraud that are meant to directly affect stock price); Compensia (expressing concern regarding how to calculate the amounts subject to recovery); and OPERS 1.

[173] *See, e.g.,* comment letters from ABA 1; BRT 1; Davis Polk 1; FSR; FedEx 1; Fried; IBC; Japanese Bankers; Mercer; Meridian Compensation Partners LLC (''Meridian''); NACD; Pearl Meyer; and SH&P. *See also* comment letters in response to the Reopening Release from Cravath, McGuireWoods; and Hunton.

[174] *See, e.g.,* comment letters from Davis Polk 1; FedEx 1; Fried; FSR; IBC (suggesting that analyses by third-party advisors are expensive, highly speculative, and imprecise); Mercer (citing the study of restatements by the Center for Audit Quality considered in the Proposing Release to show that restatements at over 4,000 companies caused only an average 1.5% decline in stock price and a median decline of 0.01%. The average impact of restatements as a result of a material error was slightly higher (−2.3%), but the median was also near zero%); and SH&P. Some of these commenters suggested that the subjectivity of calculating the amounts for stock price/TSR metrics would be incompatible with the no-fault standard of the proposed rule. *See, e.g.,* comment letters from Davis Polk 1; FedEx 1; and SH&P (further recommending that due to the subjectivity, recovery should be at the discretion of the board). *See also* comment letters in response to the Reopening Release from Cravath; Hunton; and McGuireWoods (suggesting that calculating the amounts would be difficult and would require additional economic analysis by issuers).

[175] *See, e.g.,* comment letter from ABA 1 (recommending that the present disclosure requirements under Item 402 of Regulation S–K adequately define the types of compensation that should be considered ''incentive-based compensation'' for purposes of Section 10D: that is non-equity incentive plan awards as reported in columns (c) through (e) of the Grants of Plan-Based Awards table pursuant to 17 CFR 229.402(d)(2)(iii) and equity incentive plan awards as reported in columns (f) through (h) of that table pursuant to 17 CFR 229.402(d)(2)(iv)).

[176] *See* comment letters from Davis Polk 1; and FSR.

[177] *See* comment letters from ABA 1; Meridian (suggesting that implicit in the determination of excess incentive-based compensation is that the reach of Section 10D is limited to incentive-based compensation that is linked to the achievement of specific financial metrics); and NACD. *See also* comment letters in response to the Reopening Release from ABA 1 (suggesting it is inconsistent with the statutory mandate to include either an issuer's stock price or its TSR in such definition as each measure reflects many factors beyond the issuer's reported financial information, the sole criterion set forth in Section 10D); and McGuireWoods (suggesting the term is limited to financial reporting measures used in preparing the issuer's financial statements that are accounting-based metrics).

[178] *See, e.g.,* comment letter from FSR (suggesting that avoiding the use of TSR could be problematic in light of proposed ''pay-versus-performance'' rules requiring issuers to disclose the relationship between company performance as reflected by TSR and the compensation paid).

[179] *See* comment letter in response to the Reopening Release from McGuireWoods.

[180] *See* Rule 10D–1(d). The definition applies only to recovery of incentive-based compensation under proposed Rule 10D–1, and does not apply to the recovery of incentive-based compensation pursuant to 15 U.S.C. 7243 (''Sarbanes-Oxley Act Section 304'').

[181] ''In part'' is included in the definition to clarify that incentive-based compensation need not be based solely upon attainment of a financial reporting measure. An example of compensation that is based in part upon the attainment of a financial reporting measure would include an award in which 60% of the target amount is earned if a certain revenue level is achieved, and 40% of the target amount is earned if a certain number of new stores are opened. Similarly, an award for which the amount earned is based on attainment of a financial reporting measure but is subject to subsequent discretion by the compensation committee to either increase or decrease the amount would be based in part upon attainment of the financial reporting measure.

accounting errors, undermining their incentives to ensure reliable financial reporting. Further, gaps in the forms of incentive-based pay that would be subject to recovery might encourage issuers to shift compensation towards omitted categories, further undermining the purpose of the rule.

Consistent with the proposal, we are defining ''financial reporting measures'' to be measures that are determined and presented in accordance with the accounting principles used in preparing the issuer's financial statements, and any measures derived wholly or in part from such measures.[182] This includes ''non-GAAP financial measures'' for purposes of Exchange Act Regulation G and 17 CFR 229.10 as well other measures, metrics and ratios that are not non-GAAP measures, like same store sales.[183] Financial reporting measures may or may not be included in a filing with the Commission, and may be presented outside the financial statements, such as in Management's Discussion and Analysis of Financial Conditions and Results of Operations [184] or the performance graph.[185]

In order to provide guidance to issuers, we reiterate the examples of financial reporting measures provided in the Proposing Release, including, but not limited to, the following accounting-based measures and measures derived from:

- Revenues;
- Net income;
- Operating income;
- Profitability of one or more reportable segments; [186]
- Financial ratios (*e.g.,* accounts receivable turnover and inventory turnover rates);
- Net assets or net asset value per share (*e.g.,* for registered investment companies and business development companies that are subject to the rule);
- Earnings before interest, taxes, depreciation and amortization;
- Funds from operations and adjusted funds from operations;
- Liquidity measures (*e.g.,* working capital, operating cash flow);
- Return measures (*e.g.,* return on invested capital, return on assets);
- Earnings measures (*e.g.,* earnings per share);
- Sales per square foot or same store sales, where sales is subject to an accounting restatement;
- Revenue per user, or average revenue per user, where revenue is subject to an accounting restatement;
- Cost per employee, where cost is subject to an accounting restatement;
- Any of such financial reporting measures relative to a peer group, where the issuer's financial reporting measure is subject to an accounting restatement; and
- Tax basis income.

In addition, the definition of ''financial reporting measures'' also includes stock price and TSR, as proposed.[187] As the Commission noted in the Proposing Release, Section 10D(b) requires disclosure of an issuer's policy with respect to ''incentive-based compensation that is based on financial information required to be reported under the securities laws'' and recovery of compensation awarded ''based on the erroneous data.'' We note that Congress' direction to include compensation that is ''based on'' financial information and to recover compensation ''based on'' the erroneous accounting data suggests Congress' intent to provide an expansive reading of those terms. The final rule therefore encompasses incentive-based compensation tied to measures such as stock price and TSR because improper accounting affects such measures and in turn results in excess compensation.[188]

Although the phrase ''financial information required to be reported under the securities laws'' might be interpreted as applying only to accounting-based metrics, in consideration of the statutory purpose described above, we have determined that it is appropriate to interpret the term to include performance measures including stock price and TSR that are affected by accounting-related information and that are subject to our disclosure requirements. Stock price and TSR are frequently used incentive-based performance metrics for executive compensation, such that excluding them could lead issuers to alter their executive compensation arrangements in ways that would avoid application of the mandatory recovery policy, undermining the objectives of the rule, as well as impacting efficient incentive alignment. While some commenters recommended that we narrow the scope of the definition, we agree with other commenters that supported a broader reading of the definition.[189]

We disagree with the contention put forth by some commenters that Section 10D is limited to incentive-based compensation that is linked to the achievement of specific financial metrics. Section 10D requires disclosure of the policy of the issuer on ''incentive-based compensation that is based on financial information required to be reported under the securities laws.'' The use of the term ''based on'' is expansive and the statute does not explicitly delineate the types of financial information that should be considered. Section 10D(b) separately requires the issuer to recover from any current or former executive officer of the issuer who received ''incentive-based compensation . . . based on the erroneous data.'' As we have previously noted, if an executive officer erroneously receives incentive-based compensation based on stock price or TSR that was inaccurate as a result of an accounting misstatement, that compensation is based on such erroneous data.[190] Being mindful of the statutory language and purpose of Section 10D, we do not see a basis for allowing that executive officer to retain such compensation, given that it was erroneously awarded. Absent recovery of such compensation, certain executive officers would be in a position to benefit from accounting errors, undermining their incentives to ensure reliable financial reporting. We therefore believe that inclusion of incentive-based

[182] *See* Rule 10D–1(d).

[183] *See Conditions for Use of Non-GAAP Measures,* Release No. 33–8176 (Jan. 22, 2003) [68 FR 4820 (Jan. 20, 2003)] and *Commission Guidance on Management's Discussion and Analysis of Financial Condition and Results of Operations,* Release No. 33–10751 (Jan. 30, 2020) [85 FR 10571 (Feb. 25, 2020)].

[184] 17 CFR 229.303. *See also* Item 5, Form 20–F. Examples of such measures could be accounts receivable turnover, Earnings before interest, taxes, depreciation and amortization, or sales per square foot.

[185] 17 CFR 229.201(e).

[186] As disclosed in a financial statement footnote. *See* ASC Topic 280.

[187] In a nonsubstantive modification from the proposal, we have broken out the inclusion of stock price and TSR in a separate clause of the definition. By including a separate clause in the definition, instead of using the conjunctive ''and,'' the modification makes clear that stock price and TSR are financial reporting measures.

[188] One commenter recommended using the definition of ''incentive plan award'' in 17 CFR 229.402(a)(6)(iii) of Regulation S–K, which includes ''any other performance measure.'' *See* comment letter from ABA 1. Using the existing definition of ''incentive plan award'' to define ''incentive-based compensation'' would apply the recovery to a different scope of incentive compensation. The Rule 10D–1 definition does not include ''other performance measures'' in light of Section 10D's reference to incentive-based compensation based on financial information required to be reported under the Federal securities laws.

[189] As one commenter noted, stock price is at least in part based on investor expectation of cash flows, which is intrinsically tied to a company's financial statement disclosures. *See supra* note 171.

[190] We note that Rule 10D–1 applies only to erroneously awarded incentive-based compensation based on stock price or TSR that was inaccurate as a result of the issuer's accounting restatement. For example, if the issuer is using TSR where the performance measure is linked to a peer group (such as relative TSR), only an accounting restatement by the issuer, not accounting restatements by other issuers in the peer group, would result in application of the rule and potential recovery.

compensation based on stock price and TSR is necessary and appropriate for the implementation of Section 10D. Adopting a narrower definition of ''incentive-based compensation'' or ''financial reporting measures'' would result in the failure to recover from executive officers incentive-based compensation that was erroneously awarded to them, and therefore would be less effective in achieving the goals of the statute.

We recognize, as some commenters noted, concerns relating to costs, uncertainty, and subjectivity of calculating amounts of recoverable erroneously awarded compensation with respect to the calculation of stock price and TSR. These commenters highlighted that, once an issuer concludes that its compensation is incentive-based compensation for the purposes of this rule, issuers may need to engage in complex analyses that require technical expertise and specialized knowledge and may involve substantial exercise of judgment in order to determine the stock price impact of the error that led to a restatement. Due to the presence of confounding factors, it may be difficult to establish the relationship between an accounting restatement and the stock price.

While we recognize these challenges, we believe the additional costs associated with these factors are justified in order to better achieve the objectives of the statute, as outlined above. The significance of these costs would depend on the size and financial condition of the issuer, as well as the board's approach to determining the amount, if any, of erroneously awarded compensation to be recovered following an accounting error. In an accommodation to address concerns relating to costs, uncertainty, and subjectivity of calculating these amounts, Rule 10D–1 permits issuers to use reasonable estimates when determining the impact of a restatement on stock price and TSR.[191] Allowing the use of reasonable estimates to assess the effect of the accounting restatement on these performance measures in determining the amount of erroneously awarded compensation should help to mitigate these potential difficulties.[192] Further, since ''little r'' restatements are less likely to be associated with significant stock price reactions, we expect that recovery of incentive-based compensation as a result of ''little r'' restatements that is tied to TSR would be relatively small and infrequent, which should further mitigate these costs.[193]

The statute further specifies that incentive-based compensation to which recovery should apply under the recovery policy required by the listing standard ''includ[es] stock options awarded as compensation.'' Accordingly and as proposed, the definition of ''incentive-based compensation'' in the final rule includes options and other similar equity awards whose grant or vesting is based wholly or in part upon the attainment of financial reporting measures.

Specific examples of ''incentive-based compensation'' include, but are not limited to:

- Non-equity incentive plan awards that are earned based wholly or in part on satisfying a financial reporting measure performance goal;
- Bonuses paid from a ''bonus pool,'' the size of which is determined based wholly or in part on satisfying a financial reporting measure performance goal;
- Other cash awards based on satisfaction of a financial reporting measure performance goal;
- Restricted stock, restricted stock units, performance share units, stock options, and stock appreciation rights (''SARs'') that are granted or become vested based wholly or in part on satisfying a financial reporting measure performance goal; and
- Proceeds received upon the sale of shares acquired through an incentive plan that were granted or vested based wholly or in part on satisfying a financial reporting measure performance goal.

Examples of compensation that is not ''incentive-based compensation'' for this purpose include, but are not limited to:

- Salaries;[194]
- Bonuses paid solely at the discretion of the compensation committee or board that are not paid from a ''bonus pool'' that is determined by satisfying a financial reporting measure performance goal;
- Bonuses paid solely upon satisfying one or more subjective standards (*e.g.,* demonstrated leadership) and/or completion of a specified employment period;
- Non-equity incentive plan awards earned solely upon satisfying one or more strategic measures (*e.g.,* consummating a merger or divestiture), or operational measures (*e.g.,* opening a specified number of stores, completion of a project, increase in market share); and
- Equity awards for which the grant is not contingent upon achieving any financial reporting measure performance goal and vesting is contingent solely upon completion of a specified employment period and/or attaining one or more nonfinancial reporting measures.[195]

b. When Compensation is ''Received'' and Time Period Covered

Section 10D(b)(2) requires exchanges and associations to adopt listing standards that require issuers to adopt and comply with recovery policies that apply to erroneously awarded compensation received ''during the three-year period preceding the date on which the issuer is required to prepare an accounting restatement'' but does not otherwise specify how this three-year look-back period should be measured or specify when an executive officer should be deemed to have received incentive-based compensation for the recovery policy required under the applicable listing standards.

i. Proposed Amendments

The Commission proposed that incentive-based compensation would be deemed ''received'' for purposes of triggering a recovery policy in the fiscal period during which the financial reporting measure specified in the incentive-based compensation award is attained, even if the payment or grant occurs after the end of that period. As proposed, incentive-based compensation would be subject to the issuer's recovery policy to the extent that it is received while the issuer has a class of securities listed on an exchange or an association.

[191] *See* 17 CFR 240.10D–1(b)(1)(iii)(A) (''Rule 10D–1(b)(1)(iii)(A)''). In addition, 17 CFR 240.10D–1(b)(1)(iii)(B) (''Rule 10D–1(b)(1)(iii)(B)'') requires the issuer to maintain documentation of the determination of that reasonable estimate and provide such documentation to the exchange or association as proposed. In a modification from the proposal, 17 CFR 229.402(w)(1)(i)(C) additionally requires disclosure of the estimates that were used in determining the erroneously awarded compensation attributable to an accounting restatement and an explanation of the methodology used to estimate the effect on stock price or TSR, if the financial reporting measure related to a stock price or TSR metric, to better explain how the issuer established its estimates. *See* Section II.D.3.

[192] We acknowledge that implementation of a safe harbor could further mitigate potential concerns about the difficulties and costs of calculating recovery amounts. As discussed in more detail in Section II.B.3.a.iii, we believe that permitting reasonable estimates will sufficiently mitigate these potential difficulties.

[193] *See* discussion *infra* at note 400.

[194] To the extent that an executive officer receives a salary increase earned wholly or in part based on the attainment of a financial reporting measure performance goal, such a salary increase is subject to recovery as a non-equity incentive plan award for purposes of Rule 10D–1.

[195] This statement responds to commenters' questions and concerns regarding the treatment of time-based and service-based equity awards.

The Commission further proposed that the three-year look-back period for the recovery policy required by the listing standards would be the three completed fiscal years immediately preceding the date the issuer is required to prepare an accounting restatement. Where an issuer has changed its fiscal year end during the three-year look-back period, the Commission proposed that the issuer must recover any excess incentive-based compensation received during the transition period occurring during, or immediately following, that three-year period in addition to any excess incentive-based compensation received during the three-year look-back period (*i.e.,* a total of four periods).

ii. Comments

We received limited comment regarding clarification of when compensation is received and establishing the time period to be covered by the listing standard. Some commenters supported the proposed definition of when compensation is deemed ''received.'' [196] In contrast, one commenter suggested that the proposed definition was overly broad.[197]

One commenter expressly supported the three-year period as a reasonable period of time,[198] another recommended issuer discretion to select the appropriate time period,[199] and a third noted that accounting restatements may take place a considerable time after erroneous payments were made, and recommended that the look-back period should be extended to at least five years.[200] In addition, while one commenter expressly supported the proposed use of fiscal years as consistent with the statutory language and minimizing the potential for confusion,[201] another suggested that existing issuer recovery policies do not use the term ''fiscal year.'' [202]

iii. Final Amendments

After considering the views of commenters, we are adopting the rules relating to when compensation is ''received'' and the time period covered substantially as proposed.[203] Incentive-based compensation will be deemed received for purposes of the recovery policy under Section 10D in the fiscal period [204] during which the financial reporting measure specified in the incentive-based compensation award is attained, even if the payment or grant occurs after the end of that period.[205] Under the rules, incentive-based compensation is subject to the issuer's recovery policy to the extent that it is received while the issuer has a class of securities listed on an exchange or an association.[206] Further, the time period covered for the recovery policy will be the three completed fiscal years immediately preceding the date the issuer is required to prepare an accounting restatement.[207]

The date of receipt of the compensation depends upon the terms of the award. For example,

- If the grant of an award is based, either wholly or in part, on satisfaction of a financial reporting measure performance goal, the award would be deemed received in the fiscal period when that measure was satisfied;
- If an equity award vests only upon satisfaction of a financial reporting measure performance condition, the award would be deemed received in the fiscal period when it vests; [208]
- A non-equity incentive plan award would be deemed received in the fiscal year that the executive officer earns the award based on satisfaction of the relevant financial reporting measure performance goal, rather than a subsequent date on which the award was paid; [209] and
- A cash award earned upon satisfaction of a financial reporting measure performance goal would be deemed received in the fiscal period when that measure is satisfied.

We further note that a particular award may be subject to multiple conditions and that an executive officer need not satisfy all conditions to an award for the incentive-based compensation to be deemed received for purposes of triggering the recovery policy. In light of Section 10D's purpose to require listed issuers to recover compensation that ''the executive would not have received if the accounting was done properly,'' we believe that the executive officer ''receives'' the compensation for purposes of a recovery policy when the relevant financial reporting measure performance goal is attained, even if the executive officer has established only a contingent right to payment at that time.[210] Ministerial acts or other conditions necessary to effect issuance or payment, such as calculating the amount earned or

[196] *See* comment letters from ABA 1 (noting the proposal is consistent with Item 402 reporting requirements and how most issuers view the receipt of incentive-based compensation); Better Markets 1; CFA Institute 1; and CEC 1 (suggesting the time gap between when the award's financial metric is achieved and the date the executive obtains control over the award may allow an issuer to seek recovery by cancelling the affected portion of the award). However, two of these commenters were split on the proposal to limit recovery only to the extent that compensation was received while the issuer has a class of securities listed on an exchange, with one in favor (ABA 1) and one opposed (Better Markets 1).

[197] *See* comment letter from NACD (noting that just because a reward is granted, earned, or vests does not mean that it is actually received).

[198] *See* comment letter from CFA Institute 1.

[199] *See* comment letter from NACD.

[200] *See* comment letter from As You Sow 1.

[201] *See* comment letter from CEC 1.

[202] *See* comment letter from Bishop.

[203] *See* Rule 10D–1(b)(1)(i). In a nonsubstantive modification from the proposal, we are no longer including ''(f)or purposes of Section 10D'' in the definition of ''received'' in Rule 10D–1(d) as the introductory portion of Rule 10D–1(d) makes clear that the definitions are for purposes of the section. We additionally simplified the language in Rule 10D–1(b)(1)(i)(B) to clarify the meaning of transition period for purposes of the rule without defining the term.

[204] Including a transition period for a change in fiscal year, if applicable.

[205] *See* Rule 10D–1(d).

[206] *See* 17 CFR 240.10D–1(b)(1)(i)(A). After considering comments, we continue to believe that the statute calls for recovery limited to compensation that is received while the issuer has a class of securities listed on an exchange or an association. We note that an award of incentive-based compensation granted to an executive officer before the issuer lists a class of securities will be subject to the recovery policy, so long as the incentive-based compensation was received by the executive officer while the issuer had a class of listed securities. Incentive-based compensation received by an executive officer before the issuer's securities become listed is not required to be subject to the recovery policy.

[207] Including a transition period for a change in fiscal year, if applicable. *See* Rule 10D–1(b)(1)(i)(B).

[208] *See infra* notes 210 and 211.

[209] This would be the same fiscal year for which the non-equity incentive plan award earnings are reported in the Summary Compensation Table, based on Instruction 1 to 17 CFR 229.402(c)(2)(vii), which provides: ''If the relevant performance measure is satisfied during the fiscal year (including for a single year in a plan with a multi-year performance measure), the earnings are reportable for that fiscal year, even if not payable until a later date, and are not reportable again in the fiscal year when amounts are paid to the named executive officer.''

[210] We disagree with the commenter that suggested the proposed definition was overly broad. We believe this definition is appropriate for the recovery policy to capture the appropriate amounts of compensation subject to recovery. For example, an issuer could grant an executive officer restricted stock units in which the number of units earned is determined at the end of the three-year incentive-based performance period (2020–2022), but the award is subject to service-based vesting for two more years (2023–2024). Although the executive officer does not have a non-forfeitable interest in the units before expiration of the subsequent two-year service-based vesting period, the number of shares in which the units ultimately will be paid will be established at the end of the three-year performance period which is when the relevant financial reporting measure performance goal is attained. If the issuer's board of directors concludes in 2023 that the issuer will restate previously issued financial statements for 2020 through 2022 (the three-year performance period), the recovery policy should apply to reduce the number of units ultimately payable in stock, even though the executive officer has not yet satisfied the two-year service-based vesting condition to payment. To the extent that an executive officer fails to then meet the service vesting period and never actually receives the compensation, the compensation forgone as a result of the failure to meet the vesting period would be the reduced compensation as a result of the recovery policy.

obtaining the board of directors' approval of payment, do not affect the determination of the date received.[211]

The three-year look-back period for the recovery policy will comprise the three completed fiscal years immediately preceding the date the issuer is required to prepare an accounting restatement for a given reporting period.[212] We recognize that some commenters recommended different lengths of time for the look-back period; however, the final rules are consistent with the statute, which explicitly contemplates a three-year look-back.[213] Basing the look-back period on fiscal years, rather than a preceding 36-month period, is consistent with the statutory language and issuers' general practice of making compensation decisions and awards on a fiscal year basis.[214] As an example, if a calendar year issuer concludes in November 2024 that a restatement of previously issued financial statements is required and files the restated financial statements in January 2025, the recovery policy would apply to compensation received in 2021, 2022, and 2023. The three-year look-back period is not meant to alter the reporting periods for which an accounting restatement is required or for which restated financial statements are to be filed with the Commission. Moreover, an issuer will not be able to delay or relieve itself from the obligation to recover erroneously awarded incentive-based compensation by delaying or failing to file restated financial statements.[215] In situations where an issuer has changed its fiscal year end during the three-year look-back period, the issuer must recover any excess incentive-based compensation received during the transition period occurring during, or immediately following, that three-year period in addition to any excess incentive-based compensation received during the three-year look-back period (*i.e.,* a total of four periods).[216]

3. Recovery Process

a. Calculation of Erroneously Awarded Compensation

Section 10D(2)(b) requires exchanges and associations to adopt listing standards that require issuers to adopt and comply with recovery policies that apply to the amount of incentive-based compensation received ''in excess of what would have been paid to the executive officer under the accounting restatement.''

i. Proposed Amendments

The Commission proposed to define the amount of incentive-based compensation that must be subject to the issuer's recovery policy (''erroneously awarded compensation'') as ''the amount of incentive-based compensation received by the executive officer or former executive officer that exceeds the amount of incentive-based compensation that otherwise would have been received had it been determined based on the accounting restatement.'' [217] For incentive-based compensation that is based on stock price or TSR, where the amount of erroneously awarded compensation is not subject to mathematical recalculation directly from the information in an accounting restatement, the Commission proposed that the erroneously awarded compensation amount may be determined based on a reasonable estimate of the effect of the accounting restatement on the applicable measure and that the issuer shall maintain documentation of that reasonable estimate and provide it to the exchange. The Commission further proposed that the erroneously awarded compensation would be calculated on a pre-tax basis.[218]

Additionally, in the Proposing Release, the Commission provided guidance relating to the amount to be recovered when discretion was exercised in the original grant and stated that Rule 10D–1 would not permit issuers' boards of directors to pursue differential recovery among executive officers, including in ''pool plans,'' [219] where the board may have exercised discretion as to individual grants in allocating the bonus pool.

ii. Comments

We received varying comments on how excess compensation subject to recovery should be determined. Some commenters expressed concern regarding issuers' ability to determine the amount of erroneously awarded compensation.[220] Other commenters recommended that the Commission provide additional guidance regarding calculating recoverable amounts for specific forms of compensation, such as stock options, profits from the sale of securities, and awards where discretion to reduce the award had been used in determining the size of the original award.[221] A few commenters also expressed concern about duplicative recovery.[222]

We received limited comment regarding the amount to be recovered when discretion was exercised in the original grant. One commenter recommended that recovery should not apply to a pool plan that does not have a minimum financial performance requirement,[223] and another commenter supported allowing discretion as to the

[211] For example, as stated above, an equity award granted upon attainment of a financial reporting measure would be deemed received in the fiscal year that the relevant financial reporting measure performance goal was satisfied, rather than a subsequent date on which the award was issued. The fiscal year in which an incentive-based equity award is deemed received in some cases may be a fiscal year preceding the fiscal year in which the ASC Topic 718 grant date occurs and for which it is reported in the Summary Compensation Table and Grants of Plan-Based Awards Table because our requirements for reporting equity awards in the Summary Compensation Table do not utilize a ''performance year'' standard. *See Proxy Disclosure Enhancements,* Release No. 33–9089 (Dec. 16, 2009) [74 FR 68334].

[212] *See* Rule 10D–1(b)(1)(i)(B).

[213] *See* discussion in Section II.B.2 regarding the date an issuer is required to prepare an accounting restatement for purposes of Rule 10D–1.

[214] While we recognize, as one commenter noted, that some recovery policies may not use fiscal years, we have determined to use that term because the term is well understood and consistent with the statutory language.

[215] *See* Rule 10D–1(b)(1)(i)(B).

[216] *Id.* A transition period refers to the period between the closing date of the issuer's previous fiscal year end and the opening date of its new fiscal year. 17 CFR 240.13a–10 and 17 CFR 240.15d–10. For example, if in late 2021, an issuer changes its fiscal closing date from June 30 to Dec. 31, it would subsequently report on the transition period from July 1, 2021 to Dec. 31, 2021. If the issuer's board of directors concludes in May 2023 that it is required to restate previously issued financial statements, the look-back period would consist of the year ended June 30, 2020, the year ended June 30, 2021, the period from July 1, 2021 to Dec. 31, 2021, and the year ended Dec. 31, 2022. However, consistent with 17 CFR 210.3–06(a), a transition period of nine to 12 months would be considered a full year in applying the three-year look-back period requirement.

[217] *See* Proposed Rule 10D–1(b)(1)(iii).

[218] *Id.* (providing that the erroneously awarded compensation must be computed without regard to any taxes paid by the executive officer). Under the proposal, the erroneously awarded compensation would be determined based on the full amount of incentive-based compensation received by the executive officer, rather than the amount remaining after the officer satisfies the officer's personal income tax obligation on it.

[219] ''Pool plans'' are plans in which the size of the available bonus pool is determined based wholly or in part on satisfying a financial reporting measure performance goal, but specific amounts granted from the pool to individual executive officers are based on discretion.

[220] *See* comment letters from Coalition; Osler, Hoskin & Harcourt (''Osler''); and TELUS. Two of these commenters asserted that calculation of the amount would require the exercise of judgement and estimation. *See* comment letters from Osler; and TELUS.

[221] *See* comment letters from ABA 1; Compensia; IBC; Japanese Bankers; Kovachev; and Mercer.

[222] *See* comment letters from CCMC 1; Coalition; and FSR (noting that the proposal would credit recovery under Sarbanes-Oxley Act Section 304 and recommending extending the relief to recovery of compensation under other compensation recovery policies).

[223] *See* comment letter from NACD.

amount recoverable if discretion was used to determine the original award amount.[224] A few commenters recommended board discretion on various other aspects of recovery.[225]

One commenter expressly supported the proposal to require issuers to maintain documentation of their determination of the reasonable estimate, but said it should be provided to the exchange upon the exchange's request rather than in all circumstances.[226] Another commenter similarly recommended that issuers be required to provide documentation of the estimate to the exchange only upon request, subject to confidentiality assurances.[227] Some commenters, however, opposed the idea that issuers should be required to provide the information.[228]

Some commenters expressed concern regarding the proposed requirement that an issuer establish a reasonable estimate of the effect of the accounting restatement on the applicable measure as it relates to stock price and TSR.[229] Other commenters recommended that the Commission provide additional guidance, or a safe harbor, for calculating ''reasonable estimates.'' [230] In contrast, one commenter expressed support for the proposed requirement and recommended disclosure of the results for each executive officer.[231]

Some commenters expressed concern regarding recovery on a pre-tax basis and recommended that amounts should be recovered after taxes.[232] Other commenters expressed concern over the effect that tax law could have on the recovery.[233]

iii. Final Amendments

After considering the views of commenters, we are adopting substantially as proposed that the erroneously awarded compensation under an issuer's recovery policy is ''the amount of incentive-based compensation received by the executive officer or former executive officer that exceeds the amount of incentive-based compensation that otherwise would have been received had it been determined based on the accounting restatement,'' computed without regard to taxes paid.[234] The final rules also provide that, for incentive-based compensation based on TSR or stock price, where the amount of erroneously awarded compensation is not subject to mathematical recalculation directly from the information in an accounting restatement, the amount must be based on a reasonable estimate of the effect of the accounting restatement on the applicable measure and the issuer must maintain documentation of the determination of that reasonable estimate and provide it to the exchange. While we recognize some commenters' concerns and requests for additional, specific guidance, including with respect to the calculation of the recoverable amount for specific forms of incentive-based compensation, we believe that the guidance we are providing in this release coupled with the requirement in the final rule to use reasonable estimates of the effect of the accounting restatement provides appropriate direction and flexibility for issuers and exchanges to implement the rule.

Applying this definition, after an accounting restatement, the issuer must first recalculate the applicable financial reporting measure and the amount of incentive-based compensation based thereon. The issuer must then determine whether, based on that financial reporting measure as calculated by relying on the original financial statements and taking into account any discretion that the compensation committee had applied to reduce the amount originally received, the executive officer received a greater amount of incentive-based compensation than would have been received applying the recalculated financial reporting measure.[235] Where incentive-based compensation is based only in part on the achievement of a financial reporting measure performance goal, the issuer would first need to determine the portion of the original incentive-based compensation based on or derived from the financial reporting measure that was restated.[236] The issuer would then need to recalculate the affected portion based on the financial reporting measure as restated, and recover the difference between the greater amount based on the original financial statements and the lesser amount that would have been received based on the restatement.[237]

For incentive-based compensation that is based on stock price or TSR, where the amount of erroneously awarded compensation is not subject to mathematical recalculation directly from the information in an accounting restatement, the amount of erroneously awarded compensation may be

[224] *See* comment letter from ABA 1. *See also* comment letter from SH&P (supporting revisiting the use of discretion applied in granting the original award based on the new information from the restatement).

[225] *See* comment letters from Compensia (recommending discretion over whether to settle a recovery obligation for less than the full amount); and Technical Compensation Advisors, Inc. (''TCA'') (recommending discretion over which executives to recover from, the amount to recover from each, and the timing of repayment).

[226] *See* comment letter from Compensia.

[227] *See* comment letter from ABA 1.

[228] *See* comment letters from Osler; and TELUS.

[229] *See* comment letters from NAM; and SH&P. These commenters noted the numerous factors beyond the financial statements that affect the movement of an issuer's stock price.

[230] *See, e.g.,* comment letters from CEC 1 (recommending that any estimate made in good faith be deemed *per se* reasonable); Chevron; Compensia; Hay Group; Pay Governance; Pearl Meyer; TCA; and WAW. Two of these commenters suggested that issuers may need to engage a valuation expert in some circumstances in order to establish a reasonable estimate. *See* comment letters from Chevron; and Compensia. Others noted the litigation risk and recommended the Commission provide examples, potential methodologies, or a safe harbor. *See* comment letters from Chevron; Pearl Meyer; and TCA. *See also* comment letter from EY (suggesting that some restatements, such as those relating to measurement and recognition of financial assets and liabilities, may have limited impact on stock price or TSR, such that an issuer may reasonably conclude that share price would not have been affected).

[231] *See* comment letter from Public Citizen 1.

[232] *See, e.g.,* comment letters from ABA 1; CEC 1; Davis Polk 1; Duane; FedEx 1; Japanese Bankers; and NACD. Two of these commenters expressed concern that pre-tax recovery could be considered punitive. *See* comment letters from ABA 1; and FedEx 1. *See also* comment letters from ABA 2; Davis Polk 3; and McGuireWoods on the Reopening Release suggesting that recovery of compensation be made on an after-tax basis in order to avoid undue hardship for and an inequitable over-collection from executive officers.

[233] *See, e.g.,* comment letters from Bishop (suggesting that Federal tax law does not permit executives to amend their income tax returns for earlier years which could result in the recovery being considered a financial penalty); Canadian Bankers Association (suggesting that the Canadian Income Tax Act does not provide for executive officers to recover any taxes paid); and Freshfields (suggesting that different outcomes for different individuals in different foreign jurisdictions with divergent recovery rules and tax rates could result in unfair tax impacts).

[234] *See* 17 CFR 240.10D–1(b)(1)(iii) (''Rule 10D–1(b)(1)(iii)'').

[235] For example, assume a situation in which, based on the financial reporting measure as originally reported, the amount of the award was $3,000. However, the issuer exercised negative discretion to pay out only $2,000. Following the restatement, the amount of the award based on the corrected financial reporting measure is $1,800. Taking into account the issuer's exercise of negative discretion, the amount of recoverable erroneously awarded compensation would be $200 (*i.e.,* $2,000 − $1,800).

[236] We address bonus pool plans in Section II.B.3.c.

[237] For example, assume a situation in which, based on the financial reporting measure as originally reported, the amount of the award was $3,000. The issuer exercised positive discretion to increase the amount by $1,000, paying out a total of $4,000. Following the restatement, the amount of the award based on the corrected financial reporting measure is $1,800. Taking into account the issuer's exercise of positive discretion, the amount of erroneously awarded compensation that would be recoverable would be $1,200, provided that based on the revised measurement, the exercise of positive discretion to increase the amount by $1,000 was still permitted under the terms of the plan (*i.e.,* $4,000 − ($1,800 + $1,000)).

determined based on a reasonable estimate of the effect of the accounting restatement on the applicable measure.[238] To reasonably estimate the effect on the stock price, there are a number of possible methods with different levels of complexity of the estimations and related costs, and under the final rules, issuers will have flexibility to determine the method that is most appropriate based on their facts and circumstances. While we recognize some commenters' concerns and request for additional guidance or a safe harbor, we believe that the requirement to use reasonable estimates of the effect of the accounting restatement provides useful flexibility for issuers to implement the rule, and that additional guidance or a safe harbor may unnecessarily limit issuers' methods to determine a reasonable estimate, or inadvertently create a *de facto* standard. While providing this flexibility, we note that the issuer would be required to maintain documentation of the determination of that reasonable estimate and provide such documentation to the relevant exchange.[239]

The final rules provide that erroneously awarded compensation must be calculated without respect to tax liabilities that may have been incurred or paid by the executive [240] to ensure that the issuer recovers the full amount of incentive-based compensation that was erroneously awarded, consistent with the policy underlying Section 10D. Recovery on a pre-tax basis permits the issuer to avoid the burden and administrative costs associated with calculating erroneously awarded compensation based on the particular tax circumstances of individual executive officers, which may vary significantly based on factors independent of the incentive-based compensation and outside of the issuer's control. While we acknowledge the views of the commenters who opposed a pre-tax basis for recovery, we are adopting such an approach because it better effectuates the statutory intent of Section 10D in that it seeks to ensure recovery for the benefit of shareholders of the full amount of erroneously awarded compensation paid to the executive.[241]

The ability of executive officers to recoup, to the extent authorized by applicable tax laws and regulations, taxes previously paid on recovered compensation, would mitigate fairness concerns raised by commenters.[242] We note, however, that the extent to which a tax system allows current adjustments for tax paid in prior periods under assumptions that later prove incorrect is a matter of tax policy outside the scope of this rulemaking. Limiting recovery to after-tax amounts would in effect require shareholders to provide the tax relief that the tax authorities in the executive officer's jurisdiction chose not to offer. In any event, we believe any resulting tax burden should be borne by executive officers, not the issuer and its shareholders. In light of these considerations, coupled with the administrative difficulty for issuers to implement recovery on an after-tax basis, we believe the approach reflected in the final rules better meets the goal of recovery of the full amount of erroneously awarded compensation paid to the executive.

We intend for the definition of erroneously awarded compensation to apply in a principles-based manner and as a result issuers may adopt more extensive recovery policies, so long as those policies at a minimum satisfy the requirements of the rule. While the definition is principles-based, we believe some guidance will be helpful for issuers, consistent with the proposal and input from commenters.

- For cash awards, the erroneously awarded compensation is the difference between the amount of the cash award (whether payable as a lump sum or over time) that was received and the amount that should have been received applying the restated financial reporting measure.[243]
- For cash awards paid from bonus pools, the erroneously awarded compensation is the *pro rata* portion of any deficiency that results from the aggregate bonus pool that is reduced based on applying the restated financial reporting measure.[244]
- For equity awards, if the shares, options, or SARs are still held at the time of recovery, the erroneously awarded compensation is the number of such securities received in excess of the number that should have been received applying the restated financial reporting measure (or the value of that excess number). If the options or SARs have been exercised, but the underlying shares have not been sold, the erroneously awarded compensation is the number of shares underlying the excess options or SARs (or the value thereof).

While we acknowledge that many commenters sought additional guidance, we decline to offer more specific guidance regarding the determination of erroneously awarded compensation with respect to additional forms of incentive-based compensation, as the determination will depend on the particular facts and circumstances applicable to that issuer and the executive officer's particular compensation arrangement. Issuers and their boards will be in the best position to make these determinations. A principles-based application of the rules provides useful flexibility for issuers and boards, and avoids the risk that more detailed guidance may inadvertently establish *de facto* standards. In that regard, boards of directors should consider the statute's goal to return erroneously awarded compensation to the issuer and its shareholders, and their fiduciary duties to those shareholders, in making such determinations. We additionally note that, as described in Section II.D., the issuer is required to disclose the amount of erroneously awarded compensation attributable to an accounting restatement, including an analysis of how the erroneously awarded compensation was calculated.

In response to commenters who raised concerns that the rule may result in duplicative recovery, we note that Rule 10D–1 is not intended to alter or otherwise affect the interpretation of

[238] *See* Rule 10D–1(b)(1)(iii)(A).

[239] *See* Rule 10D–1(b)(1)(iii)(B). We disagree with commenters that recommended that the documentation of the determination be provided to the exchanges only upon request. Requiring the documentation in all cases will provide exchanges ready access to the necessary documentation to evaluate when they seek to determine whether estimates were reasonable. Requiring such documentation only upon request would put the onus of seeking documentation on the exchanges, adding an additional burden to enforcing the requirements that could lead to some issuers conducting a less robust—or even no—analysis in the belief that their analysis is unlikely to be reviewed or questioned.

[240] Rule 10D–1(b)(1)(iii) provides that the erroneously awarded compensation must be computed without regard to any taxes paid by the executive officer.

[241] *See* Senate Report *supra* note 5.

[242] We are aware that in some instances executive officers may be able to reduce their current-period taxes to reflect earlier tax payments made on compensation that is subsequently recovered.

[243] Similarly, for nonqualified deferred compensation, the executive officer's account balance or distributions would be reduced by the erroneously awarded compensation contributed to the nonqualified deferred compensation plan and the interest or other earnings accrued thereon under the nonqualified deferred compensation plan.

[244] Boards also may not pursue differential recovery among executive officers, including in ''pool plans,'' where the board may have exercised discretion as to individual grants in allocating the bonus pool. In this instance, we believe that recovery should be *pro rata* based on the size of the original award rather than discretionary. For example, if a restatement reduces the size of the bonus pool, but not below the aggregate amount that the board exercised discretion to pay out as bonuses, each bonus would need to be ratably reduced to recover the excess amount for each individual's bonus.

other recovery provisions, such as Sarbanes-Oxley Act Section 304, or the determination by the Commission or the courts of when reimbursement is required under Section 304. To the extent that the application of Rule 10D–1 would provide for recovery of incentive-based compensation that the issuer recovers pursuant to Section 304 or other recovery obligations, it would be appropriate for the amount the executive officer has already reimbursed the issuer to be credited to the required recovery under the issuer's Rule 10D–1 recovery policy.[245] We note, however, that recovery under Rule 10D–1 would not preclude recovery under Sarbanes-Oxley Act Section 304, to the extent any applicable amounts have not been reimbursed to the issuer.

b. Board Discretion Regarding Whether To Seek Recovery

Section 10D requires the Commission, by rule, to direct the exchanges and associations to adopt listing standards that require issuers to adopt and comply with recovery policies. Specifically, under the statute, the Commission's rules shall require each issuer to develop a policy providing that ''the issuer will recover'' incentive-based compensation, and does not address whether there are circumstances in which an issuer's board of directors may exercise discretion not to recover.

i. Proposed Amendments

The Commission proposed that an issuer must recover erroneously awarded compensation in compliance with its recovery policy, except to the extent that pursuit of recovery would be impracticable where certain conditions are met, including that (i) the direct expense paid to a third party to assist in enforcing the policy would exceed the amount to be recovered, and (ii) in certain circumstances where the recovery would violate home country law that was in effect prior to the date of publication of the Proposing Release in the **Federal Register**. As proposed, before concluding that it would be impracticable to recover any amount of erroneously awarded compensation based on direct expenses paid to a third party, the issuer would first need to make a reasonable attempt to recover that incentive-based compensation, document its attempts to recover, and provide that documentation to the exchange. Similarly, before concluding that it would be impracticable to recover because doing so would violate home country law, the issuer first would need to obtain an opinion of home country counsel, not unacceptable to the applicable exchange, that recovery would result in such a violation. In addition, to minimize any incentive countries may have to change their laws in response to this provision, as proposed, the relevant home country law must have been adopted prior to the date of publication in the **Federal Register** of proposed Rule 10D–1, which was July 14, 2015. In either case, any determination that recovery would be impracticable would need to be made by the issuer's committee of independent directors that is responsible for executive compensation decisions, or in the absence of a compensation committee, by a majority of the independent directors serving on the board.

ii. Comments

We received mixed comments regarding the board's discretion over whether to pursue recovery and the scope of any such discretion. Some commenters expressly supported the proposal to provide limited board discretion over whether to pursue recovery, including the proposed conditions.[246] A few commenters specifically supported the proposal to require that the individuals exercising discretion should be independent directors.[247] Other commenters expressed concern that the proposed level of discretion was excessive.[248]

In contrast, other commenters expressed concern regarding the limited scope of proposed board discretion[249] and the requirement to first make a ''reasonable attempt'' at recovery before exercising discretion.[250] Some of these recommended a *de minimis* threshold for pursuing recovery,[251] or specifically objected to limiting cost considerations to direct costs.[252] Some commenters further recommended that directors should have discretion to determine whether to recover awards based on metrics that cannot be accurately recalculated, including stock price and TSR.[253] Other commenters further contended that directors' state law fiduciary duties justify allowing boards to exercise greater discretion, noting the board's business judgment, or expressing concern that the proposal's restricted discretion would diminish board authority.[254] Some commenters

[245] Similarly, to the extent that the erroneously awarded compensation is recovered under a foreign recovery regime, the recovery would meet the obligations of Rule 10D–1.

[246] *See* comment letters from CII 1; OPERS 1; and UAW, *et al.*

[247] *See* comment letters from ABA 1; and NACD.

[248] *See, e.g.,* comment letters from AFL–CIO (suggesting that the statutory language that the issuer ''will recover'' indicates that the board should have no discretion); As You Sow 1 (recommending limiting consideration of costs to direct costs and expressing concern that issuers may be incentivized to inflate costs to avoid recovery); Better Markets 1; CalPERS 1 (recommending that erroneously awarded compensation be recovered even where the costs of recovery are greater than the amount recovered); and Public Citizen 1. *See also* comment letter from Fried (suggesting that boards may use discretion to decide not to recover and that requiring boards to recover excess pay, even if it is costly to do so, may reduce both executives' resistance to returning erroneously awarded pay and the likelihood of the need for recovery).

[249] *See, e.g.,* comment letters from ABA 1 (characterizing the limited scope of board discretion as ''the single biggest impediment to the effective implementation of Section 10D''); BRT 1; Bishop; Compensation Advisory Partners LLC (''CAP''); CCMC 1; CEC 1; CFA Institute 1; Chevron; Coalition; Compensia; Davis Polk 1; Duane; Ensco; Exxon; FedEx 1; FSR; Hay Group; IBC; Kovachev; Mercer; NACD; Pearl Meyer; S&C 1; SCG 1; TCA; TELUS; and WAW. *See also* comment letters in response to the Reopening Release from ABA 2; CEC 2; Davis Polk 3; ICGN; McGuireWoods; and Hunton.

[250] *See, e.g.,* comment letters from ABA 1 (noting the subjective nature of the determination and the resulting compliance burden, and recommending against the requirement); CEC 1; Chevron; Compensia (suggesting the requirement is an unreasonable and impractical burden); Exxon; IBC; Hay Group; SCG 1; and TELUS. Some of these commenters sought guidance as to what constitutes a reasonable attempt at recovery and requested the Commission provide examples or a safe harbor. *See* comment letters from CEC 1 (recommending the Commission permit the board to make a preliminary determination of the success of the reasonable attempt); Chevron; and Hay Group.

[251] *See, e.g.,* comment letters from ABA 1 (recommending a $10,000 threshold per executive); Chevron; Compensia; Duane (recommending a $50,000 threshold per executive); FSR; and Mercer (recommending a $10,000 threshold per executive).

[252] *See, e.g.,* comment letters from ABA 1 (recommending that the board be permitted to consider the expense of determining whether excess compensation resulted from the restatement along with the recovery costs); CEC 1 (recommending that the Commission permit consideration of specific indirect costs, such as opportunity costs resulting from diverting internal staff, management and board resources); Compensia; Duane; SCG 1; and TELUS (recommending that the board be permitted to consider the costs of determining what the recoverable amount would be rather than incur those costs before making its determination). *See also* comment letter in response to the Reopening Release from ABA 2 (recommending the impracticability analysis be based on direct costs, whether or not paid to a third party, as well as any indirect costs that it can reasonably allocate to the recovery process).

[253] *See, e.g.,* comment letters from Davis Polk 1; and SH&P.

[254] *See, e.g.,* comment letters from BRT 1 (suggesting that directors have fiduciary duties, which would serve to blunt any potential adverse impact to Section 10D); Bishop; CCMC 1; Compensia (citing board's fiduciary duties and noting that shareholders could vote against directors or sue for breach of fiduciary duty); Kovachev (suggesting that under state corporate law directors, not shareholders or the Federal government, are responsible for determining executive compensation); Pearl Meyer; SCG 1 (suggesting that deciding whether excess compensation should be recovered is not unlike other decisions the compensation committee

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recommended that the Commission could balance greater board discretion with a requirement to publicly disclose the determination not to recover, the reasons why, and the amount at issue.[255] Commenters also identified other specific factors that boards should be permitted to take into account in deciding whether to recover, such as the probability of recovery or likelihood of success;[256] the circumstances giving rise to the accounting restatement;[257] the potential costs of determining and defending the recovery determination;[258] the potential effects on the issuer;[259] the potential effect on executive officers;[260] and the long-term impact on the issuer.[261]

Commenters addressing the impracticability conclusion based on violations of home country law expressed concern with the proposed limitations,[262] with some suggesting that limiting the impracticability exclusion to home country law in effect as of the proposal's **Federal Register** publication could intrude into the public policy determinations of other nations[263] and create a disincentive for foreign firms to list in the U.S.[264] Some commenters also expressed concern over the proposed requirement for a legal opinion.[265] However, no commenters identified any foreign laws that would prohibit recovery under the proposed rules.

Several commenters expressed concern that the proposal did not address potential impediments to recovery under state law and questioned whether the listing standards adopted pursuant to this rule would preempt state laws governing compensation.[266] A number of these commenters suggested that the Commission provide an exception to recovery or allow boards discretion not to pursue recovery where such actions may cause the issuer to violate state law.[267]

Additionally, some commenters expressed concern regarding recovery of amounts deferred under tax-qualified retirement plans, stating that such actions may violate ERISA anti-alienation rules, which could result in loss of tax-qualified status for the plan.[268]

iii. Final Amendments

After considering the views of commenters, we are adopting substantially as proposed rules to require that an issuer must recover erroneously awarded compensation in compliance with its recovery policy except to the extent that pursuit of recovery would be impracticable. We read the Section 10D recovery mandate to require recovery regardless of ''fault'' or responsibility for the error or resulting restatement. The language of this provision signals that the issuer should pursue recovery in most instances.

As we have previously noted, the intent of Section 10D is to require executive officers to return monies that rightfully belong to the issuer and its shareholders. In keeping with this intent and our understanding that the statute contemplates recovery in most instances, we have determined to establish very limited circumstances that would allow executive officers, or permit boards of directors to allow executive officers, to retain incentive-based compensation that they were erroneously awarded.

Some commenters sought to justify allowing boards to exercise greater discretion or permitting issuers to not seek to recover erroneously awarded compensation by citing to state law fiduciary duties and a board's business judgment.[269] Commenters also suggested that the Commission could balance greater board discretion with additional disclosure or suggested that boards should be permitted to take into account the probability of recovery or likelihood of success, the circumstances giving rise to the accounting restatement, the potential costs of determining and defending the recovery determination, the potential effects on the issuer, the potential effect on executive officers, and the long-term impact on the issuer. We have considered the potential costs of not affording such discretion, such as the possibility that in some instances recovery would be required even if the total costs for the issuer exceed the expected recovery amount. Notwithstanding these possible costs, other than the limited exceptions noted below, we do not believe that additional discretion to forgo recovery of erroneously awarded compensation would be appropriate. In enacting Section 10D, Congress determined that listed companies in the U.S. should ''develop and implement'' a policy providing that they ''will recover'' erroneously awarded compensation within three years of an accounting restatement. Congress chose to impose a federally mandated policy with specific parameters and requirements. Its decision to adopt such a mandate implies that Congress concluded that issuers likely would not voluntarily pursue recovery to the extent mandated by Section 10D. Allowing issuers broad discretion to decide whether to enforce such policies would therefore tend to undermine Congress' intent, as issuers that have previously failed to adopt

regularly makes); and WAW. *See also* comment letters in response to the Reopening Release from CEC 2 (suggesting that without sufficient discretion the rule could force a board to carry out a recovery in a manner at odds with its fiduciary duties and result in shareholder harm); and Hunton (noting discretion is consistent with the board's fiduciary or other legal duties under state law).

[255] *See* comment letters from CFA Institute 1; S&C 1; and TCA.

[256] *See* comment letters from BRT 1; and Bishop.

[257] *See, e.g.,* comment letters from BRT 1 (suggesting taking into account the scope of misconduct or responsibility for the errors); CFA Institute 1 (suggesting taking into account the severity of the error behind the original financial reporting decision); and Davis Polk 1 (suggesting taking into account culpability).

[258] *See* comment letters from Bishop; and Davis Polk 1. *See also* comment letters from Ensco; and Pearl Meyer (recommending consideration be given where executives are subject to pre-existing legally binding contracts).

[259] *See, e.g.,* comment letters from Bishop; BRT 1; Davis Polk 1; NACD; and S&C 1 (expressing concern over negative publicity or reputational harm to the issuer). *See also* comment letter from Davis Polk 1 (noting that recovery could be considered an admission against interest by the issuer resulting in higher litigation risk).

[260] *See* comment letters from Davis Polk 1 (recommending permitting consideration of severe financial hardship, death or serious illness of the executive); and S&C 1 (recommending permitting consideration of the effect on recruiting and retaining executives).

[261] *See* comment letters from BRT 1; and S&C 1.

[262] *See, e.g.,* comment letters from ABA 1; Bishop; CCMC 1; Coalition; Duane; Exxon; FSR; Kaye Scholer; Mercer; Osler; SAP; S&C 1; TELUS; and UBS. Some commenters recommended that an exemption based on home country law should also cover any other countries whose laws otherwise apply to the executive officer, such as the local law of the jurisdiction where the executive officer is employed, as that local law would govern the employee/employer relationship. *See, e.g.,* comment letters from ABA 1; CCMC 1; Coalition; Davis Polk 1; Exxon; FSR; Kaye Scholer; Osler; SAP; S&C 1; TELUS; and UBS. *See also* comment letter in response to the Reopening Release from Hunton.

[263] *See* comment letters from S&C 1; and TELUS.

[264] *See* comment letters from CCMC 1; and Coalition. *See also* comment letters in response to the Reopening Release from Cravath; and CCMC 2 (suggesting that the rules may penalize foreign firms for changes in law made after adoption of the rules).

[265] *See, e.g.,* comment letters from Bishop; CEC 1 (noting legal uncertainty in some jurisdictions); CCMC 1; Coalition; Freshfields; SAP; S&C 1 (noting absence of a prohibition does not mean the compensation recovery provision would be enforced); and TELUS (noting enforceability of compensation recovery arrangements is a developing area of jurisprudence).

[266] *See* comment letters from ABA 1; American Vanguard; Bishop; Coalition; Compensia; Cooley; Exxon; FSR; Mercer; NACD; Pearl Meyer; and SCG 1.

[267] *See* comment letters from Compensia; Cooley; FSR; Pearl Meyer; and SCG 1.

[268] *See, e.g.,* comment letters from ABA 1; IBC; and Sutherland (noting that violating the Internal Revenue Code could result in loss of tax-qualified status for the plan, causing adverse consequences to all participants). *See also* comment letter from the Reopening Release from McGuireWoods.

[269] *See supra* note 254.

recovery policies that Congress concluded would protect shareholders may also tend to exercise their discretion to recover in ways that similarly fail to protect shareholders. Thus, to the extent that commenters' suggestions would further permit executive officers to retain monies that they should not have been awarded pursuant to their compensation agreements, such exceptions or limitations could undermine the objectives of the statute.

The exceptions we adopt below will limit the instances in which an issuer would be obliged to pursue a money-losing recovery. Providing for such narrow exceptions is consistent with the overall structure of the statutory recovery mandate, which is unqualified and applies on a no-fault basis to erroneously awarded compensation. We are concerned that affording broader discretion could undermine the effectiveness of the rule, as issuers and their boards may face short-term incentives or other impediments to pursuing recovery even where recovery would be in the interest of shareholders, the long-term interest of the issuer, or the market as a whole. In addition, providing boards with broad discretion to waive recovery could also reduce the reliability of financial reporting, as executive officers may expect that they would be enriched by some errors if the board had broad discretion.

After considering the views of commenters, we are adopting impracticability exceptions, as proposed, where (1) the direct cost of recovery would exceed the amount of recovery, and (2) the recovery would violate home country law and additional conditions are met.[270] We are additionally adopting an exception, as discussed further below, that addresses commenters' concerns about the implications of recovering amounts from tax-qualified retirement plans.

We do not believe that inconsistency between the rules and existing compensation contracts, in itself, should be a basis for finding recovery to be impracticable. Such an approach could effectively exclude a significant number of existing compensation contracts from the scope of the rule, undermining its effectiveness. We note that issuers have been on notice of the statutory mandate for several years and will have additional time between adoption of these rules and exchange listing standards implementing the rules to amend any contracts to accommodate recovery. While a number of commenters suggested that recovery should be limited to executive officers who bear responsibility for the error; as discussed in Section II.C.1.c, under our reading of the statute, the extent to which an individual executive officer may be responsible for the financial statement errors requiring the restatement is irrelevant to whether they are subject to the requirement or the issuer should seek recovery.[271] We also note that a number of commenters recommended a *de minimis* threshold for pursuing recovery. However, absent satisfaction of the conditions to demonstrate that recovery is impracticable due to costs, we believe a *de minimis* exception may risk being both over and under-inclusive, given the variation in issuer sizes and executive compensation structures. We therefore decline to adopt such an approach.

In determining whether recovery would be impracticable due to costs, the only permissible criteria under the rule are whether the direct costs paid to a third party to assist in enforcing recovery would exceed the erroneously awarded compensation amounts.[272] Only direct costs paid to a third party, such as reasonable legal expenses and consulting fees, may be considered for this purpose.[273] We disagree with those commenters that recommended permitting issuers to include indirect costs. Indirect costs relating to concerns such as reputation or the effect on hiring new executive officers are not readily quantifiable and, as one commenter noted, are susceptible to exaggeration,[274] in addition to other confounding factors. We therefore do not believe such costs should be taken into account when determining whether recovery is impracticable.

The final rules also require the issuer to make a reasonable attempt to recover incentive-based compensation before concluding that it would be impracticable to do so. The issuer must document its attempts to recover and provide that documentation to the exchange.[275] We remain concerned that, without a requirement to attempt recovery, an issuer could simply assert impracticability without doing the work necessary to establish that the costs exceed the recovery amounts. We believe that requiring an attempt to recover is consistent with the no-fault character of Section 10D and necessary for the issuer to justify concluding that recovery of the amount at issue would be impracticable.

In providing this narrow cost exception, we note that Section 10D provides that, to meet the applicable listing standard, the issuer ''will recover,'' without exceptions, erroneously awarded compensation resulting from material misstatements of financial reporting items. The plain text does not provide for issuer discretion. We believe that Congress' broad mandate to recover signals that an exception from recovery of an executive officer's erroneously awarded compensation, if any, that the Commission exercises its authority to grant should be carefully considered and tailored. In exercising our authority to provide an exception, we have determined that issuers should not be afforded broad discretion to determine whether to recover compensation. We are therefore adopting as proposed a narrow exception relating to impracticability due to costs.

We also believe it is appropriate to adopt substantially as proposed a narrow exception that allows an issuer to conclude that recovery is impracticable because it would violate the home country law of the issuer.[276] To minimize any incentive countries may have to change their laws in response to this provision, the relevant home country law must have been adopted in such home country prior to November 28, 2022, the date of publication in the **Federal Register** of Rule 10D–1.[277] Before concluding that it would be impracticable to recover because doing so would violate home country law in effect as of the date of publication of Rule 10D–1 in the **Federal Register**, the issuer would first need to obtain an opinion of home country counsel, acceptable to the applicable exchange, that recovery would result in such a violation.[278]

[270] *See* 17 CFR 240.10D–1(b)(1)(iv)(A) (''Rule 10D–1(b)(1)(iv)(A)'') and 17 CFR 240.10D–1(b)(1)(iv)(B) (''Rule 10D–1(b)(1)(iv)(B)'').

[271] We note that this standard similarly applies in Sarbanes-Oxley Act Section 304.

[272] *See* Rule 10D–1(b)(1)(iv)(A).

[273] We note that the challenges of using incentive-based compensation tied to stock price and TSR to determine the amount of compensation to be recovered are not a sufficient basis for determining that recovery is impracticable. Nonetheless, the amount spent on a consultant or other third-party service provider could be considered in determining whether the impracticability exception applies, once the recoverable amount is determined.

[274] *See* comment letter from As You Sow 1.

[275] *See* Rule 10D–1(b)(1)(iv)(A). New Item 402(w) of Regulation S–K also requires the issuer to disclose why it determined not to pursue recovery.

[276] *See* Rule 10D–1(b)(1)(iv)(B).

[277] As discussed further below, in a modification from the Proposing Release, the relevant home country law must have been adopted prior to the date of publication in the **Federal Register** of Rule 10D–1 rather than July 14, 2015, which was the date of publication of the proposed rule.

[278] *See* Rule 10D–1(b)(1)(iv)(B). The issuer must provide such opinion to the exchange. We recognize the concerns of some commenters regarding the requirement for a legal opinion. We

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We recognize some commenters' concerns that the erroneously awarded compensation rules could intrude into the public policy determinations of other nations or create a disincentive for foreign firms to list in the U.S. However, the recovery mandate of Section 10D signals that the issuer should generally pursue recovery when it is determined there is erroneously awarded compensation subject to the rule. Issuers that choose to list on U.S. exchanges have chosen to be subject to the rules of those exchanges and the laws of the United States. Such issuers may choose to list on U.S. exchanges in order to signal the greater reliability of their financial reporting, and making executive officers subject to recovery may further strengthen this signal, so that the adopted approach in fact may incentivize, rather than discourage, listings by foreign firms. Given the clear mandate from the statute that executive officers not be permitted to retain erroneously awarded compensation, we have determined that any exception relating to impracticability due to conflict with home country law should be narrow.

We are not expanding the exception, as suggested by some commenters, to cover the domicile of the executive officer or any other country whose laws may apply to the executive officer or to encompass foreign laws that may be enacted in the future.[279] As compared to the jurisdiction of incorporation, it may be easier for an executive officer to shift domicile or work location and thereby avoid application of the rule. To the extent that the laws of jurisdictions other than the issuer's place of incorporation would present obstacles to recovery, we think those obstacles are more appropriately addressed by the discretion we are providing not to pursue recovery in situations in which the direct costs of recovering the erroneously awarded compensation would exceed the amount to be recovered.

Similarly we do not believe it is appropriate for the exception to apply without a time limitation. Doing so could incentivize jurisdictions to enact statutes that prohibit or restrict recovery in an effort to attract issuers that may be seeking to avoid enforcement of a compensation recovery policy. Although we are not aware that any such laws have been adopted since publication of the proposed rule, and mindful of the length of time that has passed since 2015, in a modification from the proposal, the relevant home country law must have been adopted prior to the date of publication in the **Federal Register** of Rule 10D–1 rather than July 14, 2015, which was the date of publication of the proposed rule. This change will avoid any undue disruption for foreign issuers who may have entered the U.S. markets and listed on an exchange not anticipating a potential conflict with the final amendments and would now face an immediate decision about whether to maintain their U.S. listing. Going forward, however, we believe it is appropriate and consistent with the purposes of Section 10D to require foreign issuers that avail themselves of the benefits of U.S. listing to comply with the mandatory recovery policy in the same manner as domestic issuers.

We also decline to provide an exception or additional board discretion not to pursue recovery due to potential state law conflicts. As a threshold matter, a number of commenters asserted that it is unclear whether the mandated recovery would be in violation of any state laws. We are not aware of any state law that currently would clearly prohibit recovery, and commenters did not identify any.[280] We recognize that executive officers seeking to oppose recovery could assert a number of defenses, including objections based on state law, and issuers may need to address such matters as part of the recovery process. Nevertheless, for the reasons discussed above, we believe issuers should have discretion not to pursue recovery only in the limited circumstances outlined in the final rule.

In any event, we believe that state law will not pose a significant obstacle to recovery because issuers should have strong arguments that state laws that conflict with Section 10D are preempted. With respect to preemption, as a general matter, listing standards adopted by national securities exchanges and associations at the direction of Congress and the Commission can preempt state laws in certain circumstances.[281] In such a case, a court may consider whether a state law that prevents or interferes with the recovery required under this rule ''stands as an obstacle'' to accomplishing the objectives of Federal law.[282] As discussed above, this rule will advance the objectives of Section 10D by ensuring recovery from all listed issuers for the benefit of shareholders of erroneously awarded compensation that would not have been paid had the issuer's financial statements not been in error. The recovery requirement would serve the interest of fairness to shareholders and improve the overall quality and reliability of financial reporting, which further benefits shareholders and the capital markets as a whole. Accordingly, issuers should be able to assert that state laws that would prevent or impede recovery are preempted, although the outcomes for any particular state law would depend on the details of that provision.

In exercising our discretion to provide an exception for tax-qualified retirement plans described in 26 U.S.C. 401(a), we have determined that a narrow exception is appropriate. Under 26 U.S.C. 401(a)(13), a plan will not be tax-qualified unless it provides that the plan's benefits may not be assigned or alienated, subject to certain limited exceptions that are not applicable here. Commenters noted that this statutory anti-alienation rule would preclude a tax-qualified plan from complying with a request for recovery. Commenters also expressed concerns that requiring recovery of amounts deferred under tax-qualified retirement plans may cause plans to violate the anti-alienation rule and other plan qualification requirements under the Internal Revenue Code. In recognition of those concerns, the final rule will permit issuers to forgo recovery from tax-qualified retirement plans.[283] Without

note, however, that requiring an issuer to obtain a legal opinion provides additional substantiation to the issuer's claim that recovery would result in such a violation and reduces the burden on exchanges, who might otherwise have to make a determination of whether the exception is available to the issuer, by permitting them to use and rely on the opinion.

[279] *See supra* note 262.

[280] As an example of a potentially conflicting state law, one commenter cited California Labor Code Section 221, which provides that it is ''unlawful for any employer to collect or receive from an employee any part of wages theretofore paid by said employer to said employee.'' *See* comment letter from Bishop. California Labor Code Section 224, however, also provides that Section 221 ''shall in no way make it unlawful for an employer to withhold or divert any portion of an employee's wages when the employer is required or empowered so to do by state or Federal law.''

[281] *See Credit Suisse First Bos. Corp.* v. *Grunwald,* 400 F.3d 1119, 1128 (9th Cir. 2005).

[282] *See id. See also Geier* v. *Am. Honda Motor Co.,* 529 U.S. 861, 873 (2000) (quoting *Hines* v. *Davidowitz,* 312 U.S. 52, 67 (1941)). Some commenters argue that because Section 10D is addressed to exchanges and associations, state law would not be preempted because it is technically possible for an issuer to comply with both state and Federal law. This describes one type of implied preemption—''conflict preemption.'' *Id.* at 873–74. But a different type of implied preemption—''obstacle preemption''—may arise where a state law stands as an obstacle to Federal law. *See, e.g., AT&T Mobility LLC* v. *Concepcion,* 563 U.S. 333, 342–43, 352 (2011) (finding no conflict but ruling that state law was preempted as an obstacle to a Federal scheme); and *Williamson* v. *Mazda Motors of Am.,* 562 U.S. 323, 330 (2011).

[283] *See* Rule 10D–1(b)(iv)(C). One of these commenters noted that tax-qualified retirement plans are required to be non-discriminatory in

this exception, such plans may fail statutory requirements for tax exemption, resulting in potentially adverse tax consequences for all plan participants. Thus, the change would avoid serious potential tax consequences for rank-and-file employees by providing a narrow exemption from recovery for a limited amount of incentive-based compensation.[284] Erroneously awarded incentive-based compensation contributed to plans limited only to executive officers, SERPs, or other nonqualified plans and benefits therefrom, would still be subject to recovery.

In order to mitigate potential conflicts of interest, any determination that recovery would be impracticable in any of these three circumstances must be made by the issuer's committee of independent directors that is responsible for executive compensation decisions. In the absence of a compensation committee, the determination must be made by a majority of the independent directors serving on the board. Such a determination, as with all determinations under Rule 10D–1, is subject to review by the listing exchange.

We acknowledge that there are circumstances in which pursuing recovery of erroneously awarded compensation may not be in the interest of shareholders. We have determined that limited board discretion to determine when it would be impracticable to recover is necessary or appropriate in the public interest and consistent with the protection of investors. Permitting board discretion in these circumstances will save issuers the expense of pursuing recovery in circumstances where recovery would violate anti-alienation rules applicable to tax-qualified retirement plans, or home country law, or where the direct costs of recovery could exceed or be disproportionate to the erroneously awarded compensation amounts. Balancing these concerns, the standard we are adopting appropriately permits boards of directors to evaluate whether to pursue recovery of erroneously awarded compensation, but only in these limited circumstances.

c. Board Discretion Regarding the Means of Recovery

Section 10D does not address whether an issuer's board of directors may exercise discretion in the manner in which it recovers excess compensation to comply with the listing standards.

i. Proposed Amendments

In the Proposing Release, in addition to addressing board discretion regarding whether to recover excess incentive-based compensation, the Commission addressed whether boards may exercise discretion in effecting the means of recovery. The Proposing Release recognized that the appropriate means of recovery may vary by issuer and by type of compensation arrangement, and that consequently issuers should be able to exercise discretion in how to accomplish recovery. Regardless of the means of recovery utilized, the Proposing Release indicated that issuers should recover excess incentive-based compensation reasonably promptly, as undue delay would constitute noncompliance with an issuer's recovery policy.

ii. Comments

We received various comments on the Proposing Release relating to whether boards may exercise discretion regarding the means of recovery.

Commenters generally supported allowing board discretion regarding the means of recovery.[285] Some commenters noted the concept of fungibility of assets, which would permit issuers to more readily recover erroneously awarded compensation.[286] Based on this concept of fungibility, commenters recommended permitting issuers various means of recovery, such as through canceling unrelated unvested compensation awards,[287] offsets against nonqualified deferred compensation and unpaid incentive compensation,[288] future compensation obligations,[289] or dividends on company stock owed to an executive officer.[290] Some commenters also recommended including in the final rule specific instructions on how to compute the excess amount of specific forms of incentive-based compensation and sought discretion to recover the cash value of excess shares subject to recovery.[291]

Commenters also recommended that the final rules permit, or that the Commission provide guidance or other confirmation relating to the use of, nonqualified deferred compensation plans, holdback policies, or otherwise deferring payment of incentive-based compensation to facilitate potential future recovery.[292] Other commenters highlighted potential benefits to such set-offs.[293] Some commenters additionally recommended that netting overpayments with incentive-based compensation underpayments resulting from restating financial statements for

application and, thus, are not incentive-based compensation and are not subject to various ''incentive plan'' disclosure under Item 402. *See* comment letter from ABA 1. *See also* comment letter from Sutherland (also noting that tax-qualified retirement plans are not considered incentive-based compensation in the normal sense of that term). This commenter suggested that the Commission not interpret ''incentive-based compensation'' to include either tax-qualified or non-qualified plans, further suggesting that all such compensation is provided for retirement, rather than as a performance incentive. Because amounts contributed to qualified plans may be affected by incentive-based awards, such as in the case where the benefit formula for a plan includes amounts awarded as an annual bonus, we disagree with this commenter's characterization of such compensation as categorically lacking a performance incentive.

[284] We anticipate the effect will be modest. We believe that incentive-based compensation will typically have only small and indirect effects on amounts added to tax-qualified retirement plans. 26 U.S.C. 401(a)(17) precludes a tax-qualified retirement plan from basing contributions or benefits on compensation in excess of an annual limit ($305,000 in 2022). The compensation of many covered executive officers will exceed this limit regardless of any incentive-based compensation they may have been erroneously awarded. In addition, 26 U.S.C. 415 provides a series of limits on benefits under qualified defined benefit plans and on contributions and other additions under qualified defined contribution plans. For example, under these limitations, in 2022, annual additions with respect to a participant in a defined contribution plan may not exceed $61,000 and a participant's annual benefit under a defined benefit plan may not exceed $245,000.

[285] *See* comment letters from ABA 1; Bishop; CEC 1; Compensia; Exxon; and FSR. *See also* comment letters in response to the Reopening Release from CEC 2; McGuireWoods (recommending flexibility for boards to enter into settlement and repayment terms); and Hunton.

[286] *See* comment letters from AFL–CIO; and Exxon.

[287] *See* comment letters from ABA 1; CEC 1; and WAW.

[288] *See* comment letters from Exxon; and WAW.

[289] *See* comment letters from Duane; and WAW.

[290] *See* comment letter from Exxon.

[291] *See, e.g.,* comment letters from ABA 1 (recommending that, for equity awards, recovery should first be sought from shares that remain held, and that for the equity awards where the shares were sold prior to recovery that the recovery be for the fair market value on the date the erroneously awarded compensation amount is determined, or if the shares were gifted, the fair market value on the date of the gift); Duane (noting potential restrictions on an executive's ability to liquidate securities and issuers' stock retention requirements, and recommending recovery of stock awards either in cash or in kind over reasonable periods of time); Exxon (recommending cash value should be calculated at the time the shares are ''received'' within the meaning of the rule to avoid incentivizing executives to sell shares immediately on vesting); and FSR (recommending basing the cash amount on the shares' value on the date the issuer is required to prepare a restatement to address manipulation concerns).

[292] *See, e.g.,* comment letters from ABA 1; AFL–CIO; Compensia; and NACD.

[293] *See, e.g.,* comment letters from Exxon (enhancing the ability to recover promptly); CEC 1 (ease of recovery and ability to recover the full pre-tax amount of excess compensation); and WAW (reduced cost of recovery and risk of litigation with executives).

different periods be permitted under the rules.[294]

We also received varied comments regarding the timing requirements for recovery ranging from recommendations to require ''immediate recovery,'' [295] input regarding the meaning of the ''reasonably promptly'' guidance,[296] and recommendations opposing time limits.[297] Some commenters recommended allowing deferred repayments,[298] with one noting that immediate recovery could result in significant economic hardship to an executive officer and that a deferred payment plan could increase the likelihood of collecting and avoid potential litigation costs.[299]

iii. Final Amendments

After considering the views of commenters, we continue to believe that the adopted rules should provide boards discretion, subject to certain reasonable restrictions, regarding the means of recovery and are providing the following guidance to assist boards in exercising that discretion.[300] Rule 10D–1 does not limit the amount of compensation the board is required to recover; however, the rule does not permit boards to settle for less than the full recovery amount unless they satisfy the conditions that demonstrate recovery is impracticable.[301]

We recognize that the appropriate means of recovery may vary by issuer and by type of compensation arrangement. We agree with commenters that many different means of recovery may be appropriate in different circumstances. Consequently, the final amendments permit issuers to exercise discretion in how to accomplish recovery. Nevertheless, in exercising this discretion, issuers should act in a manner that effectuates the purpose of the statute: to prevent current or former executive officers from retaining compensation that they received and to which they were not entitled under the issuer's restated financial results.

Regardless of the means of recovery used, issuers should recover erroneously awarded compensation reasonably promptly, because delays in recovering excess payments allow executive officers to capture the time value of money with respect to funds they did not earn, which should instead belong to shareholders. Consistent with the discussion of the timing in which the issuer must seek recovery in the Proposing Release, the final rule clarifies that the issuer must pursue recovery ''reasonably promptly.'' [302] The rule does not, however, adopt a definition of ''reasonably promptly.'' We recognize that what is reasonable may depend on the additional cost incident to recovery efforts. We expect that issuers and their directors and officers, in the exercise of their fiduciary duty to safeguard the assets of the issuer (including the time value of any potentially recoverable compensation), will pursue the most appropriate balance of cost and speed in determining the appropriate means to seek recovery. Furthermore, the rules do not prevent an issuer from securing recovery through means that are appropriate based on the particular facts and circumstances of each executive officer that owes a recoverable amount.[303]

For example, an issuer may be acting reasonably promptly in establishing a deferred payment plan that allows the executive officer to repay owed erroneous compensation as soon as possible without unreasonable economic hardship to the executive officer, depending on the particular facts and circumstances.[304] The final rules also do not prohibit an issuer from establishing compensation practices that account for the possibility of the need for future recovery; while we acknowledge the many suggestions by commenters in this regard, we decline to offer specific guidance on which methods may be appropriate, as it will depend on the particular facts and circumstances applicable to that issuer. Finally, we note that the final rules do not restrict exchanges from adopting more prescriptive approaches to the timing and method of recovery under their rules in compliance with Section 19(b) of the Exchange Act, including after they have observed issuer performance and use any resulting data to assess the need for further guidelines to ensure prompt and effective recovery.

D. Disclosure of Issuer Policy on Incentive-Based Compensation

Section 10D(b)(1) requires exchanges and associations to adopt listing standards that call for disclosure of the policy of the issuer on incentive-based compensation that is based on financial information required to be reported under the securities laws. Sections 10D(a) and (b) require that the Commission adopt rules requiring the exchanges to prohibit the listing of any security of an issuer that does not develop and implement a policy providing for such disclosure.

1. Proposed Amendments

The Commission proposed to require that issuers disclose their recovery policies as an element of the listing standards, so that exchanges could commence de-listing proceedings for issuers that fail to make the required disclosure, as well as those that fail to adopt recovery policies or those that fail to comply with the terms of their policy.

In addition, the Commission proposed amendments to its rules and relevant forms to require disclosure about, and the filing of, the issuer's recovery policy. Specifically, the Commission proposed:

- Amending Item 601(b) of Regulation S–K to require that an issuer file its recovery policy as an exhibit to its annual report on Form 10–K;
- Adding Item 402(w) of Regulation S–K to require issuers to disclose certain information about how they have

[294] *See, e.g.,* comment letters from ABA 1; Bishop; CEC 1 (recommending disclosure to inform shareholders of recovery by netting); Compensia; Mercer (suggesting that without netting executives would be penalized and that making the executive whole could distort the pay for performance relationship); NACD; SCG 1; and SH&P. Two of these commenters suggested that this approach would be fair and consistent with the ''no-fault'' standard of the proposed rule. *See* comment letters from NACD; and SH&P.

[295] *See* comment letter from CalPERS 1.

[296] *See* comment letter from Better Markets 1 (further recommending requiring an explanation of the timing to discourage a protracted recovery process).

[297] *See, e.g.,* comment letters from Bishop (noting that issuers will face circumstances beyond their control, such as litigation by executives); CFA Institute 1 (recommending that the listing exchange determine whether an issuer is complying with its recovery policy); and NACD.

[298] *See, e.g.,* comment letters ABA 1 (noting that there may be circumstances where the executive is otherwise unable to repay the excess amount); Bishop; Davis Polk 1; Ensco; and SCG 1 (recommending that the rule permit discretion where the board determines enforcement could affect the issuer's defense in a securities class action). One of these commenters sought clarification that repayment plans would not constitute prohibited personal loans under Exchange Act Section 13(k). *See* comment letter from Bishop. *See also* comment letters in response to the Reopening Release from ABA 2 (recommending discretion to permit a deferred payment plan); McGuireWoods (recommending flexibility for boards to enter into settlement and repayment terms); and Hunton.

[299] *See* comment letter from Davis Polk 1.

[300] *See* Rule 10D–1(b)(1)(iii). For a discussion of how to determine the amounts, *see supra* note 235.

[301] In that circumstance, the same conditions would apply as for a determination to forgo recovery. *See* Section II.C.3.b.

[302] *See* Rule 10D–1(b)(1).

[303] We note that unpaid amounts will be subject to disclosure pursuant to 17 CFR 229.402(w)(1)(ii) and (iii).

[304] In response to the commenter who asked for clarification regarding whether a deferred repayment plan would be a prohibited personal loan under 15 U.S.C. 78m(k), as a general matter, we would not view such arrangements that are narrowly tailored to the compensation being recovered and in order to facilitate full payment as promptly as is reasonable under the circumstances as being a prohibited personal loan.

applied their recovery policies, including the date of and amount of erroneously awarded compensation attributable to the accounting restatement, any estimates that were used in determining the amount, the amount that remains to be collected, and the names of, and amounts owed by, executive officers where amounts due are owed or forgone;

- Amending the Summary Compensation Table requirements of Item 402 of Regulation S–K to disclose the effect of any recovered amount;
- Amending rules to require the new compensation recovery disclosure pursuant to proposed Item 402(w) of Regulation S–K be structured using machine-readable eXtensible Business Reporting Language (''XBRL''); [305] and
- Amending forms applicable to FPIs and listed funds to require the same information called for by proposed Item 402(w) of Regulation S–K.

In the Reopening Release, the Commission requested comment on whether additional disclosures would benefit investors, such as disclosure of how issuers calculated the erroneously awarded compensation, including their analysis of the amount of the executive officer's compensation that is recoverable under the rule, and, for incentive-based compensation based on stock price or TSR, disclosure regarding the determination and methodology that an issuer used to estimate the effect of stock price or TSR on erroneously awarded compensation. The Reopening Release also sought comment on whether to add check boxes to the Form 10–K cover page that indicate separately (a) whether the previously issued financial statements in the filing include an error correction, and (b) whether any such corrections are restatements that triggered a compensation recovery analysis during the fiscal year. The Commission additionally requested comment on whether any specific data points that are included within the new compensation recovery disclosure should be detail tagged using Inline XBRL.

2. Comments

While commenters generally supported some level of disclosure about an issuer's recovery policy, comments were mixed regarding the specific disclosures that should be required. Some commenters generally supported the proposed disclosure requirements, with several commenters stating that required disclosure under the Federal securities laws would promote consistency.[306] One commenter specifically supported the use of a listing standard requirement to disclose the issuer's recovery policy,[307] and others supported the proposed structure of the disclosure requirements as they would facilitate exchanges' ability to commence delisting proceedings for issuers that fail to make the required disclosure.[308] A few commenters recommended requiring the issuer's recovery policy be posted on the issuer's website rather than requiring it to be filed, as proposed.[309]

We received a range of comments on the specific proposed disclosure requirements.[310] Some commenters supported proposed Item 402(w),[311] noting its relevance to say-on-pay and director election voting decisions,[312] and the insight the disclosure would provide into board decision-making.[313] Some commenters further supported requiring the additional disclosure requirements on which we requested comment in the Reopening Release.[314] Another commenter suggested that the disclosure would elicit a sufficient amount of detailed information about how a listed issuer has enforced its compensation recovery policy.[315] Some commenters recommended expanding certain disclosure requirements.[316] Another commenter recommended further clarification of the requirements.[317]

In contrast, some commenters recommended reducing or omitting certain of the proposed disclosure requirements.[318] A number of commenters expressed concern or objected to identifying specific executive officers from whom recovery has not yet been made or where

[305] The proposed structuring would be limited to block text tagging of the disclosures, rather than any additional detail tags for specific data points included within the compensation recovery disclosures. *See* Proposing Release at Section II.D.1.

[306] *See, e.g.,* comment letters from ABA 1; Better Markets 1; and CFA Institute 1.

[307] *See* comment letter from Compensia.

[308] *See* comment letters from ABA 1; and Better Markets 1.

[309] *See, e.g.,* comment letters from ABA 1 (recommending following the compensation committee charter disclosure model which relies on website disclosure and noting that many issuers disclose their existing recovery policies on the corporate website and investors are familiar with accessing corporate governance policies there); and NACD.

[310] We received limited comment regarding the proposal to adjust Summary Compensation Table disclosure, with one commenter expressly supporting the proposal (*see* comment letter from ABA 1) and another recommending that amounts recovered for periods earlier than the three years presented should be reported in a footnote (*see* comment letter from Mercer). One commenter questioned whether reducing amounts reported in the Summary Compensation Table Stock Awards and Option Awards columns would be inconsistent with reporting other modifications under ASC Topic 718 and whether a delay in grant date determination for share-based awards under ASC Topic 718 could result from a recovery policy consistent with Rule 10–D–1. *See* comment letter from TCA. That commenter expressed concern that such a delay would have a substantial and material impact on the disclosure timing for those awards in the Summary Compensation Table and Grants of Plan-Based Awards Table. We note that, assuming the conditions for establishing a grant date under ASC Topic 718 are otherwise met, having such a recovery policy should not affect the issuer's determination.

[311] *See, e.g.,* comment letters from As You Sow 1; Better Markets 1; CII 1; CalPERS 1; and OPERS 1.

[312] *See, e.g.,* comment letters from CalPERS 1; and CII 1 (noting its usefulness to institutional investors).

[313] *See* comment letter from OPERS 1.

[314] *See, e.g.,* comment letters on the Reopening Release from Better Markets 2 (supporting disclosure of how issuers calculate the recoverable amount, especially with regards to compensation based on stock price or TSR); CFA Institute 2; CII 3 (noting that such disclosures could be particularly helpful in assessing the company's executive compensation policies and practices for purposes of shareholder voting); ICGN; Public Citizen 2; and Occupy. *See also* comment letter from the Second Reopening Release from AFR 2 (supporting disclosure of how issuers calculate the recoverable amount). *But see* comment letter on the Reopening Release from ABA 2 (generally supporting disclosure, but suggesting inclusion of stock price and TSR would lead to complex disclosures regarding determination and methodology).

[315] *See* comment letter from ABA 1 (supporting tracking any amount of incentive-based compensation subject to recovery through the duration of the recovery obligation until that amount either is recovered or the issuer concludes that recovery would be impracticable).

[316] *See, e.g.,* comment letters from Better Markets 1; and Public Citizen 1. These commenters recommended requiring identification of each executive officer from whom recovery is sought or obtained, the respective amounts, how the amounts were determined, and the status of the recovery effort. *See also* comment letters on the Reopening Release from CFA Institute 2; and ICGN (supporting disclosure of the timing, and materiality determination); and comment letter from ABA 1 (recommending requiring the issuer to identify the incentive-based compensation arrangements that were subject to recovery, to provide context for the amount of excess incentive-based compensation resulting from the restatement).

[317] *See* comment letter from ABA 1 (recommending guidance as to when a restatement is considered completed for purposes of triggering the disclosure requirement and clarification that disclosure would be required where the issuer's calculation results in no erroneously awarded compensation and where no such compensation is recovered because the board determines recovery would be impracticable).

[318] *See, e.g.,* comment letters from BRT 1; CAP; Compensia; Exxon; Japanese Bankers; Mercer; NACD; Pay Governance; S&C 1; and UBS. A few commenters objected to the inclusion of the disclosure in Item 402. *See* comment letter from Pay Governance (suggesting more disclosure in the proxy statement would be administratively burdensome); and comment letters from NACD; and Public Citizen 1 (recommending disclosure on Form 8–K). *See also* comment letters on the Reopening Release from Davis Polk 3 (suggesting that disclosure of the methodology for calculating the recoverable amounts would be burdensome, lack comparability, and involve litigation risk); McGuireWoods; and SCG 2 (suggesting that the disclosure could be confusing and would add legal, audit, compensation consulting, and other expenses).

recovery was not pursued,[319] others raised concerns that the disclosure could violate data privacy laws of foreign jurisdictions,[320] and two others suggested that this disclosure would invite second-guessing the board's decisions.[321] Several of these commenters offered various alternative approaches to the disclosure requirement.[322]

In response to the request for comment in the Reopening Release some commenters supported adding check boxes to the cover page of Form 10–K.[323] Other commenters believed the check boxes would not provide useful information to investors and were not consistent with the Commission's modernization and simplification efforts.[324]

We similarly received varied comments on our proposal to require the disclosure be tagged using XBRL. Some commenters expressed support for the proposed implementation of XBRL data tagging.[325] Other commenters opposed the data tagging requirement,[326] while some recommended making tagging optional,[327] or exempting SRCs and EGCs in view of the burden.[328] In response to the request for comment in the Reopening Release regarding compensation recovery disclosure being separately detail tagged using Inline XBRL, some commenters supported Inline XBRL requirements for the compensation recovery information, suggesting that such requirements would lead to more timely and less costly analysis of the new disclosures.[329] In contrast, some other commenters expressed concern or opposed the Inline XBRL requirements discussed in the Reopening Release, citing compliance costs and lack of comparability across filers as specific concerns.[330]

3. Final Amendments

After considering the views of commenters, we are adopting substantially as proposed rules to require that listed issuers disclose their recovery policies as an element of the listing standards and to require disclosure about, and the filing of, the issuer's recovery policy, in Commission filings. After considering comments to the Reopening Release, and in a change from the proposal, the final rules will additionally require: disclosure relating to an issuer's compensation recovery policy and recovery; tagging of the additional information in Inline XBRL; and additional check box disclosure on the cover of the Forms 10–K, 20–F, and 40–F.

We believe Sections 10D(a) and (b) are intended to require listed issuers to adopt, comply with, and provide disclosure about their compensation recovery policies. Accordingly, Rule 10D–1 requires the listing standards adopted by exchanges to include that listed issuers disclose their recovery policies.[331] As noted above, as a result of implementing the disclosure requirement as an element of the listing standards, we would expect exchanges to commence delisting proceedings for issuers that fail to make the required disclosure. In part because Section 10D(b)(1) comes under the Section 10D(b) heading ''Recovery of Funds,'' we construe its disclosure requirement to mean disclosure of the listed issuer's policy related to recovery of erroneously awarded compensation. This approach permits an assessment of a listed issuer's compliance with the mandatory recovery policy, while avoiding a potential duplication of the existing disclosure requirements applicable to incentive-based compensation.

The disclosure requirements are intended to inform shareholders and the listing exchange as to both the substance of a listed issuer's recovery policy and how the listed issuer implements that policy in practice. To provide consistent disclosure across exchanges, Rule 10D–1 provides that the required disclosure about the issuer's recovery policy must be filed in accordance with the disclosure requirements of the Federal securities laws. [332] Amended Item 601(b) of Regulation S–K requires that an issuer file its recovery policy as an exhibit to its annual report on Form 10–K.[333] Structuring the provision in this

[319] *See, e.g.,* comment letters from BRT 1 (recommending board discretion to omit individuals' names given the range of potential factors including, security or safety concerns, the likelihood of ongoing confidential legal negotiations, or the potential personal impact of disclosure); CAP (expressing reputational concerns); Mercer (recommending against the disclosure and suggesting that exchanges could require individualized information in an issuer's submission to the exchange if critical to their compliance analysis); S&C 1 (suggesting that the specific identity of an executive will in most cases not be material to the evaluation of the boards' determination not to pursue recovery); and UBS (suggesting that naming individuals from whom the issuer determines not to recover is irrelevant and provides no benefit to shareholders). *See also* comment letter on the Reopening Release from McGuireWoods (recommending that compensation recovery disclosure regarding non-named executive officers be generalized).

[320] *See, e.g.,* comment letters from Exxon (expressing concern that identifying the status of specific individuals in certain European Union and other jurisdictions could violate local data privacy laws); Japanese Bankers (expressing concern that the proposed disclosure may violate local personal information protection acts and noting that under Japanese law the scope of separate disclosure for financial reporting purposes is limited to certain highly compensated executives); and UBS (suggesting data privacy laws or regulations in various foreign jurisdictions could affect a listed issuer's ability to disclose personal information).

[321] *See* comment letters from ABA 1 (further noting the requirement could subject executives to embarrassing disclosure as to why they are unable to pay); and Compensia.

[322] *See, e.g.,* comment letters from CAP (recommending identifying only named executive officers); BRT 1 (recommending providing board discretion over whether to identify executive officers); and Japanese Bankers (recommending disclosure on forgone recovery only for those executive officers responsible for preparing and disclosing financial statements). *See also* comment letters from ABA 1; and Mercer (recommending aggregate disclosure of amounts forgone and outstanding together with the number of executives from whom recovery was not pursued and amounts outstanding).

[323] *See, e.g.,* comment letters on the Reopening Release from CFA Institute 2; CII 3; ICGN (also supporting Form 8–K disclosure); and Occupy. *See also* comment letter on the Second Reopening Release from AFR 2.

[324] *See, e.g.,* comment letters on the Reopening Release from Davis Polk 3; McGuireWoods (stating that information regarding restatements and recovery of compensation are sufficiently covered by other disclosure rules such that this check box would provide little additional informational value to investors); and SCG 2.

[325] *See, e.g.,* comment letters from CII 1; CalPERS 1; and OPERS 1 (contending that tagging would lower investors' costs to collect the data and permit the information to be analyzed more efficiently).

[326] *See, e.g.,* comment letters from CCMC 1; Davis Polk 1; FSR; FedEx 1; Hay Group; Mercer (recommending a comprehensive approach to tagging the proxy statement); and Pearl Meyer. Many of these commenters expressed concern regarding the cost of implementation versus the perceived benefits, such as the utility of the information to investors. *See, e.g.,* comment letters from CCMC 1; Davis Polk 1 (expressing concern about the comparability of the data); FSR; FedEx 1; and Pearl Meyer.

[327] *See* comment letter from Hay Group.

[328] *See* comment letters from ABA 1; and Hay Group.

[329] *See, e.g.,* comment letters on the Reopening Release from CFA Institute 2; CII 3; and XBRL US (Aug. 30, 2021) (recommending that the disclosure be tagged using Inline XBRL and be incorporated into the definitive proxy or information statement).

[330] *See, e.g.,* comment letters on the Reopening Release from ABA 2; Davis Polk 3; and McGuireWoods. These commenters suggested that varying recovery processes may necessitate custom tagging, which would undermine comparability issues and thus limit the benefits of tagging.

[331] *See* 17 CFR 240.10D–1(b)(2).

[332] *Id.*

[333] 17 CFR 229.601(b)(97). In a modification from the proposal, we are designating the exhibit containing the compensation recovery policy as Item 601(b)(97) rather than Item 601(b)(96) as was proposed because Item 601(b)(96) is currently in use. In addition, we are moving the definition of the affected registrant to the operative text rather than defining ''listed registrant'' for purposes of Item 601(b)(97). Corresponding filing requirements will apply to listed FPIs and registered management investment companies subject to Rule 10D–1. We are correspondingly amending the Form 20–F Instructions as to Exhibits to add new Instruction 97 and Form 40–F to add new paragraph 19(a) to General Instruction B. Form N–CSR is also being amended to renumber Item 18 (Exhibits) as Item 19 and add new paragraph (a)(2) to that item (and redesignating current paragraph (a)(2) as paragraph

manner provides that, in addition to making the disclosure a condition to listing, it is also subject to Commission oversight to the same extent as other disclosure required in Commission filings.

In connection with our implementation of Section 10D(b)(1), we are also using our discretionary authority to amend Item 402 of Regulation S–K, Form 40–F, and Form 20–F to require listed issuers to disclose how they have applied their recovery policies.[334] In addition to new Item 402(w), we are adding substantially as proposed a new instruction to the Summary Compensation Table to require that any amounts recovered pursuant to a listed issuer's compensation recovery policy reduce the amount reported in the applicable column, as well as the ''total'' column'' for the fiscal year in which the amount recovered initially was reported and be identified by footnote.[335]

As adopted,[336] 17 CFR 229.402(w)(1) (''Item 402(w)(1)'') [337] applies if at any time during or after its last completed fiscal year the issuer was required to prepare an accounting restatement that required recovery of erroneously awarded compensation pursuant to the listed issuer's compensation recovery policy required by the listing standards adopted pursuant to Rule 10D–1, or there was an outstanding balance as of the end of the last completed fiscal year of erroneously awarded compensation to be recovered from the application of that policy to a prior restatement.[338]

In these circumstances, an issuer will be required to provide the following information in its Item 402 disclosure:

- The date on which the listed issuer was required to prepare an accounting restatement and the aggregate dollar amount of erroneously awarded compensation attributable to such accounting restatement (including an analysis of how the recoverable amount was calculated) [339] or, if the amount has not yet been determined, an explanation of the reasons and disclosure of the amount and related disclosures in the next filing that is subject to Item 402 of Regulation S–K; [340]
- The aggregate dollar amount of erroneously awarded compensation that remains outstanding at the end of its last completed fiscal year; [341]
- If the financial reporting measure related to a stock price or TSR metric, the estimates used to determine the amount of erroneously awarded compensation attributable to such accounting restatement and an explanation of the methodology used for such estimates; [342]
- If recovery would be impracticable pursuant to 17 CFR 240.10D–1(b)(1)(iv) (''Rule 10D–1(b)(1)(iv)''), for each current and former named executive officer and for all other current and former executive officers as a group, disclose the amount of recovery forgone and a brief description of the reason the listed registrant decided in each case not to pursue recovery; [343] and
- For each current and former named executive officer, disclose the amount of erroneously awarded compensation still owed that had been outstanding for 180 days or longer since the date the issuer determined the amount owed.[344]

We continue to believe that disclosure regarding the use of the impracticability exception in Rule 10D–1(b)(1)(iv) will provide information to shareholders and exchanges that will help them monitor the implementation of an issuer's recovery policy. Any brief description of the reason an issuer determined not to pursue recovery should include the element of Rule 10D–1(b)(1)(iv) that caused the impracticability, and should provide additional context relating to that element, such as:

- A brief explanation of the types of direct expenses paid to a third party to assist in enforcing the recovery policy, if the issuer is relying on Rule 10D–1(b)(1)(iv)(A);
- Identification of the provision of foreign law the recovery policy would violate if the issuer is relying on Rule 10D–1(b)(1)(iv)(B); or
- A brief explanation of how the recovery policy would cause an otherwise tax-qualified retirement plan to fail to meet the requirements of 26 U.S.C. 401(a)(13) or 26 U.S.C. 411(a), if the issuer is relying on Rule 10D–1(b)(1)(iv)(C).

Upon further consideration and in response to commenters concerns regarding the privacy of executive officers,[345] in a modification from the Proposing Release the final amendments require specific disclosure regarding use of the impracticability exception with respect only to the current and former named executive officers. The final amendments require more generalized disclosure regarding use of the impracticability exception with respect to other current and former executive officers as a group. Aggregated disclosure of recovery from the group of officers other than named executive officers is consistent with the registrant's reporting obligations for executive compensation purposes, and will help investors to monitor the registrant's implementation of its recovery obligation. However, we believe that more detailed information

(a)(3)) for those registered management investment companies that are subject to the requirements of Rule 10D–1.

334 *See* new Item 402(w) of Regulation S–K, Item 6.F. of Form 20–F, and Instruction 19 of Form 40–F.

335 *See* Instruction 5 to 17 CFR 229.402(c), and Instruction 5 to 17 CFR 229.402(n). The language from the proposal has been revised for clarity but the revisions do not affect the substance of the instructions.

336 In a nonsubstantive modification from the proposed rules and in order to streamline the rule, we have removed the separate definitions of certain terms and incorporated the substance of the definition into the text of the rule.

337 All domestic listed issuers are subject to Item 402(w) disclosure and are required to provide the disclosure along with the issuer's other Item 402 disclosure as part of an issuer's annual reporting obligation. *See* Item 11. Executive Compensation of Form 10–K.

338 *See* Item 402(w)(1). The revised language of Item 402(w)(1) more clearly delineates when the disclosure is required and also addresses the commenter who asked for clarification of when a restatement is considered ''completed.'' This is because the trigger for disclosure is now when the issuer determines that it is required to prepare the restatement, which is the same event that triggers the issuer to comply with its compensation recovery policy pursuant to Rule 10D–1.

339 In a modification from the proposal, 17 CFR 229.402(w)(1)(i)(B) will require an analysis of how the amount of erroneously awarded compensation was calculated. We believe that investors will benefit from disclosure of the analysis of how the amount was calculated and agree with commenters that suggested such disclosures could be particularly helpful in assessing the issuer's executive compensation policies and practices for purposes of shareholder voting.

340 *See* 17 CFR 229.402(w)(1)(i)(A), (B), and (E). In another modification from the proposal, proposed Instruction 4 to Item 402(w) has been incorporated into the rule as 17 CFR 229.402(w)(1)(i)(E) (''Item 402(w)(1)(i)(E)'') and provides as proposed that if the aggregate dollar amount of erroneously awarded compensation has not yet been determined, the listed issuer must disclose this fact and explain the reasons. Item 402(w)(1)(i)(E) also now includes a requirement, when the amount has not yet been determined, to disclose the amount and related disclosures in the next filing that is subject to Item 402 of Regulation S–K. This modification was necessary, because otherwise the issuer would not be required to disclose the determined amount in a subsequent year unless the amount is still outstanding at the end of the year.

341 *See* 17 CFR 229.402(w)(1)(i)(D). To the extent that a company determines recovery is impracticable in reliance on the exceptions in 17 CFR 240.10D–1(b)(1)(iv), the balance would no longer be outstanding and disclosure under this section would no longer be provided.

342 *See* 17 CFR 229.402(w)(1)(i)(C).

343 *See* 17 CFR 229.402(w)(1)(ii).

344 In response to commenters' concerns regarding the privacy of executive officers, in a modification from the Proposing Release the final amendments limit these detailed disclosures to current and former named executive officers. We are requiring the more detailed disclosure for current and former named executive officers for the same reasons as those discussed at note 343 *supra. See* 17 CFR 229.402(w)(1)(iii). More general information about amounts remaining outstanding is required by 17 CFR 229.402(w)(1)(i)(D).

345 *See* notes 319 through 322.

for the named executive officers is appropriate, as it will be relevant to investors' understanding of current and prior compensation disclosures.

We are also adopting the amendment to Item 404(a) providing that an issuer that complies with its Item 402(w) disclosure requirements need not disclose any incentive-based compensation recovery pursuant to Item 404(a).[346]

The requirements elicit disclosure regarding an issuer's activity to recover erroneously awarded compensation during its last completed fiscal year. In a nonsubstantive modification from the proposal, we are adopting the substance of Instruction 5 to Item 402(w) as new 17 CFR 229.402(w)(3), which limits the disclosure requirement to proxy or information statements that call for Item 402 disclosure and the issuer's annual report on Form 10–K and provides that the information required by Item 402(w) will not be deemed to be incorporated by reference into any filing under the Securities Act, except to the extent that the listed registrant specifically incorporates it by reference. As this information is similar to other executive compensation information required by Item 402 and is likely to serve a similar purpose for investors in evaluating the issuer and making voting decisions, we believe that the information is most relevant to shareholders in an issuer's proxy or information statements that call for Item 402 disclosure and the issuer's annual report on Form 10–K.

As proposed, the disclosure will be required as a separate item rather than as an amendment to the CD&A requirement because the requirements apply to any current or former executive officer, not just ''named executive officers'' and CD&A requirements do not apply to SRCs, EGCs, and FPIs,[347] all of which are subject to the new requirements.[348]

With respect to registered management investment companies subject to Rule 10D–1, the final rules will require information mirroring the Item 402(w) disclosure to be included in annual reports on Form N–CSR and in proxy statements and information statements relating to the election of directors.[349] Similarly for listed FPIs, the same information called for by Item 402(w) will be required in their annual reports filed with the Commission pursuant to Section 13(a) or Section 15(d) of the Exchange Act, such as on Form 20–F or, if the issuer elects to use the registration and reporting forms that U.S. issuers use, on Form 10–K.[350] MJDS filers will be required to provide this information in annual reports on Form 40–F.[351]

In addition, we are amending the cover page of Form 10–K, Form 20–F, and Form 40–F to add check boxes that indicate separately (a) whether the financial statements of the registrant included in the filing reflect correction of an error to previously issued financial statements, and (b) whether any of those error corrections are restatements that required a recovery analysis of incentive-based compensation received by any of the registrant's executive officers during the relevant recovery period pursuant to § 240.10D–1(b).[352] Comments in response to the Reopening Release generally supported the addition of check boxes to the cover page of Form 10–K.[353] Particularly as it relates to ''little r'' restatements which typically are not disclosed or reported as prominently as ''Big R'' restatements, the check boxes provide greater transparency around such restatements and easier identification for investors of those that triggered a compensation recovery analysis. Although the Reopening Release did not specifically ask about Forms 20–F and 40–F, these forms serve corresponding purposes as Form 10–K, and for similar reasons, we believe it will be beneficial to investors to include similar check boxes on the cover pages of these forms and note that their inclusion will be a relatively low burden. We are not adopting the check-box requirement for annual reports filed on Form N–CSR because the current content and formatting requirements for registered management investment companies' annual reports do not otherwise include check boxes, and because we anticipate that a limited number of registered management investment companies will be affected by the final rules.[354]

Relatedly, in a modification from the proposal, to allow investors to understand the check boxes in the appropriate context of the issuer's application of its recovery policy, we are adding a disclosure requirement in a new 17 CFR 229.402(w)(2) to require that, if at any time during its last completed fiscal year a registrant prepared an accounting restatement, and the registrant concluded that recovery of erroneously awarded compensation was not required pursuant to the registrant's

[346] Item 404(a) requires a description of certain transaction between the issuer and a related person. To avoid duplicative disclosure, we are amending Instruction 5.a.iii to Item 404(a) of Regulation S–K largely as proposed. We are clarifying the description of affected compensation in the instruction to indicate that it applies to erroneously awarded compensation computed as provided in 17 CFR 240.10D–1(b)(1)(iii) and the applicable listing standards for the registrant's securities. *See also* Instruction 1 to Item 22(b)(20) of Schedule 14A for registered management investment companies (information provided pursuant to Item 22(b)(20) is deemed to satisfy the requirements of paragraphs (b)(8) and (b)(11) of Item 22 with respect to the recovery of erroneously awarded compensation pursuant to Rule 10D–1(b)(1)). *See also* Item 7.B to Form 20–F for FPIs (disclosure need not be provided pursuant to this Item if the transaction involves the recovery of erroneously awarded compensation that is disclosed pursuant to Item 6.F).

[347] SRCs and EGCs are not required to provide CD&A in accordance with the scaled disclosure requirements contained in Item 402 of Regulation S–K. *See* 17 CFR 229.402(*l*) and Section 102(c) of the JOBS Act. FPIs and filers under the multijurisdictional disclosure system (''MJDS'') who file annual reports on Form 20–F or Form 40–F, respectively, are not subject to Item 402 of Regulation S–K and are not required to provide CD&A. *See* Form 20–F and Form 40–F. Similarly, FPIs electing to use U.S. issuer registration and reporting forms are not required to provide CD&A because they will be deemed to comply with Item 402 by providing the information required by Items 6.B and 6.E of Form 20–F, with more detailed information provided if otherwise made publicly available or required to be disclosed by the issuer's home jurisdiction or a market in which its securities are listed or traded. *See* 17 CFR 229.402(a)(1) of Regulation S–K.

[348] We note that a listed issuer required to provide CD&A could choose to include the Item 402(w) disclosure in its CD&A discussion of its recovery policies and decisions pursuant to 17 CFR 229.402(b)(2)(viii) of Regulation S–K, which could benefit investors by disclosing all compensation recovery information together in the filing.

[349] *See* Item 18 of Form N–CSR; Item 22(b)(20) of Schedule 14A. We are also amending General Instruction D to Form N–CSR to permit registered management investment companies subject to Rule 10D–1 to answer the information required by Item 18 by incorporating by reference from the company's definitive proxy statement or definitive information statement. In addition, we are amending 17 CFR 270.30a–2 to reflect the new item numbers in Form N–CSR. We are also cross-referencing Item 18 of Form N–CSR in Item 22(b)(20) of Schedule 14A rather than restating the requirements of Form N–CSR in Schedule 14A.

[350] Because securities registered by these listed issuers are exempt from Section 14(a) of the Exchange Act, these issuers are not required to disclose any proxy or consent solicitation materials with respect to their securities under that provision. *See* Item 6.F of Form 20–F.

[351] *See* Paragraph (19) of General Instruction B of Form 40–F.

[352] In a nonsubstantive change from the Reopening Release, we have refined certain terminology for clarity.

[353] While we recognize some commenters' concerns regarding the usefulness of the information provided by the check boxes and their views that additional check boxes do not simplify the disclosure, we believe that the check boxes will help investors more readily identify restatements by issuers and whether any of the restatements triggered a compensation recovery analysis. *See supra* note 324. We agree with those commenters that suggested that compensation recovery analysis is relevant to investors such that a check box appropriately highlights the issue. *See supra* note 323.

[354] We estimate that only seven registered management investment companies that are listed issuers and are internally managed may have executive officers who receive incentive-based compensation, and thus could be subject to the new rules.

compensation recovery policy required by the listing standards adopted pursuant to Rule 10D–1, the issuer must briefly explain why application of its recovery policy resulted in this conclusion. The additional disclosure will provide useful context to investors and the exchanges when an issuer has issued an accounting restatement and facilitates a better understanding of how an issuer is applying its recovery policy.

Finally, in a modification from the proposal, we are requiring tagging of any specific data points included within the compensation recovery disclosures, as well as block text tagging of those disclosures, in Inline XBRL.[355] Because existing Commission rules require the Inline XBRL tagging of all cover page information on Forms 10–K, 20–F, and 40–F, the two new cover page check boxes will be tagged in Inline XBRL.[356] We recognize some commenters' concerns relating to the costs of implementing the use of XBRL and their additional concerns that the data may lack comparability across filers, including as a result of custom tagging, which may limit its utility to investors. However, we agree with other commenters that Inline XBRL requirements will facilitate analysis of the new compensation recovery disclosures, even in situations where the particular characteristics of compensation recovery programs, such as the methods by which filers calculate the amount of erroneously awarded compensation, may not be fully comparable across filers (*e.g.,* by enabling analysis of trends in a single filer's disclosures over multiple reporting periods). Requiring Inline XBRL tagging of the compensation recovery disclosure benefits investors by making the disclosures more readily available and easily accessible to investors, market participants, and others for aggregation, comparison, filtering, and other analysis, as compared to requiring a non-machine-readable data language such as ASCII or HTML. At the same time, we do not expect the incremental compliance burden associated with tagging the additional information to be unduly burdensome, because issuers subject to the tagging requirements are, or in the near future will be, subject to similar Inline XBRL requirements in other Commission filings.[357]

E. Indemnification and Insurance

State indemnification statutes, indemnification provisions in an issuer's charter, bylaws, or general corporate policy and coverage under directors' and officers' liability insurance provisions may protect executive officers from personal liability for costs incurred in a successful defense against a claim or lawsuit resulting from the executive officer's service to the issuer. In the context of Securities Act registration statements, a registrant is required to state the general effect of any statute, charter provisions, bylaws, contract or other arrangements under which any controlling person, director, or officer of the registrant is insured or indemnified in any manner against liability which he may incur in his capacity as such.[358]

1. Proposed Amendments

The Commission proposed that listed issuers would be prohibited from indemnifying any executive officer or former executive officer against the loss of erroneously awarded compensation. Further, while an executive officer may be able to purchase a third-party insurance policy to fund potential recovery obligations, the indemnification prohibition would prohibit an issuer from paying or reimbursing the executive officer for premiums for such an insurance policy.

Comments

We received mixed comments on the proposal that listed issuers be prohibited from indemnifying any executive officer or former executive officer against the loss of erroneously awarded compensation. A number of commenters expressly supported the proposed treatment of indemnification and insurance.[359] Some of these commenters suggested that permitting indemnification would fundamentally undermine the purpose of the statute and effectively nullify the mandatory nature of the compensation recovery.[360] Some commenters recommended that the Commission go even further, such as by discouraging or prohibiting executive officers from procuring their own insurance.[361]

In contrast, a number of commenters expressed concerns with the proposed prohibition.[362] Some of these commenters contended that Section 10D does not prohibit indemnification.[363] One commenter recommended the approach in 17 CFR 229. 512(h) where the Commission expresses its opinion regarding indemnification, but does not prohibit it by rule.[364] Some others asserted that a prohibition on indemnification or issuer-paid insurance would be appropriate only where recovery is premised on fraud or

[355] *See* 17 CFR 229.402(w)(4) of Regulation S–K and 17 CFR 232.405 (Rule 405 of Regulation S–T). In a nonsubstantive modification from the proposal, we have moved the appearance and formatting requirement to 17 CFR 229.402(w)(3) and have separately addressed requirements relating to interactive data in 17 CFR 229.402(w)(4).

[356] *See* 17 CFR 229.601(b)(104) and 17 CFR 232.406 (Rule 406 of Regulation S–T). Issuers will thus be required to use the most updated versions of all taxonomies used to tag the filing to comply with the rule.

[357] As noted in the Reopening Release, subsequent to the proposal, the Commission adopted rules replacing XBRL tagging requirements for issuer financial statements and open-end fund risk/return summary disclosures with Inline XBRL tagging requirements. Inline XBRL embeds the machine-readable tags in the human-readable document itself, rather than in a separate exhibit. *See Inline XBRL Filing of Tagged Data,* Release No. 33–10514 (June 28, 2018) [83 FR 40846 (Aug. 16, 2018)]. As a result of those changes, we are using Inline XBRL, rather than XBRL, for the tagging requirements. *See also Securities Offering Reform for Closed-End Investment Companies,* Release No. 33–10771 (Apr. 8, 2020) [85 FR 33290 (June 1, 2020) at 33318]. Inline XBRL requirements for business development companies will take effect beginning Aug. 1, 2022 (for seasoned issuers) and Feb. 1, 2023 (for all other issuers).

[358] *See* 17 CFR 229.702.

[359] *See, e.g.,* comment letters from; AFL–CIO; AFR 1; CalPERS 1; and Rutkowski 1. *See also* comment letter from ABA 1 (expressing qualified support, but stating that issuers should not be prohibited from indemnifying executives' litigation expenses in compensation recovery actions consistent with state law, noting that these arrangements permit advancement of legal expenses incurred in defending a claim by the issuer if the executive ''acted 'in good faith' and in a manner reasonably believed to be, or not opposed to, the best interests of the issuer'').

[360] *See, e.g.,* comment letters from AFL–CIO; AFR 1; and Rutkowski 1.

[361] *See, e.g.,* comment letters from American Insurance Association (''AIA''); Better Markets 1; FSR; and TCA.

[362] *See, e.g.,* comment letters from Bishop (expressing concern over retroactive application to existing compensation agreements); CCMC 1; Compensia (suggesting compensation payments in the ordinary course of business could be mistaken for indemnification and recommending guidance); NACD; Pearl Meyer (expressing concern that a prohibition on indemnification could adversely affect a public company's ability to hire executive officers); and SCG 1.

[363] *See, e.g.,* comment letters from Bishop (suggesting that ''will'' in Section 10D expresses ''a simple futurity'' whereas ''shall'' expresses an obligation); CCMC 1 (suggesting the proposal may exceed the Commission's authority as it would touch on state regulation of insurance products); and SCG 1.

[364] *See* comment letter from CCMC 1. 17 CFR 229.512(h) provides that if acceleration of a Securities Act registration statement is requested, the registration statement is required to include an undertaking stating that the registrant has been advised that in the opinion of the Securities and Exchange Commission indemnification of directors, officers and controlling persons for liabilities arising under the Securities Act is against public policy as expressed in the Securities Act and is therefore unenforceable. The undertaking further provides that in the event that such a claim for indemnification is asserted, the registrant will, unless in the opinion of its counsel the matter has been settled by controlling precedent, submit to a court of appropriate jurisdiction the question whether such indemnification by it is against public policy as expressed in the Securities Act and will be governed by the final adjudication of such issue.

misconduct.[365] Commenters additionally expressed concern that the rule could be construed to conflict with state law provisions providing for indemnification under certain circumstances.[366]

3. Final Amendments

After considering the views of commenters, we are adopting as proposed rules to prohibit issuers from insuring or indemnifying any executive officer or former executive officer against the loss of erroneously awarded compensation.[367] While an executive officer may be able to purchase a third-party insurance policy to fund potential recovery obligations, the indemnification provision prohibits an issuer from paying or reimbursing the executive officer for premiums for such an insurance policy.[368]

Congress designed the recovery policy required by Section 10D to apply on a no-fault basis, requiring listed issuers to develop and implement a policy to recover ''any compensation in excess of what would have been paid to the executive officer had correct accounting procedures been followed.'' [369] The Proposing Release acknowledged that state indemnification statutes, indemnification provisions in an issuer's charter, bylaws, or general corporate policy and coverage under directors' and officers' liability insurance provisions may protect executive officers from personal liability for costs incurred in a successful defense against a claim or lawsuit resulting from the executive officer's service to the issuer.[370] However, Section 10D's listing standard requirement that ''the issuer will recover'' is inconsistent with indemnification because a listed issuer does not effectively ''recover'' the excess compensation from the executive officer if it has an agreement, arrangement, or understanding that it will mitigate some or all of the consequences of the recovery.[371] Indemnification arrangements that permit executive officers to retain or recover compensation that they were not entitled to receive based on restated financial statements would fundamentally undermine the purpose of Section 10D.[372]

We further believe that Section 29(a) of the Exchange Act would render any indemnification agreement void and unenforceable to the extent that the agreement purported to relieve the issuer of its obligation under Section 10(D), Rule 10D–1, and a resulting listing standard to recover erroneously paid incentive-based compensation. Section 29(a) provides that any condition, stipulation, or provision binding any person to waive compliance with any provision of this title or of any rule or regulation thereunder, or of any rule of a self-regulatory organization, shall be void.[373] As courts have noted, by its terms, Section 29(a) prohibits waiver of the substantive obligations imposed by the Exchange Act. The underlying concern of this section is 'whether the [challenged] agreement weakens [the] ability to recover under the Exchange Act.' '' [374]

We acknowledge commenters who raised various concerns with respect to the prohibition on issuers insuring or indemnifying executive officers with respect to recoverable compensation. While we acknowledge that states may have specific provisions permitting issuers to indemnify or insure their executive officers in certain circumstances, we are unaware of any provisions that mandate such indemnification or insurance, and as such, we do not believe the final rules are in conflict with such provisions. We also acknowledge, as one commenter observed, that states regulate certain insurance products. Nevertheless, we believe Rule 10D–1's prohibition is necessary to ensure that the recovery policy mandated by Congress for issuers listed on U.S. national exchanges is given actual effect. Additionally, because the rules apply to all listed issuers, with limited exceptions, we do not find the assertions by commenters that such prohibitions would put issuers at a disadvantage in the ability to hire executive officers to be compelling. In light of Section 10D's mandate to return to issuers and shareholders compensation that was erroneously awarded, we agree with commenters who asserted that any issuer indemnification or insurance of an executive officer's obligation to return erroneously awarded compensation would be contrary to the statute, and therefore, we continue to believe it is appropriate to restrict an issuer's ability to do so.

F. Transition and Timing

Section 10D does not address transition and timing of implementation of the rules.

1. Proposed Amendments

The Commission proposed that each exchange be required to file its proposed listing standards no later than 90 days following publication of the final rules in the **Federal Register**, and that such listing standards be effective no later than one year following that same publication date. Further, each listed issuer would be required to adopt a compliant recovery policy no later than 60 days following the date on which the listing rules to which it is subject become effective. The Commission also proposed that each listed issuer be required to recover pursuant to the issuer's recovery policy all erroneously awarded incentive-based compensation:

- Received by executive officers and former executive officers as a result of attainment of a financial reporting measure based on or derived from financial information for any fiscal

[365] *See* comment letters from NACD; and SCG 1.

[366] *See* comment letters from Bishop; and SCG 1 (suggesting that the risk of private litigation would justify issuer indemnification and insurance and citing to the General Corporation Law of Delaware that provides for indemnification where the agent has been successful on the merits).

[367] *See* 17 CFR 240.10D–1(b)(1)(v).

[368] Such indemnification or reimbursement would also be prohibited through modification to current compensation arrangements or other means that would amount to *de facto* indemnification, such as, for example, by providing an executive a new cash award which the issuer would then ''cancel'' to effect recovery of outstanding recoverable amounts.

[369] *See* Senate Report at 136.

[370] *See* Proposing Release at Section II.F.

[371] *See Cohen* v. *Viray,* 622 F.3d 188, 195 (2d Cir. 2010) (holding that an indemnification agreement cannot be used to release the CEO and CFO from liability to repay compensation under Sarbanes-Oxley Act Section 304, in part because ''indemnification cannot be permitted where it would effectively nullify a statute''); *see also* Senate Report at 136 (''[I]t is unfair to shareholders for corporations to allow executives to retain compensation that they were awarded erroneously''). To the extent that an issuer indemnifies an executive officer, arranges for or provides insurance protecting against the risk that incentive-based compensation will be recovered pursuant to the issuer's recovery policy, whether directly by purchasing this coverage or indirectly by increasing the executive compensation to facilitate the executive officer's purchase of this coverage, the executive officer retains the excess compensation to which he or she was not entitled.

[372] *See First Golden Bancorporation* v. *Weiszmann,* 942 F.2d 726, 729 (10th Cir. 1991) (finding any attempt by a corporate insider to seek indemnity against liability for short-swing profits under Section 16(b) of the Exchange Act void as against public policy where Congress had a clear intent to provide a ''catch-all, prophylactic remedy, not requiring proof of actual misconduct'').

[373] 15 U.S.C. 77cc. National securities exchanges and national securities associations are self-regulatory organizations. 15 U.S.C. 78c(a)(26).

[374] *See AES Corp.* v. *The Dow Chemical Company,* 325 F.3d 174, 179 (3d Cir. 2003) (quoting *Shearson/American Express, Inc.* v. *McMahon,* 482 U.S. 220, 228, 230 (1987)). *See also Cohen* v. *Viray,* 622 F.3d at 195 (citing Section 29(a) in rejecting indemnification against Sarbanes-Oxley Act Section 304 liability); and *Allied Artists Pictures Corp.* v. *Giroux,* 312 F. Supp. 450 (S.D.N.Y. 1970) (Section 29(a) rendered general release given by corporation to former chairman ''unenforceable as a matter of law'' in action by corporation to recover short-swing profits action under Section 16(b) of the Exchange Act).

period ending on or after the effective date of Rule 10D–1; and

- That is granted, earned or vested on or after the effective date of Rule 10D–1.

Finally, the Commission proposed that an issuer be required to file the required disclosures in the applicable Commission filings required on or after the date on which the listing standards become effective.

2. Comments

We received limited comment on transition and timing. One commenter found the proposed schedule for the exchanges to file their proposed listing standards and have them declared effective to be ''workable and appropriate.'' [375]

Commenters that addressed the issue generally supported applying recovery policies only to incentive-based awards granted or performance periods that begin after the effective date of the relevant exchange listing standards [376] or the effective date of the final rules.[377] Some of these commenters expressed concerns regarding retroactive application of the rules,[378] with one noting that applying the rule to awards earned or vested after the effective date of Rule 10D–1 could pick up awards granted prior to the effective date.[379] A number of commenters also expressed concern regarding the effect of the rules on existing contracts, noting that existing contracts typically can be amended only with consent.[380] Finally, some commenters thought the proposed 60-day period for issuers to adopt their recovery policies following the effective date of the exchanges' listing rules was too short and recommended additional time.[381]

3. Final Amendments

After considering the views of commenters, we are adopting transition and timing requirements substantially as proposed, with a modification in response to commenters (as described below). Under the final amendments, issuer compliance is required whether such incentive-based compensation is received pursuant to a pre-existing contract or arrangement, or one that is entered into after the effective date of the exchange's listing standard.

Under the rules we are adopting: (i) each exchange will be required to file its proposed listing standards no later than 90 days following the November 28, 2022, (ii) the listing standards must be effective no later than one year following the November 28, 2022, and (iii) each issuer subject to such listing standards will be required to adopt a recovery policy no later than 60 days following the date on which the applicable listing standards become effective.[382] We would not expect compliance with the disclosure requirement until issuers are required to have a policy under the applicable exchange listing standard.

As noted above, several commenters raised concerns about application of the mandated recovery policy to compensation that was granted prior to the effective date of the rules. In a modification from the proposal in response to these concerns, and to provide an additional transition period, the final rules provide that each listed issuer is required to comply with the recovery policy for all incentive-based compensation received (as defined in 17 CFR 240.10D–1(d) [383]) by current or former executive officers on or after the effective date of the applicable listing standard (as opposed to the effective date of Rule 10D–1).[384] In addition, each listed issuer is required to provide the disclosures required by the rule and Item 402(w) in the applicable Commission filings required on or after the date on which the exchanges' listing standards become effective.[385]

Notwithstanding these extended transition periods, we recognize that there could be incentive-based compensation that is the subject of a compensation contract or arrangement that existed prior to the effective date of Rule 10D–1 which was not received until after the effective date of the applicable listing standards—and therefore would be subject to recovery under the final amendments. We do not believe this would be an inappropriate application of the mandated recovery policy. In our view, executives do not have a reasonable settled expectation in retaining compensation that was erroneously awarded based on misreported financial metrics, particularly when those financial metrics were attained on or after the effective date of the applicable listing standards, as contemplated by the final amendments. For similar reasons, we do not believe it is inappropriate to apply the mandated recovery policy to pre-existing compensation contracts or arrangements.

While we acknowledge commenter concerns about the need for adequate time to prepare for the application of the listing standards and the development of appropriate recovery policies, including in some cases the renegotiation of certain contracts, we believe the final rules provide ample time for such preparations. In that regard, we note that issuers will have more than a year from the date the final rules are published in the **Federal Register** to prepare and adopt compliant recovery policies. We believe the prescriptive nature of Rule 10D–1 provides issuers with sufficient notice to begin such preparations concurrently with listing standards being finalized.

III. Other Matters

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

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[375] *See* comment letter from ABA 1.

[376] *See, e.g.,* comment letters from ABA 1; BRT 1; Compensia; Chevron; Mercer; and NACD.

[377] *See, e.g.,* comment letters from CCMC 1; Coalition; Meridian; and SCG 1.

[378] *See* comment letters from CCMC; and Coalition.

[379] *See* comment letter from Chevron.

[380] *See, e.g.,* comment letters from ABA 1 (stating that if the rule is not applied on a wholly prospective basis, it should apply only to erroneously awarded compensation granted after the effective date of final Rule 10D–1); BRT 1; CCMC 1; Coalition; Mercer; Meridian; NACD (stating that questions of contractual violations are serious and may not be resolved merely through an amendment to by-laws); and SCG 1 (suggesting that issuers may only be able to amend plans on a prospective basis, as plans often prohibit amendments that impair a participant's rights to an outstanding award, unless the participant consents). *See also* comment letters in response to the Reopening Release from ABA 2; Cravath; Hunton; McGuireWoods; and SCG 2. Some of these commenters recommended exceptions for existing contracts or awards (Cravath and Hunton) or an exception for compensation paid pursuant to existing employment and equity award agreements (SCG 2).

[381] *See* comment letters from ABA 1 (recommending an exemption or a delayed phase-in of at least two years for SRCs and EGCs); NACD (recommending 90 days); and Davis Polk 1 (recommending six months).

[382] *See* 17 CFR 240.10D–1(a)(2) and (3).

[383] Rule 10D–1 states ''[i]ncentive-based compensation is deemed received in the issuer's fiscal period during which the financial reporting measure specified in the incentive-based compensation award is attained, even if the payment or grant of the incentive-based compensation occurs after the end of that period.''

[384] *See* 17 CFR 240.10D–1(a)(3)(ii). Notwithstanding the look-back requirement in 17 CFR 240.10D–1(b)(1)(i)(D), an issuer is only required to apply the recovery policy to incentive-based compensation received after the effective date of the applicable listing standard.

[385] *See* 17 CFR 240.10D–1(a)(3)(iii). Issuers subject to such listing standards will be required to adopt a recovery policy no later than 60 days following the date on which the applicable listing standards become effective and must begin to comply with these disclosure requirements in proxy and information statements and the issuer's annual report on Form 10–K on or after the issuer adopts its recovery policy.

Pursuant to the Congressional Review Act, the Office of Information and Regulatory Affairs has designated these rules a ''major rule,'' as defined by 5 U.S.C. 804(2).

IV. Economic Analysis

As discussed above, Section 954 of the Dodd-Frank Act amends the Exchange Act to include new Section 10D, which requires the Commission to direct exchanges and associations to prohibit the listing of issuers that do not develop and implement policies to recover erroneously awarded incentive-based compensation.[386] The policies must provide that, in the event that the issuer is required to prepare an accounting restatement due to the issuer's material noncompliance with any financial reporting requirement under the securities laws,[387] the issuer will recover from any of the issuer's current or former executive officers who received incentive-based compensation (including stock options awarded as compensation) during the three-year period preceding the date the issuer is required to prepare the accounting restatement, based on the erroneous data, in excess of what would have been paid to the executive officer under the accounting restatement. From an economic perspective, when implemented, this change will effectively return the erroneously awarded compensation to the shareholders. Section 10D also calls for the listing standards to require each issuer to develop and implement a policy providing for disclosure of the issuer's policy on incentive-based compensation that is based on financial information required to be reported under the securities laws. We are adopting a new rule and rule amendments to satisfy the statutory mandates of Section 10D. As discussed above, we believe the intent of these statutory mandates is to require the return of executive compensation that was awarded erroneously to the issuer and its shareholders.

We have reviewed the letters and information provided by commenters, and performed an analysis of the main economic effects that may flow from the rules being adopted in this release. We consider the economic impact—including the costs and benefits and the impact on efficiency, competition, and capital formation—of the final rule requirements on issuers and other affected parties, relative to the baseline discussed below. Section 3(f) of the Exchange Act and Section 2(c) of the Investment Company Act require us, when engaging in rulemaking that requires us to consider or determine whether an action is necessary or appropriate in the public interest, to consider, in addition to the protection of investors, whether the action will promote efficiency, competition, and capital formation.[388] Further, Section 23(a)(2) of the Exchange Act requires us, when making rules under the Exchange Act, to consider the impact any new rule would have on competition and not adopt any rule that would impose a burden on competition that is not necessary or appropriate in furtherance of the purposes of the Exchange Act.[389] Where practicable, we have attempted to quantify the effects of the final rules; however, in many cases, we are unable to do so because we lack the data necessary to provide a reasonable estimate. For purposes of this economic analysis, we address the costs and benefits resulting from the statutory mandate and from our exercise of discretion together, recognizing that it is difficult to separate the costs and benefits arising from these two sources.

A. Baseline

To assess the economic impact of the final rules, we are using as our baseline the current state of the market without a requirement for listed issuers to implement and disclose a compensation recovery policy consistent with Section 10D. We begin by analyzing affected issuers, including the prevalence of incentive-based compensation. Next, we provide information on the frequency of restatements as triggering events. We also provide information on the regulatory baseline. Finally, we provide information on how many issuers currently have compensation recovery provisions, as well as descriptive information regarding those provisions.

We recognize that a substantial number of issuers[390] will be affected, since incentive-based compensation[391] is widely used. Although statistics reflecting the prevalence of incentive-based compensation precisely as defined in this rulemaking are not available, one study[392] found that 97% of a representative sample of the S&P 500 companies grant performance-based compensation as part of their long-term incentive plans, though the prevalence might be lower among smaller companies.[393]

The incidence of events where incentive-based compensation would be

[386] *See* Section I.

[387] The trigger events would include both ''Big R'' and ''little r'' restatements that correct errors in previously issued financial statements. *See* Section II.B.

[388] *See* 15 U.S.C. 78c(f); 15 U.S.C. 80a–2(c).

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

[390] As a starting point to describe the number of affected issuers, we identify the number of exchange listed companies. As of Dec. 31, 2021, there were approximately 5,300 exchange listed companies (excluding closed end funds and REITs). We recognize that there are many companies that, because they are not exchange listed, will not be affected by these rules. For instance, on Aug. 22, 2022, there were 12,454 securities quoted on OTCmarket.com, (*see* OTC Markets Grp. Inc., *Current Market,* OTC Markets (Aug. 22, 2022), *https://www.otcmarkets.com/market-activity/current-market*) and from 2013–2015 there were roughly 10,000 stocks quoted on OTC markets. *See* Josh White, *Outcomes of Investing in OTC Stocks,* (working paper, Dec. 16, 2016), *available at https://www.sec.gov/files/White_OutcomesOTCinvesting.pdf.*

[391] Compensation that may trigger recovery under the final rules includes amounts awarded under long-term incentive plans (such as performance-based equity) or short-term incentive plans (such as cash bonuses) that are granted, vested, or whose size is determined based on a financial metric.

[392] *See* Meridian Compensation Partners, *2021 Corporate Governance and Incentive Design Survey* (Fall 2021), *available at https://www.meridiancp.com/insights/2021-corporate-governance-and-incentive-design-survey/* (''Meridian Report'') (97% of a representative sample of S&P 500 companies grant performance-based vehicles as part of their long-term incentive plans as of 2021); *see also* Andrea Pawliczek, *Performance-Vesting Share Award Outcomes and CEO Incentives,* 96 Acct. Rev. 337 (2021) (''As of 2014, about 60 percent of S&P 1500 companies granted some form of performance-based equity awards''). These studies describe performance-based incentive awards, which may often, but not always, be included in the incentive-based compensation affected by this rulemaking. For example, as described in Section II.C.2.a.iii, incentive-based compensation would not include awards based on nonfinancial events, such as opening a specified number of stores, and it would include cash awards based on satisfaction of a performance target that is based on a financial reporting measure even if the performance target was not pre-established or communicated, or the outcome was not substantially uncertain.

[393] The three most common performance metrics used by the representative sample of the S&P 500 companies in long-term incentive plans were relative TSR (74%), return measures (46%), and earnings per share (31%). *See* Meridian Report. An alternative sample of firms, including smaller and foreign firms, yields slightly different results. Based on Commission staff analysis of 145 randomly sampled issuers drawn from the full population of issuers that filed an annual proxy statement in calendar year 2021, we estimate that approximately 42% of proxy statement filers used stock price and/or TSR as an element of their incentive-based compensation. Staff manually examined the CD&A in each of the 145 proxy statements to identify issuers that disclosed the use of stock price and/or TSR as compensation performance metrics in 2021. For purposes of this analysis, TSR may refer to relative TSR as well as TSR. This estimate is broadly consistent (*see* Scott Allen, *et al., The Latest Trends in Incentive Plan Design as Firms Adjust Plans Amid Uncertainty,* Humancapital/Aon Blog (Oct. 2020), *available at https://humancapital.aon.com/insights/articles/2020/the-latest-trends-in-incentive-plan-design-as-firms-adjust-plans-amid-uncertainty* (indicating, in Figure 9, that TSR is the most commonly used metric in the CEO's long-term incentive plan among S&P 500 companies in most industries, where the use of TSR ranges from 22% to 61% of companies depending on the industry). *See also* comment letter from CEC 2, noting that in 2020, the average portion of equity awards tied to performance metrics (not including stock options) surpassed 50%, and that the average portion of at risk pay in a CEO's compensation package exceeds 80%.

required to be recovered is affected by the number of restatements. One report indicates that 4.8% of companies disclosed a restatement in 2020.[394] As discussed above, both ''Big R'' and ''little r'' restatements may trigger compensation recovery analysis under the final rules.[395] As reported in the 2022 staff memorandum, we estimate that ''little r'' restatements may account for roughly three times as many restatements as ''Big R'' restatements.[396] Similarly, one recent study of accounting restatements between 2008 and 2015 identifies 634 ''Big R'' restatements and 1,653 ''little r'' restatements.[397]

We note that not all accounting restatements will trigger a recovery of compensation that was earned as a result of meeting performance measures. Using incentive-based compensation tied to net income as an example, in order for that compensation to be required to be recovered, there would have to be an accounting error that increased net income. Based on one recent study, 60% of all ''Big R'' restatements made between 2008 and 2015 had a negative impact on net income, and only 25% of ''little r'' restatements had a negative impact on net income.[398] Thus, not every restatement would trigger a recovery of compensation that is tied to net income.[399] Also, we expect that recovery of incentive-based compensation that is tied to TSR would be relatively small and infrequent as a result of ''little r'' restatements, since these restatements are less likely to be associated with significant stock price reactions.[400]

The final rules will require exchanges to apply the compensation recovery requirement to all listed issuers, including EGCs, SRCs, FPIs, debt-only issuers, and controlled companies, with only limited exceptions. As outlined in the table below, we estimate that Rule 10D–1 would be applicable to approximately 5,364 registrants.[401] We estimate that, of those 5,364 registrants, there are 1,039 SRCs (that are not also EGCs), 160 EGCs (that are not also SRCs or FPIs),[402] 757 issuers that are both SRCs and EGCs, 722 FPIs (filing annual reports on Form 20–F), and 132 MJDS issuers (filing annual reports on Form 40–F). There are a limited number of registered management investment companies that also would be affected by the final rules.[403]

[394] *See* A Twenty-One Year Review. In 2021, the number of restatements was substantially higher due to Special Purpose Acquisition Company (''SPAC'') restatements. Excluding SPAC restatements, there was a 10% year-over-year decrease in the number of restatements. *See* A Twenty-One-Year Review. Studies cited and data included in this release on ''little r'' restatement frequency may define ''little r'' restatements differently than the definition included in Section II, and are generally based on the total number of revisions to previously issued financial statements where the issuer did not file an Item 4.02 8–K. We note that one commenter observed that, ''if Dodd-Frank section 954 were in place in 2009, executive officers at up to 674 companies would have been subject to the clawback provisions,'' *see* comment letter from Kovachev, 2015. The commenter cited Audit Analytics, 2009 Financial Restatements, A Nine Year Comparison. The number of restatements has substantially declined since 2009 to 338 in 2021, after excluding SPAC restatements, *see* A Twenty-One Year Review (non-SPAC restatements comprise 23% of the total 1,470 restatements). We note that another commenter observed that since the initial 2015 proposal, ''improvements in checks and balances—such as board governance, audit committee oversight, and company systems of internal control over financial reporting—along with increased regulatory scrutiny by the SEC and PCAOB have occurred and act to help mitigate the likelihood of misstatements in financial statements filed with the Commission,'' *see* comment letter from CCMC (Nov. 22, 2021) (''CCMC 2'').

[395] *See* Section II.B.1.c. The following estimates are based on historical rates and types of restatements, which may not be indicative of future rates and types of restatements.

[396] This estimate, based on exchange-listed companies during calendar year 2021, excluding SPACs, reflects approximately 54 ''Big R'' restatements and 173 ''little r'' restatements; including SPACs would have yielded 837 ''Big R'' and 474 ''little r'' restatements. These estimates were obtained from the Audit Analytics Restatement database which covers all Commission registrants who have disclosed a financial statement restatement in electronic filings since Jan. 1, 2000. To remove SPACs from the restatements, these calculations exclude blank check companies (SIC code 6770) and shell companies. SPAC restatements were excluded because they were unusually high in 2021 due to Commission guidance that year that SPACs account for their warrants as liabilities instead of equity, prompting a wave of one-time restatements.

[397] These figures were provided in the 2022 staff memorandum. That memo also noted that ''little r'' restatements as a percentage of total restatements rose to nearly 76% in 2020, up from approximately 35% in 2005.

[398] *See* Choudhary *et al., supra* note 61. *See also* Thompson, *supra* note 79 (finding that 74% of ''Big R'' and 31% of ''little r'' restatements have a negative effect on net income); Christine Tan and Susan Young, *An Analysis of 'Little r' Restatements,* 29 Acct. Horizons 667 (2015) (finding that 11.8% of ''little r'' restatements revise net income downwards).

[399] Incentive-based compensation is more likely to be recovered if it is tied to more reported items on the financial statements. For example, incentive-based compensation tied to earnings or operating income is more likely to be recovered than incentive-based compensation tied to only revenue or only expenses. Between 2008 and 2015, approximately eight% of restatements involved expense recording (such as payroll or selling, general and administrative expenses). *See* Choudhary *et al., supra* note 61.

[400] *See* Choudhary *et al., supra* note 61 (finding an average stock price reaction of −3.3% to ''Big R'' restatements and −0.3% for ''little r'' restatements); Thompson, *supra* note 79 (finding an average stock price reaction of −1.5% to ''Big R'' restatements and −0.3% for ''little r'' restatements).

[401] We estimate the number of issuers subject to the final rule based upon Commission staff analysis of issuers that filed annual reports on Form 10–K, Form 20–F, or Form 40–F in calendar year 2021, regardless of the fiscal year of the filing, and that filed a proxy statement in 2021. The staff verified an issuer's Form 10–K to determine if the issuer is an SRC. The staff also checked an issuer's Form 10–K and registration statement to determine if the issuer is an EGC. The issuer's 12B status was used to identify exchange-listed companies. Staff determined an issuer's Section 12(b) registration status based, in part, on the self-reported status disclosed on the annual report cover page, as well as other determining factors such as the number or holders of record, the issuer's total assets, and the issuer's filing history of long- and short-form registrations (on Form 10–12 or Form 8–A12, respectively), deregistration filings (on Form 15), and delisting filings (on Form 25 or Form 25–NSE). Examining filings in this manner involves a certain degree of error, and it is possible for issuers to be misclassified. Hence, all numbers in this analysis should be taken as estimates.

[402] We include the U.S. EGCs only (that are not also SRCs or FPIs) in our estimate. The total count of EGCs (that are not also SRCs) including U.S. EGCs, FPI EGCs, and MJDS EGCs (that are not also SRCs) was 434 based on 2021 registrant filings).

[403] *See supra* note 41. Certain commenters describe the costs associated with compliance for registered management investment companies. We recognize that, in addition to internally managed funds, some externally managed funds may incur compliance costs if, for instance, they employ a chief compliance officer and include incentive based compensation as part of their pay package. *See, e.g.,* comment letter from ICI.

As described in the 2022 staff memorandum, compared to the baseline for the Proposing Release, in today's markets, many more companies have adopted compensation recovery policies.[404] For instance, one study of more than 17,000 companies from 1996 to 2017 reports that as of December 2017, 5,358 companies had a compensation recovery policy in place.[405] The rate of adoption may be higher among the larger U.S.-listed companies. Survey results indicate that 98% of a representative sample of S&P 500 companies have adopted compensation recovery policies as of 2021,[406] and 83% of a representative sample of mid-cap (S&P 400) companies as of 2020.[407]

As outlined in the table below, we estimate that approximately 46% of all filers currently disclose some form of an executive compensation recovery policy.[408] We further estimate that approximately 34% of SRCs, 19% of EGCs, nine % of issuers that are both SRCs and EGCs, 25% of FPIs, and 13% of MJDS issuers disclose some form of a recovery policy.

	Number of filers that disclose a recovery policy	*Number of filers affected (total)*	*Percent of filers that disclose a recovery policy*
All affected filers (total)	2,451	5,364	46%
SRCs	352	1,039	34
EGCs	31	160	19
SRC and EGCs	71	757	9
FPIs	178	722	25
MJDS	17	132	13
All other filers	1,804	2,554	71

In addition to the issuers with company-specific executive compensation recovery policies, under the baseline there are existing provisions of law concerning the recovery of such compensation under certain circumstances, as well as certain disclosure requirements. Sarbanes-Oxley Act Section 304 contains a recovery provision that is triggered when a restatement is the result of issuer misconduct. This provision applies only to CEOs and CFOs and the amount of required recovery is limited to compensation received in the 12-month period following the first public issuance or filing with the Commission of the improper financial statements.[409] In addition, interim final rules under Section 111 of the Emergency Economic Stabilization Act of 2008 (''EESA'') required institutions receiving assistance under the Troubled Asset Relief Program (''TARP'') to mandate that ''Senior Executive Officers'' and the next twenty most highly compensated employees repay compensation if awards based on statements of earnings, revenues, gains, or other criteria were later found to be materially inaccurate.[410] As discussed above, relative to either the Sarbanes-Oxley Act or EESA, the compensation recovery requirement of the final rules has a different scope because it would affect any current or former executive officer of a listed issuer and would be triggered when the issuer is required to prepare an accounting restatement due to material noncompliance of the issuer with any financial reporting requirement under securities laws, regardless of issuer or executive misconduct or the role of the executive officer in preparing the financial statements. Finally, we note that currently issuers other than SRCs, EGCs, and FPIs are required to disclose in their CD&A, if material, their policies and decisions regarding adjustment or recovery of named executive officers' compensation if the relevant performance measures are restated or adjusted in a manner that would reduce the size of an award or payment.[411]

Although there has been a large increase in the percentage of filers that disclose a compensation recovery policy since 2015,[412] recent studies indicate that these policies establish more limited circumstances in which a compensation recovery analysis would be triggered than would be the case under the final rules.[413] Many of the issuers that disclose having recovery policies require misconduct on the part of the executive officer to trigger recovery. For instance, a recent study reports that 52 out of 98 firms with misstatements and compensation recovery provisions required the employee to have contributed to the

[404] *See* 2022 staff memorandum.

[405] Ilona Babenko, *et al., Clawback Provisions and Firm Risk* (working paper 2021), *available at http://ssrn.com/abstract=4006661* (retrieved from SSRN Elsevier database) (''Babenko *et al.*''). One commenter reports 100% of the S&P 500 companies, and 99.7% of the remaining 2,500 companies in the Russell 3000 index, have some form of compensation recovery policy, according to the ISS QualityScore database, *see* comment letter from the Office of the Comptroller of the State of New York. *See also* comment letter from CEC 2 (indicating based on an Oct. 2021 survey of their subscribers, more than 90% maintain a clawback policy, and citing a study finding that the number of large companies with clawback policies may be as high as 97%). As discussed below, we expect that most of these policies will require revision to meet the requirements in this rule. *See, e.g.,* note 413.

[406] *See* Meridian Report.

[407] *See* Clearbridge Compensation Grp., *Executive Compensation Policies, The Clearbridge 100 Report for Mid-Cap Companies* (Dec 2020) *available at https://www.clearbridgecomp.com/wp-content/uploads/CB100-Report-for-Mid-Cap-Companies-Exec-Comp-Policies-12-11-20.pdf (''Clearbridge Report'').*

[408] We estimate the number of issuers that have disclosed some form of recovery policy based on Commission staff analysis of information disclosed in Form 10–K, Form 20–F, Form 40–F, and an issuer's annual proxy statement (DEF 14A). (Staff used text analysis and keyword searches similar to those of Babenko, *et al.*). In contrast to the analysis provided in the Proposing Release, we modified the keyword search because the searches identified issuers that disclosed they had *not* adopted or *were considering adopting,* compensation recovery provisions. Specifically, 3 out of 5,367 (0.6%) of companies did not file DEF 14A in 2021. We further eliminated 235 out of 5,364 (4%) of issuers flagged by the keyword search because the disclosures indicated the absence or consideration of compensation recovery provisions rather than their presence. Examining filings in this manner involves a certain degree of error, and it is possible for issuers to be misclassified. Hence all numbers in this analysis should be taken as estimates.

[409] *See* 15 U.S.C. 7243.

[410] Under EESA, a ''Senior Executive Officer'' is defined as an individual who is one of the top five highly paid executives whose compensation is required to be disclosed pursuant to the Exchange Act. *See* Department of Treasury interim final rule, *TARP Standards for Compensation and Corporate Governance,* 74 FR 28394 (June 15, 2009).

[411] *See* 17 CFR 229.402(b)(2)(viii).

[412] *See* 2022 staff memorandum.

[413] *See, e.g.,* Tor-Erik Bakke *et al., The Value Implications of Mandatory Clawback Provisions* (working paper June 28, 2018), *available at https://ssrn.com/abstract=2890578* (retrieved from SSRN Elsevier database) (as of 2014–2015, only 5% (43 of 1,123) of companies with a voluntarily adopted compensation recovery policy have policies that are comparable to the Proposing Release); *see also* Meridian Report and ClearBridge Report. *Cf.* Erkens *et al., supra* note 62 (developing a ''Clawback Strength Index,'' and finding that adopters of stronger policies experience more benefits).

restatement with fraudulent actions or misconduct, whereas 46 of the 98 do not explicitly require fraud or misconduct as a condition of the recovery.[414] By contrast, the final rules would require a listed issuer to have a recovery policy that applies to ''Big R'' and ''little r'' restatements, without regard to misconduct.

There appears to be considerable variation in the coverage of executive officers subject to recovery under currently disclosed recovery policies.[415] Under the final rules, a listed issuer's compensation recovery policy will require recovery of erroneously awarded compensation received after an individual began serving as an executive officer of the issuer during the recovery period. As a result, in some cases, recovery will be required from individuals who may be former executive officers either at the time they receive the incentive-based compensation or at the date when the listed issuer is required to prepare an accounting restatement. By contrast, most of the issuer-specific executive compensation recovery policies do not apply to former executive officers. For example, in a representative sample of firms from the S&P 500, only 13% of executive compensation recovery policies would apply to former executive officers as well as current executive officers,[416] and a study of mid-cap companies reports that 19% of executive compensation recovery policies would apply to former executive officers.[417] Therefore, according to recent studies, the majority of issuers disclose having recovery policies that require compensation recovery from a narrower range of individuals than a recovery policy that would comply with the final rule requirements.

While recent studies have shown that many issuers' current recovery policies differ from the requirements of the final rules, certain aspects of currently disclosed recovery policies are generally consistent with the final rules. For example, in a representative sample of firms from the S&P 500, 98% of issuers that disclosed recovery policies indicate that both cash and equity incentives would be included in the policy.[418] Also, most mid-cap issuers (74%) specified a look-back period of three years.[419] Thus a number of issuers with disclosed recovery policies include compensation scope and look-back provisions that may be consistent with the requirements under the final rules.

In summary, many issuers have voluntarily adopted compensation recovery policies. However, studies suggest that there may be substantial gaps between those voluntarily adopted policies and the new requirements, particularly with respect to inclusion of former executive officers, the events that would trigger recovery analyses, and the ''no-fault'' nature of the final rules.

B. Analysis of Potential Economic Effects

The final rules require exchanges and associations to establish listing standards that will require each issuer to implement and disclose a policy providing for the recovery of erroneously awarded incentive-based compensation. Consistent with Section 10D, the final rules require that the recovery of incentive-based compensation be triggered in the event the issuer is required to prepare an accounting restatement due to material noncompliance with any financial reporting requirement under the securities laws.[420] The final rules are predicated on the premise that an executive officer should not retain compensation that, had the issuer's accounting been done properly in the first instance, would never have been received by the executive officer, regardless of any fault of the executive officer for the accounting errors. One benefit of the rule is that it will effectively return the erroneously awarded compensation to issuers and shareholders. In addition, the rule may reduce the likelihood of accounting errors because executive officers—insofar as they have the ability to affect financial reporting—may have an enhanced incentive to ensure that greater care is exerted in preparing accurate financial reports, and a reduced incentive to engage in inappropriate accounting practices for the purpose of increasing incentive-based compensation awarded to them.[421] While these incentives could result in higher-quality financial reporting[422] that would benefit investors, they may also distort capital allocation decisions.

The requirement that an issuer implement a recovery policy may introduce uncertainty about the amount of incentive-based compensation the executive officer will be able to retain.[423] As a result, executive officers may demand that incentive-based compensation comprise a smaller portion of their compensation packages, or that they receive a greater total amount of compensation, to adjust for the possibility that the awarded

[414] *See* Thompson, *supra* note 78. Similarly, according to a study of a representative sample of S&P 500 companies, 53% of compensation recovery policies are triggered by financial restatements without requirement of ethical misconduct, regardless of cause, *see* Meridian Report. In addition, Babenko *et al.* (finding that 69% of compensation recovery policies specify that recovery applies only to persons directly responsible for the triggering event, and that 63% of companies have a disclosed ''statute of limitations'' for the recovery policy that is less than three years). In an earlier study of 2,326 companies in the Corporate Library database, DeHaan *et al. supra* note 62 find that 39% had compensation recovery policies that did not require executive misconduct in order to be triggered.

[415] As of 2021, approximately 60% of a representative sample of S&P 500 companies had recovery policies that applied to current key executives (*e.g.,* Section 16 officers); approximately 23% applied to all incentive (annual and/or equity) plan participants; approximately 13% applied to current and former key executives (*e.g.,* Section 16 officers); and the remaining 4% applied to current named executive officers only. *See* Meridian Report. *See also* Shearman & Sterling, *Corporate Governance & Executive Compensation Survey 2021* (2021), *available at https://www.shearman.com/Perspectives/2021/11/Shearman-Releases-19th-Annual-Corporate-Governance-and-Executive-Compensation-Survey* (reporting similar results from a survey of the 100 largest U.S. public companies) (''S&S Report''). One commenter estimated that the rule may cover approximately 50,000 executives, if there are on average ten executive officers subject to recovery provisions at each issuer subject to Rule 10D–1. *See* comment letter from Fried. Although in some cases, there may be many affected executive officers, we expect that the number of affected executive officers will vary depending on several factors, including the structure of the issuer and its history of executive turnover.

[416] *See* Meridian Report. *See also* S&S Report.

[417] *See* Clearbridge Report.

[418] *See* Meridian Report. Similarly, a study of the largest 100 U.S. public companies shows that 79 of the 95 companies that maintain a compensation recovery policy may recoup both cash and equity incentives (*see* S&S Report), and a study of midcap companies shows that 95% of companies with a compensation recovery policy would include the annual cash bonus and 90% would include PSUs (*see* Clearbridge Report).

[419] *See* Clearbridge Report.

[420] The set of relevant restatements includes those that correct errors in previously issued financial statements that are material to those previously issued financial statements or that would result in a material misstatement if the errors were corrected in or left uncorrected in the current report. *See* Section II.B.1.

[421] We recognize that some of the executive officers affected by the amendments may not have the ability to directly affect the financial reporting of the issuer.

[422] For purposes of this economic analysis, high-quality financial reporting means that the financial disclosure is informative about the actual performance and condition of the issuer, and should be informative about its value.

[423] The recovery policy would require listed issuers to recover excess compensation paid, but it would not require them to provide additional payment to executive officers in cases where a restatement would have resulted in a greater amount of compensation. We recognize that, absent any requirements and under the baseline, issuers may voluntarily compensate executives under such circumstances. But if executives are not compensated when a restatement would have resulted in a greater amount of compensation, this asymmetry may further reduce the value executive officers place on compensation subject to such a recovery policy.

incentive-based compensation may be reduced due to future recovery. And to the extent that executive officers respond negatively to the expected effects of the compensation recovery policies developed and implemented by issuers, the final rules may cause affected issuers to be less able to attract and retain executive talent. But we expect that investors may benefit to the extent that incentive based compensation will become more sensitive to the true performance of the issuer, which would better align the interests of the executive officers with those of the shareholders.

Thus, as previewed above and discussed in more detail below, the final rule may produce both benefits and costs for the affected parties. Economists have analyzed the effects of the benefits and costs of issuer compensation recovery policies on issuer valuation. Specifically, one study analyzed the stock price reactions to the issuance of the Proposing Release and a second study examined stock price reactions to the adoption of voluntary compensation recovery provisions. The studies find, with certain caveats and limitations, positive average stock price reactions to the announcement of the events—whether the proposal of the regulations, or a particular issuer's adoption of voluntary compensation recovery provisions.[424] These stock price reactions indicate that market participants have assigned an overall positive value to the adoption of such provisions, leading to the observed increase in stock price on the date of the announcement.[425] These results support the inference that the benefits associated with adoption of compensation recovery provisions may justify the costs.[426]

The discussion below analyzes the economic effects of the final rules, including the anticipated costs and benefits as well as the likely impact on efficiency, competition, and capital formation. For purposes of this analysis, we address the potential economic effects resulting from the statutory mandate and from our exercise of discretion together, recognizing that it is often difficult to separate the costs and benefits arising from these two sources. Below we discuss the direct effects of the final rule on issuers and shareholders. We also discuss the effects on U.S. exchanges and discuss the costs of recovery. We then examine the indirect effects the final rule may have on financial reporting and executive compensation. We analyze the expected effects of the rule's disclosure requirements, as well as the effects from the rule's provisions on indemnification and insurance. Finally, we note that these effects may differ for different types of issuers.

1. Direct Effects on Issuers and Shareholders

The most immediate outcome of the final rules will be the establishment of listing standards that will result in issuers implementing recovery policies consistent with Section 10D.[427] Such recovery policies, when triggered, will provide a direct benefit for a listed issuer as well as its shareholders, when the company recovers incentive-based compensation that was erroneously paid to current or former executive officers. The recovered amounts will be available for the issuer to return to investors or invest in productive assets to generate value for shareholders.[428] Thus when erroneously awarded compensation is recovered, the recovered amounts will directly benefit issuers and shareholders.

We also expect a number of direct costs for issuers resulting from the final rules. To ensure that issuers have a recovery policy that meets the final rule requirements, issuers will likely incur legal and consulting fees to develop or revise recovery policies, and to modify the compensation packages of executive officers to conform to those policies. We expect that these costs may decrease over time, after initial development.

We have received several comment letters describing direct implementation costs. For example, several commenters have noted that even those issuers that already have recovery policies would likely incur some costs to revise those policies to comply with the final rule requirements.[429] One commenter indicated that issuers will likely incur significant costs including legal fees and litigation risks because they will need to revise existing policies.[430] Another commenter indicated that existing recovery plans include restrictions that may prohibit or restrict amendments to those plans, and noted that plan participants, particularly those no longer employed by the issuer, may not consent to an amendment that results in significant economic costs to themselves.[431] We acknowledge that

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[424] We note that the events studied may reflect the expectation and adoption of less stringent recovery provisions than required by the new rules. The studies report that issuers with more powerful management teams (*see* Bakke *et al.*) and issuers with previous restatements (*see* Iskandar-Datta *et al.*) experience larger economic gains associated with the Proposing Release and the adoption of voluntary recovery provisions.

[425] There are certain limitations on these event studies. The results reflect market participants' response to the new information released in the event, relative to the expectations prior to the event. As a result, the positive market reaction to the Proposing Release reflects the difference between expectations and the actual proposing release. We also note that the observed stock price reaction to individual issuer's adoption of compensation recovery provisions would reflect the benefits associated with the specific provisions adopted by those firms, which were likely tailored to the issuer's needs and also unlikely to fully comply with the new rules.

[426] Bakke *et al., supra* note 413, find that issuers without a compensation recovery provision experienced positive abnormal returns of 0.6% on average around the announcement of the Proposing Release, relative to issuers with an existing compensation recovery provision. These results suggest that the effects of the proposed rules would provide a net benefit to issuers that do not have a compensation recovery provision, but that the aggregate benefits of the rulemaking would be reduced due to the increase in issuers with compensation recovery provisions in place. More broadly, there is evidence regarding the benefits to issuers of adopting compensation recovery provisions. *See, e.g.,* Mai Iskandar-Datta and Yonghang Jia, *Valuation Consequences of Clawback Provisions,* 88 Acct. Rev. 171 (2013) (finding that shareholders of issuers that adopt voluntary recovery provisions experience statistically significant positive stock-valuation consequences ranging between 0.79% and 1.23%, and that issuers with previous financial restatements had the largest gains).

[427] Although, as described in the baseline section, many issuers have already implemented recovery policies that may be somewhat consistent with the final rule requirements, we recognize that most of the existing recovery policies will require revision to comply with the listing standards.

[428] Given the number of affected issuers and size of executive compensation packages, the amount of compensation recovered by issuers under the policies could be substantial. Although recovery of erroneously paid compensation would provide an immediate benefit for issuers and shareholders, these funds may not be large relative to the issuer's business operations. Based on an analysis of executive compensation using Standard & Poor's Compustat and Executive Compensation databases, in fiscal year 2020 non-salary compensation for all named executive officers combined was 0.7% of net income, and 0.44% of its market value of equity. This represents an upper bound for the amount of incentive-based compensation for named executive officers. These ratios do not include current and former executive officers that would be covered by the final rule but are not named executive officers.

[429] *See, e.g.,* comment letter from CEC (noting that the rules would impose additional implementation costs and require issuers to adjust their policies); Davis Polk 3 (noting that issuers will incur compliance costs associated with formulating recovery policies and modifying them over time); and Pay Governance (noting that the new rules will require substantive changes to many existing compensation recovery policies). *See also* comment letter from FedEx Corporation (Nov. 22, 2021) (noting that publicly traded corporations that adopted compensation recovery provisions based on the proposed rule issued in 2015 would incur implementation costs to adapt to the expanded scope of the final rule).

[430] *See* comment letter from Bishop (stating that issuers that have adopted recoupment policies specifying the ''3-year period preceding the date on which the issuer is required to prepare an accounting restatement'' will likely incur significant costs, such as legal fees and litigation risks because the rule specifies ''three completed fiscal years immediately preceding the date the issuer is required to prepare an accounting restatement'').

[431] *See* comment letter from SCG 1.

issuers will incur direct implementation costs, and recognize that even those issuers that have implemented recovery provisions will likely incur costs to revise them and those costs will likely be higher for issuers that have implemented recovery plans with restrictions that prohibit or restrict amendments to those plans. We expect that these costs will vary with the complexity of the compensation practices of the issuer as well as the number of executive officers the recovery policy will apply to, and may be initially substantial in a number of cases. However, as stated above, we expect once issuers adopt a recovery policy or revise their existing recovery policy, these costs may decrease over time. We also note that issuers will have additional time between adoption of these rules and exchange listing standards implementing the rules to amend any contracts to accommodate recovery.

2. Effects on U.S. Exchanges and Listings

Rule 10D–1 would affect U.S. exchanges by requiring them to adopt listing standards that prohibit the initial or continued listing of an issuer that does not comply with the final rules. The requirement places a direct burden on exchanges to amend applicable listing standards. This burden could involve deploying legal and regulatory personnel to develop listing standards that comply with the rule requirements. Moreover, the exchanges are likely to incur some costs associated with tracking the compliance of each issuer. We anticipate these costs to be small as exchanges likely already have robust compliance tracking systems and personnel that are dedicated to ensuring listing standards are met.[432] Finally, if an issuer chooses not to implement a recovery policy or does not take action when required under its recovery policy, the exchanges would incur costs to enforce the listing standards required by the final rules and delist the issuer for noncompliance. This would also result in a loss of the revenue from listing if the issuer were ultimately delisted.[433]

One commenter specifically requested an economic analysis addressing whether the rule will create conditions that will lead to a decrease in the number of U.S. public companies.[434] While we recognize that the rules are associated with costs for listed issuers, we also recognize and describe the benefits for listed issuers associated with the rules. In light of the significant uncertainty regarding the net effects for issuers, it is unclear whether the net effects of the rules would lead to a decrease in the number of issuers listed on U.S. exchanges.

In the event that issuers alter their decisions regarding where to list due to the final rules, revenue of U.S. exchanges may be affected. For example, there could be revenue effects for U.S. exchanges if issuers choose to list their securities on a foreign exchange without such a compensation recovery policy requirement. More generally, if the mandated listing requirements are perceived to be particularly burdensome for listed issuers, this could adversely impact the competitive position of U.S. exchanges vis-à-vis those foreign exchanges that do not enforce similar listing standards. However, given the costs associated with transferring a listing and the broad applicability of the final rule to securities listed on U.S. exchanges, we do not believe it is likely that the final rule requirements would compel a typical issuer in the short-term to find a new trading venue not subject to these requirements.[435] The final rules may result in a loss of potential revenue to exchanges to the extent that issuers, who would have decided to list on an exchange in the absence of the final rule requirements, choose to forgo listing or delay listing until the issuers' circumstances change.[436] The magnitude of this effect on exchanges and issuers is not quantifiable given the absence of data. It could be significant because the loss in potential revenue from the total number of issuers that have chosen to forgo or delay listing aggregates over time, thus having lasting impact on the exchanges' revenue. Finally, the final rules apply to issuers who list securities on a national securities exchange. As such there are unlikely to be competitive effects among national securities exchanges due to all national securities exchanges being affected by the final rule requirements.

3. Costs of Recovery

We recognize that, as a result of this rulemaking, issuers will face costs to calculate the amount to be recovered should an event trigger the compensation recovery provision. The calculations could be done internally or the issuer could choose to retain an outside expert to calculate this amount. The costs of calculating the amount to be recovered likely will vary depending on the nature of the restatement, the issuers' compensation structure, the type of compensation involved, the periods affected, and the method selected for calculation.

The costs of calculating an amount to be recovered are expected to be higher when incentive-based compensation that is based on stock price or TSR is subject to recovery. In this context, issuers will need to determine the amount of compensation that was erroneously awarded based on the extent to which an inflated stock price results from an accounting error. One key input for such calculations would be the difference between the historical stock prices and the ''but for'' stock price, where the ''but for'' stock price is the price at which the security would have sold, absent the accounting error. This section provides background information on methods to estimate the amount of inflation in stock prices as a result of accounting errors.

To reasonably estimate the ''but for'' price of the stock, there are a number of possible methods with different levels of complexity of the estimations and

[432] *See* comment letter from NYSE, supporting the approach to delisting in the Proposing Release, and describing the existing functions of exchange personnel.

[433] If an issuer chooses to delist or is delisted by the exchange or association, the issuer's securities may become less liquid in the U.S. market, and the issuer's share price may be negatively affected. For issuers that fail to adopt or implement a recovery policy, delisting under the rule would be expected to increase the issuer's cost of capital. We also note that other factors may affect the decision for an issuer to delist and any effect from the final rules would be incremental to these other factors.

[434] *See* comment letters from CCMC (noting that the number of public companies has steadily declined to the point that it is half what it was in 1996, and that a similar rate of decline in the number of IPOs occurred concurrently, while the same period experienced the explosion of the size of the proxy and emergence of disclosure overload issues). *See also* comment letter from NACD (noting that the rule might have a dampening effect on the market for public companies themselves if it and other rules like it influence private companies to remain private or push public companies to go private).

[435] We note that changes in laws in foreign jurisdictions regarding compensation recovery after the publication of the final rules in the **Federal Register** could potentially reduce the relative value of a U.S. listing. We also note that the revenue effect on U.S. exchanges resulting from the behavior of FPIs is unclear, because while some FPIs may choose to delist as a result of the final rules, it is at least theoretically possible that others may choose to list because of them. Although issuers can voluntarily adopt compensation recovery provisions without listing on a U.S. exchange, the decision to list on a U.S. exchange after the adoption of the final rule would reflect a stronger commitment to enforcing such provisions. *See* Section IV.B.8.

[436] We note that capital formation could be hindered if an issuer chooses to forgo or delay listing because of the final rules and the alternative methods of raising capital result in less liquid securities being issued or less thorough disclosures being required. We also note that other factors may affect the decision for an issuer to list and any effect from the final rules would be incremental to these other factors.

related costs.[437] One such method, which is often used in accounting fraud cases to determine the effects of restatements on the market price of an issuer's stock, is an ''event study.'' An event study captures the market's view of the valuation impact of an event or disclosure. In the case of a restatement, the event study estimates the drop in the stock price attributed to the announcement[438] that restated financial information is required, separate from any change in the stock price due to market factors.[439] An event study therefore measures the net-of-market drop in the stock price, which is a key input to establish the ''but for'' price at which the security is presumed to have traded in the absence of the inaccurate financial statements. In the context of an event study, to determine the net-of-market drop in the stock price, certain decisions need to be made, such as determining the appropriate proxy for the market return and statistical adjustment method (*i.e.,* a model to account for the potential difference in risk between the company and market); the model estimation period; the date and time that investors learned about the restatement; and the length of time it took for investors to incorporate the information from the restatement into the issuer's stock price.[440] The effects of these design choices may vary from case to case. Some of the potential choices may have no effect on the results while other choices may significantly drive the results and could generate considerable latitude in calculating a reasonable estimate of the excess amount of incentive-based compensation that was erroneously awarded.[441]

Calculating the ''but for'' price can be complicated when stock prices are simultaneously affected by information other than the announcement of a restatement on the event date.[442] Because certain executive officers may have influence over the timing of the release of issuer-specific information, they may have the ability to affect the estimation of a reasonable ''but for'' price. For example, if an accounting restatement is expected to have a negative effect on an issuer's stock price, certain executive officers may have an incentive and the ability to contemporaneously release positive information in an attempt to mitigate any reduction in the issuer's stock price. The strategic release of confounding information may make it more difficult for the board of directors to evaluate the effect of the restatement on the stock price.

As discussed above, the final rules do not require an event study to calculate a reasonable estimate of the erroneously awarded compensation tied to stock price to be recovered after an accounting error leading to a restatement. Instead, the final rules permit an issuer to use any reasonable estimate of the effect of the restatement on stock price and TSR. In addition, we note that an issuer may need to incur the direct costs associated with implementing a methodology to reasonably estimate the ''but for'' price *prior to* determining whether any amount of incentive-compensation is required to be recovered under the final rules. In choosing a methodology to derive a reasonable estimate of the effect of the accounting restatement on stock price and TSR, issuers would likely weigh the costs of implementing any methodology and the potential need to justify that estimate, under their unique facts and circumstances. We have received a number of comments regarding the costs of calculating the recoverable amount. For example, some commenters noted that determining the amount of compensation that was based on or derived from the financial reporting measure may be challenging because incentive compensation award amounts may include multiple metrics, and reflect judgment and discretion rather than a formulaic calculation.[443] In addition, commenters indicated that the calculations will expose managers and boards of directors to litigation risk.[444]

Commenters have also noted that issuers will face additional costs associated with estimating the amount of incentive-based compensation when the compensation is linked to stock price and TSR because of the complexity of the calculations.[445] A number of commenters requested additional guidance and examples of calculations,[446] and some expressed concern that issuers may consider moving away from TSR-based incentive plans to avoid the potential costs and uncertainty that may result should a recovery be triggered.[447] Some commenters noted that there would be increased litigation risk regarding recoveries of compensation linked to stock price and TSR due to the potential range of reasonable estimates.[448]

[437] The complexity of a particular methodology involves a trade-off between the potential for more precise estimates of the ''but for'' price and the assumptions and expert judgments required to implement such methodology.

[438] Event studies can have multiple event dates. For example an event study can measure the stock price impact attributed to the announcement that amended filings are required, as well as the stock price impact attributed to when the actual amended filings are made available for the investors to examine.

[439] Note that the ''announcement'' may take a variety of forms. For instance, an analyst or reporter may publicly disclose information about the company that serves as a corrective disclosure, even if the company does not make an announcement. In addition, since companies would generally not issue a Form 8–K release for a ''little r'' restatement, the publication of revised financials may serve as a public disclosure.

[440] The complexity of an event study depends on the circumstances of the event and the particular approach taken. For example, one event study could use a broad market index in estimating a market model, while another event study could use a more tailored index that may take into account industry specific price movements but would require judgments on the composition of the issuers in the more tailored index. For further discussion on the complexities of event studies, *see* Mark L. Mitchell and Jeffrey M. Netter, *The Role of Financial Economics in Securities Fraud Cases: Applications at the Securities and Exchange Commission,* 49 Bus. Law 565 (Feb. 1994); S. P. Kothari and Jerold B. Warner, *Econometrics of Event Studies* (B. Espen Eckbo ed.), Handbook Corp. Fin. Empirical Corp. Fin vol. I (Elsevier/North-Holland 2004); and John Y. Campbell *et al.*, The Econometrics of Event Studies, Princeton University Press (1997).

[441] Issuers may conduct event studies of restatement effects for a variety of reasons, including the possibility of shareholder litigation and government investigations. If an issuer has already conducted an event study to estimate the amount of inflation in the stock price due to a restatement, that would reduce the costs of conducting an event study for purposes of compensation recovery analysis while also limiting the latitude associated with utilizing different design choices.

[442] Confounding information potentially affecting an issuer's stock price on the event date could include other plans released by the issuer related to potential corporate actions (*e.g.,* mergers, acquisitions, or capital raising), announcements of non-restatement related performance indicators, and news related to macro-economic events (*e.g.,* news about the industry the issuer operates in, changes to the state of the economy, and information about expected inflation).

[443] *See* comment letters from Chevron; Coalition; Osler; and TELUS.

[444] *See, e.g.,* comment letters from Chevron; and Coalition. To the extent that issuers perceive more costly estimation methods to be a preferred approach in the context of potential litigation, the risk of litigation may increase the costs of compliance with the final rules.

[445] *See, e.g.,* comment letters from CAP; CEC 1; Chevron; Compensia; NAM; SH&P (stating that incentive compensation based on performance metrics such as stock price or total shareholder return cannot be accurately recalculated); Pearl Meyer; Davis Polk 1; and Kovachev. For example, CAP noted that estimates of the impact of the restatement when stock price/TSR metrics are involved, ''will be extremely difficult to put into practice and will force Boards to hire outside experts to perform the calculations. We predict that this will benefit professional service firms willing to perform the analyses, but will return little value to shareholders.''

[446] *See, e.g.,* comment letters from Chevron; Compensia; Hay Group; Pay Governance; Pearl Meyer; and WAW.

[447] *See* comment letters from Compensia; and WAW.

[448] *See, e.g.,* comment letters from Chevron; Coalition; Compensia; IBC (stating ''[o]ften [the methods] produce ranges of numbers, rather than a definite amount, introducing more uncertainty and opportunity to second guess the company's decision on how much to recover, therefore opening the door for potential additional shareholder

Since there is considerable variation in incentive compensation plans as well as restatements, and in addition, issuers may choose different reasonable approaches to calculation, we cannot estimate the total costs of calculating the amounts to be recovered. Nor can we estimate the likelihood that companies will move away from TSR-based incentive plans.[449] These uncertainties also may undermine issuers' incentives to enforce their recovery policies and make it more difficult for exchanges to monitor compliance.[450] This effect may be partially or entirely mitigated by the requirement for issuers to provide documentation to the relevant exchange of any reasonable estimates used or attempts to recover compensation, which will assist exchanges in monitoring compliance and incentivize issuers to carefully document the considerations that went into the determination to enforce (or not enforce) their recovery policy.

Although the costs of hiring outside experts may vary depending on the circumstances, we estimate that if outside professionals are retained to assist with the calculations, they will likely charge between $80 and $1,800 per hour for their services.[451] One commenter indicated that the expert fees will be closer to $800 per hour when determining the impact of an accounting restatement on stock price or TSR.[452] Another commenter indicated that the cost of an event study may range from $100,000 to $200,000.[453]

We acknowledge the costs and the potential complexity associated with calculating amounts to be recovered and acknowledge that the hourly rate may exceed its estimated values in some cases, depending on the complexity of the calculations. In addition, we recognize the likelihood of higher costs associated with the recovery calculations for incentive-based compensation linked to stock price and TSR as well as the widespread use of this type of incentive-based compensation.[454] However, we are adopting the new rule and rule amendments to implement the statutory mandates of Section 10D, which is intended to require the return of executive compensation that was awarded erroneously to the issuer and its shareholders. The costs of calculating amounts to be recovered may be mitigated as issuers exercise flexibility to determine the method of calculation that is most appropriate given the circumstances. Also the costs of calculating recovery amounts may be lower to the extent that the calculations would have been performed in the context of the restatement, because the effect of the misstatement on management's compensation is a qualitative factor in a materiality analysis.[455]

Depending on the circumstances, there may be other costs associated with enforcing the mandatory recovery policy. If the current or former executive officer is unwilling to return erroneously awarded compensation, the issuer may incur legal expenses to pursue recovery through litigation or arbitration.[456] However, if the direct expense paid to a third party to assist in enforcing the recovery policy from an executive or former executive officer would exceed the erroneously paid incentive-based compensation, the final rules allow the issuer, under certain circumstances, to determine that recovery would be impracticable, and therefore not pursue the recovery. This may mitigate the direct costs of enforcement to issuers.[457] Finally, if an issuer does not take action when required under its recovery policy, then the issuer may also incur costs associated with the listing exchange's proceedings to delist its securities.

4. Effects on Financial Reporting

In seeking to maximize the value of their financial investments, shareholders rely on the financial reporting quality of issuers to make informed investment decisions about the issuer's securities. High-quality financial reporting should provide shareholders with an assessment of the issuer's performance and should be informative about its value. Erroneous financial reporting can mislead investors about the issuer's value. For instance, improper financial reporting may overstate demand for the issuer's products, or exaggerate its ability to manage costs. An accounting restatement due to material noncompliance with any financial reporting requirement under the securities laws may cause shareholders to question the accuracy of those estimates and may lead shareholders and other prospective investors to substantially revise their beliefs about the issuer's financial performance and prospects with potentially significant effects on firm value.

While incentive-based compensation is typically intended to provide incentives to executives to maximize the value of the enterprise, thus aligning their incentives with shareholders, it may also provide executives with incentives that conflict with shareholders' reliance on high-quality financial reporting. For example, in some instances, executives might have incentives to pursue impermissible accounting methods under GAAP that result in a material misstatement of financial performance, to realize higher compensation.[458] This potential for *deliberate* misreporting reflects a principal-agent problem that is detrimental for shareholders.[459]

derivative litigation''); and Pearl Meyer (noting the possibility of challenges from interested parties, including current executive officers as well as individuals who were executive officers at some point during the lookback period but are no longer holding such position).

[449] *See* Section IV.B.5 for additional discussion of the economic effects of the potential decision to move away from incentive based compensation that is subject to recovery, such as TSR-based incentive plans.

[450] Due to the discretion that an issuer may have in choosing both the method and the assumptions underlying the method to estimate a ''but for'' price, it may be difficult for an exchange to determine if the ''but for'' price resulted in a reasonable estimate of the erroneously awarded compensation required to be recovered. This may make it more difficult for exchanges to monitor compliance.

[451] The range is based on comment letters from TCA and Davis Polk 1 as well as the SEAK, Inc., 2021 Survey of Expert Witness Fees report indicating that the hourly fee for case review/preparation ranges from $80 to $1,800 with an average fee of $422 per hour. *See* SEAK, Inc., *2021 Survey of Expert Witness Fees, SEAKexperts.com Blog (*July 25, 2022, 3:54 p.m.), available at *https://blog.seakexperts.com/expert-witness-fees-how-much-should-an-expert-witness-charge/#:~:text=According%20to%20SEAK%27s%202021%20Survey,experts%20responding%20is%20%24500%2Fhour.* We note that this range is also roughly consistent with the 90th percentile of wage information compiled by the U.S. Bureau of Labor Statistics, Occupational Employment Statistics for the Financial and Investment Analyst occupation. As of May 2021, the median hourly wage for a financial and investment analyst was $44.03 and the 90th percentile hourly wage was $80.08.

[452] *See* comment letter from TCA.

[453] *See* comment letter from Davis Polk 1 (citing a study by Marsh & McLennan Companies).

[454] *See supra* note 393.

[455] See *supra,* note 80.

[456] Issuers may incur additional costs associated with the rules to the extent that they create an impediment to litigation settlements because they do not include an exception for releases of potential recoupment claims. This may impose costs directly on issuers and indirectly on the economy as litigation could potentially be prolonged. *See, e.g.,* comment letter from SCG 1.

[457] Since the final rule will permit issuers to forgo recovery from tax-qualified retirement plans, we expect that issuers and plan participants will avoid the costs associated with such recovery.

[458] We also note that some estimates and judgments permissible under GAAP may allow executive officers to realize higher compensation, without resulting in a material misstatement of financial performance and thus without triggering recovery consistent with Section 10D.

[459] Among other decisions, executive officers must decide the extent of internal resources and personal attention to devote to achieving high-quality financial reporting and assuring that the financial disclosure is informative about the performance and condition of the issuer. To the extent that the expected costs and benefits

Continued

Although civil and criminal penalties already create disincentives to deliberate misreporting, the recovery requirements under the final rules will reduce the financial benefits to executive officers who choose to pursue impermissible accounting methods, and thus may add another disincentive to engage in deliberate misreporting. The magnitude of this effect will depend on the particular circumstances of an issuer.

The final rules may also provide executive officers with an increased incentive to take steps to reduce the likelihood of *inadvertent* misreporting.[460] Most directly, because executive officers are less likely to benefit from reporting errors, they have stronger incentives to increase the amount of time and resources they spend on the production of high-quality financial reporting, and may also, for instance, increase the staffing of the internal audit function.[461] These actions would reduce the likelihood of an accounting error that requires restatement.

Research studies provide mixed results on the impact of compensation recovery on financial reporting accuracy and reliability. Several studies have analyzed outcomes after the implementation of a voluntary recovery policy, finding results that are consistent with issuers devoting more resources to internal control over financial reporting.[462] In addition, some studies show that adoption of voluntary recovery provisions is associated with improved managerial decision making.[463] However, we acknowledge that multiple studies find that the adoption of recovery provisions may lead to outcomes such as real earnings management to achieve short-term earnings goals.[464] To the extent that the final rules lead some issuers to increase real earnings management, investors and issuers could bear increased costs.

Executive officers may also take other steps to reduce the likelihood of inadvertent misreporting. An executive officer could change the business practices of the issuer, thereby affecting the opportunity for an accounting error to arise. For example, an executive officer could simplify delivery terms of a project or a transaction in order to use accounting standards that are more straightforward to apply and perhaps require fewer accounting judgments, which may reduce the likelihood of accounting errors. As another example, the executive officer could make accounting judgments on loan loss reserves that are less likely to result in

associated with any level of investment decision in financial reporting quality would ultimately be reflected in the issuer's firm value, in absence of a principal-agent problem, executive officers would likely decide to allocate the value maximizing amount of resources to producing high-quality financial statements and, as a result, the level of information value of the financial reporting would likely be optimal. A principal-agent problem, however, reduces the executive officer's incentive to allocate the appropriate amount of resources to produce high-quality financial statements, which reduces the information value of financial reporting. In addition, the issuer may not realize all of the benefits from high quality financial reporting. For example, accurate financial reporting by one issuer provides a useful benchmark to investors in evaluating other issuers. As a result, issuers may underinvest in the production of high-quality financial statements, relative to the benefits for investors.

[460] One commenter noted while intentional reporting errors are relatively infrequent between 1996 and 2005 (1% error rate), unintentional misstatements are far more frequent (2.89% error rate). *See* comment letter from Vivian Fang.

[461] *See, e.g.,* comment letters from NYCRS; Fried; and Public Citizen 1. We recognize that there may be some limit beyond which the utilization of additional resources in order to further limit the likelihood of small, inadvertent accounting errors may not be the optimal use of these resources. It is unclear where the current expenditures of issuers stand relative to these limits. We also recognize that financial reporting decisions may be outside of the scope of responsibilities of some of the executive officers who will be subject to compensation recovery as a result of the final rules, *see* Section II.C.1.

[462] *See* Michael H.R. Erkens *et al., Not All Clawbacks Are the Same: Consequences of Strong Versus Weak Clawback Provisions,* 66 J. Acct. & Econ. 291 (2018) (finding that companies that voluntarily adopt stronger clawback measures experience improvements in reporting quality); Lillian H. Chan *et al., The Effects of Firm-Initiated Clawback Provisions on Earnings Quality and Auditor Behavior* 54 J. Acct. & Econ. 180 (2012) (finding that after the adoption of clawback provisions, incidence of accounting restatements declines, firms' earnings response coefficients increase, and auditors are less likely to report material internal control weaknesses, charge lower audit fees, and issue audit reports with a shorter lag); DeHaan, *et al., supra* note 62 (finding improvements in financial reporting quality following clawback adoption, including decreases in meet-or-beat behavior and unexplained audit fees, a decrease in restatements, a significant increase in earnings response coefficients and a significant decrease in analyst forecast dispersion). *See also* Henry K. Mburu and Alex P. Tang, *Voluntary Clawback Adoption and Analyst Following, Forecast Accuracy, and Bias,* 18 J. Acct & Fin. 106 (2018) (finding that voluntary adoption of compensation recovery provisions leads to an increase in analyst coverage and analyst accuracy, as well as reduced optimistic bias by analysts); Mark A. Chen *et al., The Costs and Benefits of Clawback Provisions in CEO Compensation,* 4 Rev. Corp. Fin. Stud. 108 (2015) (finding lower earnings variability and reduced aggressiveness in financial reporting after voluntary adoption of a compensation recovery provision); Bradley Benson *et al., Will the Adoption of Clawback Provisions Mitigate Earnings Management?,* 18 J. Acct. & Fin. 61 (2018) (finding that when compensation recovery provisions are implemented by a company with an independent board, earnings quality improves).

[463] *See, e.g.,* Yu-Chun Lin, *Do Voluntary Clawback Adoptions Curb Overinvestment?,* 25 Corp. Govern. Int'l Rev. 255 (2017) (finding that compensation recovery provisions mitigate overinvestment); Dina El-Mahdy, *The Unintended Consequences of Voluntary Adoption of Clawback Provisions on Managerial Ability,* 60 Acct. & Fin. 2493 (2020) (finding that voluntary adoption of compensation recovery provisions is associated with an increase in productivity as measured by revenues generated for a given level of costs); Thomas Kubrick, Thomas Omer, and Zac Wiebe, *The Effect of Voluntary Clawback Adoptions on Corporate Tax Policy,* 95 Acct. Rev. 259 (2020) (finding that adoption of compensation recovery provisions may lead to more effective tax planning and lower effective tax rates); Anna Brown *et al., M&A Decisions and US Firms' Voluntary Adoption of Clawback Provisions in Executive Compensation Contracts,* 42 J. Bus. Fin. & Acct. 237 (2015) (finding that adoption of compensation recovery provisions leads to improved decisions in the context of mergers and acquisitions); Matteo P. Arena and Nga Nguyen, *Compensation Clawback Policies and Corporate Lawsuits,* 27 J. Fin. Reg. & Compliance 70 (2019) (finding that after the adoption of compensation recovery provisions, litigation risk significantly declines). One paper finds that firms' investment risk decreases with the voluntary adoption of a compensation recovery provision, but notes that this effect may be either value-increasing or value-decreasing, depending on the circumstances. *See* Yu Chen and Carol Vann, *Clawback Provision Adoption, Corporate Governance, and Investment Decisions,* 44 J. Bus. Fin. Acct. 1370 (2017) (finding that after adopting a compensation recovery provision, firms' abnormal investment decreases and the firms' investments are less risky).

[464] *See,* for instance, Lilian Chan *et al., Substitution between Real and Accruals Based Earnings Management after Voluntary Adoption of Compensation Clawback Provisions,* 90 Acct. Rev. 147 (2015) (finding that the total amount of earnings management does not decrease after recovery provisions are adopted, and that companies are more likely to lower research and development expenses to achieve short term earnings goals after adoption). Similar results are provided by Gary Biddle *et al., Clawback adoptions, managerial compensation incentives, capital investment mix and efficiency,* (working paper Dec. 2021), *available at https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3042973 (retrieved from SSRN Elsevier database).* A related paper, Dichu Bao *et al., Can Shareholders Be at Rest After Adopting Clawback Provisions? Evidence from Stock Price Crash Risk,* 35 Contemp. Acct. Res., 1578 (2018), finds that voluntary recovery provision adoption is associated with an increase in stock price crash risk, that after the adoption some companies reduce the readability of their Form 10–K filings, and increase real earnings management through abnormal production costs, abnormal expenses, and abnormal cash flows. *See also* Hangsoo Kyung *et al., The Effect of Voluntary Clawback Adoption on non-GAAP Reporting,* 67 J. Acct. & Econ. 175 (2019) (finding that issuers adopting recovery provisions increase the frequency of disclosure of non-GAAP earnings, and non-GAAP exclusion quality decreases after the adoption); Thompson, *supra* note 69 (finding that issuers with compensation recovery provisions are more likely to report misstatements as ''little r'' restatements instead of ''Big R'' restatements). Consistent with the possibility that the rules as proposed may create incentives to reduce research and development expenditures, Bakke *et al., supra* note 413, find that the stock price reaction to the Proposing Release was less positive for issuers with high cash flow activity and companies engaged in research and development activity, and it was negative for issuers that have already adopted a compensation recovery provision and are engaged in research and development. *See also* comment letter from Fried (noting the potential to incentivize executive officers ''to shift from value-reducing earnings manipulation to even more destructive real earnings management'').

an accounting restatement. Taking steps such as these does not necessarily affect the selection of the project or transaction the issuer chooses to undertake (although it could, as discussed below), but could result in greater investor confidence in the quality of financial reporting and information value of the financial statements, and thus have a positive impact on capital formation.[465]

As a result of the final rules, we believe that the increased incentives to generate high-quality financial reporting may improve the overall quality of financial reporting. For some issuers that are already producing high-quality financial reports, there may be limits to the benefits of incremental increases in financial reporting quality. However, we believe that a substantial number of issuers will benefit from an increase in the quality of financial reporting. These improvements could result in increased informational efficiency, enhanced investor confidence that may result in greater market participation, and a reduced cost of raising capital, thereby facilitating capital formation.[466] While we lack the data to quantify the potential benefits to shareholders from a reduced likelihood of an accounting error, evidence suggests that penalties imposed by the market for accounting restatements can be substantial. For example, one recent study [467] found that over the period 2008 to 2015 the market value of equity of the average issuer declined by 3.3% upon announcement of a ''Big R'' financial restatement, and by 0.3% upon announcement of a ''little r'' restatement.

More broadly, the availability of more informative or accurate information regarding the financial performance of issuers may also have the effect of increasing the efficient allocation of capital among corporate issuers. Because investors will be better informed about the potential investment opportunities at any given point in time, they will be more likely to allocate their capital according to its highest and best use. This would benefit all issuers, even those whose financial reporting would not be affected by the final rule requirements on exchanges' listing standards. In particular, issuers whose financial reporting is unaffected may have better access to capital by virtue of investors being able to make more informed comparisons between them and issuers whose financial reporting would become more accurate as a result of the final rule requirements.[468] In contrast, without the final rules, investors may improperly assess the value of the issuers whose financial reporting is based on erroneous information, which could result in an inefficient allocation of capital, inhibiting capital formation and competition.

We are aware, however, that these potential benefits of the final rules are not without associated costs. Under the final rules, as a commenter asserted, the increased allocation of resources to the production of high-quality financial reporting may divert resources from other activities that may be value enhancing.[469] Moreover, while the increased incentive to produce high-quality financial reporting and thus reduce the likelihood of accounting errors should increase the informational efficiency of investment opportunities, it may also encourage, as a few commenters noted, executive officers to forgo value-enhancing projects if doing so would decrease the likelihood of a financial restatement.[470] For example, when choosing among investment opportunities for the issuer, executive officers may have an increased incentive to avoid those projects that would require more complicated accounting judgments, because such projects may be more likely to trigger a restatement.[471] That is, the final rules may reduce incentives for an executive officer to choose projects for which it is more difficult to generate high-quality financial reporting.[472] This could have a beneficial impact on the value of the issuer to the extent that the forgone projects would have resulted in lower value than those that were ultimately chosen.[473] The final rules may also be value-enhancing to listed issuers by reducing the likelihood of accounting errors because executive officers may be

[465] One academic study finds that, when market competition is weak, the information environment affects the expected returns of equity securities. In particular, when financial disclosure quality is low, as measured by scaled accruals quality, issuers with low market competition, as measured by the number of shareholders of record, have a higher expected return. All else being equal, higher expected returns make raising capital more costly for the company. *See* Christopher S. Armstrong *et al., When Does Information Asymmetry Affect the Cost of Capital,* 49 J. Acct. Rsch. 1, (Mar. 2011). The academic literature has developed a measure of the quality of financial reporting denoted accruals quality. This measure quantifies how well accruals are explained either by the cash flow from operations (past, current, and future periods) or accounting fundamentals. For details on the construction and interpretation of the measure, *see* Patricia M. Dechow and Ilia D. Dichev, *The Quality of Accruals and Earnings: The Role of Accrual Estimation Errors, 77 Acct. Rev. 35,* (2002); and Jennifer Francis *et al., The Market Pricing of Accruals Quality* 29 J. Acct. & Econ. 295, (2005).

[466] In addition, to the extent that investors cannot differentiate between issuers with high quality financial reporting and issuers with low quality financial reporting, they may underinvest in issuers with high quality financial reporting. But an improvement in the reporting of issuers with low quality financial reporting would raise the average issuer's quality of financial reporting. This improvement for the average issuer may mitigate the underinvestment in issuers with high quality financial reporting and therefore lower their cost of capital as well.

[467] *See* Choudhary *et al., supra* note 61. *See also* Christine E.L. Tan *et al., An Analysis of* ''*Little r*'' *Restatements,* 29 Acct. Horizons 667 (2015) and Susan Scholz, *Financial Restatement: Trends in the United States: 2003*−*2012, Center for Audit Quality,* (July 24, 2014), *available at https://www.thecaq.org/financial-restatement-trends-united-states-2003-2012.*

[468] *See* Brian J. Bushee *et al., Economic Consequence of SEC Disclosure Regulation: Evidence From the OTC Bulletin Board,* 39 J. Acct. & Econ. 233 (2005).

[469] *See, e.g.,* comment letter from NACD (noting the proposal could divert resources to financial reporting that would otherwise be used for other value enhancing activities).

[470] Projects that increase the volatility of cash flows from operations, the volatility of sales revenue, or percentage of soft assets have been associated with an increased likelihood of a restatement. *See* Patricia M. Dechow *et al., Predicting Material Accounting Misstatements,* 28 Contemp. Acct. Rsch. 17 (Spring 2011). Consistent with these findings that riskier operations are associated with an increased likelihood of restatements, Babenko *et al.* find that firms that adopt a recovery provision subsequently reduce their research and development spending, file fewer patents, and decrease their capital expenditures. The authors also find that firms adopting a recovery provision subsequently hold more cash, issue less net debt, and experience an increase in credit rating. *See, e.g.,* comment letters from Fried; NACD; and NAM.

[471] For example, the issuer could select projects that do not add to the complexity of the required reporting systems, or select projects that have a shorter performance period and therefore may involve less difficult accounting judgments about the expected future costs. *See* comment letter from NAM.

[472] *See* Babenko *et al.* The study finds that executives respond to the implementation of a compensation recovery policy by reducing firm risk. For example, the authors report that issuers spend less on research and development, and file for fewer patents. This is consistent with executives changing their project selection policy as the result of implementing a compensation recovery policy. We note, however, that the determination of whether or not to select a particular project is likely related to many characteristics of the project. These characteristics could include the value the project creates, the cash flows the project returns in the near term, and the strategic objectives of the issuer.

[473] *See* Babenko *et al.* The authors address the question of whether the reduction in risk associated with the voluntary adoption of a compensation recovery policy is beneficial for shareholders. They find a positive and significant relation between adoption of such a policy and long-term stock and accounting performance and a positive and significant short-term stock-market reaction around the date of the adoption. The stock market response to compensation recovery policy adoption, as well as stock and accounting performance over the year subsequent to adoption, are significantly larger the greater the reduction in actual and predicted firm risk associated with the recovery provision. *See also* California Public Employees' Retirement System (Nov. 22, 2021) (''CalPERS 2'') (noting that ''clawback policies potentially mitigate excessive risk-taking that certain compensation may incentivize'').

incentivized to ensure that greater care is exerted in preparing accurate financial statements, thus avoiding the costs associated with a restatement.

As described above, some studies suggest that a compensation recovery policy could result in an increased likelihood of an executive officer making suboptimal operating decisions in order to affect specific financial reporting measures as a result of the decreased incentive to use accounting judgments to affect those financial reporting measures.[474] For example, if an executive officer is under pressure to meet an earnings target, rather than manage earnings through accounting judgments, an executive officer may elect to reduce or defer to a future period research and development or advertising expenses. This could improve reported earnings in the short-term, but could result in a suboptimal level of investment that adversely affects performance in the long run.

Under the final rules, if it appears that previously issued financial statements may contain an accounting error, there would be a potential incentive for issuers or individual executive officers (to the extent they are in a position to do so) to cause the company to avoid characterizing the accounting error in such a way that would trigger application of the final rules. Such an incentive exists because compensation recovery is only required after the conclusion that an accounting restatement is required to correct an error in previously issued financial statements that is material to the previously issued financial statements or that would result in a material misstatement if the error were corrected in or left uncorrected in the current period. To the extent that these incentives discourage the timely and accurate reporting of material accounting errors, it could result in loss of confidence in financial information disclosures by investors and hinder capital formation.

However, we note that there are serious consequences, including criminal penalties, that help to deter either a delay or mischaracterization. In addition, the rule discourages delays by defining the trigger date as the date on which the issuer concludes, or reasonably should have concluded, that the issuer's previously issued financial statements contain an error that requires a restatement. In addition, the inclusion of ''little r'' restatements eliminates the incentive to mischaracterize ''Big R'' restatements as ''little r'' restatements. Finally, oversight by audit committees and outside auditors may serve as an additional mitigating factor.

5. Effects on Executive Compensation

When setting the compensation for executive officers, the board of directors of an issuer frequently incorporates into the total compensation package a payout that is tied to one or more measures of the issuer's performance.[475] The purpose of tying compensation to performance is to provide an incentive for executive officers to maximize the value of the enterprise, thus aligning their incentives with other shareholders. The proportion of the compensation package that relies on performance incentives generally depends on factors such as the level of risk inherent in the issuer's business activities, the issuer's growth prospects, and the scarcity and specificity of executive talent needed by the issuer. It also may reflect personal preferences influenced by characteristics of the executive such as age, wealth, and aversion to risk. In particular, the executive officer's risk aversion may make compensation packages with strong performance incentives undesirable for the executive officer because of the less predictable payments. These factors contribute not only to the magnitude of the expected compensation, but also to how an executive views and responds to the compensation.[476]

Several commenters have indicated that the requirements of the final rules could meaningfully affect the size and composition of the compensation packages awarded to executive officers of listed issuers.[477] In particular, some commenters argued that the final rules would encourage executive officers to favor compensation that would not be subject to potential recovery, such as base salary, over incentive-based compensation.[478] The Commission acknowledges that the composition of executive compensation could be impacted by the final rules. On the one hand, the final rules could encourage greater use of certain kinds of incentive-based compensation. The implementation of a mandatory recovery policy may make it less costly for the issuer to use the types of incentive-based compensation that would be subject to recovery (those with explicit market or performance conditions tied to the issuer's financial reporting or stock price).[479] Most directly, such a policy would reduce the cost of such compensation by recovering overpayments associated with misstatements. Further, adopting a recovery policy may reduce the potential incentives that may arise from incentive-based compensation to engage in practices resulting in inaccurate reporting.

On the other hand, as noted by some commenters, the final rules could discourage the use of certain kinds of incentive-based compensation. As noted at the beginning of this section, risk-averse executive officers prefer predictable compensation, and the mandatory implementation of a recovery policy that meets the requirements of the final rules would introduce an additional source of uncertainty in the compensation of the executive officer.[480] In addition, the expected value of executive compensation subject to the rule could decrease because, to the extent any such compensation is erroneously awarded, it

[474] *See supra* note 464. *See also* Sohyung Kim *et al., Other Side of Voluntary Clawback Provisions in Executive Compensation Contracts: Evidence From the Investment Efficiency,* 25 Rev. Pacific Basin Fin. Mkts. & Policies 1 (2022) (finding evidence that the voluntary adoption of compensation recovery policies decreases the investment efficiency in the post-adoption period, especially for issuers whose *ex ante* probability of underinvestment is high).

[475] Executive compensation may be tied to issuer performance implicitly, as in the case of awards of options or restricted stock that have only service-based vesting conditions, or more explicitly, as in the case of incentive-based compensation with market or performance conditions that affect the amount of compensation or whether it vests.

[476] Executive officers typically have personal preferences regarding the form of compensation received. To the extent that executive officers have different levels of risk aversion, they can arrive at different personal valuations of the same incentive-based compensation package. Hence, more risk-averse executive officers may require additional compensation when paid in the form of less certain incentive-based compensation.

[477] *See, e.g.,* comment letters from TCA; Ensco; WAW; NAM; CAP; NACD; and American Vanguard.

[478] *See, e.g.,* comment letters from American Vanguard, NAM, and WAW. Further, some commenters argued that the final rules would encourage the use of incentive-based compensation tied to performance measures that fall outside the scope of the rules, such as strategic measures, subjective measures, or operational measures. *See, e.g.,* comment letter from Ensco.

[479] This effect was observed in a recent study examining voluntarily adopted compensation recovery provisions. *See, e.g.,* Peter Kroos *et al., Voluntary Clawback Adoption and the use of Financial Measures in CFO Bonus Plans,* 93 Acct. Rev. 213 (2018) (finding that adoption of compensation recovery provisions is associated with greater CFO bonus incentives because such compensation recovery provisions serve as an effective check on the ability of CFOs to manipulate the performance metrics that could influence their performance-based compensation). The final rule, which conditions initial and continued listing of securities on compliance with the recovery policy, substantially increases the incentives of board members to enforce the policy relative to voluntarily adopted recovery provisions.

[480] The ''no-fault'' nature of the recovery policy, which mandates that executive officers return erroneously awarded compensation even if they had no role in the accounting error, along with the issuer's choice of a calculation methodology and the variation in assumptions that underlie it could also add to this uncertainty.

must be recovered. Therefore, because incentive compensation based on financial metrics could be both more uncertain and lower in expected value, executives may seek a shift away from such compensation and towards base salary or other forms that are not recoverable, such as options or restricted stock with time-based vesting, incentive-based compensation tied to operational metrics, or bonuses awarded at the discretion of the board. To the extent these forms of compensation have reduced incentive alignment between executive pay and shareholder interests, *i.e.,* pay-for-performance sensitivity,[481] this potential shift in compensation composition, as noted by several commenters, may lessen the alignment with the interests of shareholders.[482]

We acknowledge this potential cost but believe a number of factors and findings mitigate this concern. First, as noted earlier in this section, the issuer, in contrast to the executive, has incentives to push for *more* incentive-based compensation. This is because erroneous payments can now be recouped, and incentive-based compensation will generate less temptation to manipulate financial metrics, potentially leading to more accurate reporting. Thus issuer incentives could offset executive desire to shift away from incentive-based compensation. Second, it is not obvious that a shift away from incentive-based compensation covered by this rule lessens the alignment with the interests of shareholders. Less incentive-based compensation reduces incentives for financial misreporting, contributing to more reliable financial statements, which benefits issuers and shareholders. In addition, recent evidence indicates some investor dissatisfaction with performance-based pay [483] as well as a growing interest in nonfinancial metrics pay.[484] Third, to the extent that financial reporting quality improves because of the rule and reduces the likelihood of a restatement, this may reduce the uncertainty in executive compensation resulting from the rule. Lastly, other factors, such as shareholder engagement, other governance controls, and market forces play an important role in the level and design of executive compensation and may mitigate changes due to the final rules.[485]

Separate from changes to the composition of compensation, the size of total compensation may also be impacted by the rule. In response to potential increased uncertainty, risk-averse executives may demand an offset to bear this uncertainty. Executives may also demand higher total compensation to offset the expected loss from potential recovery. This possibility was noted by a number of commenters, who suggested this increase in executive compensation would harm shareholders.[486]

We acknowledge that an increase in executive pay is a possibility. Some research suggests that as a result of recovery provisions, the total compensation of executive officers may increase, but other studies do not support this hypothesis.[487] The extent of any such increase will depend on the structure and conditions of the labor market for executive officers as well as other economic factors, including the negotiating environment and particular preferences of executives. We also note that although executives may demand and receive an increase in total compensation relative to the baseline to offset potential losses from recovery, their new compensation agreements would reasonably be expected to tie more closely to true firm performance, as misstatement-driven determinants of pay are replaced by base pay or pay tied to accurate financial or operational metrics. This could improve alignment between executives and shareholders. In addition, improved financial reporting quality that may result from the rule and reduced likelihood of a restatement would benefit the issuer and shareholders, mitigating costs associated with any increase in executive compensation. Finally, as noted earlier in this section, shareholder engagement, other governance controls, and market forces may mitigate changes due to the final rules.

A number of commenters stated that the final rules may affect the competition among issuers to hire and retain executive officers, as well as recruitment for specific board committees.[488] Increased uncertainty

[481] Pay-for-performance sensitivity is a measure of incentive alignment used in academic research. The measure captures the correlation of an executive officer's compensation with changes in shareholder wealth. *See, e.g.,* Michael Jensen and Kevin Murphy, *Performance Pay and Top Management Incentives,* 98 J. Pol. Econ. 225 (1990).

[482] *See, e.g.,* comment letter from Davis Polk 3 (suggesting that decreasing the use of accounting-based incentive compensation by increasing base salary may weaken the alignment between executives' incentives and those of the company and shareholders). *See also* comment letters from TCA; Ensco; Pearl Meyer; WAW; NAM; CAP; NACD; and American Vanguard.

[483] *See, e.g.,* Council of Institutional Investors, *Policies on Corporate Governance* § 5 Executive Compensation (rev. Mar. 7, 2022), *available at https://www.cii.org/corp_gov_policies#exec.*

[484] *See, e.g.,* ISS Governance, *2021 Global Benchmark Policy Survey* (Oct. 2021), *available at https://www.issgovernance.com/file/publications/2021-global-policy-survey-summary-of-results.pdf* (reporting that while there has been an upsurge in interest in environmental, social, and governance (ESG) metrics in executive compensation, some observers have criticized the increasing use of poorly defined ESG metrics).

[485] Recent regulatory changes have not always impacted executive compensation in ways that may have been expected, perhaps because of the offsetting effect of heightened investor engagement on pay structure since the introduction of say-on-pay votes. *See, e.g.,* Lisa De Simone, Charles McClure and Bridget Stomberg, *Examining the Effects of the TCJA on Executive Compensation* (Apr. 15, 2022). Kelley School of Business Research Paper No. 19–28, *available at https://ssrn.com/abstract=3400877* (finding no evidence that the repeal of a long-standing exception under Section 162(m) of the tax code that allowed companies to deduct executives' qualified performance-based compensation in excess of $1 million reversed a related shift in executive compensation away from cash compensation and towards performance pay). In addition, the board, via the compensation committee, has oversight over executive compensation, and typically weighs a number of considerations in determining how best to incentivize performance. *See, e.g.,* Alex Edmans, *et al., Executive Compensation: A Survey of Theory and Evidence* (Eur. Corp. Governance Inst. (ECGI) Fin. Working Paper No. 514/2016), *available at https://ssrn.com/abstract=2992287* (retrieved from SSRN Elsevier database) (describing the influences of boards, executives, and institutional factors such as legislation, taxation, accounting policy, compensation consultants, and proxy advisory firms on compensation outcomes).

[486] *See, e.g.,* comment letters from TCA; Ensco; Pearl Meyer; WAW; NAM; NACD; and American Vanguard.

[487] *See* DeHaan *et al., supra* note 62; Chen *et al., supra* note 462 (finding that compensation recovery provisions are associated with higher CEO compensation); and Kroos *et al., supra* note 479. *See also* Ramachandran Natarajan and Kenneth Zheng, *Clawback Provision of SOX, Financial Misstatements, and CEO Compensation Contracts,* 34 J. Acct., Auditing & Fin. 74 (2019) (finding that compared with control firms, companies with a high restatement likelihood where the CEO is the chair of the board exhibit an increase in CEO salaries between the pre- and post-Sarbanes-Oxley Act periods, suggesting that in the post-Sarbanes-Oxley Act period influential CEOs are able to receive higher salaries that are not subject to the Sarbanes-Oxley Act Section 304 clawback provision). By contrast, Erkens *et al., supra* note 462, finds results suggesting that while CEO incentive-based compensation may be reduced for adopters of strong compensation recovery provisions, for those companies, CEO total compensation is also reduced. The authors suggest that the findings may indicate that the adoption of strong compensation recovery provisions is associated with a broader reform package. Similarly, Iskandar-Datta *et al., supra* note 426, find no evidence that compensation recovery provisions entail costs in the form of higher CEO compensation following adoption nor do they influence the design of compensation contracts.

[488] *See, e.g.,* comment letter from Compensia (noting that no-fault recovery would have dramatic adverse effects on issuers such as individuals negotiating to avoid executive officer status). In addition, Compensia contends that the rule would put increased pressure on the boards and managers responsible for reviewing financial statements and executive compensation, making audit committee and compensation committee service less attractive. *See also* comment letters from Ensco; Kovachev; NAM; Pearl Meyer; and American Vanguard. Another commenter, however, suggests that

Continued

that reduces the perceived value of the expected incentive-based compensation of an executive officer, or expectation of lower total compensation due to recovery, could cause listed issuers to have more difficulty attracting talented executives. As a result, listed issuers could potentially experience a comparative disadvantage relative to companies that are not covered (*i.e.,* unlisted issuers and private companies).[489]

While we acknowledge this possibility, this concern is mitigated if the potential impacts to compensation discussed earlier in this section, that total executive compensation may increase or shift to forms that are not recoverable, manifest to some degree. To the extent issuers adjust total compensation for executive officers and design alternative incentive packages, we expect that the competitiveness of listed issuers in the executive labor market may remain unchanged. In addition, studies have shown that listed firms offer higher total executive compensation than unlisted firms of comparable size and other characteristics.[490] We thus believe it is unlikely executives will significantly disfavor listed firms from their choice set of employment opportunities.

One commenter suggested that ''clawback risk may deter executives from undertaking or approving business strategies with more complex accounting methods, since the complexity may add to the likelihood of a reporting error and corresponding clawback of their compensation.'' [491] We acknowledge this concern but note research shows that adoption of voluntary recovery provisions is associated with improved managerial decision making.[492]

clawback rules should not impede the ability of issuers to recruit executives. *See* comment letter from Occupy.

[489] *See, e.g.,* comment letter from IBC (noting that narrowing the market of available and interested executives in any increment is not in the shareholders' best interest). *See* also comment letter from Davis Polk 3 (noting that having compensation subject to change for matters out of their control (''no-fault'') could lower executives' morale and satisfaction, causing executives to shy away from working with public companies). *See also* comment letters from NAM; and American Vanguard.

[490] *See* Huasheng Gao and Kai Li, *A Comparison of CEO Pay–Performance Sensitivity in Privately-Held and Public Firms,* J. Corp. Fin. 35 (2015) *available at https://www.sciencedirect.com/science/article/pii/S0929119915001261* (finding that CEOs in public firms are paid 30% more than CEOs in comparable private firms).

[491] *See* comment letter from NAM.

[492] As noted above, some research shows that adoption of voluntary recovery provisions is associated with improved managerial decision making. *See supra* notes 463 and 473.

6. Effects of Disclosure and Tagging Requirements

Under the final rules, the listed issuer's recovery policy would be required to be filed as an exhibit to the issuer's annual report on Form 10–K, 20–F or 40–F or, for registered management investment companies, on Form N–CSR. To the extent that listed issuers that currently have compensation recovery policies might not disclose the existence or the specific terms of that policy, there may be direct benefits of this disclosure requirement separate from any pecuniary recovery following an accounting restatement. The disclosure requirements are intended to inform shareholders and the listing exchange as to the substance of a listed issuer's recovery policy and how the listed issuer implements that policy in practice. For instance, the disclosure requirements include the date of and amount of erroneously awarded compensation attributable to the accounting restatement, certain estimates that were used in determining the amount, and the amounts that have been collected, are still owed, and are forgone. The final rules also require issuers to indicate by a check box on the cover page of their annual reports whether the financial statements of the registrant included in the filing reflect correction of an error to previously issued financial statements and whether any of those error corrections are restatements that required a recovery analysis.

The final rules also require the disclosure (including the cover page check boxes) be provided in Inline XBRL, a structured (*i.e.,* machine-readable) data language. This may facilitate the extraction and analysis (*e.g.,* comparison, aggregation, filtering) of the disclosed information across a large number of issuers or, eventually, over several years. XBRL requirements for public operating company financial statement disclosures have been observed to mitigate information asymmetry by reducing information processing costs, thereby making the disclosures easier to access and analyze.[493] While these observations are specific to operating company financial statement disclosures and not to disclosures outside the financial statements, such as the compensation recovery disclosures, they suggest that the Inline XBRL requirements could directly or indirectly (*i.e.,* through information intermediaries such as financial media, data aggregators, and academic researchers) provide investors with increased insight into information related to compensation recovery at specific issuers and across issuers, industries, and time periods.[494] Additionally, requiring Inline XBRL tagging of the compensation recovery disclosure benefits investors by making the disclosures more readily available and easily accessible to investors, market participants, and others for aggregation, comparison, filtering, and other analysis, as compared to requiring a non-machine readable data language such as ASCII or HTML.

The compliance costs associated with the final rules, which apply only to listed issuers, would include costs attributable to the Inline XBRL tagging requirements. Various preparation solutions have been developed and used by operating companies to fulfill XBRL requirements, and some evidence suggests that, for smaller companies, XBRL compliance costs have decreased over time.[495] The incremental

[493] *See, e.g.,* Jeff Zeyun Chen *et al., Information Processing Costs and Corporate Tax Avoidance: Evidence From the SEC's XBRL Mandate* (Jan. 11, 2021), 40 J. Acct. & Pub. Pol'y 2 (finding XBRL reporting decreases likelihood of firm tax avoidance because ''XBRL reporting reduces the cost of IRS monitoring in terms of information processing, which dampens managerial incentives to engage in tax avoidance behavior''); *see also* Paul A. Griffin *et al., The SEC's XBRL Mandate and Credit Risk: Evidence on a Link Between Credit Default Swap Pricing and XBRL Disclosure, Am. Acct. Ass'n Ann. Meeting,* (2014) (finding XBRL reporting enables better outside monitoring of firms by creditors, leading to a reduction in firm default risk); *see also* Elizabeth Blankespoor, *The Impact of Information Processing Costs on Firm Disclosure Choice: Evidence from the XBRL Mandate,* 57 J. Of Acc. Res. 919, 919–967 (2019) (finding ''firms increase their quantitative footnote disclosures upon implementation of XBRL detailed tagging requirements designed to reduce information users' processing costs,'' and ''both regulatory and non-regulatory market participants play a role in monitoring firm disclosures,'' suggesting ''that the processing costs of market participants can be significant enough to impact firms' disclosure decisions'').

[494] *See, e.g.,* Nina Trentmann, *Companies Adjust Earnings for Covid–19 Costs, But Are They Still a One-Time Expense?,* Wall St. J. (Sept. 24, 2020, 3:54AM) (citing an XBRL research software provider as a source for the analysis described in the article), *available at https://www.wsj.com/articles/companies-adjust-earnings-for-covid-19-costs-but-are-they-still-a-one-time-expense-11600939813* (retrieved from Factiva database); *see also* XBRL Int'l, *Bloomberg Lists BSE XBRL Data* (Mar. 17, 2019), *available at https://www.xbrl.org/news/bloomberg-lists-bse-xbrl-data/; see also* Rani Hoitash and Udi Hoitash, *Measuring Accounting Reporting Complexity With XBRL,* 93 Acct. Rev. 259 (2018), *available at https://papers.ssrn.com/sol3/papers.cfm?abstract_id=2433677* (retrieved from SSRN Elsevier database).

[495] An AICPA survey of 1,032 reporting companies with $75 million or less in market capitalization in 2018 found an average cost of $5,850 per year, a median cost of $2,500 per year, and a maximum cost of $51,500 per year for fully outsourced XBRL creation and filing, representing a 45% decline in average cost and a 69% decline in median cost since 2014. *See* Michael Cohn, *AICPA Sees 45% Drop in XBRL Costs for Small*

compliance costs associated with Inline XBRL tagging requirements under the final rules are mitigated by the fact that most issuers subject to the tagging requirements are or will be subject to other Inline XBRL requirements for other disclosures in Commission filings, including financial statement and cover page disclosures in certain periodic reports and registration statements.[496] Such issuers may be able to leverage existing Inline XBRL preparation processes and expertise in complying with the Inline XBRL tagging requirements under the final rules.

With the new disclosures, investors may have a better understanding of the incentives of the issuer's executive officers, owing to more complete disclosure of the issuer's compensation policies, including its recovery policy. Moreover, while listed issuers will be required to adopt and comply with a recovery policy satisfying the requirements of the final rules, issuers will have the choice to implement recovery policies that are more extensive than these requirements. For example, issuers may choose to establish more stringent recovery policies (*e.g.,* a longer look-back period, more forms of compensation subject to recovery, or more individuals covered) to provide a positive signal to the market regarding their approach to executive compensation. If variation in the scope of issuers' recovery policies emerges across issuers, disclosure of those policies may marginally improve allocative efficiency by allowing investors to make more informed investment decisions based on a better understanding of the incentives of the executive officers. The requirement to publish recovery policies may make such variation more likely to emerge.[497]

Further, if at any time during the last completed fiscal year a listed issuer's recovery policy required an issuer to recover erroneously awarded compensation, the final rules will require the issuer to disclose details of the recovery efforts under Item 402(w) of Regulation S–K. These disclosures will allow existing and prospective shareholders to observe whether issuers are enforcing their recovery policies consistent with Section 10D. This will also help exchanges monitor compliance. Similarly, the requirement to disclose instances in which the board does not pursue recovery and its reasons for doing so (*e.g.,* because the expense of enforcing recovery rights would exceed the amount of erroneously awarded compensation or because the recovery would violate a home country's laws), would permit shareholders to be aware of the board's actions in this regard and thus potentially hold board members accountable for their decisions.

As a commenter noted, there are a number of direct costs for issuers resulting from the disclosure requirements of the final rules.[498] First, issuers will incur direct costs to file their compensation recovery policies as an exhibit to their Exchange Act annual reports. For purposes of our Paperwork Reduction Act Analysis, we estimate that the exhibit filing requirement would impose a minimal burden of 0.4 hours per issuer. Second, if an issuer is required to recover erroneously awarded compensation, or if there is an outstanding balance from application of the recovery policy to a prior restatement, the issuer would incur a direct cost to prepare and disclose the information required by Item 402(w) of Regulation S–K, Item 6.F of Form 20–F, or paragraph B.19 of Form 40–F, as applicable (or, for registered management investment companies, Item 18 to Form N–CSR and Item 22(b)(20) of Schedule 14A) and the corresponding narrative. For purposes of our PRA, we estimate that the final disclosure requirement, including costs to tag the required disclosure in Inline XBRL, as described above, would impose a burden of 25 hours per issuer.[499]

7. Indemnification and Insurance

Many of the benefits discussed above would result from an executive officer's changes in behavior as a result of incentive-based compensation being at risk for recovery should a ''Big R'' or ''little r'' restatement be required. These benefits would be substantially undermined if the issuer were able to indemnify the executive officer for the loss of compensation.[500] Moreover, as a commenter noted, shareholders would bear the cost of providing such indemnification.[501] Therefore, the indemnification provision prohibits listed issuers from indemnifying current and former executive officers against the loss of erroneously awarded compensation or paying or reimbursing such executives for insurance premiums to cover losses incurred under the recovery policy.[502]

Although reimbursement of insurance premiums by issuers would be prohibited, the insurance market may develop an insurance product that would allow an executive officer, as an individual, to purchase insurance against the loss of incentive-based compensation when the material accounting error is not attributable to the executive. In that event, an executive officer would be able to hedge some of the risk that results from a recovery policy. If an executive officer purchased this type of insurance policy, the benefits of the issuer's recovery policy could be reduced to the extent that insurance reduces the executive officer's incentive to ensure accurate financial reporting. However, to the extent an insurance policy does not cover losses resulting from the recovery of compensation attributed to a material accounting error that resulted from inappropriate actions by the insured executive officer, then incentives would remain for the executive to avoid inappropriate actions.

The development of this type of private insurance policy for executive officers would also have implications for issuers. Overall, it could make it less costly for an issuer to compensate an executive officer after implementing a recovery policy. If an active insurance

Companies, Acct. Today (Aug. 15, 2018), *available at https://www.accountingtoday.com/news/aicpa-sees-45-drop-in-xbrl-costs-for-small-reporting-companies* (retrieved from Factiva database). In addition, a 2018 NASDAQ survey of 151 listed registrants found an average XBRL compliance cost of $20,000 per quarter, a median XBRL compliance cost of $7,500 per quarter, and a maximum XBRL compliance cost of $350,000 per quarter in XBRL costs. *See* Letter from Nasdaq, Inc. (Mar. 21, 2019) (to the Request for Comment on Earnings Releases and Quarterly Reports); *see Request for Comment on Earnings Releases and Quarterly Reports,* Release No. 33–10588 (Dec. 18, 2018) [83 FR 65601 (Dec. 21, 2018)].

[496] *See* 17 CFR 229.601(b)(101), General Instruction C.4 of Form N–CSR, and 17 CFR 232.405.

[497] In the absence of a mandatory requirement for issuers to implement and disclose a recovery policy, investors may be uncertain about whether the implementation of a voluntary recovery policy by an issuer is a credible signal of the issuer's approach to executive compensation. By increasing the likelihood of a recovery policy being enforced, the final rules may make the signal more credible and allow issuers to differentiate themselves based on variation in the scope of a recovery policy.

[498] *See, e.g.,* comment letter from IBC (noting that the ''necessity for additional disclosures as well as the XBRL requirement increase the administrative cost to the registrant due to the substantial increase in the amount of information required for disclosure and the complexity of formatting data in XBRL'')

[499] *See* Section V.C., for a more extensive discussion of these disclosure burdens, including the monetization and aggregation across issuers of these direct costs.

[500] Several commenters offered suggestions on this issue, *see* Section II.E.2.

[501] *See, e.g.,* comment letter from Rosanne D. Balfour, discussing this potential outcome.

[502] As an example of the type of indemnification that is prohibited, one commenter noted that when Wilmington Trust was required to recover $2 million from an executive under the TARP clawback rules, the company responded by increasing the executive's base salary by 25%. *See* comment letter from Kovachev. *See also* the discussion *infra* at note 368.

market develops such that the executive officer could hedge against the uncertainty caused by the recovery policy, then market-determined compensation packages would likely increase to cover the cost of such policy. While the indemnification provision prohibits issuers from reimbursing a current or former executive officer for the cost of such insurance policy, a market-determined compensation package would likely account for the hedging cost and incorporate it into the base salary of the executive officer's compensation. This increase may be less than the increase in the market-determined compensation packages if an insurance policy was unavailable because an insurance company may be more willing to bear uncertainty than a risk-averse executive.

8. Effects May Vary for Different Types of Issuers

The effects of the final rules may vary across different types of listed issuers. In particular, the effects of implementing a recovery policy could be greater (or lower) on SRCs, relative to non-SRCs, to the extent that SRCs have different compensation structures, financial reporting complexity, or quality than other issuers. Analysis by Commission staff indicates that SRCs, on average, use a lower proportion of incentive-based compensation than non-SRCs, suggesting a lower potential impact of the final rules on SRCs.[503] On the other hand, as discussed in Section IV.A., only 34% of SRCs currently have a recovery policy in place in contrast to 71% of larger domestic issuers. As a result, SRCs may experience more dramatic benefits as well as larger costs, relative to the baseline. There is also evidence that companies that are typically required to restate financial disclosures are generally smaller than those that are not required to restate financial disclosures, suggesting that there could be a greater incidence of restatements and recoveries at SRCs.[504] Academic studies suggest that the likelihood of reporting a material weakness in internal control over financial reporting decreases as the size of the issuer increases.[505] This may imply that, relative to non-SRCs, the final rules may cause executive officers at SRCs to devote proportionately more resources to the production of high-quality financial reporting. Finally, to the extent that implementation of the final rules entails fixed costs, SRCs, because of their smaller size, would incur a greater proportional compliance burden than larger issuers.

The final rules also may affect EGCs differently than non-EGCs. Relative to non-EGCs, EGCs can be characterized as having higher expected growth in the future and potentially higher risk investment opportunities.[506] As such, relative to non-EGCs, the market valuations of EGCs may be driven more by future prospects than by the value of current assets. As discussed above, a recovery policy could reduce the incentive of an executive officer to invest in certain value-enhancing projects that may increase the likelihood of a material accounting error, including both ''Big R'' and ''little r'' restatements. This reduced incentive could have a greater impact for EGCs, relative to non-EGCs, to the extent that executive officers at EGCs are more likely to forgo value-enhancing growth opportunities as a result of the final rules, which as discussed above, may have a larger impact on the market value of equity of EGCs, relative to non-EGCs. However, EGCs also tend to be smaller than non-EGCs,[507] which may imply that EGCs have a higher likelihood of an accounting restatement and a higher likelihood of reporting a material weakness in internal control over financial reporting. Similar to SRCs, this may imply that, relative to non-EGCs, the final rules may cause executive officers at EGCs to devote proportionately more resources to the production of high-quality financial reporting. Also, as discussed in Section IV.A., only 19% of EGCs currently have a recovery policy in place compared to 71% of larger domestic issuers . As a result, EGCs may experience more dramatic changes relative to the baseline.

Some commenters have noted that SRCs and EGCs may face disproportionate costs.[508] One commenter noted that these companies may benefit disproportionately,[509] and another commenter indicated that the benefits may be lower for companies immediately following the IPO process.[510] We acknowledge that SRCs and EGCs may face disproportionate costs of compliance as compared to other companies, but also note that our baseline analysis suggests that fewer of these companies may have implemented compensation recovery policies[511] and

[503] Commission staff analyzed the composition of total compensation paid to all named executive officers whose compensation was reported in the Summary Compensation Table for 50 randomly selected SRCs and 50 randomly selected non-SRCs in fiscal year 2021. Staff found that, on average, SRCs pay 47% of total compensation in base salary versus 20% for non-SRCs; SRCs pay 19% of total compensation in stock awards versus 45% for non-SRCs; SRCs pay 7% of total compensation in non-equity incentive plan compensation versus 18% for non-SRCs; SRCs pay 6% of total compensation as a bonus versus 2% for non-SRCs; and SRCs pay 16% of total compensation in option awards versus 8% for non-SRCs. Since the Summary Compensation Table does not provide sufficient information to determine if stock awards or non-equity incentive plan compensation would constitute ''incentive-based compensation'' as defined in the rule, these differences should be taken as maximum estimated differences of incentive-based compensation for named executive officers. Staff did not find significant differences between SRCs and non-SRCs in the percent of compensation paid in nonqualified deferred compensation, or in other compensation. We also note that the final rule covers a broader set of employees than the named executive officers required to report within the Summary Compensation Table.

[504] *See* Susan Scholz, *Financial Restatement: Trends in the United States 2003–2012,* Ctr. Audit Quality, Washington, DC, (2013).

[505] *See, e.g.,* Jeffrey T. Doyle *et al., Determinants of Weaknesses in Internal Control Over Financial Reporting,* 44 J. Acct. & Econ. 193 (2007) *available at https://papers.ssrn.com/sol3/papers.cfm?abstract_id=770465* (retrieved from SSRN Elsevier database).

[506] In an analysis of 446 EGCs with fiscal year 2021 data available in the Standard & Poor's Compustat and the CRSP monthly stock returns databases, Commission staff found that on average EGCs have higher research and development expenses as a percent of total assets. For this analysis staff set book-to-market to the 0.025 and 0.975 percentile for values outside of that range; staff set research and development to the 0.975 percentile for values above that level; and staff restricted the analysis to companies that issued common equity and were listed on NYSE, NYSE MKT, or NASDAQ.

[507] Using the same dataset referenced in note 322, staff found the average market capitalization of EGCs is approximately $1.5 billion while the average market capitalization of non-EGCs is approximately $14.6 billion. Staff also found the smallest EGCs tend to be relatively close in market capitalization to the smallest non-EGCs, with the 10th percentile of the distributions of the market capitalization of EGCs and non-EGCs being approximately $40.6 million and $60.5 million, respectively. Conversely, staff found the largest EGCs tend to have substantially lower market capitalizations than the largest non-EGCs, with the 90th percentile of the distributions of the market capitalization of EGCs and non-EGCs being approximately $2.9 billion and $21.9 billion.

[508] *See, e.g.,* comment letter from ABA 1 (indicating that SRCs and EGCs are likely to bear significant costs in enforcing a mandatory compensation recovery policy and that the proposed rule would create a costly incentive for newly public issuers to avoid the use of incentive based compensation); CCMC 2 (indicating that the costs would be disproportionate); Compensia (indicating that SRCs and EGCs would face disproportionate costs); Mercer (indicating that the rule could impede the facilitation of capital formation for SRCs and EGCs); and NACD (suggesting the rule ''puts an inordinate burden on smaller companies, which cannot always afford the kind of compliance costs entailed by new rules'').

[509] *See, e.g.,* comment letter from Public Citizen 1 (suggesting that ''the chance for manipulation [at SRCs] is perhaps even greater at such companies than at larger firms with a wider and arguably more vigilant shareholder base'').

[510] *See, e.g.,* comment letter from Compensia (suggesting that for EGCs, ''the likelihood of a financial restatement in the period immediately following an IPO would be minimal given the degree of scrutiny the issuer must undergo during the offering process'').

[511] *See* Section IV.A.

consequently may realize disproportionate benefits.[512]

In addition, we recognize that there may be additional specific costs and benefits for FPIs. While we believe the typical issuer is unlikely to transfer listing in the short-term as a result of the final rules, the potential response of FPIs is less clear. On one hand, by virtue of listing on a U.S. exchange, an FPI has demonstrated willingness to list outside of the issuer's home country. The issuer presumably chose to list on a U.S. exchange because the particular U.S. exchange is an advantageous trading venue for the issuer's securities.

Commenters have noted that the final rules would increase the compliance burden on FPIs and could thereby potentially reduce the advantage of listing on a U.S. market.[513] One commenter noted that the final rules would cause a competitive disadvantage for domestic issuers as compared to foreign issuers,[514] and others noted that they may encourage foreign governments to pass laws that disadvantage or penalize U.S. corporations.[515] In addition, commenters noted that U.S. corporations operating in jurisdictions outside the United States would face similar compliance hurdles as FPIs.[516]

We recognize that FPIs may bear additional compliance costs, as noted by commenters, relative to non-FPI listed issuers. As a result, FPIs could choose to delist from U.S. exchanges.[517] Further, FPIs that are not currently listed on U.S. exchanges, but are considering listing on a non-home country exchange, may choose to list on another non-home foreign exchange because of the increased burden of our final rules. At the same time, we understand that one of the benefits of listing on a U.S. exchange is that an issuer can signal the high quality of its corporate governance, which is achieved by subjecting itself to the rigorous corporate governance rules and regulations of a U.S. exchange.[518] By listing on U.S. exchanges, many FPIs may gain the ability to raise capital at a reduced cost compared to their home market. Hence, some FPIs seeking access to U.S. capital markets may view the requirements as beneficial.

We also recognize that the final rule may have different effects on listed funds. One commenter noted that listed funds' financial statements are less complex than operating company financial statements and that accounting restatements are relatively rare for funds.[519] The commenter also stated that the proposal could affect more than the small number of internally managed listed funds that the Commission estimated in the proposal, because some externally managed listed funds may pay some or all of the funds' chief compliance officers' compensation.

We recognize that there is a wide range of complexity in issuer financial reporting. Issuers with less complex financial reporting, such as some listed funds, may realize fewer benefits from the final rule. We also anticipate that such issuers may experience fewer costs, as fewer compensation contracts may be affected, and potential trigger events would be relatively rare. In addition, we recognize that listed funds that pay for their chief compliance officers' compensation would be affected by the final rule, and that as a result, the number of affected funds likely exceeds the estimate provided in the Proposing Release.

C. Alternatives

Below we discuss possible alternatives to the final rules we considered and their likely economic effects.

1. Exemptions for Certain Categories of Issuers

We considered exempting (or permitting the exchanges to exempt) SRCs and EGCs from proposed Rule 10D–1. As discussed above, the final rules may impose certain disproportionate costs on SRCs and EGCs. However, smaller issuers, SRCs and EGCs, may have an increased likelihood of reporting an accounting error and may be more likely to report a material weakness in internal control over financial reporting.[520] As more fully discussed in Section II.A.3, while the Commission has the authority to exercise its discretion to exempt such issuers, Congress did not direct the Commission to consider differential treatment for recovery of incentive-based compensation that was not earned and should not have been paid for SRCs or EGCs. As such, we see no reason why shareholders of smaller issuers should not benefit from recovery of erroneously awarded compensation in the same manner as shareholders of larger issuers.

A number of commenters suggested that we consider exempting FPIs, arguing that home countries would generally have a greater interest in determining whether issuers should have recourse against executive officers.[521] Another commenter suggested that some issuers may be required to implement two different recovery policies, and also noted that FPIs are not currently required to identify Section 16 officers. As a result, the commenter stated that the economic analysis in the Proposing Release understated the costs for FPIs.[522]

As discussed previously in the context of FPIs generally, the potential effect of the final rules on FPIs is difficult to predict. On the one hand, due to the potential differences in home

[512] *See supra* note 413.

[513] *See, e.g.,* comment letters from CCMC 1; and Coalition. *See also, e.g.,* comment letter from Freshfields (noting that the rules will require FPIs to identify and keep track of executive officers consistent with Section 16, and stating that, as a result of such requirements, the Economic Analysis in the Proposing Release understates the compliance burden for FPIs, especially if the FPI becomes subject to two clawback regimes); and Kaye Scholer (stating that the proposal does not give due consideration to or address the complications that would arise where an FPI is also required to recover compensation under home country rules, such as situations where the home country has a different definition of incentive-based compensation). In addition, *see* comment letter from UBS (noting that it may lose attractiveness as an employer as a result of the proposed rules).

[514] *See* comment letter from Bishop.

[515] *See* comment letters from CCMC 1; and Coalition.

[516] *See, e.g.,* comment letters from CCMC 1; and Coalition.

[517] *See supra* note 261, describing feedback from commenters who note that the rules may create potential disincentives for FPIs to list on U.S. exchanges. *See also* comment letter from Davis Polk 1 (noting that ''adoption of Section 404 of the Sarbanes-Oxley Act of 2002 led 51.6% of foreign firms to consider delisting from U.S. exchanges, and led 76.8% of small foreign firms to consider delisting, with 98 foreign firms de-listing in 2002,'' citing SEC Office of Economic Analysis, *Study of the Sarbanes-Oxley Act of 2002 Section 404 Internal Control over Financial Reporting Requirements* (Sep. 2009), *available at https://www.sec.gov/news/studies/2009/sox-404_study.pdf.*)

[518] *See, e.g.,* Craig Doidge *et al., Why do Foreign Firms Leave U.S. Equity Markets?,* 65 J. Fin., 1507 (2010), (noting that by subjecting themselves to U.S. laws and institutions, insiders of foreign firms credibly bond themselves to avoid some types of actions that might decrease the wealth of minority shareholders.) *But see* comment letter from Kaye Scholer (arguing that U.S. standards for corporate governance may not be more rigorous than other jurisdictions, and further that it is not clear that FPIs list on a U.S. exchange to signal their high quality corporate governance rather than to access U.S. capital markets or to provide more liquidity for their stock).

[519] *See* comment letter from ICI.

[520] *See,* Choudhary *et al., supra* note 61 (finding that future restatements are less likely for larger firms). *See also* comment letter from Public Citizen 1 (arguing that the risk of manipulation is greater at smaller companies).

[521] *See, e.g.,* comment letters from the ABA 1; Bishop; and Davis Polk 1.

[522] *See supra* footnotes 32 through 37; *see also* comment letter from Freshfields (''we expect all UK companies that are FPIs either already have a clawback in place, or will implement one when their directors' remuneration policy is next submitted for shareholder approval,'' and ''we believe that the Economic Analysis in the Release understates the compliance burden for FPIs especially if the FPI becomes subject to two clawback regimes'').

country law, the final rule requirements may be especially burdensome for FPIs relative to non-FPIs.[523] On the other hand, there is evidence that many FPIs may be listing on U.S. exchanges in part to credibly signal to investors their willingness and ability to be subjected to stricter governance standards.[524] While FPIs may face a relatively higher burden from the final rules, they also may experience a relatively higher benefit. As more fully discussed in Section II.A.3, while the Commission has the authority to exercise its discretion to exempt such issuers, the concerns expressed by commenters do not in our view justify exempting all FPIs from the obligation to recover incentive-based compensation that was erroneously awarded. Moreover, the recovery requirements will help to encourage reliable financial reporting by listed issuers, which is as important for investors in FPIs as for other issuers. Studies have shown that foreign companies present a similar risk of restatement as other companies[525] and that U.S. issuers who are non-accelerated filers accounted for approximately 53% of restatements.[526] To the extent that recovery under Rule 10D–1 would be wholly inconsistent with a foreign regulatory regime, we have included an impracticability accommodation, as discussed in Section II.C.3.b., which may alleviate some of the implementation challenges faced by FPIs.

Certain commenters also suggested we unconditionally exempt listed funds, rather than the conditional exemption we are adopting. Listed funds, unlike most other issuers, are generally externally managed and often have few, if any, employees that are compensated by the fund (*i.e.,* the issuer). As discussed above, the final rules are designed to reflect the structure and compensation practices of listed funds by requiring funds to implement compensation recovery policies only when they in fact award incentive-based compensation covered by Section 10D. As such, we believe the rules are appropriately tailored as applied to funds in that they will only apply to the small subset of listed funds that award incentive-based compensation covered by Section 10D.

[523] We note that if recovery of erroneously awarded compensation would violate home country laws that were in effect as of the date of publication of Rule 10D–1 in the **Federal Register**, the final rules may permit the board of directors discretion to forgo recovery as impracticable, subject to certain conditions.

[524] *See* Craig Doidge *et al., supra* note 518.

[525] *See supra* note 56.

[526] *See* A Twenty-Year Review.

2. Excluding Incentive-Based Compensation Tied to Stock Price

The final rule encompasses incentive-based compensation tied to measures such as stock price and TSR because improper accounting affects such financial reporting measures and in turn results in excess compensation. As discussed above, the final rules may result in issuers incurring significant costs to recover incentive-based compensation tied to stock price. If incentive-based compensation tied to stock price were excluded from the final rules, issuers would not incur the costs associated with recovery. However, a significant component of the total performance-based compensation would be excluded from the scope of the final rules without generating the related potential benefits. In addition, the exclusion of performance-based compensation tied to stock price would provide issuers with an incentive to shift compensation away from forms subject to recovery to forms tied to market-based metrics such as stock price and TSR that would not be subject to recovery.

The economic effect of any incentive to shift away from compensation subject to recovery is difficult to predict due to the nature of incentive-based compensation tied to stock price. On one hand, incentive-based compensation tied to metrics that are market-based, such as stock price or TSR, could be highly correlated with the interests of shareholders and therefore may be beneficial to shareholders. On the other hand, because market-based measures may be influenced by factors that are unrelated to the performance of the executive officer, these metrics may not fully capture or represent the effort and actions taken by the executives. In particular, market-based measures incorporate expectations about future earnings, which may not be closely tied to the executive officer's current performance. In contrast, the use of accounting-based measures, such as those derived from revenue, earnings, and operating income, can be tailored to match a specific performance period and provide direct measures of financial outcomes.[527] To this end, accounting-based measures of performance—although not directly tied to issuer value enhancement—may better capture the effect of an executive officer's actions during the relevant performance period. Therefore, if incentive-based compensation tied to stock price were excluded, the incentive to substitute away from accounting-based measures to market-based measures of performance may result in compensation that is less tied to the consequences of an executive officer's actions during the performance period. Since changes in compensation practices away from the current market practices may be either beneficial to issuers or not, depending on whether current practices are optimal, it is unclear that shifting compensation toward forms tied to market-based metrics would be beneficial.

The optimal compensation package may contain a mix of incentive-based compensation tied to market-based measures and accounting-based measures. Empirically, the use of market-based performance metrics is more prevalent in long-term incentive plans than in short-term incentive plans.[528] Using market-based measures of performance in short-term incentive plans may be undesirable for the executive officer in that the stock price may be volatile and may not reflect the executive's efforts to enhance firm value in the performance period. The relatively higher use of market-based measures in long-term incentive plans could reflect that in the long-term the executive officer's efforts to enhance firm value may be more likely to be incorporated in the market value of the firm. Short-term and long-term performance-based compensation may act as complements, with the different performance measures used to award each type reflecting the compensation committee's effort to align the executive officer's interests with those of the shareholders. The exclusion of incentive-based compensation tied to stock price may affect the relative mix of short-term and long-term performance-based compensation, or the performance measures that each type is linked to, and consequently may adversely affect the incentives of the executive officer.

3. Including Only ''Big R'' Restatements as Trigger Events

The Commission considered adopting final rules that would provide that recovery is required with respect to only ''Big R'' restatements that correct errors that are material to previously issued financial statements. Under that alternative, ''little r'' restatements would not trigger a potential recovery.

As discussed above, some commenters have provided feedback

[527] All of the seven most frequently used metrics to award compensation in short-term incentive plans were accounting-based measures. Those measures are operating income, revenue, cash flow, EPS, return measures, operating income margin, and net income. *See* Meridian Report. *See also supra* note 356.

[528] *See* Meridian Report.

indicating that there are substantial benefits associated with including ''little r'' restatements as trigger events, including the likelihood that the final rules will provide stronger incentives for managers to monitor the accuracy of financial statements.[529] Were we to include only ''Big R'' restatements, those benefits would not be realized. However, other commenters have noted that the inclusion of ''little r'' restatements as trigger events may increase the costs of compliance with the final rules compared to an alternative of including only ''Big R'' restatements.[530] Although it is possible that certain compliance costs may be higher as a result of the inclusion of ''little r'' restatements in the scope of potential trigger events, as discussed above, not every restatement would trigger a recovery of compensation that was earned as a result of meeting performance measures.[531] In addition, issuers are already required to perform a materiality analysis on each error that is identified in order to determine how to account for and report the correction of that error, and in that context, issuers may have already calculated the impact of the error on executive compensation. Furthermore, the broader scope of encompassing ''little r'' restatements addresses concerns that issuers could manipulate materiality and restatement determinations to avoid application of the compensation recovery policy.[532]

4. Other Alternatives Considered

Some commenters suggested that issuers may choose to implement a nonqualified deferred compensation plan (*e.g.,* a ''holdback plan'') to aid in the recovery of erroneously awarded incentive-based compensation.[533] One commenter suggested that the Commission specifically require the use of a holdback plan,[534] and another commenter noted that such a plan may raise significant tax issues and recommended that the Commission provide the board of directors with broad discretion.[535] A holdback plan would likely reduce the costs of recovering erroneously awarded incentive-based compensation. On the other hand, a holdback plan may further augment any increase in compensation necessary to offset the expected cost to the executive officer of a recovery policy. This is due to the executive officer not having access to the funds she has earned and having to delay consumption that would otherwise be possible. These considerations suggest that a holdback plan could be efficient at some issuers but inefficient at others. We note that the rule does not mandate a holdback plan, but also does not prevent issuers from adopting a holdback plan if they so choose.

One commenter suggested that the Commission consider also requiring recovery of proportional incentive compensation, whether or not it is numerically connected to the restated financial results. This suggestion would require issuers, in the event of a restatement, to recover a proportionate amount of the compensation tied to qualitative variables or board judgment.[536] Relative to the final amendments, this alternative implementation would reduce the incentive to alter the composition of an executive officer's compensation package to more heavily weight qualitative variables or board judgment, while increasing the incentive to more heavily weight base salary as well as performance-based compensation tied to metrics other than financial reporting measures. To the extent that performance compensation based on qualitative variables and board judgment allows the board to compensate the executive officer for performance that is otherwise difficult to measure, the reduced weight on this form of performance-based compensation could make it more difficult for the board to align the executive officer's interests with those of the shareholders. On the other hand, as suggested by the commenter, we agree that reduced weight on this form of performance-based compensation could make it easier for shareholders to understand the incentives of the executive officer. Because a greater amount of performance-based compensation would be at risk for recovery, implementing this alternative could also increase the amount of expected compensation the executive officer would require in order to voluntarily bear the increased uncertainty.

V. Paperwork Reduction Act

A. Summary of the Collection of Information

Certain provisions of our rules, schedules, and forms that will be affected by the final rules contain ''collection of information'' requirements within the meaning of the Paperwork Reduction Act. The Commission published a notice requesting comment on changes to these collections of information in the Proposing Release and submitted these requirements to the Office of Management and Budget (''OMB'') for review in accordance with the PRA.[537] While a number of commenters provided comments on the potential costs of the proposed rules, as well as factors that could affect the scope of entities covered by the proposal, commenters did not specifically address our PRA analysis.[538]

The hours and costs associated with preparing, filing, and distributing the schedules and forms constitute reporting and cost burdens imposed by each collection of information. An agency may not conduct or sponsor, and a person is not required to comply with, a collection of information unless it displays a currently valid OMB control number. Compliance with the information collections is mandatory. Responses to the information collections are not confidential and there is no mandatory retention period for the information disclosed. The titles for the affected collections of information are:

''Form 10–K'' (OMB Control No. 3235–0063);

''Form 20–F'' (OMB Control No. 3235–0288);

''Form 40–F'' (OMB Control No. 3235–0381); and

''Form N–CSR'', Certified Shareholder Report of Registered Management Investment Companies'' (OMB Control No. 3235–0570).[539]

[529] *See supra* note 84.

[530] *See supra* note 88. Also, as noted in the Second Reopening Release, the inclusion of ''little r'' restatements as potential trigger events increases the number of potential trigger events.

[531] We expect that recovery of incentive-based compensation that is tied to TSR would be relatively small and infrequent as a result of ''little r'' restatements, since these restatements are less likely to be associated with significant stock price reactions. *See* Choudhary *et al., supra* note 61 (finding an average stock price reaction of −3.3% to ''Big R'' restatements and −0.3% for ''little r'' restatements); Thompson, *supra* note 79 (finding an average stock price reaction of −1.5% to ''Big R'' restatements and −0.3% for ''little r'' restatements).

[532] *See supra* note 107.

[533] *See* comment letter from Compensia; NACD; and Bhagat and Elson. *See also* Stuart Gillan and Nga Nguyen, *Clawbacks, Holdbacks, and CEO Contracting,* 30 J. Appl. Corp. Fin., 53 (2018).

[534] *See* comment letter from Bhagat and Elson.

[535] *See* comment letter from ABA 1.

[536] *See* comment letter from Public Citizen 1.

[537] 44 U.S.C. 3507(d) and 5 CFR 1320.11.

[538] *See supra* Section II. One commenter contended that the Reopening Release should have included an updated PRA analysis. *See* comment letter from Toomey/Shelby, *supra* note 14.

[539] The amendments also affect the following collections of information: ''Regulation 14A and Schedule 14A'' (OMB Control No. 3235–0059); ''Regulation 14C and Schedule 14C'' (OMB Control No. 3235–0057); and ''Rule 20a–1 under the Investment Company Act of 1940, Solicitations of Proxies, Consents, and Authorizations'' (OMB Control No. 3235–0158). Regulations 14A and 14C and the related schedules require the new disclosure to be included in proxy and consent solicitations. Rule 20a–1 requires funds to comply with Regulation 14A, Schedule 14A, and all other rules and regulations adopted pursuant to Section

Continued

The Commission adopted Form 10–K, Form 20–F and Form 40–F under the Exchange Act. Form N–CSR was adopted under the Exchange Act and Investment Company Act. The forms set forth the disclosure requirements to help shareholders make informed voting and investment decisions.

B. Summary of the Final Amendments and Effect of the Final Amendments on Existing Collections of Information

To implement the provisions of Section 954 of the Dodd-Frank Act, which added Section 10D to the Exchange Act we are adopting Rule 10D–1 under the Exchange Act as well as amendments to Items 402, 404, and 601 of Regulation S–K; Rule 405 of Regulation S–T; Schedule 14A; Form 20–F; Form 40–F; Form 10–K; and Form N–CSR. Rule 10D–1 directs national securities exchanges and associations to establish listing standards that require listed issuers to adopt and comply with written policies for recovery of erroneously awarded incentive-based compensation based on financial information required to be reported under the securities laws, applicable to the listed issuers' executive officers, over a period of three years. As described in more detail above, we are also adopting new disclosure requirements in Schedule 14A, Form 10–K, Form 20–F, Form 40–F, and Form N–CSR to require issuers listed on an exchange to file their written compensation recovery policy as an exhibit to their annual reports. Form 10–K, Form 20–F, Form 40–F additionally require issuers listed on an exchange to indicate by a check box on the cover page of their annual reports whether the financial statements of the registrant included in the filing reflect correction of an error to previously issued financial statements and whether any of those error corrections are restatements that required a recovery analysis; and disclose actions an issuer has taken pursuant to such recovery policy. These disclosures will also be required to be provided in tagged data language using Inline XBRL.[540]

The additional information a listed U.S. issuer is required to compile and disclose regarding its policy on incentive-based compensation pursuant to Item 402(w) supplements information that U.S. issuers often provide elsewhere in their executive compensation disclosure.[541] Similarly, for a listed FPI filing an annual report on Form 20–F or, if a FPI elects to use domestic registration and reporting forms, on Form 10–K, the amendments supplement existing disclosures.[542] We anticipate that new disclosure and submission requirements will increase the amount of information that listed U.S. issuers and listed FPIs must compile and disclose and therefore increase the burdens and costs for the affected registrants.

For listed U.S. issuers, other than registered management investment companies, the amendments require additional Item 402 disclosure in certain required reports and will increase the burden hour and cost estimates associated with Form 10–K.[543] For listed registered management investment companies, the amendments to Form N–CSR and Schedule 14A require additional disclosure and will increase the associated burden hour and cost estimates, if the registered investment company pays incentive-based compensation, for Form N–CSR.[544] For listed FPIs filing an annual report on Form 20–F, Form 40–F or, if a FPI elects to use U.S. registration and reporting forms, on Form 10–K, the amendments require additional disclosure in annual reports and will increase the burden hour and costs estimates for each of these forms.

C. Burden and Cost Estimates Related to the Final Amendments

The following table summarizes the estimated paperwork burdens associated with the amendments to the affected forms filed by listed issuers.

14(a) of the Exchange Act that would be applicable to a proxy solicitation if it were made in respect of a security registered pursuant to Section 12 of the Exchange Act. As noted below, for purposes of the PRA and in order to avoid the PRA inventory reflecting duplicative burdens, we assume the disclosure will be incorporated by reference into Form 10–K and Form N–CSR from proxy and information statements and do not include a separate burden for these collections of information. *See* notes 543 and 544.

[540] While paperwork burdens associated with investment company interactive data requirements are generally accounted for in the Information Collection titled ''Registered Investment Company Interactive Data,'' any burdens associated with interactive data for investment companies associated with the final rules are estimated to be negligible. For administrative simplicity, these burdens therefore are incorporated into the burdens associated with the Form N–CSR Information Collection, discussed below.

[541] These issuers are required to provide information relating to the compensation of their named executive officers that may include policies and decisions regarding the adjustment or recovery of awards or payments if the relevant performance measures upon which they are based are restated or otherwise adjusted in a manner that would reduce the size of an award or payment. *See* 17 CFR 229.402(b)(2)(viii). SRCs and EGCs generally are subject to scaled executive compensation disclosure requirements in Item 402 of Regulation S–K. *See* 17 CFR 229.402(*l*) and Section 102(c) of the JOBS Act. However, the requirements of new Item 402(w) are not scaled and thus SRCs and EGCs will be required to provide all of the disclosures called for by this item. Accordingly, we have not calculated separate or different paperwork burdens with respect to Item 402(w) for these classes of issuers. With respect to registered management investment companies, under the final rules, information mirroring Item 402(w) disclosure must be included in annual reports on Form N–CSR and in proxy statements and information statements relating to the election of directors.

[542] *See* Item 6.B and Item 7.B. of Form 20–F.

[543] For purposes of our PRA estimates, consistent with past amendments to Item 402, we assume that all of the burden relating to the new narrative disclosure requirements in Schedule 14A and Schedule 14C would be associated with Form 10–K, even if registrants include the new disclosure required in Form 10–K by incorporating that disclosure by reference. We are therefore not allocating a separate burden estimates for Regulation 14A/Schedule 14A and Regulation 14C/Schedule 14C. We took a similar approach in connection with the rules for Summary Compensation Table disclosure required by the 2006 amendments to Item 402. *See Executive Compensation and Related Person Disclosure,* Release No. 33–8732A (Aug. 29, 2006) [71 FR 53158].

[544] Similarly, for purposes of the PRA estimates, we are also assuming that all of the burden relating to the new narrative disclosure requirements for registered investment companies will be associated with Form N–CSR, and therefore, we are not allocating a separate burden estimate for Schedule 14A or Rule 20a–1 under the Investment Company Act with respect to disclosure by such funds.

PRA TABLE 1—ESTIMATED PAPERWORK BURDEN OF FINAL AMENDMENTS

	Estimated burden increase	Brief explanation of estimated burden increase
Amendments to Reg. S–K Items 402, 404, and 601, Reg. S–T Item 405, Form 20–F, Form 40–F, Schedule 14A, Form 10–K, and Rule 10D–1		
(1) Require the filing of an issuer's recovery policy as an exhibit to its Exchange Act annual report. (2) Require: ○ Disclosure regarding the issuer's conclusion that recovery was not required under the recovery policy or disclosure regarding how the issuer applied its recovery policy after the issuer was required to prepare an accounting restatement that required recovery under the policy, or there was an outstanding balance to be recovered; ○ Disclosure of the effects of the recovery on the Summary Compensation Table; ○ New check boxes to indicate on the cover page of issuers' annual reports whether the financial statements included in the filing reflect correction of an error to previously issued financial statements and whether such corrections are restatements that required a recovery analysis; and ○ The above information to be tagged using Inline XBRL.	(1) An increase of 0.4 burden hours for Form 10–K, Form 20–F, and Form 40–F. (2) An increase of 25 burden hours for each of the affected forms: Form 10–K, Form 20–F, and Form 40–F.	These increases are the estimated effect on the affected forms by the amendments to implement Section 10D, including the filing of the recovery policy, recovery policy and policy implementation disclosures, and the use of structured data for this information.
Amendments to Form N–CSR, and Rule 10D–1		
(1) Require the filing of a fund's recovery policy as an exhibit to its Form N–CSR annual report. (2) Require: ○ Disclosure regarding the fund's conclusion that recovery was not required under the recovery policy or disclosure regarding how the fund applied its recovery policy after the fund was required to prepare an accounting restatement that required recovery under the policy, or there was an outstanding balance to be recovered; and ○ The above information to be tagged using Inline XBRL.	(1) An increase of 0.4 burden hours for the affected form: Form N–CSR. (2) An increase of 25 burden hours for the affected form: Form N–CSR.	These increases are the estimated effect on the affected form by the amendments to implement Section 10D, including the filing of the recovery policy, recovery policy and policy implementation disclosures, and the use of structured data for this information.

In the Proposing Release, we derived our burden hour and cost estimates by reviewing our burden estimates for similar disclosure and considering our experience with other tagged data initiatives. In particular, we noted that the preparation of the information required by Item 402(w) and the corresponding narrative disclosure provisions would be comparable to an issuer's preparation of the disclosure required by the Commission's 2009 amendments to enhance certain aspects of proxy disclosure, which were also largely designed to enhance existing disclosure requirements.[545] In addition, we believe that certain of the information required to prepare the new disclosure would be readily available to some U.S. issuers because this information, if material, is required to be gathered, determined, or prepared in order to satisfy other disclosure requirements of Item 402 of Regulation S–K. For other listed issuers, we believe that the information required to prepare the new disclosure requirement will not impose a significant burden because the issuer controls and possesses this information, which is a compilation of facts related to an issuer's implementation of its recovery policy.

[545] *See Proxy Disclosure Enhancements* Release No. 33–9089 (Dec. 16, 2009) [74 FR 68334 (Dec. 23, 2009)] (''Proxy Disclosure Enhancements''), which adopted amendments to make new or revised disclosures about: compensation policies and practices that present material risks to the company; stock and option awards of executives and directors; director and nominee qualifications and legal proceedings; board leadership structure; the board's role in risk oversight; and potential conflicts of interest of compensation consultants that advise companies and their boards of directors.

In the Proposing Release, the Commission estimated that the average incremental burden for an issuer to prepare the new narrative disclosure would be 21 hours. The proposed estimate included the time and cost of preparing disclosure, as well as tagging the data in XBRL format. We continue to believe that these are the primary cost elements for issuers preparing the disclosure and that the elements account for determining the types of incentive-based compensation awards an issuer grants to executive officers that could be subject to recovery under the issuer's recovery policy and, if necessary, disclosing information regarding the application and implementation of this recovery policy if required by a restatement.

While the cost elements remain the same, we recognize that there may be some additional burden in tagging the information using Inline XBRL, using the check boxes, and providing the expanded disclosure regarding the application of the recovery policy, including disclosure analyzing how the amount of erroneously awarded compensation was calculated and explaining why an issuer concluded that a recovery of compensation was not required. As a result, we are increasing our estimate of the average incremental burden for an issuer to prepare the disclosure from 21 hours to 25 hours. We note that this estimate should represent an upward bound, as the incremental additional disclosure associated with ''little r'' restatements should be lower than for ''Big R'' restatements because we anticipate that it will be less likely that a ''little r'' restatement will result in erroneously awarded compensation, and where no recovery is required the rules require less disclosure. As we noted in Section IV, we estimate that ''little r'' restatements may account for roughly three times as many restatements as ''Big R'' restatements.[546]

In addition, consistent with the Proposing Release, we separately estimate the burden of filing a listed issuer's or listed registered investment company's recovery policy as an exhibit to its annual report. In a modification from the proposal, we are reducing the estimate of the burden from approximately one hour to 0.4 hours. We estimate that the initial burden of filing the recovery policy as an exhibit will be one hour, but the ongoing burden for filing in subsequent years will be minimal, which we estimate as a burden of 0.1 hours. In order to form our estimate, we averaged the initial one hour burden with the 0.1 hour burden in subsequent years to determine the average burden over three years of 0.4 hours.

Because these estimates are an average, the burden could be more or less for any particular company, and may vary depending on a variety of factors, such as the degree to which companies use the services of outside professionals or internal staff and the overall effect of the restatement on the issuer's incentive-based compensation. Issuers subject to Item 402(w) will provide the required disclosures by either including the information directly in their Exchange Act annual reports or incorporating the information by reference from a proxy statement on Schedule 14A or information statement on Schedule 14C.

The amendments described in Section II will increase the paperwork burden for filings on the affected forms that include recovery policy exhibit filings and recovery policy disclosure. However, not all filings on the affected forms include these disclosures, either because they are not listed issuers or they are not required to provide the disclosure because they have not had to seek recovery pursuant to their recovery policy. Therefore, to estimate the increase in overall paperwork burden from the amendments, we first estimate the number of listed issuers and then estimate the number of issuers that may be required to include the recovery disclosure. Based on the staff's findings, the table below sets forth our estimates of the number of filings on these forms[547] and the number of such filings that will be required to include the recovery disclosure.[548]

PRA Table 2—Estimated Number of Affected Filings

Form	Current annual responses in OMB Inventory	Number of estimated recovery policy exhibit filings	Number of estimated filings that include recovery disclosure
10–K	8,292	4,513	226
20–F	729	722	36
40–F	132	132	7
N–CSR	6,898	7	1

We calculated the burden estimates by adding the estimated additional burden to the existing estimated responses and multiplying the estimated number of responses by the estimated average amount of time it would take an issuer to prepare and review disclosure required under the final amendments. For purposes of the PRA, the burden is

[546] *See* note 396 and accompanying text.

[547] Of the 2,710 listed issuers that file Form N–CSR, we estimate seven registered management investment companies that are listed issuers and are internally managed that may have executive officers who receive incentive-based compensation, and thus may be required to file a recovery policy exhibit. Of these seven, we assume for PRA purposes that one registered management investment company per year will be required to prepare the new narrative disclosure required by new Item 18 of Form N–CSR. One commenter suggested that a greater number of investment companies could be affected by the proposal, but as this commenter did not include data addressing the compensation arrangements that would fall within the scope of the proposed requirements, and because we have no other reason to believe that our estimates should be adjusted, we are not adjusting our methods of estimating the number of investment companies that the final rules would affect. *See* comment letter from ICI.

[548] *See* Section IV. In Section IV.A, we note that the report, A Twenty-One Year Review, indicated that 4.9% of issuers disclosed a restatement in 2020. In developing our estimates, we used the current annual responses in the OMB inventory for the forms as a starting point when determining the number of affected issuers. Issuers are generally only required to file one annual report on Form 10–K, Form 20–F, Form 40–F, or Form N–CSR per year. We expect, as noted above, that for purposes of the PRA, to the extent issuers provide the required information in other filings, the information will be incorporated by reference. *See* notes 543 and 544. Further, while issuers are generally required to file one annual report, the rules do not apply to all issuers, rather they only apply to listed issuers. As PRA Table 2 reflects, we estimate, based on Audit Analytics restatement data for 2021, that approximately five% of listed issuers restated their financial statements in 2020 and 2021. While recognizing that not all issuers that file restatements will be required to provide recovery disclosure, for purposes of the PRA, we use the five% figure as an upward bound, and estimate that all such issuers will provide the required disclosure.

to be allocated between internal burden hours and outside professional cost. PRA Table 3 sets forth the percentage estimates we typically use for the burden allocation for each collection of information and the estimated burden allocation for the proposed new collection of information. We also estimate that the average cost of retaining outside professionals is $600 per hour.[549]

PRA TABLE 3—ESTIMATED BURDEN ALLOCATION FOR THE AFFECTED COLLECTIONS OF INFORMATION

Collection of information	Internal (percent)	Outside professionals (percent)
Forms 10–K, N–CSR	75	25
Form 20–F, 40–F	25	75

PRA Table 4 illustrates the incremental change to the total annual compliance burden of affected forms, in hours and in costs, as a result of the amendments' estimated effect on the paperwork burden per response.[550] We note that the table includes one line for the exhibit filing requirements and a separate line for the recovery disclosure requirement, to account for the differences in the number of estimated responses.

PRA TABLE 4—CALCULATION OF THE INCREMENTAL CHANGE IN BURDEN ESTIMATES OF CURRENT RESPONSES RESULTING FROM THE FINAL AMENDMENTS

Collection of information	Number of estimated affected responses (A) [a]	Burden hour increase per response (B)	Change in burden hours (C) = (A) × (B)	Change in company hours (D) = (C) × 0.75 or 0.25	Change in professional hours (E) = (C) × 0.25 or 0.75	Change in professional costs (F) = (E) × $600
10–K Exhibit	4,513	0.4	1,805	1,354	451	$270,600
10–K	226	25	5,650	4,238	1,412	847,200
20–F Exhibit	722	0.4	289	72	217	130,200
20–F	36	25	900	225	675	405,000
40–F Exhibit	132	0.4	52.8	13	40	24,000
40–F	7	25	175	44	131	78,600
N–CSR Exhibit	7	0.4	3	2	1	600
N–CSR	1	25	25	19	6	3,600

PRA Table 5 illustrates the incremental change to the total annual compliance burden of affected forms, in costs, as a result of the adjustment to the average cost of retaining outside professionals from $400 to $600 per hour.[551]

PRA TABLE 5—CALCULATION OF THE INCREMENTAL CHANGE IN COSTS OF CURRENT RESPONSES RESULTING FROM THE AVERAGE COST ADJUSTMENT

Collection of information	Number of affected responses	Current cost burden at $400 per hour	Adjusted cost burden at $600 per hour
10–K	8,292	$1,840,481,319	$2,760,721,978
20–F	729	576,824,025	865,236,038
40–F	132	17,084,560	25,626,840

We derived our new burden hour and cost estimates by estimating the total amount of time it would take a listed issuer to prepare and review the disclosure requirements contained in the final rules. The following table summarizes the requested paperwork burden, including the estimated total reporting burdens and costs, under the amendments. For purposes of the PRA, the requested change in burden hours in column H of PRA Table 6 is rounded to the nearest whole number.

[549] We recognize that the costs of retaining outside professionals may vary depending on the nature of the professional services, but for purposes of this PRA analysis, we estimate that such costs would be an average of $600 per hour. At the proposing stage, we used an estimated cost of $400 per hour. We are increasing this cost estimate to $600 per hour to adjust the estimate for inflation from August 2006 to the present. The inflation-adjusted amount is $583.88, which we have rounded up to $600.

[550] These estimates represent the average burden for all issuers, both large and small. In deriving our estimates, we recognize that the burdens will likely vary among individual issuers based on a number of factors, including the size and complexity of their organizations. The OMB PRA filing inventories represent a three-year average. Some issuers may experience costs in excess of this average in the first year of compliance with the amendments and some issuers may experience less than the average costs. Averages also may not align with the actual number of filings in any given year.

[551] *See* note 549. The table adjusts the average cost of retaining outside professionals from $400 to $600 per hour for the affected Exchange Act forms. The aggregate burden of Form N–CSR was last estimated, including to adjust for inflation, in 2021.

PRA TABLE 6—REQUESTED PAPERWORK BURDEN UNDER THE FINAL AMENDMENTS

Form	Current burden			Program change			Revised burden		
	Current annual responses	Current burden hours	Adjusted cost burden	Number of affected responses	Change in company hours	Change in professional costs	Annual responses	Burden hours	Cost burden
	(A)	(B)	(C)	(D)	(E)	(F)	(G)	(H) = (B) + (E)	(I) = (C) + (F)
Form 10–K	8,292	14,025,462	$2,760,721,978	4,513	5,592	$1,117,800	8,292	14,031,054	$2,761,839,778
Form 20–F	729	479,261	865,236,038	722	297	535,200	729	479,558	865,771,238
Form 40–F	132	14,237	25,626,840	132	57	102,600	132	14,294	25,729,440
Form N–CSR	6,898	181,167	5,199,584	2,710	21	4,200	6,898	181,188	5,203,784

VI. Final Regulatory Flexibility Act Analysis

The Regulatory Flexibility Act requires the Commission, in promulgating rules under Section 553 of the Administrative Procedure Act,[552] to consider the impact of those rules on small entities. We have prepared this Final Regulatory Flexibility Analysis (''FRFA'') in accordance with Section 604 of the RFA.[553] An Initial Regulatory Flexibility Analysis (''IRFA'') was prepared in accordance with the RFA and was included in the Proposing Release.

A. Need for, and Objectives of, the Final Amendments

We are adopting amendments to implement the provisions of Section 954 of the Dodd-Frank Act, which added Section 10D to the Exchange Act. Section 10D requires the Commission to adopt rules directing the exchanges and associations to prohibit the listing of any security of an issuer that is not in compliance with Section 10D's requirements concerning disclosure of the issuer's policy on incentive-based compensation and recovery of erroneously awarded compensation. In accordance with the statute, the final rules direct the exchanges to establish listing standards that require each issuer to adopt and comply with a policy providing for the recovery of erroneously awarded incentive-based compensation based on financial information required to be reported under the securities laws that is received by current or former executive officers. The final rules also require listed issuers to file their policies as an exhibit to their annual reports and to include other disclosures in the event a recovery analysis is triggered under the policy

As discussed in Section I, we read Section 954 to be motivated by a simple proposition: executives of listed issuers should not be entitled to retain incentive-based compensation that was erroneously awarded on the basis of misreported financial information. The statute thus mandates that listed issuers have policies in place to recover such compensation for the benefit of the issuer's owners—its shareholders. The language and legislative history of Section 954 makes clear that the provision is premised on the notion that an executive officer should not retain incentive-based compensation that, had the issuer's accounting been correct in the first instance, would not have been received by the executive, regardless of any fault of the executive officer for the accounting errors. Accordingly, under the final rules, listed issuers will be required to adopt a policy to recover erroneously awarded incentive-based compensation from current or former executive officers regardless of whether those officers caused the material noncompliance or have direct responsibility for financial reporting matters. The disclosure requirements in the rules are intended to promote consistent disclosure among issuers as to both the substance of a listed issuer's recovery policy and how the listed issuer implements that policy in practice. The need for, and objectives of, the amendments are discussed in more detail in Sections I and II. We discuss the economic impact, including the estimated compliance costs and burdens, of the amendments in Sections IV and V.

B. Significant Issues Raised by Public Comments

In the Proposing Release, we requested comment on all aspects of the IRFA, including how the proposed rules could further lower the burden on small entities, the number of small entities that would be affected by the proposed rules, the existence or nature of the potential impact of the proposals on small entities discussed in the analysis, and how to quantify the impact of the proposed rules. We did not receive any comments specifically addressing the IRFA.[554] However, we received a number of comments on the proposed rules generally,[555] and have considered these comments in developing the FRFA. As noted in Section II.A.2., a number of commenters recommended that the Commission exempt or defer compliance for SRCs and EGCs citing the costs and burdens associated with imposing compensation recovery policies containing the detail and scope contemplated by the proposal.[556] Other commenters expressed support for requiring recovery by SRCs and EGCs as proposed.[557]

C. Small Entities Subject to the Final Amendments

The final amendments will affect, among other entities, small entities that list securities on U.S.-registered securities exchanges. The RFA defines ''small entity'' to mean ''small business,'' ''small organization,'' or ''small governmental jurisdiction.'' [558] For purposes of the RFA, under our rules, an issuer, other than an investment company, is a ''small business'' or ''small organization'' if it had total assets of $5 million or less on the last day of its most recent fiscal year and is engaged or proposing to engage in an offering of securities which does not exceed $5 million.[559] The final

[552] 5 U.S.C. 553.

[553] 5 U.S.C. 604.

[554] As discussed in *supra* note 14, one comment letter noted that the Commission did not update the RFA analysis in the Reopening Release, and urged the Commission to re-propose with an updated RFA analysis. *See* comment letter from Toomey/Shelby.

[555] *See* Sections II and IV.

[556] *See, e.g.,* comment letters from ABA 1; CCMC 2; Compensia; Hunton; Mercer; and NACD. Some commenters additionally recommended exempting SRCs and EGCs from the XBRL tagging requirements in view of the burden of preparing disclosure in XBRL format. *See* Section II.D.2. and comment letters from ABA 1; and Hay Group.

[557] *See, e.g.,* comment letters from Better Markets 1; CalPERS 1; CFA Institute 1; Public Citizen 1; and SBA.

[558] 5 U.S.C. 601(6).

[559] *See* 17 CFR 230.157 under the Securities Act and 17 CFR 240.0–10(a) under the Exchange Act. When referring to an exchange, the term ''small business'' or ''small organization'' means any exchange that: (1) has been exempted from the reporting requirements of 17 CFR 242.601; and is not affiliated with any person (other than a natural

amendments will affect small entities that have a class of securities that are registered under Section 12(b) of the Exchange Act. We estimate that there are approximately 126 listed issuers, other than registered investment companies, that may be considered small entities.[560] Under 17 CFR 270.0–10, an investment company, including a business development company, is considered to be a small entity if it, together with other investment companies in the same group of related investment companies, has net assets of $50 million or less as of the end of its most recent fiscal year. We estimate that there are approximately three listed investment companies, including business development companies, that may be considered small entities that may be affected by the final amendments.

D. Projected Reporting, Recordkeeping, and Other Compliance Requirements

As noted above, the purpose of the final rules is to implement Section 10D of the Exchange Act by directing the exchanges to prohibit the listing of any security of an issuer that does not comply with listing standards regarding the development and implementation of a policy requiring recovery of erroneously awarded incentive-based compensation, and to require issuers to file all disclosure with respect to that policy in accordance with Commission rules. Rule 10D–1 requires exchanges to adopt listing standards that require a listed issuer (including a small entity) to develop and implement a policy providing that, in the event that the issuer is required to prepare an accounting restatement due to material noncompliance with any financial reporting requirement, the issuer will recover from any of its current or former executive officers who received incentive-based compensation during the preceding three-year period based on the erroneous data, any such compensation in excess of what would have been paid under the accounting restatement. As described in more detail above, the final rules also require issuers listed on an exchange to: file their written erroneously awarded compensation recovery policy as an exhibit to their annual reports; indicate by check boxes on the cover page of their annual reports whether the financial statements of the registrant included in the filing reflect correction of an error to previously issued financial statements and whether any of those error corrections are restatements that required a recovery analysis; and disclose actions an issuer has taken pursuant to such recovery policy. These disclosures will also be required to be provided in tagged data language using Inline XBRL.

Small entities that are listed issuers will be subject to the same recovery and disclosure requirements as other listed issuers. These requirements are discussed in detail in Section II.

Developing and implementing the recovery policy mandated by the final amendments will impose compliance costs on small entities. The amendments may also involve the use of professional skills, such as legal, accounting, or technical skills. For example, listed issuers may engage the professional services of attorneys, accountants, and/or executive compensation consultants to develop their recovery policies and may use the services of those professionals to implement those policies in the event of an accounting restatement. Such services may be needed to compute recoverable amounts, especially for incentive-based compensation based on stock price or total shareholder return metrics. Small entities also will incur costs in connection with the collection, recording, and reporting of disclosures required under the rules. In addition, these entities will incur costs to tag the required disclosures in Inline XBRL and may engage the services of outside professionals to assist with this process. We discuss the economic effects, including the estimated costs and burdens, of the final amendments on all registrants, including small entities, in Sections IV and V.

As noted in Section IV, there is evidence that companies that are required to restate financial disclosures are generally smaller than those that are not required to restate financial disclosures, suggesting that there could be a greater incidence of recoveries at listed issuers that are small entities.[561] This may imply that, relative to other issuers, the final rules may cause executive officers at small entities to devote proportionately more internal resources to financial reporting and incur a greater proportional compliance burden than larger issuers. In addition, to the extent that a recovery policy reduces the incentive of an executive officer of a small entity to invest in certain value-enhancing projects that may increase the likelihood of a material accounting error, this may have a larger impact on the market value of equity of smaller entities whose valuation may be driven more by future prospects than by the value of current assets.[562]

However, we believe that the impact of the amendments on small entities overall will be mitigated because the rules apply only to listed issuers, and the quantitative listing standards applicable to issuers listing securities on an exchange, such as market capitalization, minimum revenue, and shareholder equity requirements, will serve to limit the number of affected small entities. Further, as noted in Section IV, the effects of implementing a recovery policy could be lower on small entities relative to other issuers to the extent that small entities use a lower proportion of incentive-based compensation than other issuers. Analysis by Commission staff finds evidence that SRCs (and small entities that are SRCs), on average, use a lower proportion of incentive-based compensation than non-SRCs, suggesting a lower potential impact of the final rules on SRCs and small entities.[563]

E. Agency Action To Minimize Effect on Small Entities

The RFA directs us to consider alternatives that would accomplish our stated objectives, while minimizing any significant adverse impact on small entities. Accordingly, we considered the following alternatives:

- Clarifying, consolidating or simplifying compliance and reporting requirements under the rules for small entities;
- Exempting small entities from all or part of the requirements;
- Using performance rather than design standards; and

person) that is not a small business or small organization. *See* 17 CFR 240.0–10(e). No exchanges meet these criteria.

[560] These estimates are based on staff analysis of issuers potentially subject to the final amendments, excluding co-registrants, with EDGAR filings on Form 10–K, or amendments thereto, filed during the calendar year of Jan. 1, 2020 to Dec. 31, 2020, or filed by Sept. 1, 2021, that, if timely filed by the applicable deadline, would have been filed between Jan. 1 and Dec. 31, 2020. Analysis is based on data from XBRL filings, Compustat, Ives Group Audit Analytics, and manual review of filings submitted to the Commission. We further note that in the Proposing Release we estimated that there were 61 listed issuers. While the number of issuers in our current estimate reflects an increase from 61 to 126 listed issuers, we further estimate that 89 of the 126 listed issuers are SPACs. In the past two years, the U.S. securities markets have experienced an unprecedented surge in the number of initial public offerings by SPACs, with SPACs initially raising more than $83 billion in 2020 and more than $160 billion in 2021, compared to $13.6 billion in in 2019 and $10.8 billion in 2018. Some of these small entities that are SPACs are unlikely to remain small entities once the SPAC has completed its intended business combination and becomes an operating rather than a shell company.

[561] *See* note 504 and accompanying text.

[562] *See* note 506 and accompanying text.

[563] *See supra* note 503 and accompanying text.

• Establishing different compliance or reporting requirements or timetables that take into account the resources available to small entities.

The amendments do not provide simplified compliance and reporting requirements, an exemption, or otherwise establish alternative compliance, reporting requirements, or timetables for small entities. As noted in Section I, Section 10D's purpose is straightforward: to recover incentive-based compensation that was erroneously awarded to executives at listed companies on the basis of misreported financial information. We see no reason why the shareholders of listed issuers that are small entities should not be entitled to recover compensation that was erroneously awarded to executives on the basis of such misreported information. Like other listed issuers, these entities will have flexibility to forgo recovery in circumstances where the direct expense paid to a third party to assist in enforcing recovery would exceed the recoverable amounts and will not be required to have a recovery policy in place until more than a year after the final amendments are published in the **Federal Register**. Moreover, while the final rules may impose a greater proportional compliance burden on small entities, as discussed in Section IV, the benefits of the final rules may be particularly salient for small entities as evidence suggests that they may have an increased likelihood of reporting an accounting error and may be more likely to report a material weakness in internal control over financial reporting.

The recovery requirement may also provide executive officers with an increased incentive to improve the overall quality and reliability of the issuer's financial reporting. As noted in Section IV, small entities may have an increased likelihood of reporting an accounting error and may be more likely to report a material weakness in internal control over financial reporting, due to their smaller size relative to larger entities.[564] For all of these reasons, we do not believe it would be appropriate to establish alternative compliance requirements or exempt small entities from the scope of the mandatory recovery provisions.

The final amendments further require the filing of a listed issuer's policy on recovery of incentive-based compensation, and clear disclosure to provide shareholders with useful information regarding the application of that policy. By requiring such disclosure, the final amendments will help promote consistent compliance with recovery obligations and related disclosure across all listed issuers. Because the filing of the recovery policy is not costly for issuers and provides a way for investors to understand the means by which an issuer is complying with the requirements, we do not believe the marginal cost savings to small entities warrants an exemption from this requirement. Further, we note that the additional disclosures with respect to the application of the policy would only be required in the event of a restatement due to material noncompliance with financial reporting requirements, and we believe it is necessary in these circumstances for investors to understand the implications of the restatement and the issuer's application of its policy, regardless of the size of the entity.

Finally, some aspects of the final rules use performance standards. Specifically, Rule 10D–1 uses a principles-based definition of ''incentive-based compensation,'' provides boards of directors with discretion in determining the means of recovery, and uses a principles-based approach to determining the amount of incentive-based compensation subject to recovery. These aspects of the final rules may make it easier for small entities to apply the mandatory recovery policy in the context of their own facts and circumstances. However, many other aspects of the final rules, in particular the disclosure requirements, use design standards in order to promote consistent information and recovery practices across listed issuers, in keeping with what we understand to be Congress's objective in enacting Section 10D.

[564] *See* note 520.

Statutory Authority

The amendments contained in this release are being adopted under the authority set forth in Sections 6, 7, 10, and 19(a) of the Securities Act; Sections 3(b), 10D, 12, 13, 14, 23(a), and 36 of the Exchange Act; and Sections 20, 30, and 38 of the Investment Company Act of 1940.

List of Subjects in 17 CFR Parts 229, 232, 240, 249, 270, and 274

Reporting and recordkeeping requirements, Securities, Investment companies.

Text of Rule Amendments

In accordance with the foregoing, the Commission amends title 17, chapter II, of the Code of Federal Regulations as follows:

PART 229—STANDARD INSTRUCTIONS FOR FILING FORMS UNDER SECURITIES ACT OF 1933, SECURITIES EXCHANGE ACT OF 1934 AND ENERGY POLICY AND CONSERVATION ACT OF 1975—REGULATION S–K

■ 1. The authority citation for part 229 continues to read as follows:

Authority: 15 U.S.C. 77e, 77f, 77g, 77h, 77j, 77k, 77s, 77z–2, 77z–3, 77aa(25), 77aa(26), 77ddd, 77eee, 77ggg, 77hhh, 777iii, 77jjj, 77nnn, 77sss, 78c, 78i, 78j, 78j–3, 78*l,* 78m, 78n, 78n–1, 78o, 78u–5, 78w, 78*ll,* 78mm, 80a–8, 80a–9, 80a–20, 80a–29, 80a–30, 80a–31(c), 80a–37, 80a–38(a), 80a–39, 80b–11, and 7201 *et seq.;* and 18 U.S.C. 1350; sec. 953(b), Pub. L. 111–203, 124 Stat. 1904 (2010); and sec. 102(c), Pub. L. 112–106, 126 Stat. 310 (2012).

■ 2. Amend § 229.402 by:
■ a. Revising paragraph (a)(1);
■ b. In paragraph (c), adding Instruction 5 under the heading ''Instructions to Item 402(c)'';
■ c. In paragraph (n), adding Instruction 5 under the heading ''Instructions to Item 402(n)''; and
■ d. Adding paragraph (w).

The revision and additions read as follows:

§ 229.402 (Item 402) Executive compensation.

(a) *General.* (1) *Treatment of foreign private issuers.* A foreign private issuer will be deemed to comply with this Item if it provides the information required by Items 6.B, 6.E.2, and 6.F of Form 20–F (17 CFR 249.220f), with more detailed information provided if otherwise made publicly available or required to be disclosed by the issuer's home jurisdiction or a market in which its securities are listed or traded, or paragraph (19) of General Instruction B of Form 40–F (17 CFR 249.240f), as applicable. A foreign private issuer that elects to provide domestic Item 402 disclosure must provide the disclosure required by Item 402(w) in its annual report or registration statement, as applicable.

* * * * *

(c) * * *

Instructions to Item 402(c). * * *

5. Reduce the amount reported in the applicable Summary Compensation Table column for the fiscal year in which the amount recovered initially was reported as compensation by any amounts recovered pursuant to a registrant's compensation recovery policy required by the listing standards adopted pursuant to 17 CFR 240.10D–1, and identify such amounts by footnote.

* * * * *

(n) * * *

Instructions to Item 402(n). * * *

5. Reduce the amount reported in the applicable Summary Compensation Table column for the fiscal year in which the amount recovered initially was reported as compensation by any amounts recovered pursuant to the compensation recovery policy required by the listing standards adopted pursuant to 17 CFR 240.10D–1, and identify such amounts by footnote.

* * * * *

(w) *Disclosure of a registrant's action to recover erroneously awarded compensation.*

(1) If at any time during or after the last completed fiscal year the registrant was required to prepare an accounting restatement that required recovery of erroneously awarded compensation pursuant to the registrant's compensation recovery policy required by the listing standards adopted pursuant to 17 CFR 240.10D–1, or there was an outstanding balance as of the end of the last completed fiscal year of erroneously awarded compensation to be recovered from the application of the policy to a prior restatement, the registrant must provide the following information:

(i) For each restatement:

(A) The date on which the registrant was required to prepare an accounting restatement;

(B) The aggregate dollar amount of erroneously awarded compensation attributable to such accounting restatement, including an analysis of how the amount was calculated;

(C) If the financial reporting measure as defined in 17 CFR 240.10D–1(d) related to a stock price or total shareholder return metric, the estimates that were used in determining the erroneously awarded compensation attributable to such accounting restatement and an explanation of the methodology used for such estimates;

(D) The aggregate dollar amount of erroneously awarded compensation that remains outstanding at the end of the last completed fiscal year; and

(E) If the aggregate dollar amount of erroneously awarded compensation has not yet been determined, disclose this fact, explain the reason(s) and disclose the information required in paragraphs (w)(1)(i)(B) through (D) of this section in the next filing that is required to include disclosure pursuant to Item 402 of Regulation S–K;

(ii) If recovery would be impracticable pursuant to 17 CFR 240.10D–1(b)(1)(iv), for each current and former named executive officer and for all other current and former executive officers as a group, disclose the amount of recovery forgone and a brief description of the reason the listed registrant decided in each case not to pursue recovery; and

(iii) For each current and former named executive officer from whom, as of the end of the last completed fiscal year, erroneously awarded compensation had been outstanding for 180 days or longer since the date the registrant determined the amount the individual owed, disclose the dollar amount of outstanding erroneously awarded compensation due from each such individual.

(2) If at any time during or after its last completed fiscal year the registrant was required to prepare an accounting restatement, and the registrant concluded that recovery of erroneously awarded compensation was not required pursuant to the registrant's compensation recovery policy required by the listing standards adopted pursuant to 17 CFR 240.10D–1, briefly explain why application of the recovery policy resulted in this conclusion.

(3) The information must appear with, and in the same format as, the rest of the disclosure required to be provided pursuant to this Item 402. The information is required only in proxy or information statements that call for Item 402 disclosure and the registrant's annual report on Form 10–K, and will not be deemed to be incorporated by reference into any filing under the Securities Act, except to the extent that the listed registrant specifically incorporates it by reference.

(4) The disclosure must be provided in an Interactive Data File in accordance with Rule 405 of Regulation S–T and the EDGAR Filer Manual.

* * * * *

■ 3. Amend § 229.404 by:

■ a. Under the heading ''Instructions to Item 404(a),'' removing ''or'' at the end of Instruction 5.a.i.;

■ b. Under the heading ''Instructions to Item 404(a),'' removing the ''.'' and adding in its place ''; or'' in Instruction 5.a.ii.; and

■ c. Under the heading ''Instructions to Item 404(a),'' adding Instruction 5.a.iii.

The addition reads as follows:

§ 229.404 (Item 404) Transactions with related persons, promoters and certain control persons.

* * * * *

Instructions to Item 404(a). * * *

5.a. * * *

iii. The transaction involves the recovery of erroneously awarded compensation computed as provided in 17 CFR 240.10D–1(b)(1)(iii) and the applicable listing standards for the registrant's securities, that is disclosed pursuant to Item 402(w) (§ 229.402(w)).

* * * * *

■ 4. Amend § 229.601 by:

■ a. In paragraph (a), amend the ''Exhibit table'' by adding paragraph (97); and

■ b. Adding paragraph (b)(97).

The additions to read as follows:

§ 229.601 (Item 601) Exhibits.

(a) * * *

EXHIBIT TABLE

	Securities act forms										Exchange act forms					
	S–1	S–3	SF–1	SF–3	S–4[1]	S–8	S–11	F–1	F–3	F–4[1]	10	8–K[2]	10–D	10–Q	10–K	ABS–EE
*	*			*			*			*			*			
(97) Policy Relating to Recovery of Erroneously Awarded Compensation															X	
*	*			*			*			*			*			

[1] An exhibit need not be provided about a company if: (1) With respect to such company an election has been made under Form S–4 or F–4 to provide information about such company at a level prescribed by Form S–3 or F–3; and (2) the form, the level of which has been elected under Form S–4 or F–4, would not require such company to provide such exhibit if it were registering a primary offering.

[2] A Form 8–K exhibit is required only if relevant to the subject matter reported on the Form 8–K report. For example, if the Form 8–K pertains to the departure of a director, only the exhibit described in paragraph (b)(17) of this section need be filed. A required exhibit may be incorporated by reference from a previous filing.

* * * * *

(b) * * *

(97) *Policy relating to recovery of erroneously awarded compensation.* A registrant that at any time during its last completed fiscal year had a class of

securities listed on a national securities exchange registered pursuant to section 6 of the Exchange Act (15 U.S.C. 78f) or a national securities association registered pursuant to section 15A of the Exchange Act (15 U.S.C. 78o–3) must file as an exhibit to its annual report the compensation recovery policy required by the applicable listing standards adopted pursuant to 17 CFR 240.10D–1.

* * * * *

PART 232—REGULATION S–T—GENERAL RULES AND REGULATIONS FOR ELECTRONIC FILINGS

■ 5. The general authority citation for part 232 continues to read in part as follows:

Authority: 15 U.S.C. 77c, 77f, 77g, 77h, 77j, 77s(a), 77z–3, 77sss(a), 78c(b), 78*l,* 78m, 78n, 78o(d), 78w(a), 78*ll,* 80a–6(c), 80a–8, 80a–29, 80a–30, 80a–37, 80b–4, 80b–6a, 80b–10, 80b–11, 7201 *et seq.;* and 18 U.S.C. 1350, unless otherwise noted.

* * * * *

■ 6. Amend § 232.405 by:
■ a. Removing the word ''or'' at the end of paragraph (b)(2)(iii);
■ b. Removing the period at the end of paragraph (b)(2)(iv) and adding ''; or'' in its place;
■ c. Adding paragraph (b)(2)(v);
■ d. Removing paragraph (b)(3)(i)(C);
■ e. Removing the word ''and'' at the end of paragraph (b)(3)(ii);
■ f. Removing the period at the end of paragraph (b)(3)(iii) and adding ''; and'' in its place;
■ g. Adding paragraph (b)(3)(iv);
■ h. Removing the period at the end of paragraph (b)(4)(i) and adding ''and'' in its place; and
■ i. Adding paragraph (b)(4)(ii).

The revisions and additions read as follows:

§ 232.405 Interactive Data File Submissions.

* * * * *

(b) * * *

(2) * * *

(v) Any disclosure provided in response to Item 18 of §§ 249.331 and 274.128 of this chapter (Form N–CSR), as applicable.

(3) * * *

(iv) As applicable, the disclosure set forth in paragraph (b)(4) of this section.

(4) * * *

(ii) Any disclosure provided in response to: § 229.402(w) of this chapter (Item 402(w) of Regulation S–K); Item 6.F of § 249.220f of this chapter (Form 20–F); paragraph (19) of General Instruction B of § 249.240f of this chapter (Form 40–F); and Item 18 of §§ 249.331 and 274.128 of this chapter (Form N–CSR).

* * * * *

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

■ 7. The general authority citation for Part 240 is revised to read as follows:

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

* * * * *

■ 8. Add an undesignated center heading and § 240.10D–1 after § 240.10C–1 to read as follows:

Requirements Under Section 10D

§ 240.10D–1 Listing standards relating to recovery of erroneously awarded compensation.

(a) Each national securities exchange registered pursuant to section 6 of the Act (15 U.S.C. 78f) and each national securities association registered pursuant to section 15A of the Act (15 U.S.C. 78o–3), to the extent such national securities exchange or association lists securities, must:

(1) In accordance with the provisions of this section, prohibit the initial or continued listing of any security of an issuer that is not in compliance with the requirements of any portion of this section;

(2) No later than February 27, 2023, propose rules or rule amendments that comply with this section. Such rules or rule amendments that comply with this section must be effective no later than one year after November 28, 2022;

(3) Require that each listed issuer:

(i) Adopt the recovery policy required by this section no later than 60 days following the effective date of the listing standard referenced in paragraph (a)(2) of this section to which the issuer is subject;

(ii) Comply with that recovery policy for all incentive-based compensation received (as defined in paragraph (d) of this section) by executive officers on or after the effective date of the applicable listing standard;

(iii) Provide the disclosures required by this section and in the applicable Commission filings required on or after the effective date of the listing standard referenced in paragraph (a)(2) of this section to which the issuer is subject.

(b) *Recovery of Erroneously Awarded Compensation.* The issuer must:

(1) Adopt and comply with a written policy providing that the issuer will recover reasonably promptly the amount of erroneously awarded incentive-based compensation in the event that the issuer is required to prepare an accounting restatement due to the material noncompliance of the issuer with any financial reporting requirement under the securities laws, including any required accounting restatement to correct an error in previously issued financial statements that is material to the previously issued financial statements, or that would result in a material misstatement if the error were corrected in the current period or left uncorrected in the current period.

(i) The issuer's recovery policy must apply to all incentive-based compensation received by a person:

(A) After beginning service as an executive officer;

(B) Who served as an executive officer at any time during the performance period for that incentive-based compensation;

(C) While the issuer has a class of securities listed on a national securities exchange or a national securities association; and

(D) During the three completed fiscal years immediately preceding the date that the issuer is required to prepare an accounting restatement as described in paragraph (b)(1) of this section. In addition to these last three completed fiscal years, the recovery policy must apply to any transition period (that results from a change in the issuer's fiscal year) within or immediately following those three completed fiscal years. However, a transition period between the last day of the issuer's previous fiscal year end and the first day of its new fiscal year that comprises a period of nine to 12 months would be deemed a completed fiscal year. An issuer's obligation to recover erroneously awarded compensation is not dependent on if or when the restated financial statements are filed.

(ii) For purposes of determining the relevant recovery period, the date that an issuer is required to prepare an accounting restatement as described in paragraph (b)(1) of this section is the earlier to occur of:

(A) The date the issuer's board of directors, a committee of the board of directors, or the officer or officers of the issuer authorized to take such action if board action is not required, concludes, or reasonably should have concluded, that the issuer is required to prepare an accounting restatement as described in paragraph (b)(1) of this section; or

(B) The date a court, regulator, or other legally authorized body directs the issuer to prepare an accounting restatement as described in paragraph (b)(1) of this section.

(iii) The amount of incentive-based compensation that must be subject to the issuer's recovery policy (''erroneously awarded compensation'') is the amount of incentive-based compensation received that exceeds the amount of incentive-based compensation that otherwise would have been received had it been determined based on the restated amounts, and must be computed without regard to any taxes paid. For incentive-based compensation based on stock price or total shareholder return, where the amount of erroneously awarded compensation is not subject to mathematical recalculation directly from the information in an accounting restatement:

(A) The amount must be based on a reasonable estimate of the effect of the accounting restatement on the stock price or total shareholder return upon which the incentive-based compensation was received; and

(B) The issuer must maintain documentation of the determination of that reasonable estimate and provide such documentation to the exchange or association.

(iv) The issuer must recover erroneously awarded compensation in compliance with its recovery policy except to the extent that the conditions of paragraphs (b)(1)(iv)(A), (B), or (C) of this section are met, and the issuer's committee of independent directors responsible for executive compensation decisions, or in the absence of such a committee, a majority of the independent directors serving on the board, has made a determination that recovery would be impracticable.

(A) The direct expense paid to a third party to assist in enforcing the policy would exceed the amount to be recovered. Before concluding that it would be impracticable to recover any amount of erroneously awarded compensation based on expense of enforcement, the issuer must make a reasonable attempt to recover such erroneously awarded compensation, document such reasonable attempt(s) to recover, and provide that documentation to the exchange or association.

(B) Recovery would violate home country law where that law was adopted prior to November 28, 2022. Before concluding that it would be impracticable to recover any amount of erroneously awarded compensation based on violation of home country law, the issuer must obtain an opinion of home country counsel, acceptable to the applicable national securities exchange or association, that recovery would result in such a violation, and must provide such opinion to the exchange or association.

(C) Recovery would likely cause an otherwise tax-qualified retirement plan, under which benefits are broadly available to employees of the registrant, to fail to meet the requirements of 26 U.S.C. 401(a)(13) or 26 U.S.C. 411(a) and regulations thereunder.

(v) The issuer is prohibited from indemnifying any executive officer or former executive officer against the loss of erroneously awarded compensation.

(2) File all disclosures with respect to such recovery policy in accordance with the requirements of the Federal securities laws, including the disclosure required by the applicable Commission filings.

(c) *General Exemptions.* The requirements of this section do not apply to the listing of:

(1) A security futures product cleared by a clearing agency that is registered pursuant to section 17A of the Act (15 U.S.C. 78q–1) or that is exempt from the registration requirements of section 17A(b)(7)(A) (15 U.S.C. 78q–1(b)(7)(A));

(2) A standardized option, as defined in 17 CFR 240.9b–1(a)(4), issued by a clearing agency that is registered pursuant to section 17A of the Act (15 U.S.C. 78q–1);

(3) Any security issued by a unit investment trust, as defined in 15 U.S.C. 80a–4(2);

(4) Any security issued by a management company, as defined in 15 U.S.C. 80a–4(3), that is registered under section 8 of the Investment Company Act of 1940 (15 U.S.C. 80a–8), if such management company has not awarded incentive-based compensation to any executive officer of the company in any of the last three fiscal years, or in the case of a company that has been listed for less than three fiscal years, since the listing of the company.

(d) *Definitions.* Unless the context otherwise requires, the following definitions apply for purposes of this section:

Executive Officer. An *executive officer* is the issuer's president, principal financial officer, principal accounting officer (or if there is no such accounting officer, the controller), any vice-president of the issuer in charge of a principal business unit, division, or function (such as sales, administration, or finance), any other officer who performs a policy-making function, or any other person who performs similar policy-making functions for the issuer. Executive officers of the issuer's parent(s) or subsidiaries are deemed executive officers of the issuer if they perform such policy making functions for the issuer. In addition, when the issuer is a limited partnership, officers or employees of the general partner(s) who perform policy-making functions for the limited partnership are deemed officers of the limited partnership. When the issuer is a trust, officers, or employees of the trustee(s) who perform policy-making functions for the trust are deemed officers of the trust. Policy-making function is not intended to include policy-making functions that are not significant. Identification of an executive officer for purposes of this section would include at a minimum executive officers identified pursuant to 17 CFR 229.401(b).

Financial reporting measures. Financial reporting measures are measures that are determined and presented in accordance with the accounting principles used in preparing the issuer's financial statements, and any measures that are derived wholly or in part from such measures. Stock price and total shareholder return are also financial reporting measures. A financial reporting measure need not be presented within the financial statements or included in a filing with the Commission.

Incentive-based compensation. Incentive-based compensation is any compensation that is granted, earned, or vested based wholly or in part upon the attainment of a financial reporting measure.

Received. Incentive-based compensation is deemed received in the issuer's fiscal period during which the financial reporting measure specified in the incentive-based compensation award is attained, even if the payment or grant of the incentive-based compensation occurs after the end of that period.

■ 9. Amend Section 240.14a–101, by adding Item 22(b)(20) to read as follows:

§ 240.14a–101 Schedule 14A. Information required in proxy statement.

Schedule 14A Information

* * * * *

Item 22. * * *

(b) * * *

(20) In the case of a Fund that is an investment company registered under the Investment Company Act of 1940 (15 U.S.C. 80a) that is required to develop and implement a policy regarding the recovery of erroneously awarded compensation pursuant to § 240.10D–1(b)(1), if at any time during the last completed fiscal year the Fund

was required to prepare an accounting restatement that required recovery of erroneously awarded compensation pursuant to the Fund's compensation recovery policy required by the listing standards adopted pursuant to 240.10D–1, or there was an outstanding balance as of the end of the last completed fiscal year of erroneously awarded compensation to be recovered from the application of the policy to a prior restatement, the Fund must provide the information required by Item 18 of Form N–CSR, as applicable.

* * * * *

PART 249—FORMS, SECURITIES EXCHANGE ACT OF 1934

■ 10. The authority citation for part 249 continues to read, in part, as follows:

Authority: 15 U.S.C. 78a *et seq.,* and 7201 *et seq.;* 12 U.S.C. 5461 *et seq.;* 18 U.S.C. 1350; Sec. 953(b) Pub. L. 111–203, 124 Stat. 1904; Sec. 102(a)(3) Pub. L. 112–106, 126 Stat. 309 (2012), Sec. 107 Pub. L. 112–106, 126 Stat. 313 (2012), Sec. 72001 Pub. L. 114–94, 129 Stat. 1312 (2015), and secs. 2 and 3 Pub. L. 116–222, 134 Stat. 1063 (2020), unless otherwise noted.

* * * * *

Section 249.220f is also issued under secs. 3(a), 202, 208, 302, 306(a), 401(a), 401(b), 406 and 407, Pub. L. 107–204, 116 Stat. 745, and secs. 2 and 3, Pub. L. 116–222, 134 Stat. 1063.

Section 249.240f is also issued under secs. 3(a), 202, 208, 302, 306(a), 401(a), 406 and 407, Pub. L. 107–204, 116 Stat. 745.

* * * * *

Section 249.310 is also issued under secs. 3(a), 202, 208, 302, 406 and 407, Pub. L. 107–204, 116 Stat. 745.

* * * * *

Note: The text of Form 20–F does not, and this amendment will not, appear in the Code of Federal Regulations.

■ 11. Amend Form 20–F (referenced in § 249.220f) by:
■ a. Adding the text and check boxes to the cover page immediately before the text ''Indicate by check mark which basis of accounting the registrant has used to prepare the financial statements included in this filing'';
■ b. Adding Item 6.F.;
■ c. Adding Instruction 4. to the Instructions to Item 7.B.; and
■ d. Adding Instruction 97 to the Instructions as to Exhibits.

The revisions and additions to read as follows:

Form 20–F

* * * * *

If securities are registered pursuant to Section 12(b) of the Act, indicate by check mark whether the financial statements of the registrant included in the filing reflect the correction of an error to previously issued financial statements. ☐

Indicate by check mark whether any of those error corrections are restatements that required a recovery analysis of incentive-based compensation received by any of the registrant's executive officers during the relevant recovery period pursuant to § 240.10D–1(b). ☐

* * * * *

Item 6. Directors, Senior Management and Employees

* * * * *

F. *Disclosure of a registrant's action to recover erroneously awarded compensation.*

(1) If at any time during or after the last completed fiscal year the registrant was required to prepare an accounting restatement that required recovery of erroneously awarded compensation pursuant to the registrant's compensation recovery policy required by the listing standards adopted pursuant to 17 CFR 240.10D–1, or there was an outstanding balance as of the end of the last completed fiscal year of erroneously awarded compensation to be recovered from the application of the policy to a prior restatement, the registrant must, in its annual report on Form 20–F, provide the following information:

(i) For each restatement:

(A) The date on which the registrant was required to prepare an accounting restatement;

(B) The aggregate dollar amount of erroneously awarded compensation attributable to such accounting restatement, including an analysis of how the amount was calculated;

(C) If the financial reporting measure as defined in 17 CFR 240.10D–1(d) related to a stock price or total shareholder return metric, the estimates that were used in determining the erroneously awarded compensation attributable to such accounting restatement and an explanation of the methodology used for such estimates;

(D) The aggregate dollar amount of erroneously awarded compensation that remains outstanding at the end of the last completed fiscal year; and

(E) If the aggregate dollar amount of erroneously awarded compensation has not yet been determined, disclose this fact, explain the reason(s) and disclose the information required in (B) through (D) in the next filing that is subject to this Item;

(ii) If recovery would be impracticable pursuant to 17 CFR 240.10D–1(b)(1)(iv), for each current and former named executive officer and for all other current and former executive officers as a group, disclose the amount of recovery forgone and a brief description of the reason the listed registrant decided in each case not to pursue recovery; and

(iii) For each current and former named executive officer from whom, as of the end of the last completed fiscal year, erroneously awarded compensation had been outstanding for 180 days or longer since the date the registrant determined the amount the individual owed, disclose the dollar amount of outstanding erroneously awarded compensation due from each such individual.

(2) If at any time during or after its last completed fiscal year the registrant was required to prepare an accounting restatement, and the registrant concluded that recovery of erroneously awarded compensation was not required pursuant to the registrant's compensation recovery policy required by the listing standards adopted pursuant to 17 CFR 240.10D–1, briefly explain why application of the recovery policy resulted in this conclusion;

(3) The information must appear with, and in the same format as, the rest of the disclosure required to be provided pursuant to this Item 6, is required only in annual reports and does not apply to registration statements on Form 20–F, and will not be deemed to be incorporated by reference into any filing under the Securities Act, except to the extent that the listed registrant specifically incorporates it by reference; and

(4) The disclosure must be provided in an Interactive Data File in accordance with Rule 405 of Regulation S–T and the EDGAR Filer Manual.

* * * * *

Item 7. Major Shareholders and Related Party Transactions

* * * * *

Instructions to Item 7.B * * *

4. Disclosure need not be provided pursuant to this Item if the transaction involves the recovery of excess incentive-based compensation that is disclosed pursuant to Item 6.F.

* * * * *

Instructions as to Exhibits

* * * * *

97. A registrant that at any time during its last completed fiscal year had a class of securities listed on a national securities exchange registered pursuant to section 6 of the Exchange Act (15 U.S.C. 78f) or a national securities association registered pursuant to section 15A of the Exchange Act (15 U.S.C. 78o–3) must file as an exhibit to

its annual report on Form 20–F the compensation recovery policy required by the applicable listing standards adopted pursuant to 17 CFR 240.10D–1.

17 through 96 and 98 through 99 [Reserved]

* * * * *

Note: The text of Form 40–F does not, and this amendment will not, appear in the Code of Federal Regulations.

■ 12. Amend Form 40–F (referenced in § 249.240f) by adding the text and check boxes to the cover page immediately before the heading ''General Instructions'' and adding paragraph (19) to General Instruction B to read as follows:

Form 40–F

* * * * *

If securities are registered pursuant to Section 12(b) of the Act, indicate by check mark whether the financial statements of the registrant included in the filing reflect the correction of an error to previously issued financial statements. ☐

Indicate by check mark whether any of those error corrections are restatements that required a recovery analysis of incentive-based compensation received by any of the registrant's executive officers during the relevant recovery period pursuant to § 240.10D–1(b). ☐

* * * * *

B. Information To Be Filed on This Form

* * * * *

(19) Recovery of erroneously awarded compensation.

(a) A registrant that at any time during its last completed fiscal year had a class of securities listed on a national securities exchange registered pursuant to section 6 of the Exchange Act (15 U.S.C. 78f) or a national securities association registered pursuant to section 15A of the Exchange Act (15 U.S.C. 78o–3) must file as exhibit 97 to its annual report on Form 40–F the compensation recovery policy required by the applicable listing standards adopted pursuant to 17 CFR 240.10D–1.

(b) If at any time during or after the last completed fiscal year the registrant was required to prepare an accounting restatement that required recovery of erroneously awarded compensation pursuant to the registrant's compensation recovery policy required by the listing standards adopted pursuant to 17 CFR 240.10D–1, or there was an outstanding balance as of the end of the last completed fiscal year of erroneously awarded compensation to be recovered from the application of the policy to a prior restatement, the registrant must, in its annual report on Form 40–F, provide the following information:

(1) For each restatement:

(i) The date on which the registrant was required to prepare an accounting restatement;

(ii) The aggregate dollar amount of erroneously awarded compensation attributable to such accounting restatement, including an analysis of how the amount was calculated;

(iii) If the financial reporting measure as defined in 17 CFR 10D–1(d) related to a stock price or total shareholder return metric, the estimates that were used in determining the erroneously awarded compensation attributable to such accounting restatement and an explanation of the methodology used for such estimates;

(iv) The aggregate dollar amount of erroneously awarded compensation that remains outstanding at the end of the last completed fiscal year; and

(v) If the aggregate dollar amount of erroneously awarded compensation has not yet been determined, disclose this fact, explain the reason(s) and disclose the information required in (ii) through(iv) in the next filing that is subject to this paragraph 19;

(2) If recovery would be impracticable pursuant to 17 CFR 240.10D–1(b)(1)(iv), for each current and former named executive officer and for all other current and former executive officers as a group, disclose the amount of recovery forgone and a brief description of the reason the listed registrant decided in each case not to pursue recovery; and

(3) For each current and former named executive officer from whom, as of the end of the last completed fiscal year, erroneously awarded compensation had been outstanding for 180 days or longer since the date the registrant determined the amount the individual owed, disclose the dollar amount of outstanding erroneously awarded compensation due from each such individual.

(c) If at any time during or after its last completed fiscal year the registrant was required to prepare an accounting restatement, and the registrant concluded that recovery of erroneously awarded compensation was not required pursuant to the registrant's compensation recovery policy required by the listing standards adopted pursuant to 17 CFR 240.10D–1, briefly explain why application of the recovery policy resulted in this conclusion;

(d) The information must appear with, and in the same format as generally required for, the rest of the disclosure required to be provided pursuant to General Instruction B, is required only in annual reports and does not apply to registration statements on Form 40–F, and will not be deemed to be incorporated by reference into any filing under the Securities Act, except to the extent that the listed registrant specifically incorporates it by reference; and

(e) The disclosure must be provided in an Interactive Data File in accordance with Rule 405 of Regulation S–T and the EDGAR Filer Manual.

* * * * *

Note: The text of Form 10–K does not, and this amendment will not, appear in the Code of Federal Regulations.

■ 13. Amend Form 10–K (referenced in § 249.310) by adding a field to the cover page to include the text and check boxes immediately before the text ''Indicate by check mark whether the registrant is a shell company (as defined in Rule 12b–2 of the Act)'' to read as follows:

Form 10–K

* * * * *

If securities are registered pursuant to Section 12(b) of the Act, indicate by check mark whether the financial statements of the registrant included in the filing reflect the correction of an error to previously issued financial statements. ☐

Indicate by check mark whether any of those error corrections are restatements that required a recovery analysis of incentive-based compensation received by any of the registrant's executive officers during the relevant recovery period pursuant to § 240.10D–1(b). ☐

* * * * *

PART 270—RULES AND REGULATIONS, INVESTMENT COMPANY ACT OF 1940

■ 14. The authority citation for part 270 continues to read, in part, as follows:

Authority: 15 U.S.C. 80a–1 *et seq.,* 80a–34(d), 80a–37, 80a–39, and Pub. L. 111–203, sec. 939A, 124 Stat. 1376 (2010), unless otherwise noted.

* * * * *

Section 270.30a–2 is also issued under 15 U.S.C. 78m, 78o(d), 80a–8, 80a–29, 7202, and 7241; and 18 U.S.C. 1350, unless otherwise noted.

* * * * *

■ 15. Amend § 270.30a–2 by revising it to read as follows:

§ 270.30a–2 Certification of Form N–CSR.

(a) Each report filed on Form N–CSR (§§ 249.331 and 274.128 of this chapter) by a registered management investment company must include certifications in the form specified in Item 19(a)(3) of

Form N–CSR, and such certifications must be filed as an exhibit to such report. Each principal executive and principal financial officer of the investment company, or persons performing similar functions, at the time of filing of the report must sign a certification.

(b) Each report on Form N–CSR filed by a registered management investment company under Section 13(a) or 15(d) of the Securities Exchange Act of 1934 (15 U.S.C. 78m(a) or 78o(d)) and that contains financial statements must be accompanied by the certifications required by Section 1350 of Chapter 63 of Title 18 of the United States Code (18 U.S.C. 1350) and such certifications must be furnished as an exhibit to such report as specified in Item 19(b) of Form N–CSR. Each principal executive and principal financial officer of the investment company (or equivalent thereof) must sign a certification. This requirement may be satisfied by a single certification signed by an investment company's principal executive and principal financial officers.

PART 274—FORMS PRESCRIBED UNDER THE INVESTMENT COMPANY ACT OF 1940

■ 16. The authority citation for part 274 is revised to read as follows:

Authority: 15 U.S.C. 77f, 77g, 77h, 77j, 77s, 78c(b), 78*l,* 78m, 78n, 78*o*(d), 80a–8, 80a–24, 80a–26, 80a–29, and 80a–37 unless otherwise noted.

Section 274.128 is also issued under 15 U.S.C. 78j–1, 7202, 7233, 7241, 7264, and 7265; and 18 U.S.C. 1350.

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

■ 18. Amend Form N–CSR (referenced in 17 CFR 274.128) by:
■ a. Revising General Instruction D;
■ b. Redesignating Item 18 as Item 19;
■ c. Redesignating the instructions to Item 18 as instructions to Item 19;
■ d. Adding new Item 18;
■ e. Redesignating paragraph (a)(2) of newly designated Item 19 (Exhibits) as paragraph (a)(3);and
■ f. Adding paragraph (a)(2) to newly designated Item 19 (Exhibits).

The revisions and additions read as follows:

Form N–CSR

* * * * *

D. Incorporation by Reference

A registrant may incorporate by reference information required by Items 4, 5, 18, 19(a)(1), and 19(a)(2). No other Items of the Form shall be answered by incorporating any information by reference. The information required by Items 4, 5, and 18 may be incorporated by reference from the registrant's definitive proxy statement (filed or required to be filed pursuant to Regulation 14A (17 CFR 240.14a–1 *et seq.*)) or definitive information statement (filed or to be filed pursuant to Regulation 14C (17 CFR 240.14c–1 *et seq.*)) involving the election of directors, if such definitive proxy statement or information statement is filed with the Commission not later than 120 days after the end of the fiscal year covered by an annual report on this Form. All incorporation by reference must comply with the requirements of this Form and the following rules on incorporation by reference: Rule 303 of Regulation S–T (17 CFR 232.303) (specific requirements for electronically filed documents); Rule 12b–23 under the Exchange Act (17 CFR 240.12b–23) (additional rules on incorporation by reference for reports filed pursuant to Sections 13 and 15(d) of the Exchange Act); and Rule 0–4 under the Investment Company Act of 1940 (17 CFR 270.0–4) (additional rules on incorporation by reference for investment companies).

* * * * *

Item 18. Recovery of Erroneously Awarded Compensation

(a) If at any time during or after the last completed fiscal year the registrant was required to prepare an accounting restatement that required recovery of erroneously awarded compensation pursuant to the registrant's compensation recovery policy required by the listing standards adopted pursuant to 17 CFR 240.10D–1, or there was an outstanding balance as of the end of the last completed fiscal year of erroneously awarded compensation to be recovered from the application of the policy to a prior restatement, the registrant must provide the following information:

(1) For each restatement:

(i) The date on which the registrant was required to prepare an accounting restatement;

(ii) The aggregate dollar amount of erroneously awarded compensation attributable to such accounting restatement, including an analysis of how the amount was calculated;

(iii) If the financial reporting measure defined in 17 CFR 10D–1(d) related to a stock price or total shareholder return metric, the estimates that were used in determining the erroneously awarded compensation attributable to such accounting restatement and an explanation of the methodology used for such estimates;

(iv) The aggregate dollar amount of erroneously awarded compensation that remains outstanding at the end of the last completed fiscal year; and

(v) If the aggregate dollar amount of erroneously awarded compensation has not yet been determined, disclose this fact, explain the reason(s) and disclose the information required in (ii) through (iv) in the next annual report that the registrant files on this Form N–CSR;

(2) If recovery would be impracticable pursuant to 17 CFR 10D–1(b)(1)(iv), for each named executive officer and for all other executive officers as a group, disclose the amount of recovery forgone and a brief description of the reason the registrant decided in each case not to pursue recovery; and

(3) For each named executive officer from whom, as of the end of the last completed fiscal year, erroneously awarded compensation had been outstanding for 180 days or longer since the date the registrant determined the amount the individual owed, disclose the dollar amount of outstanding erroneously awarded compensation due from each such individual.

(b) If at any time during or after its last completed fiscal year the registrant was required to prepare an accounting restatement, and the registrant concluded that recovery of erroneously awarded compensation was not required pursuant to the registrant's compensation recovery policy required by the listing standards adopted pursuant to 17 CFR 240.10D–1, briefly explain why application of the recovery policy resulted in this conclusion.

Item 19. Exhibits

(a) * * *

(2) Any policy required by the listing standards adopted pursuant to Rule 10D–1 under the Exchange Act (17 CFR 240.10D–1) by the registered national securities exchange or registered national securities association upon which the registrant's securities are listed. Instruction to paragraph (a)(2).

Instruction to paragraph (a)(2).

The exhibit required by this paragraph (a)(2) is only required in an annual report on Form N–CSR.

* * * * *

By the Commission.

Dated: October 26, 2022.

Vanessa A. Countryman,

Secretary.

[FR Doc. 2022–23757 Filed 11–25–22; 8:45 am]

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FEDERAL REGISTER

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Part III

Consumer Product Safety Commission

16 CFR Parts 1112 and 1260
Safety Standard for Operating Cords on Custom Window Coverings; Final Rule

CONSUMER PRODUCT SAFETY COMMISSION

16 CFR Parts 1112 and 1260

[CPSC Docket No. CPSC–2013–0028]

Safety Standard for Operating Cords on Custom Window Coverings

AGENCY: Consumer Product Safety Commission.

ACTION: Final rule.

SUMMARY: The U.S. Consumer Product Safety Commission (Commission or CPSC) has determined that custom window coverings with accessible operating cords longer than 8 inches pose an unreasonable risk of strangulation to children 8 years old and younger. To address this risk of strangulation, the Commission is issuing a final rule under the Consumer Product Safety Act (CPSA) to require that operating cords on custom window coverings meet the same requirements as operating cords on stock window coverings, as set forth in the applicable voluntary standard. The final rule provides several methods to make window covering cords inaccessible or non-hazardous. Because this is a consumer product safety rule, operating cords on custom window coverings must be tested and certified as meeting the requirements of the final rule. Custom window coverings that meet the definition of a ''children's product'' require third party testing by a CPSC-accepted third party conformity assessment body. Accordingly, the final rule also amends the Commission's regulation that lists children's product rules requiring third party testing.

DATES: The effective date of the rule is May 30, 2023, and the rule will apply to all custom window coverings manufactured after that date. The incorporation by reference of the publication listed in this rule is approved by the Director of the Federal Register as of May 30, 2023.

FOR FURTHER INFORMATION CONTACT: Jennifer Colten, Compliance Officer, Office of Compliance and Field Operations, Consumer Product Safety Commission, 4330 East West Highway; telephone: 301–504–8165; *jcolten@cpsc.gov.*

SUPPLEMENTARY INFORMATION:

I. Introduction

On January 7, 2022, the Commission published a notice of proposed rulemaking (NPR) to regulate operating cords on custom window coverings. 87 FR 1014 (Jan. 7, 2022). The Commission received over 2000 comments on the proposed rule and, on March 16, 2022, held a public hearing to receive oral comments on the proposed rule.[1] 87 FR 8441 (Feb. 15, 2022).[2] As described in this preamble, after consideration of the comments, the Commission is now finalizing the rule.[3] The final rule is generally consistent with the NPR, but provides two methods to make operating cords inaccessible under the rule (using a rigid cord shroud or a retractable cord), and allows use of a loop cord and bean chain restraining device to prevent formation of hazardous loops. The final rule is based on information and analysis contained in CPSC staff's September 29, 2021, Staff Briefing Package: Notice of Proposed Rulemaking for Corded Window Coverings (Staff's NPR Briefing Package),[4] and on information in staff's September 28, 2022, Staff Briefing Package: Draft Final Rules for Corded Window Coverings (Staff's Final Rule Briefing Package).[5]

A. Overview of the Final Rule

The purpose of the final rule is to address the unreasonable risk of strangulation to children 8 years old and younger associated with hazardous operating cords on custom window coverings. The Commission issues this final rule pursuant to sections 7 and 9 of the CPSA, 15 U.S.C. 2056 and 2058, to create a new mandatory standard for operating cords on custom window coverings. The Commission finds that this rule is reasonably necessary to address an unreasonable risk of death and serious injury to children 8 years old and younger associated with corded custom window coverings, due to the ongoing fatal and nonfatal incidents, the high severity of the outcomes (death and disability to children), the availability of cost-effective technologies that address the hazard, and the inadequacies of parental supervision, warnings, education campaigns, external safety devices for this class of products, and the existing voluntary standard for custom products.

The final rule is designed to eliminate the ongoing tragedy of child deaths on corded custom window coverings. The Commission is aware of 209 fatal and near-miss strangulations on window covering cords that occurred among children 8 years old and younger from January 2009 through December 2021. The industry has been long aware of the strangulation hazard and how to address these deaths and injuries, by removing accessible cords from window coverings. Finally, in 2018, after more than 20 years of consideration, the voluntary standards committee revised the voluntary standard to eliminate the strangulation hazard on stock window coverings. After this change in the market, sales of stock products increased, even though the prices of stock products in some cases doubled.

The final rule will extend the requirements for stock products to custom window coverings. Staff estimates that compliance with the final rule will result in a net increase of as little as $24 per household every approximately 10 years when consumers replace all custom window coverings in their home. *See* Table 9, *infra,* and Tab F of Staff's Final Rule Briefing Package. This price increase represents only about 5% of the total costs of replacing all custom window coverings. *Id.* The Commission expects that the custom window covering market will absorb this cost, just as seen in the stock window covering market. This fact is also observed in the Canadian window covering market. Canada implemented a rule earlier this year that eliminates hazardous cords on all window covering products, and the market has reacted with cost-effective substitutes and redesigned products.

The final rule is consistent with the proposed rule, by requiring operating cords on custom window coverings to meet identical requirements for operating cords on stock window coverings, as set forth in section 4.3.1 of ANSI/WCMA A100.1—2018, American National Standard for Safety of Corded

[1] Video available at: *https://www.youtube.com/watch?v=ggbi6Tm5egA;* Transcript available at: *https://www.regulations.gov/document/CPSC-2013-0028-3663.*

[2] On March 2, 2022, the Commission voted to deny a February 11, 2022 request by the Window Covering Manufacturers Association (WCMA), to extend the comment period for this rulemaking by 75 days. The staff's package explaining WCMA's request is available at: *https://www.cpsc.gov/s3fs-public/NPR-for-Operating-Cords-on-Custom-Window-Coverings-Notice-of-Extension-of-Comment-Period.pdf?VersionId=AHlkvtMCFUiY21f3.fCcNfILlqcTCstT.* A Record of Commission Action on the request is available at: *https://www.cpsc.gov/s3fs-public/RCA-Safety-Standard-for-Custom-Window-Coverings-Notice-of-Extension-of-Comment-Period.pdf?VersionId=.YvybvKXK8VfmPx8GFqgcHH7t3E7ggS6.* Although the Commission denied the comment period extension, the Commission has received and considered all late-filed comments for this rulemaking.

[3] On November 2, 2022, the Commission voted 4–0 to publish this final rule, and each Commissioner issued a statement in connection with their vote.

[4] Available at: *https://www.cpsc.gov/s3fs-public/NPRs-Add-Window-Covering-Cords-to-Substantial-Product-Hazard-List-Establish-Safety-Standard-for-Operating-Cords-on-Custom-Window-Coverings-updated-10-29-2021.pdf?VersionId=HIM05bK3WDLRZrlNGogQLknhFvhtx3PD.*

[5] Available at: *https://www.cpsc.gov/s3fs-public/Final-Rules-to-1-Add-Window-Covering-Cords-to-the-Substantial-Product-Hazard-List-and-2-Establish-a-Safety-Standard-for-Operating-Cords-on-Custom-Window-Coverings.pdf?VersionId=nDxz9G5hfDy5k.SnXkqgGKLiDsMK4hpe.*

Window Covering Products (ANSI/WCMA–2018). Section 4.3.1 of ANSI/WCMA–2018 requires stock window coverings to have:

(1) no operating cords (cordless) (section 4.3.1.1);

(2) inaccessible operating cords (section 4.3.1.3); or

(3) operating cords equal to or shorter than 8 inches in any use position (section 4.3.1.2).

The proposed rule provided requirements for one method, a rigid cord shroud, for manufacturers to make operating cords inaccessible, to comply with section 4.3.1.3.

Based on review and consideration of the public comments, the Commission is providing requirements for an additional method to meet the ''inaccessible'' requirement under section 4.3.1.3 in the final rule, a retractable cord, as long as it meets the performance requirements in the rule. The final rule does not preclude manufacturers from developing new methods of meeting the ''inaccessible'' requirement in section 4.3.1 of ANSI/WCMA–2018. However, if manufacturers choose to use a rigid cord shroud or a retractable cord, these devices must meet the requirements in the final rule. The final rule also contains requirements for one method to make accessible continuous loops non-hazardous: loop cord and bead chain restraining devices. ANSI/WCMA–18 and the draft ANSI/WCMA A100.1—2022, American National Standard for Safety of Corded Window Covering Products (draft ANSI/WCMA–2022), allow these three methods to make cords non-hazardous, with different requirements from the final rule. Hundreds of commenters requested that we allow these options to remain for custom products. These methods are allowed in the final rule provided that they meet durability requirements.

This final rule addresses the unreasonable risk of injury associated with operating cords on custom window coverings. In a separate, concurrent rulemaking under section 15(j) of the CPSA, under CPSC Docket No. CPSC–2021–0038, the Commission is finalizing a rule to deem a ''substantial product hazard'' (SPH), as defined in section 15(a)(2) of the CPSA: (1) the presence of hazardous operating cords on stock window coverings; (2) the presence of hazardous inner cords on stock and custom window coverings; or (3) the absence of a required manufacturer label on stock and custom window coverings.[6]

[6] The preamble to the rule under section 15(j) explains that the voluntary standard adequately addresses operating cord hazards associated with stock window coverings, and inner cord hazards associated with both stock and custom window coverings. Note that unlike with custom window coverings, ANSI/WCMA–2018 does not include requirements for additional methods for stock products to meet section 4.3.1, and most stock products use manual lifting to comply with the voluntary standard. Regardless, the rule under section 15(j) of the CPSA does not preclude manufacturers from innovating compliance methods, as long as the products meet the operating cord requirements in section 4.3.1 of ANSI/WCMA–2018.

B. Background and Statutory Authority

Window coverings are ''consumer products'' within the jurisdiction of the CPSC, and subject to regulation under the authority of the CPSA. *See* 15 U.S.C. 2052(a)(5). The final rule applies to all custom window coverings used in residences, in schools, or elsewhere, as long as consumers have access to the window covering and are subject to a strangulation hazard. *Id.* Section 7(a) of the CPSA authorizes the Commission to promulgate this final rule which sets forth performance requirements that are reasonably necessary to prevent or reduce an unreasonable risk of injury or death associated with operating cords on custom window coverings. 15 U.S.C. 2056(a).

Incident data demonstrate that children can strangle on accessible window covering cords that are long enough to wrap around their neck. Accordingly, the performance requirements in the final rule require that operating cords on custom products meet the requirements for stock window coverings in section 4.3.1 of ANSI/WCMA–2018, to prevent an unreasonable risk of injury, strangulation, and death, to children 8 years old and younger, and provides several methods to make operating cords inaccessible or non-hazardous. Options to eliminate cords or to make cords inaccessible must be integrated with the product as sold, so that the safety of custom window coverings does not rely on the installation of external safety devices (*i.e.,* cord tension device) by a consumer or an installer.

Section 7(b)(1) of the CPSA requires the Commission to rely on a voluntary standard, rather than promulgate a mandatory standard, when compliance with the voluntary standard would eliminate or adequately reduce the risk of injury associated with a product, and it is likely that products will be in substantial compliance with the voluntary standard. 15 U.S.C. 2056(b)(1). As described in section II.F of this preamble, the Commission finds that custom window coverings substantially comply with the voluntary standard, ANSI/WCMA–2018. However, as reviewed in the NPR, section 4.3.2 of ANSI/WCMA–2018 that applies to custom window coverings, does not adequately address the risk of injury associated with operating cords on custom window coverings because it allows for the sale of custom window coverings equipped with hazardous operating cords. 87 FR 1030–32. A hazardous cord is one that is not compliant with section 4.3.1 of ANSI/WCMA–2018, which requires that products be cordless, use cords that are inaccessible to children, or use cords that are short (equal to or less than 8 inches) to prevent children from wrapping a cord around their neck. The NPR explained that the requirements in the rule would address 100 percent of the known operating cord incidents associated with custom window coverings. *Id.* at 1031.

Section 9 of the CPSA specifies the procedure that the Commission must follow to issue a consumer product safety standard under section 7 of the CPSA. The Commission may commence rulemaking by issuing either an advance notice of proposed rulemaking (ANPR) or an NPR. The Commission issued an ANPR for corded window coverings, including stock and custom products, in January 2015 (80 FR 2327 (January 16, 2015)). Subsequently, in January 2022, the Commission issued two NPRs. The Commission issued an NPR under section 15(j) of the CPSA for the hazards addressed by ANSI/WCMA–2018, including operating and inner cords on stock window coverings, and inner cords on custom window coverings (87 FR 891 (Jan. 7, 2022)), and issued an NPR under sections 7 and 9 of the CPSA to address operating cords on custom window coverings (87 FR 1014 (Jan. 7, 2022)).

As required in section 9 of the CPSA, in the NPR for custom window coverings, the Commission requested comment on the risk of injury identified by the Commission, the regulatory alternatives being considered, and other possible alternatives for addressing the risk of injury. The Commission also requested comments on the preliminary findings included in the proposed rule. *Id.* at 1053–54. Section III of this preamble summarizes and responds to the comments received on the NPR.

C. Product Description

1. Overview of Window Covering Products

The NPR describes the types of custom window coverings in use and the types of operating cords and systems for custom window coverings. 87 FR 1015–18. Window coverings include a

wide range of products, including shades, blinds, curtains, and draperies. A cord or loop used by consumers to manipulate a window covering is called an ''operating cord'' and may be in the form of a single cord, multiple cords, or continuous loops. ''Cordless'' window coverings are products designed to function without an operating cord, but they may contain inner cords. Figures 1 through 6 explain window covering terminology and show examples of different types of window coverings.

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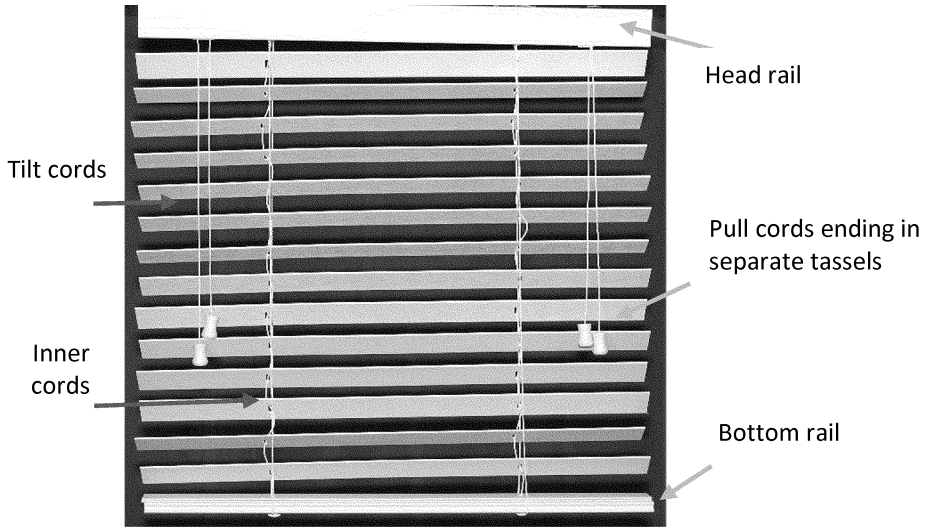

Figure 1. Horizontal blind

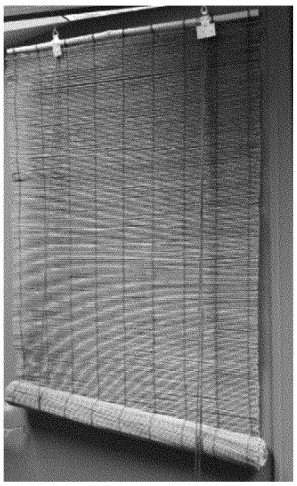

Figure 2. Roll-up shade with lifting loops

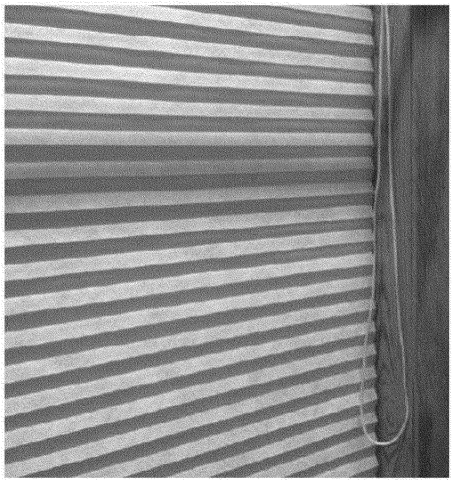

Figure 3. Cellular shade with looped operating cord

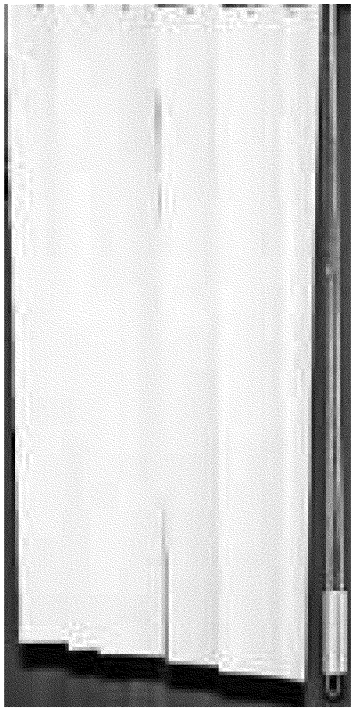

Figure 4. Vertical blind

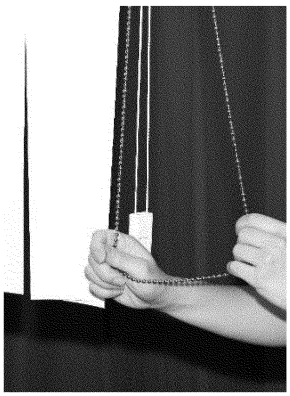

Figure 4a. Close-Up View Vertical blind

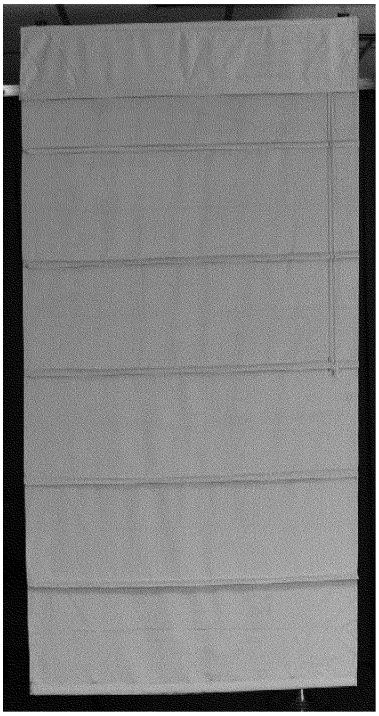

Figure 5. Roman shade

Figure 6. Cordless horizontal blind

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Figure 1 shows a horizontal blind containing inner cords, operating cords, and tilt cords. Figure 2 shows a roll-up shade containing lifting loops and operating cords. Figure 3 shows a cellular shade with inner cords between two layers of fabric and operating cords. Figure 4 shows a vertical blind with a looped operating cord to traverse the blind and a looped bead chain to tilt the vanes. Figure 4a, a close-up view of Figure 4, shows two continuous loop operating cords on the same blind; one cord tilts the slats to open and close the blind, and the other cord traverses the blind. Figure 5 shows a Roman shade with inner cords that run on the back side of the shade and operating cords. Figure 6 is a horizontal blind that is marketed as ''cordless'' because it has no operating cords, but it still contains inner cords. Window covering operating systems can vary slightly by window covering type, but all operating systems fit into one of two general categories: corded or cordless.

2. Corded Window Coverings

''Traditional'' or ''corded'' shades and blinds generally have cords located inside the product (inner cord), to the side of the product (operating cord or outer cord), or both. The inner cords between the head rail and bottom rail lift the horizontal slats to adjust light coming through, as in the case of horizontal blinds, or lift fabric and similar materials, as in the case of Roman or pleated shades. The outer cord or operating cord allows the user to raise, lower, open and close, rotate, or tilt the window covering. Operating cord systems generally fall into one of three categories: (1) standard; (2) single cord; and (3) continuous loop. The operating cord in a standard operating system consists of two or more cords and often includes a cord locking device to allow the user to set the height of the window covering. In a single cord operating system, the user can manipulate the window covering with a pull cord. The operating cord in a continuous loop operating system uses a single piece of cord or a beaded metal or plastic chain that is secured to a wall and operates like a pulley. For example, pulling down the rear half of the loop will lower the shade, while pulling down the front half of the loop will raise the shade.

3. Cordless Window Products

Virtually every window covering type is available with a ''cordless'' operating system, which means it has been designed to function without an operating cord.[7] Cordless window coverings may require inner cords, but these can be, and typically are, made inaccessible. In lieu of an operating cord, cordless operating systems can be manual or motorized. A manual operating system allows users to lift or lower the window covering with a handle or directly by hand. A motorized operating system uses a motor and control system to manipulate the window covering, such as a remote control or wall switch. Installation of cordless window coverings that are motorized is more complicated than manual systems because motorized systems require a power source.

4. Other Types of Safety Devices

The NPR reviewed safety devices some manufacturers use to isolate operating cords to make them safer, and assessed whether these methods address the strangulation risk. 87 FR 1018–19. Alternative safety devices include, among others: retractable cords, cord cleats, cord shrouds, cord condensers, and wands. Tab I in Staff's NPR Briefing Package contains a more detailed description of these devices. In the NPR, the Commission preliminarily found that these devices, as addressed in ANSI/WCMA–2018, are inadequate to address the risk of injury associated with operating cords on custom window products. *Id.* However, the Commission requested comment on several methods used to make operating cords inaccessible, including rigid cord shrouds, a method included in the NPR, as well as retractable cords and cord and bead chain restraining devices. 87 FR 1054.

Based on the comments received, and as discussed in section II of this preamble, the final rule includes additional methods to address the strangulation risk, including retractable cords and loop cord and bead chain restraining devices. In the final rule the Commission strengthens durability and performance requirements for these additional methods, to address the public comments and to ensure that use of safety devices does not introduce new hazards, such as from broken parts. These additional compliance methods allow for products that have one-handed operation and do not limit consumer accessibility to window coverings, but still eliminate the strangulation hazard.

5. ''Stock'' and ''Custom'' Window Coverings Defined in the NPR

Like the NPR, this final rule relies on the definitions of window coverings and their features as set forth in the ANSI/WCMA–2018 standard, which requires ''stock'' and ''custom'' window coverings to meet different sets of operating cord requirements. 87 FR 1019. The final rule uses the same definition of a ''stock window covering'' as the NPR, and has the same meaning as the definition of ''Stock Blinds, Shades, and Shadings'' in section 3, definition 5.02 of ANSI/WCMA–2018. A ''stock widow covering'' is a completely or substantially fabricated product prior to being distributed in commerce. Even when the seller, manufacturer, or distributor modifies a pre-assembled product, by adjusting to size, attaching the top rail or bottom rail, or tying cords to secure the bottom rail, the product is still considered ''stock,'' as defined in ANSI/WCMA–2018. Moreover, under the ANSI standard, online sales of a window covering, or the size of the order, such as multifamily housing orders, do not make the product a non-stock product. ANSI/WCMA–2018 provides these examples to clarify that, as long as the product is ''substantially fabricated'' prior to distribution in commerce, subsequent changes to the product do not change its categorization from ''stock'' to ''custom.''

The final rule also defines a ''custom window covering'' using the same definition of ''Custom Blinds, Shades, and Shadings'' found in section 3, definition 5.01 of ANSI/WCMA–2018, which is ''any window covering that is not classified as a stock window covering.'' The final rule also includes definitions of ''operating cord,'' ''cord shroud,'' ''rigid cord shroud,'' and ''retractable cord,'' as described in section IV.A of this preamble.

[7] The availability of alternatives to corded window coverings may sometimes be constrained due to size and weight limitations. *See* Lee, 2014. Through market research, staff found several examples of cordless blinds that are made with a maximum height of 84″ and a maximum width of 144″ (Tab G of Staff's NPR Briefing Package).

6. The Window Covering Industry

The total U.S. window covering market size in 2021 was approximately $6.7 billion [8] (Euromonitor 2022a). CPSC staff estimates that firms classified as small by Small Business Administration (SBA) guidelines account for $3.9 billion annually, and that none of these firms account for more than three percent of total market share by revenue (Euromonitor 2022b). The NPR reviewed that, based on 2017 data, 1,898 firms were categorized as blinds and shades manufacturers and retailers (Census Bureau, 2020). 87 FR 1019. Of these, about 1,840 firms (302 manufacturers and 1,538 retailers) are small. In 2020, three manufacturers accounted for almost 38 percent of dollar sales in the U.S. window coverings market (Euromonitor 2021a). Only one of these manufacturers is a publicly held firm. In 2020, the largest global manufacturer and distributor of window coverings reported worldwide net sales of $3.5 billion, with North American window covering sales reported as $1.7 billion. The second largest firm is privately held, and annual reports are not publicly available. Estimates of this firm's revenue indicate annual U.S. window covering revenue in 2020 of approximately $728 million (Euromonitor 2021a). The third firm is also privately held, and estimates indicate U.S. window covering revenues in 2020 of approximately $88 million (Euromonitor 2021a). The remainder of the total market size of $6.6 billion is attributed to firms that each account for less than 3 percent market share (Euromonitor 2021b). *Id.*

A recent study conducted for CPSC (D+R International 2021) estimated that in 2019, approximately 139 million residential window coverings were shipped in the United States. Most of these shipments, 59.2 percent, were blinds, while 25.4 percent were shades. When comparing unit sales data to revenue data, CPSC staff found that while custom products account for approximately 44 percent of unit sales, a disproportionate amount of revenue is attributable to custom window covering products. For example, Roman shades, which are sold almost always as custom window covering products, account for 1.9 percent of annual sales in 2019, but generated revenues equal to 2.3 percent of the total.

7. Retail Prices

As reviewed in the NPR, retail prices for window coverings vary, depending on the type of the product and retailer. 87 FR 1019; Tab F of the Final Rule Briefing Package. According to a D+R International (2021) study, average prices for window coverings range from $54 to $94 for shades and from $25 to $250 for blinds.[9] Prices for vertical blinds are generally lower than the prices of horizontal blinds; prices for roller shades are slightly lower than the prices of Roman and cellular shades (D+R International 2021).[10]

Consumers can purchase custom sized and custom designed window coverings from mass merchants, specialty retailers, e-commerce retailers, and in-home consultation firms. Custom coverings include uncommon window covering sizes, such as extremely small (*e.g.,* 9 inches wide × 13 inches high), extremely large (*e.g.,* 96 inches wide × 96 inches high), and other unusual sizes. Retail prices for custom made window coverings can be as high as $5,000.[11] Retailers often suggest in-home measuring and evaluation to estimate the price for custom designed products, as non-standard sizes or window shapes or motorized lift systems can require professional installation. Prices for customized window coverings are on average higher than similar stock products sold by mass retailers.

8. Window Coverings in Use

CPSC staff calculated an estimate of the number, and statistical distribution, of custom window coverings in use using CPSC's Product Population Model (PPM).[12] Tab F of the Staff Final Rule Briefing Package. The PPM is a statistical model that projects the number of products in use given estimates of annual product shipments/unit sales and information on product failure rates over time. Using the annual unit shipment estimates from the D+R International (2021) report, along with estimates on the number of corded products sold/in use, estimates for the share of custom products sold/in use, and estimates of the expected product life for window coverings by type provided by WCMA, staff estimates approximately 145 million corded custom window coverings in use in the United States in 2020. Table 1 shows the breakdown and calculation of estimated *corded custom* products in use, by type.

TABLE 1—ESTIMATES OF THE NUMBER OF CORDED CUSTOM WINDOW COVERINGS IN USE

	[1]	[2]	[3]	[4]	[5]
	Number of products in use (millions)	% of custom products in use (WCMA 2022a)	% of corded products (WCMA 2022b)	Expected product life (WCMA 2022b)	Number of corded custom products in use (millions)
Horizontal Blinds	474.24				76.02
Vinyl/Metal	251.35	20	91.9	6.7	46.20
Wood/Faux Wood	222.89	20	66.9	10.8	29.82
Shades	280.36				22.67
Cellular	94.46	20	21.0	7.2	3.97
Pleated	40.66	20	31.0	7.5	2.52
Roman	23.29	20	41.2	8.75	1.92
Roller	84.27	20	57.3	7.2	9.66
Soft Sheer	37.69	20	61.1	7.2	4.61
Vertical Blinds	177.84	20	64.8	7.6	23.05
Curtains/Drapery	212.59	20	54.4	15	23.13
Total	1,145.03				144.87

[8] Stock window coverings most likely account for a minority of the total market size in terms of revenue due to significant average price differences between stock and custom products (D+R International 2021).

[9] The range for shades is based on average prices for cellular shades, roller shades, Roman shades, and pleated shades. The range for blinds is based on average prices for vinyl blinds, metal blinds, faux-wood blinds, wood blinds, and vertical blinds.

[10] The D+R review of prices and product availability found that stock product prices are generally lower than custom products and that cordless lift systems resulted in an increase in price except in the case of vertical blinds.

[11] Based on firms' websites, retail prices for custom-made Roman shades can range from $300–$5,000.

[12] Lahr, M.L., Gordon, B.B., 1980. Product life model feasibility and development study. Contract CPSC–C–79–009, Task 6, Subtasks 6.01–6.06. Columbus, OH: Battelle Laboratories.

D. Hazards Associated With Window Covering Cords

Window covering cords, including operating cords (meaning pull cords and continuous loop cords), inner cords, and lifting loops, can pose strangulation hazards to children when they are accessible and long enough to wrap around a child's neck. Figures 7, 8, and 9 below depict the strangulation hazard for different window covering cord types.

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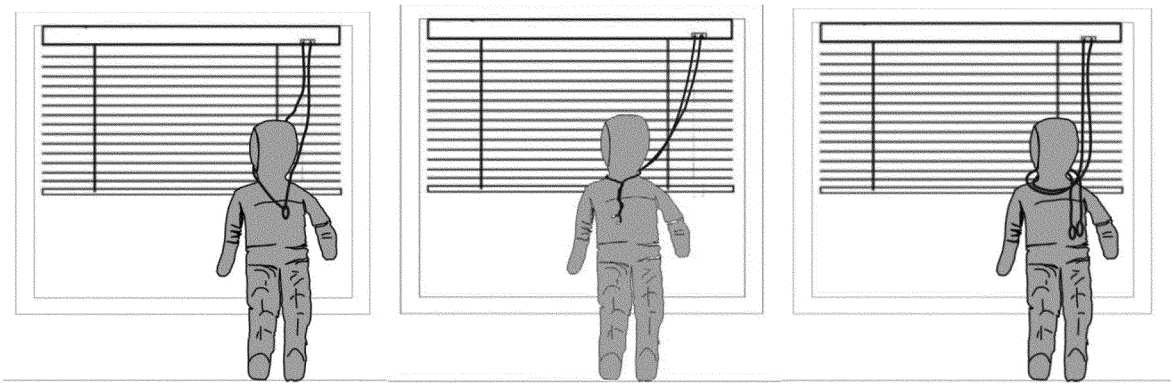

Figure 7. (a) Operating pull cords ending in one tassel (left); (b) operating cords tangled, creating a loop (middle); (c) operating cords wrapped around the neck (right)

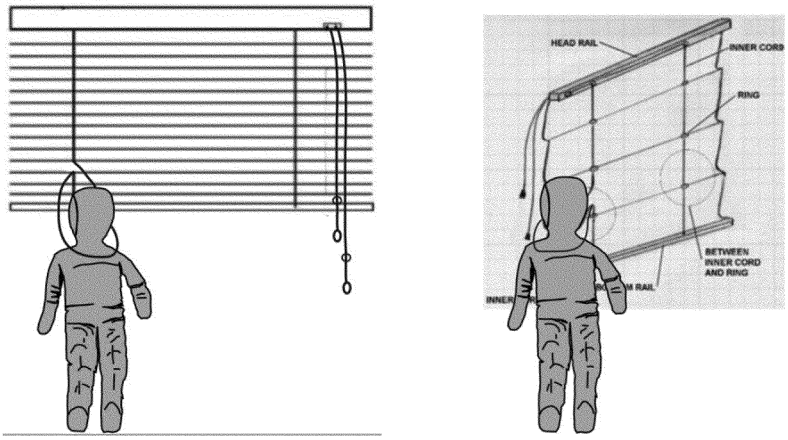

Figure 8. (a) Inner cords creating a loop (left), (b) Inner cords on the back side of Roman shade (right)

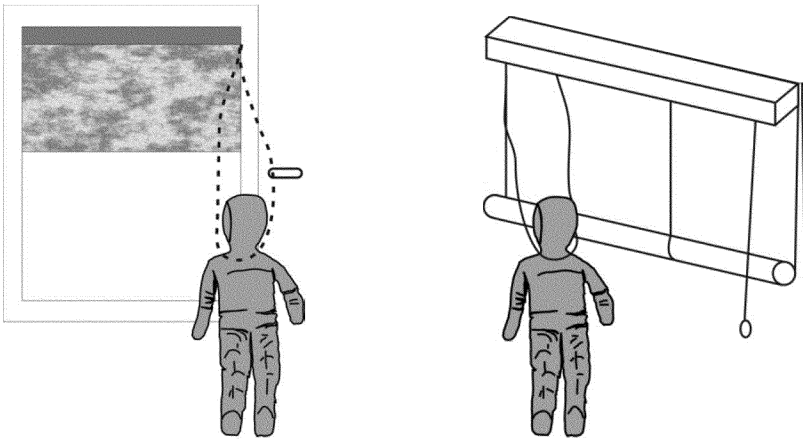

Figure 9. (a) Continuous loop cord (left), (b) Lifting loop on roll-up shade (right)

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Children can strangle from mechanical compression of the neck when they place a window covering cord around their neck. Strangulation due to mechanical compression of the neck is a complex process resulting from multiple mechanisms and pathways that involve both obstruction of the airway passage and occlusion of blood vessels in the neck. Strangulation can lead to serious injuries with permanent debilitating outcomes or death. If sustained lateral pressure occurs at a level resulting in vascular

occlusion, strangulation can occur when a child's head or neck becomes entangled in any position, even in situations where the body is fully or partially supported.

Strangulation is a form of asphyxia that can be partial (hypoxia), when there is an inadequate oxygen supply to the lungs, or total, when there is complete impairment of oxygen transport to tissues. A reduction in the delivery of oxygen to tissues can result in permanent, irreversible damage. Experimental studies show that as little as 2 kg (4.4 lbs.) of pressure on the neck may occlude the jugular vein (Brouardel, 1897); and 3 kg to 5 kg (7–11 lbs.) may occlude the common carotid arteries (Brouardel, 1897 and Polson, 1973). Minimal compression of any of these vessels can lead to loss of consciousness within 15 seconds and death in 2 to 3 minutes (Digeronimo and Mayes, 1994; Hoff, 1978; Iserson, 1984; Polson, 1973).

The vagus nerve is also located in the neck near the jugular vein and carotid artery. The vagus nerve is responsible for maintaining a constant heart rate. Compression of the vagus nerve can result in cardiac arrest due to mechanical stimulation of the carotid sinus-vagal reflex. In addition, the functioning of the carotid sinuses may be affected by compression of the blood vessels. Stimulation of the sinuses can result in a decrease in heart rate, myocardial contractility, cardiac output, and systemic arterial pressure in the absence of airway blockage.

Strangulation proceeding along one or more of these pathways can progress rapidly to anoxia, associated cardiac arrest, and death. As seen in the CPSC data (Wanna-Nakamura, 2014), and in the published literature, neurological damage may range from amnesia to a long-term vegetative state. Continued deterioration of the nervous system can lead to death (Howell and Gully, 1996; Medalia *et al.,* 1991).

Because a preexisting loop acts as a noose when a child's neck is inserted, and death can occur within minutes of a child losing footing, CPSC staff concluded that head insertion into a preexisting loop poses a higher risk of injury than when a child wraps a cord around his or her neck. However, both scenarios have been demonstrated to be hazardous and have led to fatal outcomes, according to CPSC data.

Based on the data, the Commission also concludes that reliance on parental supervision and warning labels are inadequate to address the risk of injury associated with window covering cords. As reviewed in the NPR, a user research study found that caregivers lacked awareness regarding the potential for window covering cord entanglement; lacked awareness of the speed and mechanism of the strangulation injury; identified difficulty using and installing safety devices for window coverings among the primary reasons for not using them; and were unable to recognize the purpose of the safety devices provided with window coverings (Levi *et al.,* 2016).[13] According to Godfrey *et al.* (1983), consumers are less likely to look for and read safety information about the products that they frequently use and are familiar with. Consumers almost certainly have window coverings in their homes and may use them daily. Therefore, even well-designed warning labels will have limited effectiveness in communicating the hazard on this type of product.

Based on the foregoing, the Commission finds that warning labels are unlikely to effectively reduce the strangulation risk from hazardous cords on window coverings, because consumers are not likely to read and follow warning labels on window covering products, and strangulation deaths among children occur quickly and silently, such that parental supervision is insufficient to address the incidents. Indeed, staff observed that most of the window covering units involved in incidents had the permanent warning label required by the ANSI/WCMA standard affixed to the product. Even well-designed warning labels will have limited effectiveness in communicating the hazard on this type of product, because consumers are less likely to heed warnings for familiar products that they commonly interact with without incident.

In contrast to requirements for custom window coverings in ANSI/WCMA–2018, stock window covering requirements in the ANSI/WCMA standard adequately address the strangulation hazard, by not allowing hazardous cords on these products; stock window covering requirements do not rely on consumer action to address the risk of strangulation. Stock window coverings that comply with the ANSI/WCMA standard inherently minimize strangulation risk as sold because no consumer or installer action is required to protect against strangulation of children. Accordingly, the Commission concludes that the risk of injury associated with custom window coverings must be addressed through performance requirements for these products, to ensure that custom window coverings are as safe as stock window coverings for children 8 years old and younger.

E. Risk of Injury

The incident data demonstrate that regardless of whether a product is categorized as stock or custom, children are exposed to the same risk of strangulation from accessible window covering cords. For the NPR, the Commission presented window covering cord incidents occurring from 2009 through 2020.[14] 87 FR 1022–27. Since extracting data for the NPR, CPSC has received reports of 15 additional incidents. Tab A of Staff's Final Rule Briefing Package details this new incident data. The following analysis is based on incidents received from 2009 through 2021, and distinguishes between stock and custom window coverings whenever feasible.

1. Incident Data From CPSC Databases

Based on newspaper clippings, consumer complaints, death certificates purchased from states, medical examiners' reports, reports from hospital emergency department-treated injuries, and in-depth investigation reports, CPSC staff found a total of 209 reported fatal and near-miss strangulations on window covering cords that occurred among children 8 years old and younger from January 2009 through December 2021. These 209 incidents do not necessarily include all window covering cord-related strangulation incidents that occurred during that period, and recent data, particularly for 2021, may be incomplete. However, these 209 incidents do provide a minimum number for such incidents during that time frame.

Table 2a provides the breakdown of the incidents by year. Totals include new incidents received after the NPR data analysis, which are noted in parentheticals below. Because reporting is ongoing and the number of incidents may grow, and because these reports are anecdotal, inferences should not be drawn from the year-to-year variations in the reported data.

[13] *https://cpsc.gov/s3fs-public/Window%20Coverings%20Safety%20Devices%20Contractor%20Reports.pdf.*

[14] CPSC staff searched three databases for identification of window covering cord incidents: the Consumer Product Safety Risk Management System (CPSRMS), the National Electronic Injury Surveillance System (NEISS), and the Multiple Cause of Deaths data file (further information can be found at *https://wonder.cdc.gov/mcd-icd10.html*). The first two sources are CPSC-maintained databases. The Multiple Cause of Deaths data file is available from the National Center for Health Statistics (NCHS).

TABLE 2a—REPORTED FATAL AND NEAR-MISS STRANGULATION INCIDENTS INVOLVING WINDOW COVERING CORDS AMONG CHILDREN EIGHT YEARS AND YOUNGER 2009–2021

Incident year	Number of reported incidents		
	Total	Fatal strangulations	Near-miss strangulations
2009	48	14	34
2010	31	11	20
2011	10	6	4
2012	17	8	9
2013	9	2	7
2014	17	12	5
2015	9	7	2
2016	17	13	4
2017	10 (1)	5	5 (1)
2018	8	4	4
2019	11	4	7
*2020 **	13 (5)	8 (5)	5
*2021 **	9 (9)	6 (6)	3 (3)
Total	209 (15)	100 (11)	109 (4)

Source: CPSC epidemiological databases CPSRMS and NEISS. Data in ( ) indicate the number of new incidents received since the NPR data analysis.
Note: * indicates data collection is ongoing.

Among the 15 newly reported incidents, staff identified 11 fatalities (73 percent) and 4 non-hospitalized injuries (27 percent). The non-hospitalized injuries resulted in lacerations and abrasions.

Table 2b expands on Table 2a to display the distribution of the annual incidents by severity of incidents and type of window coverings involved. CPSC staff identified 50 of 209 incident window coverings (24 percent) to be stock products, and 36 of the 209 (17 percent) window coverings as custom products. Where staff could identify a product type, custom products made up 42% (36 out of 86) of the incident products. CPSC staff could not identify the window covering type in the remaining 123 of the 209 incidents (59 percent); 65 of the 123 incidents (53 percent) involving an uncategorized window covering resulted in a fatality.

TABLE 2b—REPORTED FATAL AND NEAR-MISS STRANGULATION INCIDENTS INVOLVING STOCK/CUSTOM/UNKNOWN TYPES OF WINDOW COVERING CORDS AMONG CHILDREN EIGHT YEARS AND YOUNGER 2009–2021

Incident year	Reported incidents by window covering type			
	Stock (fatal/nonfatal)	Custom (fatal/nonfatal)	Unknown (fatal/nonfatal)	All
2009	20 (4/16)	7 (2/5)	21 (8/13)	48
2010	10 (3/7)	7 (2/5)	14 (6/8)	31
2011	2 (1/1)	4 (3/1)	4 (2/2)	10
2012	1 (1/0)	5 (1/4)	11 (6/5)	17
2013	2 (1/1)	3 (1/2)	4 (0/4)	9
2014	3 (2/1)	2 (1/1)	12 (9/3)	17
2015	4 (4/0)	1 (1/0)	4 (2/2)	9
2016	5 (3/2)	4 (3/1)	8 (7/1)	17
2017	2 (1/1)	1 (0/1)	7 (4/3)	10
2018	.....	1 (0/1)	7 (4/3)	8
2019	1(0/1)	.....	10 (4/6)	11
*2020**	.....	1 (1/0)	12 (7/5)	13
*2021**	.....	.....	9 (6/3)	9
Total	50 (20/30)	36 (15/21)	123 (65/58)	209

Source: CPSC epidemiological databases CPSRMS and NEISS.
Note: * indicates data collection is ongoing.

One hundred of the 209 incidents (48 percent) reported a fatality. Among the nonfatal incidents, 16 involved hospitalizations (8 percent). The long-term outcomes of these 16 injuries varied from a scar around the neck, to quadriplegia, to permanent brain damage. One additional child was treated and transferred to another hospital; the final outcome of this patient is unknown. In addition, 79 incidents (38 percent) involved less-severe injuries, some requiring medical treatment, but not hospitalization. In the remaining 14 incidents (7 percent), a child became entangled in a window covering cord, but was able to disentangle from the cord and escape injury. For the incidents identified in the NPR for which gender information is available, 66 percent of the children were males, and 34 percent were females. One incident did not report the child's gender. For the 15 new incidents staff found a similar pattern regarding gender; 62 percent of the victims were male and 38 percent were females.

Table 2c provides a breakdown of the incidents by window covering type. Among the 11 newly reported deaths since the NPR analysis, staff definitively identified the cord type in 6 deaths. Three deaths (27 percent of all newly reported deaths) involved a pull cord, 2 deaths (18 percent) involved a continuous loop, and 1 death (9 percent) involved inner cord(s); staff had insufficient information to determine the cord type involved for the remaining 5 fatal incidents.

TABLE 2c—DISTRIBUTION OF REPORTED INCIDENTS BY TYPES OF WINDOW COVERINGS AND ASSOCIATED CORDS 2009–2021

[Numbers in parentheses indicate new reports received since NPR]

Window covering type	Cord type						
	Pull cord	Continuous loop	Inner cord	Lifting loop	Tilt cord	Unknown	Total
Horizontal	68 (3)	2	4 (1)	0	5	10	89 (4)
Vertical	0	12 (1)	0	0	0	0	12 (1)
Drapery	0	4 (1)	0	0	0	0	4 (1)
Roman	2	2	19	0	0	1	24
Other *	2	5	0	0	0	0	7
Roll-Up	1	0	0	4	0	1	6
Roller	0	9	0	0	0	0	9
Unknown	1	1	0	0	0	56 (9)	58 (9)
Subtotal †	74 (3)	35 (2)	.....	.....	5	68 (9)	182 (14)
Total	74 (3)	35 (2)	23 (1)	4	5	68 (9)	209 (15)

Source: CPSC epidemiological databases CPSRMS and NEISS.
Other *: This category includes cellular and pleated shades.
Subtotal †: This row shows the incidents that are relevant to the section 7&9 rule.

2. Incident Data From National Estimates

(a) Estimates of Window Covering Cord-Related Strangulation Deaths Using National Center for Health Statistics Data

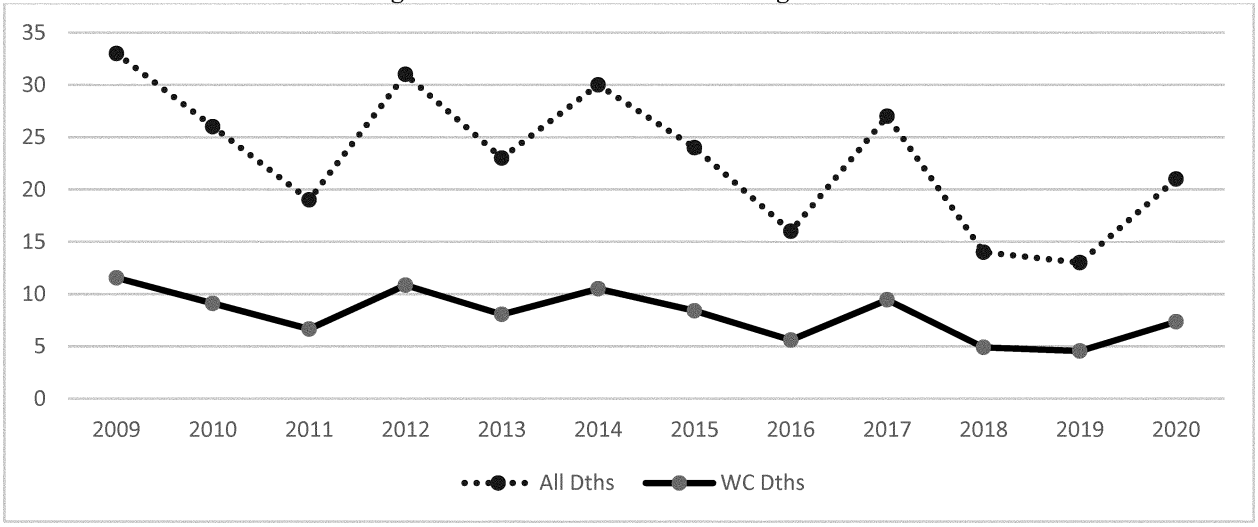
The National Center for Health Statistics (NCHS) compiles all death certificates filed in the United States into multiple-cause mortality data files. The mortality data files contain demographic information on the deceased, as well as codes to classify the underlying cause of death, and up to 20 contributing conditions. The NCHS compiles the data in accordance with the World Health Organization (WHO) instructions, which request member nations to classify causes of death by the current Manual of the International Statistical Classification of Diseases, Injuries, and Causes of Death. Death classifications use the tenth revision of the International Classification of Diseases (ICD), implemented in 1999. For the NPR, 2019 was the latest available year for NCHS data; since then, data for 2020 have become available.

Using the ICD10 code value of W76 (*Other accidental hanging and strangulation*), the code most likely to capture strangulation fatalities among children under 5 (based on empirical evidence from death certificates maintained in CPSC databases), CPSC staff derived fatality estimates for 2009 through 2020, presented in Figure 10 below. An unknown proportion of strangulation deaths is likely coded under ICD10=W75 (*Accidental suffocation and strangulation in bed*) as well as ICD10=W83 (*Other specified threats to breathing*), which staff cannot separate out from the non-strangulation deaths because of the unavailability of any narrative description in these data. Hence, CPSC's estimates of strangulation deaths are minimums.

A 2002 CPSC report by Marcy *et al.*[15] concluded that 35 percent of all strangulation fatalities among children less than 5 years old were associated with window covering cords. Assuming that the same proportion applied for the entire 12-year period 2009–2020, Figure 10 below presents the national estimates for all strangulation fatalities as well as strangulations involving window covering cords among children under 5.

[15] N. Marcy, G. Rutherford. ''Strangulations Involving Children Under 5 Years Old.'' U.S. Consumer Product Safety Commission, December 2002.

Figure 10: Estimated Annual Minimum for Fatal Strangulations Among Children Under Five Years of Age 2009 - 2020



Source: Multiple Cause of Death data, NCHS, 2009 – 2020.
Note: The estimates for the window covering cord fatalities are based on the assumptions that 35% of all strangulation fatalities are due to window covering cords and that this percentage remained unchanged over 2009-2020.

Based on the 2002 study, staff estimates the annual average number of deaths due to window coverings at 8.1.[16] We note that this estimate is consistent with CPSC's actual incident data over a 12 year period. For example, at the time of this final rule analysis, the incidents over the 12-year period 2009–2020 report an average of 7.8 annual deaths involving window covering cords among children under 8 years old.

F. ANSI/WCMA–2018 History and Description

The NPR detailed CPSC staff's decades-long efforts to work with the Window Covering Manufacturers Association beginning in 1995 on an American National Standards Institute voluntary standard to address the strangulation hazard to young children from accessible cords on window coverings. 87 FR 1027–28. Importantly, after several versions of a voluntary standard failed to adequately address the strangulation risk, on January 8, 2018, ANSI published a revision to the window coverings standard, ANSI/WCMA A100.1—2018, that adequately addressed the operating and inner cord strangulation hazard for stock window coverings, and the inner cord hazard for custom products. WCMA updated the 2018 version the standard in May 2018, and the standard went into effect on December 15, 2018. That standard did not, however, adequately address the operating cord hazard for custom products.

ANSI/WCMA–2018 segments the window covering market between ''stock'' and ''custom'' window coverings, as defined in section 3 of the standard, definitions 5.02 and 5.01. Per section 4.3.1 of the standard, stock window coverings are required to have:

(1) no operating cords (4.3.1.1),

(2) inaccessible operating cords (4.3.1.3), or

(3) short operating cords (equal to or less than 8 inches) (4.3.1.2).

Although manufacturers of custom window coverings can opt to meet the operating cord requirements for stock window coverings (sections 4.3.2.1 through 4.3.2.3 for custom window coverings are identical to 4.3.1.1 through 4.3.1.3), ANSI/WCMA–2018 allows the sale of corded window coverings that do not meet this standard, such as on some custom order products (sections 4.3.2.4 through 4.3.2.6). Table 3 demonstrates the operating cord systems allowed on custom window coverings that are prohibited on stock window coverings in ANSI/WCMA–2018.

TABLE 3—ANSI/WCMA–2018 OPERATING AND INNER CORD REQUIREMENTS FOR STOCK AND CUSTOM WINDOW COVERINGS

Performance requirements in ANSI/WCMA A100.1–2018	Assessment of the performance requirement	Stock products	Custom products
1. No operating cords OR	Adequate	Required to have one or more of these options.	Allowed/Not Required.
2. Short cord with a length equal to or less than 8 inches in any state (free or under tension) OR			
3. Inaccessible operating cords.			
4. Inner cords that meet Appendix C and D	Adequate	Required	Required.
5. Manufacturer Label that meets section 5.3	Adequate	Required	Required.

[16] We received a comment critical of CPSC's use of this 2002 study. At this point in time, we are unaware of other data sources that would provide information regarding a more current national trend in window covering cord-related strangulations and the commenter did not provide an alternate data source.

TABLE 3—ANSI/WCMA–2018 OPERATING AND INNER CORD REQUIREMENTS FOR STOCK AND CUSTOM WINDOW COVERINGS—Continued

Performance requirements in ANSI/WCMA A100.1–2018	Assessment of the performance requirement	Stock products	Custom products
6. Single Retractable Cord Lift System (no limit on length of exposed cord when operating). *7. Continuous Loop Operating System.* *8. Accessible Operating Cords longer than 8 inches.*	Inadequate	Prohibited	Allowed/Not Prohibited.

Section 4.3.2 of ANSI/WCMA–2018 contains additional requirements for custom products, including:

(1) operating cords must have a default length of 40 percent of the blind height (previously unlimited) (4.4);

(2) a wand is the default option for tilting slats (instead of a cord) (4.4.1.1); and

(3) warning labels must depict more graphically the strangulation hazard associated with cords (5.1).

Section II of this preamble assesses the adequacy of requirements for operating cords on stock and custom window coverings in ANSI/WCMA–2018 to address the hazards associated with corded window coverings. Based on staff's assessment, the Commission finds that ANSI/WCMA–2018 adequately addresses the risk of strangulation on operating cords for stock window coverings, by removing operating cords, ensuring that they are inaccessible to children, or by making them too short for a child to wrap around his or her neck. However, consistent with Table 3, the Commission finds ANSI/WCMA–2018 does not adequately address the risk of injury associated with operating cords on custom window coverings, because custom products can still be sold to consumers with hazardous operating cords.

G. Development of Draft Revised ANSI/WCMA Voluntary Standard

After the publication of the NPR on January 7, 2022, WCMA brought forth several proposals to revise requirements for custom window covering cords in ANSI/WCMA–2018, resulting in a final draft revision that went to ballot on July 15, 2022.[17] The ballot closed on August 15, 2022. CPSC staff voted negative on the ballot based on staff's analysis of the draft standard. Staff assessed as inadequate to address the risk of injury the requirements for tension devices used with continuous loop operating systems, the requirements for retractable cords, and tests for rigid cord shrouds and loop cord and bead chain restraining devices.[18] Although the draft ANSI/WCMA–2022 has not been adopted, and thus an assessment of this draft is not necessary for this rulemaking, CPSC nonetheless discusses the draft revised standard in section II.D of this preamble, based on Tab I of Staff's Final Rule Briefing Package. The draft ANSI/WCMA–2022 standard improves some requirements for operating cords on custom window coverings, but continues to allow accessible operating cords and loops that are long enough to wrap around a child's neck.

On September 23, 2022, WCMA issued a recirculation ballot due to negative votes cast for the original balloted revisions. In addition to CPSC staff, Consumer Federation of America, Independent Safety Consulting, LLC, and Parents for Window Blind Safety voted negative. As explained in Tab C of Staff's Final Rule Briefing Package, the reballoting does not resolve the concerns identified by CPSC staff.

H. Commission Efforts To Address Hazardous Window Covering Cords

1. Petition and Rulemaking

Since the mid-1990s, CPSC staff has been engaged with the voluntary standards body urging changes to the ANSI/WCMA standard to reduce the risk of injury associated with window covering cords. On October 8, 2014, the Commission granted a petition to initiate a rulemaking to develop a mandatory safety standard for window coverings.[19] The petition sought to prohibit window covering cords when a feasible cordless alternative exists. When a feasible cordless alternative does not exist, the petition requested that all window covering cords be made inaccessible by using passive guarding devices. The Commission granted the petition and published an ANPR seeking information and comment on regulatory options for a mandatory rule to address the risk of strangulation to young children on window covering cords, and then subsequently published two NPRs, under different authorities, to address the risk of injury.

The Commission is now finalizing both rules. The rule under section 15(j) of the CPSA is being finalized as proposed. *See* CPSC Docket Number CPSC–2021–0038. This rule under sections 7 and 9 of the CPSA is being finalized consistent with the NPR, but provides that rigid cord shrouds, retractable cords, and loop cord and bead chain restraining devices are all methods that can be used to make window covering cords inaccessible or non-hazardous. All of these devices are sold integrated with a custom window covering, and contain additional requirements in the final rule to ensure that any cords remain inaccessible or if accessible, non-hazardous, and that the test methods ensure durability over the use of the product.

2. Window Covering Recalls

Since January 1, 2009, CPSC has conducted 42 consumer-level window covering recalls, including two recall reannouncements. Tab C of Staff's NPR Briefing Package provides the details of these 42 recalls, where strangulation was the primary hazard. Manufacturers recalled more than 28 million units,[20] including Roman shades and blinds, roll-up blinds, roller shades, cellular shades, horizontal blinds, and vertical

[17] From December 2021 through May 2022, CPSC staff participated in meetings held by ANSI/WCMA to discuss updating the voluntary standard. Tab C of Staff's Final Rule Briefing Package contains a more detailed description of staff's participation. Meeting logs and staff's correspondence have been placed on the docket for this rulemaking.

[18] CPSC staff letter is available at *https://www.regulations.gov/document/CPSC-2013-0028-3667.*

[19] The petition, CP 13–2, was submitted by Parents for Window Blind Safety, Consumer Federation of America, Consumers Union, Kids in Danger, Public Citizen, U.S. PIRG, Independent Safety Consulting, Safety Behavior Analysis, Inc., and Onder, Shelton, O'Leary & Peterson, LLC. Staff's October 1, 2014 Petition Briefing Package, and a copy of the petition at Tab A, is available on CPSC's website at: *https://www.cpsc.gov/Global/.Newsroom/FOIA/CommissionBriefingPackages/2015/PetitionRequestingMandatoryStandardforCordedWindowCoverings.pdf* on (*cpsc.gov*).

[20] This estimate does not include the recalled units of Recall No. 10–073. This was a December 15, 2009 industry-wide recall conducted by members of the Window Covering Safety Council (WCSC). An exact number of recalled products was not stated in the recall announcements.

blinds. The recalled products also included stock products, which can be purchased off the shelf by consumers, and custom products, which are made-to-order window coverings based on a consumer's specifications, such as material, size, and color.

II. Assessment of Operating Cord Requirements for Stock and Custom Window Coverings

Consistent with the NPR, the final rule requires that operating cords on custom window coverings meet the same requirements as those for operating cords on stock window coverings, as provided in section 4.3.1 of ANSI/WCMA–2018. Additionally, based on the comments received, the final rule includes rigid cord shrouds and retractable cords as methods to make operating cords on custom window coverings inaccessible to children, and loop cord and bead chain restraining devices as a method to prevent the formation of hazardous loops. Below we provide an overview of the engineering and human factors analysis of the requirements for stock and custom window coverings in ANSI/WCMA–2018, assess the balloted draft revision (draft ANSI/WCMA–2022), and evaluate the available technologies to make window coverings safer for children. We also explain the changes made in the final rule in response to the comments received on the NPR.

A. Engineering Assessment of Operating Cord Requirements in ANSI/WCMA–2018

1. Stock Window Coverings

As stated in the NPR, the requirements for operating cords on stock window coverings in ANSI/WCMA–2018 are adequate to address the risk of strangulation associated with window coverings. 87 FR 1030–31. Staff analyzed the incident data for window coverings, which indicated that the largest proportion of deaths, irrespective of window covering type, involved operating cords (most frequently tangled or knotted cords, followed by cord(s) wrapped around the child's neck). The voluntary standard recognizes that long and accessible cords can pose a strangulation hazard. ANSI/WCMA–2018 defines the ''operating cord'' as the portion of a cord that the user interacts with and manipulates to move the window covering in a certain direction (*e.g.,* lifting or lowering, traversing, rotating). If a child wraps a long operating cord around their neck, or inserts their neck into a cord loop created by the design of the window covering or by tangled cords, the child can strangle to death within minutes. ANSI/WCMA–2018 provides three ways that a stock window covering can comply with the standard to reduce or eliminate the risk of children strangulating on operating cords:

a. No Operating Cords (section 4.3.1.1). Having no operating cords eliminates the strangulation hazard associated with operating cords. Consumers use a mechanism, other than an operating cord, to accomplish the desired movement action (*i.e.,* lifting, lowering, traversing). For example, a spring mechanism on a horizontal blind allows the user to lift and lower the blind via the bottom rail of the window covering.

b. Short Cord with a Length Equal to or Less Than 8 Inches in Any State (section 4.3.1.2). Based on the anthropometric dimensions of the youngest child involved in an incident, a static cord length of 8 inches or shorter is insufficient to strangle a child, because the neck circumference of a fifth percentile 6- to 9-month-old child is 8 inches (BSI, 1990, as cited in Norris and Wilson, 1995). Because a child would need some extra length of cord to hold the cord out and wrap it around their neck, staff calculated that a cord must be longer than 8 inches to cause strangulation. The requirements for stock products in ANSI/WCMA–2018 rely on this 8 inch operating cord limit, requiring that operating cords must be 8 inches or shorter, or must be made inaccessible, to address the strangulation risk. The Canadian window covering regulation has a similar requirement, limiting accessible cord lengths to about 8.7 inches.

c. Inaccessible Operating Cords Determined Per the Test Requirement in Appendix C of the ANSI/WCMA–2018 (section 4.3.1.3). If a window covering has an operating cord that is longer than 8 inches, ANSI/WCMA–2018 requires that the cord must be inaccessible to children. Having inaccessible cords effectively eliminates the strangulation hazard associated with operating cords, because the child is unable to access a cord to cause strangulation. Accordingly, this requirement is tested using a probe that is intended to simulate the finger size of a young child; the diameter of the probe is 0.25 inches, based on fifth percentile 2- to 3.5-year-old's index finger diameter (Snyder *et al.,* 1977) at 0.33 inches and the off-the-shelf availability of a 0.25-inch diameter dowel pin. If the probe cannot touch the operating cord, the cord is then deemed inaccessible, pursuant to ANSI/WCMA–2018.

Figure 11 displays an example of a rigid cord shroud. In Figure 11, the accessibility probe cannot touch the operating cord because it is surrounded by the cord shroud. Therefore, the window covering in Figure 11 meets section 4.3.1.3 of ANSI/WCMA–2018, because the operating cord is inaccessible.

Figure 11. Rigid cord shroud

The Commission concludes that ANSI/WCMA–2018 adequately addresses the strangulation hazard posed by accessible operating cords on stock window covering products, because the standard either eliminates accessible operating cords, or it limits the length of the cord so that it is too short for a child to strangle.

2. Custom Window Coverings

As stated in the NPR, requirements for operating cords on custom window products in section 4.3.2 of ANSI/WCMA–2018 do not adequately address the risk of strangulation to children 8 years old and younger, because ANSI/WCMA–2018 allows custom window coverings to be sold with hazardous operating cords if they are custom ordered. 87 FR 1031–32. Of the 36 custom window covering incidents reviewed by staff, 31 (86%) incidents were related to operating cords (including pull cords and continuous loops). CPSC has determined that had the requirements in section 4.3.1 of the ANSI/WCMA standard for operating cords on stock products been in effect for custom window coverings, the requirements would have prevented 100 percent of the incidents involving operating cords on custom window coverings.

The 2018 version of the voluntary standard added two new requirements for custom window coverings to mitigate the strangulation hazard: (1) default maximum operating cord length of 40 percent of the blind height when the product is fully lowered, and (2) a default tilt wand option, instead of a cord, for tilting slats. However, ANSI/WCMA–2018 still allows hazardous operating cords to be part of the window covering design for custom products, which can comply with ANSI/WCMA–2018 using any of the methods below, all of which pose strangulation risks:

(a) *Accessible Operating Cords longer than 8 inches (section 4.3.2.6).* By allowing operating cords on custom window coverings to exceed 8 inches in length, ANSI/WCMA–2018 creates a continuing unreasonable risk of injury to children 8 years old and younger. Section 4.3.2.6 of ANSI/WCMA–2018 allows hazardous operating cords, meaning operating cords that are long enough for a child to wrap around their neck, or multiple cords that can become tangled and create a loop large enough for a child to insert their head. Even though ANSI/WCMA–2018 attempts to reduce the strangulation risk by shortening the default length of the cord to 40 percent of the window covering's length (section 4.4) and specifying the tilt wand as the default option versus tilt cords (section 4.4.1.1), as explained in Tab I of Staff's NPR Briefing Package, and in section II.C of the NPR, the risk associated with operating cords remains.

(b) *Continuous Loop Operating System (section 4.3.2.5).* This operating system requires that the operating loop be kept taut with a tension device. However, as observed in the incident data, a child can still insert their head into the continuous loop if it is not taut enough; in addition, tension devices may not be attached to the wall, which results in a free loop. Including the data reviewed since the NPR, CPSC staff identified 25 fatal strangulations involving a continuous corded loop without a functional tension device (*e.g.,* no device on the loop, device on the loop but not attached to a fixed surface, or broken device).[21] Moreover, staff identified various scenarios where a head probe could be inserted into the hazardous loop from an installed continuous loop with an ANSI/WCMA-compliant tension device attached to the wall. Staff also identified mis-installation or failure modes that will leave a hazardous loop on a custom product throughout its life cycle, starting from its installation.[22] In all these circumstances, a continuous loop operating system is not sufficient to prevent strangulation of a child.

We received more than 420 comments stating that continuous loops with properly attached tension devices are safe and should not be eliminated by the rule. These comments, however, are inconsistent with incident data, and CPSC staff's assessment of tension devices. Because of the risk of serious injury and death to children created by these devices, absent adequate safety features, the rule will not allow these devices to be sold with custom window coverings unless there is also an integrated, durable, safety feature that will adequately address the hazard. Specifically, the final rule will allow continuous loop systems if the product integrates a loop cord or bead chain restraining device that meets revised requirements in the final rule, including tests to ensure durability, such as an ultraviolet (UV) test, followed by a cyclic test, and a deflection test, as set forth in § 1260.2(d) of the final rule and explained in more detail in section II.E of this preamble.

(b) *Single Retractable Cord Lift System (section 4.3.2.4).* This method of complying with ANSI/WCMA–2018 allows an operating cord on a custom window covering to be pulled out to any length to operate the window covering, provided that it then retracts to a shorter length when the user releases the cord.

[21] Tab I of Staff's NPR Briefing Package, section II.C of the NPR.

[22] Tab I of Staff's Final Rule Briefing Package.

Retractable cord lift systems with an extended cord greater than 8 inches, and a low retraction force so that a child can access that length, allow a child to manipulate the cord and wrap the cord around their neck. Accordingly, the retractable cord requirement, as written in ANSI/WCMA–2018 for operating cords on custom window coverings, is not adequate to address the risk of injury, because the maximum cord length and a minimum pull force required to operate the system are not specified in the standard.

CPSC requested comment in the NPR on whether additional requirements for retractable cords, such as a maximum exposed cord length and a minimum pull force for a single retractable cord lift system, could address the strangulation hazard. 87 FR 1031–32. More than 140 commenters requested that retractable cords be allowed for use on custom window coverings. To address the comments, and to adequately address the risk of injury, the final rule allows for the use of single retractable cord systems provided they meet the additional requirements in the rule. Section 1260.2(c) requires that retractable cord systems complete retraction at 30 grams, have a non-cord retraction device, and have a stroke length equal to or less than 12 inches below the headrail. Retraction at 30 grams is the amount of force required to pull back the retractable cord fully into the headrail, to ensure that the cord remains inaccessible after use. A non-cord retraction device means that the product must use something other than a cord for the user to interact with to operate the window covering, such as a wand. A stroke length is the fixed amount of exposed cord available when a user pulls the retraction device down to lower or raise the window covering. In section II.E below, we assess that these additional requirements, including requirements for durability testing, will adequately address the strangulation hazard associated with accessible window covering cords.

3. Window Covering Technologies

The NPR reviewed safer window covering technologies to address the strangulation hazard in use on stock and custom window coverings, including cordless window coverings, window coverings with rigid cord shrouds, and cordless motorized window coverings. 87 FR 1032. Operating cords can be made inaccessible with passive guarding devices that allow the user to operate the window covering without the direct interaction of a hazardous cord. These types of window coverings use rigid cord shrouds, integrated cord/chain tensioners, or crank mechanisms. *Id.*

Cordless blinds can be raised and lowered by pushing up the bottom rail or pulling down the rail. This same motion may also be used to adjust the position of the horizontal slats for light control. Through market research, CPSC staff found several examples of cordless blinds that are made with a maximum height of 84 inches and a maximum width of 144 inches.

Rigid cord shrouds can be retrofitted over various types of window coverings to enclose pull cords and continuous-cord loops. A rigid cord shroud allows the user to use the pull cords while eliminating access to the hazardous cords. CPSC staff worked with WCMA and other members from March through December 2018, to develop draft requirements to test the stiffness of ''rigid cord shrouds,'' by measuring the deflection and deformation.[23]

The NPR included requirements for rigid cord shrouds based on the deflection and deformation test previously developed by the ANSI/WCMA members. The final rule retains the requirements for two tests, as proposed in the NPR: the ''Center Load'' test and the ''Axial Torque'' test, to ensure the stiffness and the integrity of the shroud so that the enclosed operating cord does not become accessible when the shroud is twisted. The Center Load test verifies the stiffness of the cord shroud, by measuring the amount of deflection in the shroud when a 5-pound force is applied at the mid-point. This test ensures that the shroud is not flexible enough to wrap around a child's neck. The Axial Torque test verifies that the cord shroud's opening does not enlarge to create an accessible cord opening when the shroud is twisted. Tab H of Staff's NPR Briefing Package contains additional detail on the requirement. The final rule maintains these requirements in § 1260.2(b). However, the final rule contains one clarification that rigid cord shrouds must also meet the UV and durability testing for cord shrouds in section 6.3 of ANSI/WCMA–2018.

The NPR also discussed crank mechanisms and cordless motorized blinds as safer alternatives to replace corded continuous-loop systems. 87 FR 1032. Cordless custom window coverings are allowed in the final rule pursuant to § 1260.2(a). Crank mechanisms are also allowed under § 1260.2(a) if the crank mechanism replaces the operating cord.

[23] The 2018 standard tests rigid cord shrouds for UV stability and impact.

B. International Standards for Window Covering Operating Cords

The NPR identified and assessed three international standards for operating cords on window coverings: (1) Australian, (2) Canadian, and (3) European. 87 FR 1032–22. The NPR stated that ANSI/WCMA–2018 is more stringent than the Australia Regulation, 2010 F2010C00801, and the European regulations, EN 13120, EN 16433 and EN 16434. However, the NPR stated that ANSI/WCMA–2018 is not as stringent as the new Canadian regulation, SOR/2019–97. Canada's window covering regulation states that any window covering cord that can be reached must be too short for a 1-year old child to wrap around their neck (*i.e.,* not more than 22 cm (8.66 inches) in length) or form a loop that a 1-year-old child can pull over their head (*i.e.,* not more than 44 cm (17.32 inches) in circumference). *Id.* Canada's regulation also requires that all window coverings meet one of the following conditions:

- *Section 4:* The cord shall be unreachable/inaccessible.
- *Section 5 and 6:* Reachable/accessible cords shall be 22 cm (8.66 inches) or less when pulled with 35N (7.87 lbf).
- *Section 7:* Reachable/accessible looped cords shall be 44 cm (17.32 inches) or less in perimeter when pulled with 35N (7.87 lbf).

Both the Canadian standard and the ANSI/WCMA stock window covering requirements do not permit a long, accessible operating cord. The Canadian standard is more stringent, however, because the Canadian standard applies to both stock and custom products, while the ANSI/WCMA standard contains separate requirements for stock and custom products, which allow long, accessible operating cords on custom products. *Id.*

Although the Canadian standard is similar to the ANSI/WCMA's stock window covering requirement, there are some differences. The NPR explained how the standards differ in the definition of an ''accessible cord,'' stating that the ANSI/WCMA–2018 standard has a more stringent definition. *Id.* Additionally, in Tab F of Staff's Final Rule Briefing Package, staff explains that the Canadian standard has a more stringent inner cord pull force requirement than ANSI/WCMA–2018; although staff assesses that the pull force in the ANSI/WCMA standard is adequate to address the risk of injury.

C. Human Factors Assessment of Operating Cord Requirements in ANSI/WCMA–2018

Operating cord requirements for stock window coverings in section 4.3.1 of ANSI/WCMA–2018 effectively eliminate the strangulation hazard associated with operating cords for stock window coverings. However, section 4.3.2 of ANSI/WCMA–2018 sets different requirements for operating cords on custom window coverings. Manufacturers can choose to meet the same requirements as stock products (cordless, inaccessible, or 8 inches or shorter) to comply, but the standard continues to allow operating cords that are accessible and that are longer than 8 inches, such as single retractable cord lift systems (with no stroke length limit), continuous loop operating systems, and standard operating systems. Thus, the ANSI standard allows free-hanging and accessible cords on custom window coverings that do not eliminate the strangulation hazard associated with operating cords.

1. Default Requirements for Custom Operating Cords Allow Accessible Cords

In the earlier versions of the ANSI/WCMA standard, the standard contained no specified length for operating cords. However, ANSI/WCMA–2018 added the following two requirements for custom window coverings, which are intended to reduce the hazard associated with free-hanging and accessible operating cords:

- Section 4.4 of ANSI/WCMA–2018 requires that the default cord length should be no more than 40 percent of the product height when the window covering is fully lowered. The exception is when a custom length is required to ensure user accessibility. Figure 12 shows the length of operating cords that are longer than 40 percent of product height and shorter cords that comply with this new requirement.
- Section 4.4.1 requires that a wand tilt be the default operating system, and cord tilt be an allowable customer option (Figure 12). The length requirement in section 4.4 still applies to tilt cords.

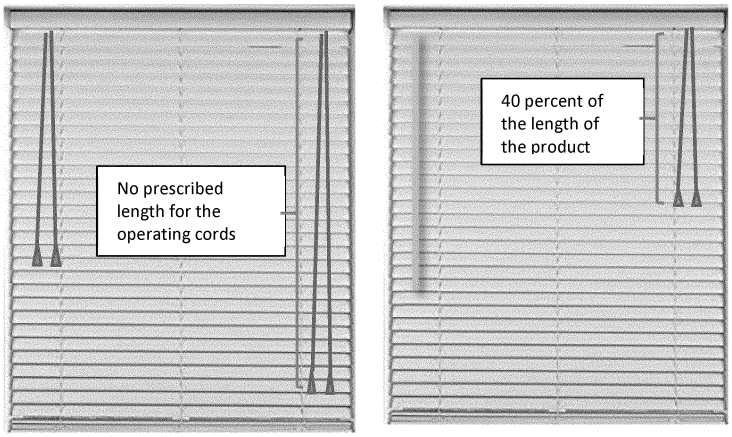


Figure 12. Window blind with operating cords longer than 40 percent of the length of the product and tilt cords to tilt the slats (left). Window blind with operating cords equal to 40 percent of the product length and wand tilt replacing tilt cords (right)

CPSC has concerns with longer operating cords that would comply with the requirements in sections 4.4 and 4.4.1 because:

- The length of operating cords can still be hazardous when the window covering is fully lowered. First, a child can wrap the cord around their neck; about 8 inches of cord is enough to encircle the child's neck.[24] Additionally, multiple cords can tangle and create a loop into which a child can insert their head; a loop with a circumference of about 17 inches is sufficient for child's head to enter.[25] Figure 13 shows these two scenarios.

[24] Neck circumference of fifth percentile 6- to 9-month-old children is 8 inches (BSI, 1990 as cited in Norris and Wilson, 1995).

[25] Head circumference of fifth percentile 6- to 9-month-old children is 16.5 inches (Snyder *et al.,* 1977).

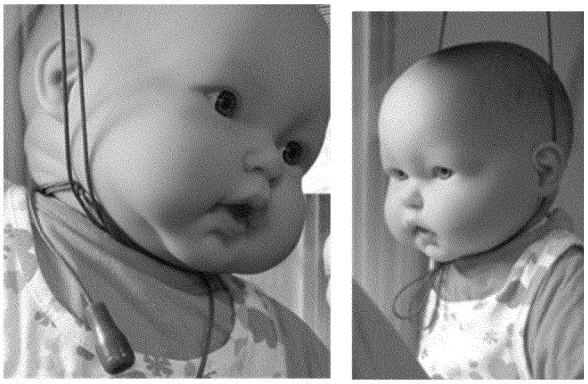


Figure 13. Demonstration of wrapped cords around (doll) child's neck (left), (doll) child's head is through the loop created by entangled multiple cords (right)

• Operating cord(s) will get longer as the window covering is raised, making it easier for a child to access and manipulate the hazardous operating cord. For example, a 60-inch-tall window blind with a 24-inch long (*i.e.,* 40 percent, consistent with section 4.4 of ANSI/WCMA–2018) operating cord can have an operating cord that is as long as 84 inches when the blind is fully raised.

• If the cord tilt option is chosen, the cord tilt can also be long enough for a child to wrap around their neck or be tangled and create a loop in which a child's head can enter.

• Firms typically allow consumers to easily change the default options during the custom order process, thus, maintaining a firm's ability to continue to sell accessible operating cords that exceed 8 inches long, posing a strangulation hazard.

Incident data show that children have strangled on operating cords in various ways. As reported in the incident data in section I.E of the NPR, and Tab A of Staff's NPR Briefing Package, custom window coverings were involved in at least 35 incidents. Table 4 shows how children accessed window covering cords. In 14 incidents, the child climbed on an item, including a couch, chair, toy chest, or dog kennel, and accessed the cord. In four cases, a child was on a sleeping surface, including a bed (2), playpen, and a crib. In six incidents, a child was able to reach the cord from the floor.

TABLE 4—CHILD'S INTERACTION SCENARIO IN INCIDENTS ASSOCIATED WITH CUSTOM PRODUCTS

Scenario	Number of incidents
Climbed on an item to reach the cords	14
On floor	6
On bed, in playpen or crib	4
Unknown	11
Total	*35*

The incident data demonstrate that accessible cords that are longer than 8 inches are hazardous. For example, the data show that even if operating cords are kept close to the window covering head rail, with some means, children climb and access the cords. Additionally, a significant number of operating pull cord incidents occurred in fully or partially raised window coverings, which reduces the benefit of having a default length of 40 percent of the window covering height in the fully lowered position of the window covering, because the cords will get longer as the product is raised.[26] Based on these data, the Commission concludes that the requirements in sections 4.4 and 4.4.1 of the ANSI/WCMA–2018 standard are inadequate because they continue to allow accessible and long cords to be part of the window covering.

2. Warning Labels in ANSI/WCMA–2018, Alone, Are Inadequate To Address the Strangulation Hazard Associated With Operating Cords

The ANSI/WCMA–2018 standard requires that corded custom window covering products have warning labels regarding the strangulation hazard to children, as summarized below:

• A warning label must be permanently attached to the bottom rail, including a pictogram depicting the hazard of a cord wrapped around a child's neck. The content explains the strangulation hazard and what consumers need to do to avoid the hazard (keeping cords out of children's reach, shortening cords to prevent reach, moving crib and furniture away).

• A similar warning label must be placed on product merchandising materials which includes, but is not limited to, the sample book and the website (if the website is relied upon for promoting, merchandising, or selling on-line).

• A warning tag containing a pictogram and similar text as above must be placed on accessible cords, including operating cords, tension devices that are intended to keep continuous loops taut, and on inner cords of a roll up shade.

Formatting of warning labels in the ANSI standard is required to follow ANSI Z535 standards.[27] This includes a signal word (''WARNING'') in all uppercase letters, measuring not less than 5⁄16 in (8 mm) in height and preceded by an ANSI safety alert symbol (*i.e.,* an equilateral triangle surrounding an exclamation point) of at least the same size, the rest of the warning message text be in both uppercase and lowercase letters, with capital letters measuring not less than 1⁄8 in (3 mm). A Spanish version of the label is also required.

[26] A total of 36 out of 46 pull cord incidents when position of the window covering was known have occurred with partially or fully raised window covering (1996 to 2016 incidents).

[27] The ANSI Z535 Series provides the specifications and requirements to establish uniformity of safety color coding, environmental/facility safety signs and communicating safety symbols. It also enables the design, application, use and placement of product safety signs, labels, safety tags and barricade tape.

Among the 36 incidents involving custom products, at least 16 of the incident units had a visible, permanent warning label, as displayed in Table 5.[28] In some cases, parents reported that they were aware of the cord hazard, but never thought their child would interact with a cord; in a few cases, parents were aware of the operating cord hazard but not the inner cord hazard. In some cases involving bead chains, parents thought that the connector clip on the bead chain loop was supposed to break away. None of the incident units had a hang tag. One unit had the hang tags tucked into the head rail, which was discovered when the unit was removed.

TABLE 5—PRESENCE OF PERMANENT WARNING LABELS IN INCIDENT UNITS

Permanent label present	Number of incidents
Yes	18
Mostly peeled off	1
No	7
Unknown	10
Total	*36*

As stated above, warning labels are unlikely to effectively reduce the strangulation risk due to hazardous cords on window coverings, because consumers are not likely to read and follow warning labels on window covering products, and strangulation deaths among children occur quickly and silently, such that parental supervision is insufficient to address the incidents.

3. Certain Safety Devices Are Inadequate To Address the Risk of Strangulation

ANSI/WCMA–2018 requires that custom products with accessible operating cords include cord cleats with instructions for use and mounting. The standard also requires that custom products with a continuous-loop operating system contain a cord tension device. Figure 14 shows examples of cord cleats and tension devices.

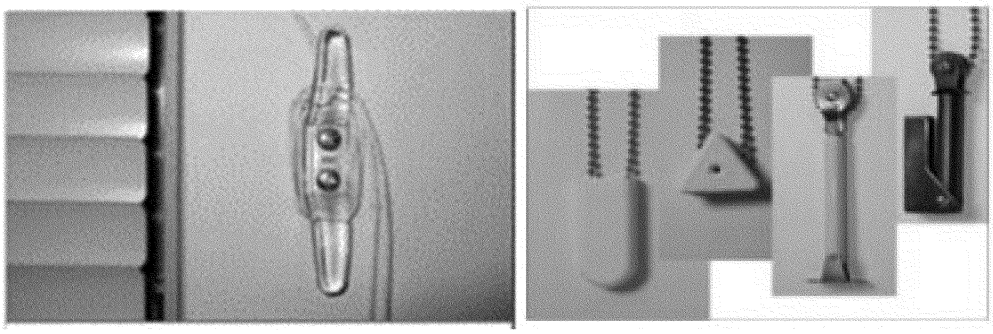


Figure 14. Examples of cord cleat (left), cord tension device (right)

(a) Cord Cleats

When a cord cleat is installed, the consumer must wrap the cord around the cleat every time the product is raised or lowered to mitigate the strangulation hazard, which means that the user's active involvement is necessary every time. Furthermore, cord cleats can be accessed by a child if they climb onto something, like a couch or chair. In one incident, although caregivers normally wrapped the cord around the cleat, on the day of the incident, cords were not wrapped, and the child accessed the cords after climbing on a couch.

(b) Tension Devices

ANSI/WCMA–2018 requires that a tension device be attached to the cord or bead chain loop by the manufacturer, and also requires that removal of the device demand a sequential (*i.e.,* multi-step) process or tools. The voluntary standard also requires window coverings to be designed so that they are prevented, at least partially, from operating, unless the tension device is properly installed. The standard also requires that the tension device be supplied with fasteners and instructions and meets the durability test requirements.

Reliance on safety devices that consumers must use or install separately from the window covering operating system is problematic for several reasons. First, this is not an ideal approach from the consumer's perspective because securing safety devices goes beyond the installation of the window covering itself, and increases the time and effort required to use the product. Second, safety devices usually require drilling holes on the wall or windowsill, which may not be permissible for renters and may not be desirable by homeowners. Third, the requirement that window coverings be designed so that they are at least partially prevented from operating, unless the tension device is properly installed, has not proven to be effective. CPSC staff has determined that a head probe (simulating a child's head) can be inserted into a tensioned loop cord; and as described below, there are reported strangulation incidents involving this scenario and others where tensioners were present.

Among the 36 incidents involving custom products, 13 had continuous loop cords or bead chains. In one non-injury incident, the child was able to insert his head through the loop even though a professional installer had attached the tension device to a wall. In two incidents, a tension device was attached to the cord but not to the wall. In one incident, the tension device had broken prior to the incident and not been repaired. In five incidents with continuous loops or bead chains, a tension device was not installed or present. The reports on the remaining four incidents contain no mention of a tension device.

(c) Consumer Perception of Non-Integrated Safety Devices

Some consumers may believe that because they do not expect to have young children living with them or visiting them, installation of external safety devices, such as tension devices and cord cleats, is unnecessary. But custom window coverings last approximately 10 years, and so they can be expected to remain in the home for a long time. Unforeseen visits by children can occur in that period, and when homes are sold, or new renters move in, the existing window coverings,

[28] In two cases, staff examined exemplar units.

if they are functional, usually remain installed and become hazardous to visitors and new occupants with young children.

Finally, CPSC issued a contract to investigate the effectiveness of safety devices in reducing the risk of a child's access to hazardous cords and loops on window coverings.[29] The research objective was to provide CPSC with systematic and objective data on the factors that impact installation, use, and maintenance of window covering safety devices; assess how these factors impact the likelihood of correct installation, use, and maintenance; and identify how the factors relate to the goal of reducing children's access to hazardous cords and loops on window coverings. Major findings from the study point to:

(i) A general awareness about cord entanglement among caregivers does not translate to precautionary action, due partly to the insufficient information provided at the point of sale;

(ii) Lack of awareness of the speed and mechanism of the injury that may lead to caregivers' underestimating the importance of providing an adequate level of supervision;

(iii) Difficulty using and installing safety devices as primary reasons for not using them; and

(iv) Inability to recognize the purpose of the safety devices provided with window coverings.

In general, participants in the study preferred a cordless window covering or a passive mechanism, which does not require intentional action by the user. The researchers concluded that there could be benefits from enhancing the public's awareness and understanding of the unique nature of incidents (*e.g.,* speed, mechanism) and explaining a child's vulnerability in all rooms in the home, and that providing specific information at the point of sale could be partially helpful. However, these improvements would be incremental, and increasing the use of cordless window coverings would be needed to achieve significant benefits.

For the final rule, the Commission determines that safety devices that are external to the window covering product and require installation and/or consumer interaction to make the cord less hazardous, are ineffective to adequately reduce the risk of injury from strangulation. However, the final rule does provide for use of passive safety devices, such as cord shrouds and loop cord and bead chain restraining devices, to adequately address the risk of injury, provided that the passive safety device is integrated with the product before sale, and does not require use or installation of an external safety device.

4. Relying on Parental Supervision Is Inadequate

For many years, CPSC has identified cords on window coverings as a hidden hazard. If young children are left unsupervised for even a few minutes in a room that is considered safe, such as a bedroom or family room, they can wrap a cord around their neck, insert their head into a cord loop, and be injured or die silently.

Even when supervision is present, the level of supervision varies, and distractions and other limitations to supervision exist. For example, CPSC has incident reports involving five near-fatal strangulations, in which the parent was either nearby, or in the same room. Among the 36 incidents involving custom products, incident location is known for 34 incidents. In 18 incidents, the child was in a room shared by the family members, such as a family room, living room, and sunroom. Eleven of 18 incidents were not witnessed, whereas five were witnessed by an adult, and two incidents occurred in the company of other children. Almost all the incidents (15/16) that occurred in a bedroom were unwitnessed (Table 6).

Behavioral research supports these incident reports. People cannot be perfectly attentive, particularly over long periods, regardless of their desire to do so (Wickens & Hollands, 2000). Caregivers are likely to be distracted, at least occasionally, because they must perform other tasks, are exposed to more salient stimuli, or are subject to other stressors, such as being responsible for supervising more than one child. In fact, research by Morrongiello and colleagues (2006) indicates that older toddlers and preschool children (2 through 5 years old) are regularly out of view of a supervising caregiver for about 20 percent of their awake time at home, and are completely unsupervised for about 4 percent of awake time in the home. The most common rooms in which children were left alone and unsupervised, according to the research, were the living or family room and the bedroom.

TABLE 6—LOCATION OF INCIDENTS AND WHETHER THE INCIDENTS WERE WITNESSED

Location	Fatal	Nonfatal
Bedroom:		
Witnessed by children	1	
Not witnessed	9	6
Family/Living/Dining room:		
Witnessed by Adult		5
Witnessed by children		2
Not witnessed	5	6
Unknown		2
Grand Total	*15*	*21*

5. Assessment of Operating Cord Requirements for Window Coverings

CPSC staff evaluated the requirements that apply to operating cords on stock window coverings in section 4.3.1 of ANSI/WCMA–2018: no operating cords, short operating cords 8 inches or shorter, or inaccessible operating cords determined per the test requirement in Appendix C of ANSI/WCMA–2018. Having no operating cords effectively eliminates the strangulation hazard associated with operating cords because there is no cord to cause strangulation; therefore, this is an adequate requirement. Having a short cord that does not exceed 8 inches of length in any position of the window covering also effectively eliminates the strangulation hazard associated with operating cords; the neck circumference of fifth percentile 6- to 9-month-old children is 8 inches (BSI, 1990 as cited in Norris and Wilson, 1995), therefore, this is an adequate requirement. Ensuring that the operating cords are inaccessible is another adequate requirement. This requirement is tested in ANSI/WCMA–2018 using a probe that is intended to simulate the finger size of a young child. If the probe cannot touch the cords, the cord is then deemed inaccessible. Staff assessed that child anthropometry and strength-related inputs to develop these requirements are adequate to address the strangulation risk associated with hazardous cords.

To effectively address the unreasonable risk of strangulation associated with operating cords on custom window coverings, the final rule contains the same requirements for operating cords on custom window coverings that are required in the voluntary standard for stock window coverings. Additionally, the final rule specifically approves two methods to make operating cords inaccessible (rigid cord shroud or retractable cord), and one method to prevent the formation of a hazardous loop on a continuous-loop system (loop cord or bead chain restraining device).

[29] *https://cpsc.gov/s3fs-public/Window%20Coverings%20Safety%20Devices%20Contractor%20Reports.pdf.*

6. Addressability of Incidents With the Final Rule

Table 7 displays incident data for the custom and stock (and unknown) product categories, by cord type. If the custom window coverings involved in the incident data had complied with the requirements in the final rule for operating cords, meaning complying with the requirements for stock products in section 4.3.1 of ANSI/WCMA–2018, 91.1 percent (31/34) of the custom product incidents for which cord type is known would have been prevented. All of the remaining custom product incidents for which cord type is known would have been addressed by complying with the voluntary standard for inner cords, which will be codified as mandatory in the final rule under section 15(j) of the CPSA.

TABLE 7—STOCK/CUSTOM/UNKNOWN WINDOW COVERINGS INVOLVED IN INCIDENTS AND CORD TYPES

[All reported data combined]

Stock/custom	Continuous loop	Inner cord	Lifting loop	Operating cord	Tilt cord	Unknown	Grand total
Custom	13	3	0	18	0	2	36
Stock	3	14	1	24	2	6	50
Unknown	19	6	3	32	3	60	123
Grand Total	*35*	*23*	*4*	*74*	*5*	*68*	*209*

7. Accessibility Concerns

Section 9(e) of the CPSA, 15 U.S.C. 2058(e), requires that the Commission consider the special needs of elderly and handicapped persons to determine the extent to which such persons may be adversely affected by such rule. At least 383 commenters stated that having a short cord introduces accessibility issues for various consumers, including people in wheelchairs or people who are otherwise challenged to reach elevated access cords; and these commenters urge that these consumers still need a corded product. Similarly, some commenters stated that the proposed rule is not compliant with the Americans with Disabilities Act (ADA). In that regard, the Department of Justice has published accessibility standards called the 2010 ADA Standards for Accessible Design (2010 ADA Standards). The 2010 ADA Standards set minimum requirements for newly designed and constructed or altered state and local government facilities, public accommodations, and commercial facilities to be readily accessible to and usable by individuals with disabilities. Sections 308.2 and 308.3 of the 2010 ADA Standards specify forward and side reach distances.[30] For example, an unobstructed high forward reach and high side reach shall be 48 inches (Figures 15–18).

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[30] Department of Justice (2010). 2010 ADA Standards for Accessible Design, accessed at: *https://www.ada.gov/regs2010/2010ADAStandards/2010ADAStandards.pdf.*

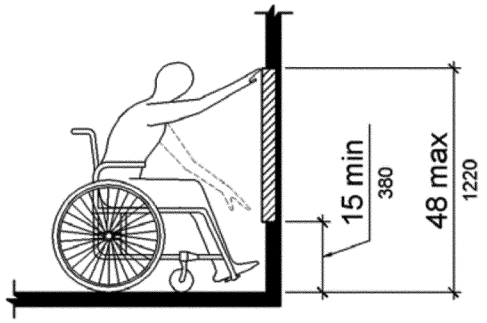


Figure 15. Obstructed Forward Reach

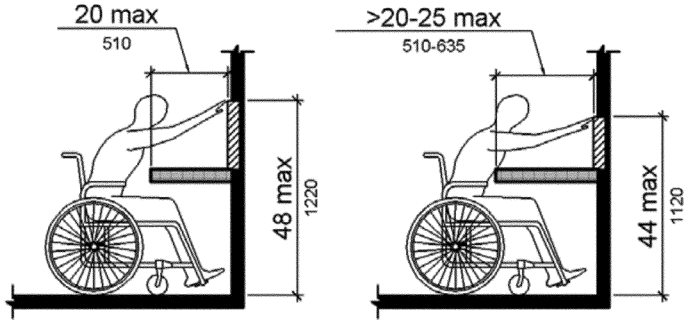


Figure 16. Unobstructed High Forward Reach

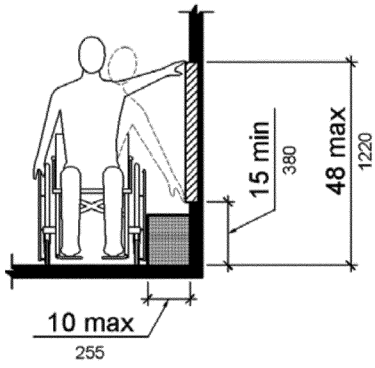
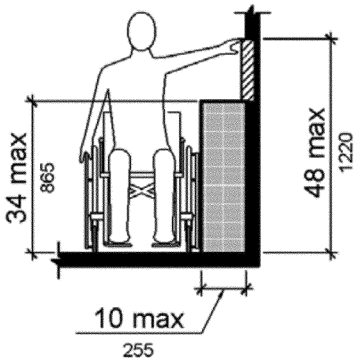


Figure 17. Obstructed Side Reach



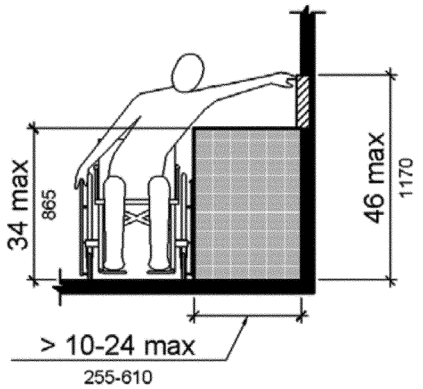


Figure 18. Obstructed High Side Reach

Note. **Figures 15-18 are from 2010 ADA Standards for Accessible Design, accessed at https://www.ada.gov/regs2010/2010ADAStandards/2010ADAStandards.pdf**

In Tab B of Staff's Final Rule Briefing Package, staff assesses that alternative solutions can safely replace the existing hazardous cords, such as rigid cord shrouds and loop cord and bead chain restraining devices, which can allow access at about the same height as corded products. Additionally, retractable cords can be made accessible with a rigid wand or handle to an easy-to-access height. Moreover, poles are available to reach the bottom of cordless products.

Under the ADA, operable parts of the window covering need to be operable with one hand and not require tight grasping, pinching, or twisting of the wrist; the force required to activate operable parts must be five pounds maximum. Traditional operating cords and continuous loop bead chains and cords require tight pinching and grasping to operate. However, window coverings that are compliant with the mandatory rule would likely have interfaces, such as rigid cord shrouds, which would meet the ADA requirement, by avoiding pinch grip, and instead using hand grip.

Also, rigid cord shrouds, loop cord and bead chain restraining devices, and retractable devices can be easier to operate from behind furniture, compared to continuous loops that are attached to a wall. Figure 19 illustrates a comparative assessment. If the continuous loop is not attached to a wall, then it is easier to access (by leaning to grab it) and operate, but it poses a strangulation risk (left); if a tension device is attached to a wall, it is not easy for consumers to access (middle); on the other hand, a rigid cord shroud is not less accessible, and it is operable behind the furniture while also being safe (right).

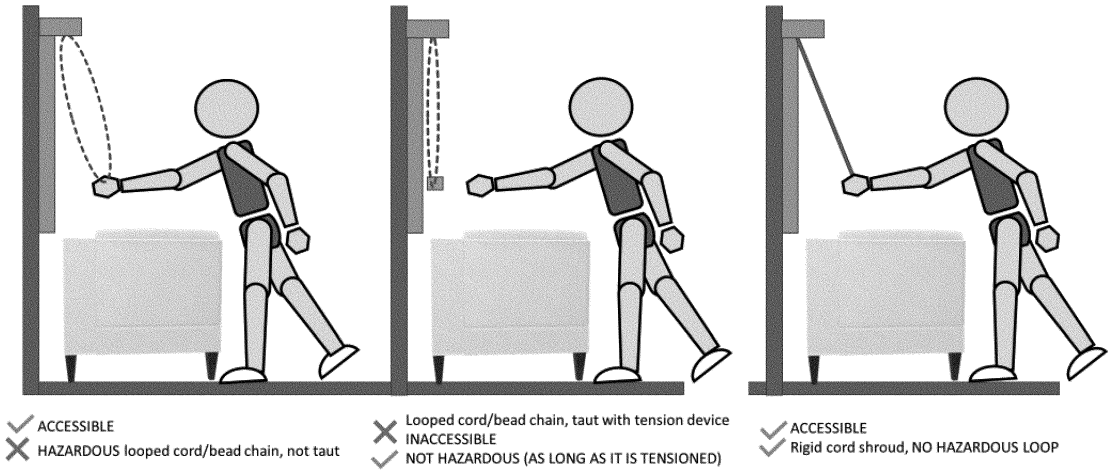


Figure 19. Operability of a window covering behind an obstruction

Lastly, if continuous loops with tension devices were allowed as an option in homes where accessing the cord is an issue, continuous loops might not be attached to the wall, particularly in locations where a continuous loop is difficult to access when the cord is kept taut via a tension device. Based on the incident data, staff concludes that it is reasonably foreseeable that not only a consumer, but also a professional installer, may follow an elderly or disabled consumer's request not to install the tension device and remove it from the cord loop in homes where accessibility is an issue. By contrast, products manufactured with a safer option would be both accessible to a disabled user and protective of child safety.

Finally, as explained in more detail in section II.E of this preamble, the Commission is approving in the final rule three methods that not only make window coverings safer, but also may be suitable for hard-to-reach locations and for persons with disabilities.

8. Information and Education

Since 1985, CPSC has been warning of the danger of child strangulation due to corded window coverings. Every October, CPSC participates jointly with Window Covering Safety Council (WCSC) in National Window Covering Safety Month to urge parents and caregivers to check their window coverings for exposed and dangling cords and to take precautions. Both CPSC and WCSC recommend cordless window coverings at homes where young children live or visit.

In addition to traditional communication methods, CPSC reaches out to consumers using social media, such as safety blogs and online chats, to create awareness of the hazards associated with corded window coverings. Given the long history of continuing injuries and deaths despite window covering safety campaigns, the campaigns have not adequately eliminated or reduced the hazard.

D. Assessment of the Balloted Draft ANSI/WCMA–2022 Standard

After the publication of the NPR on January 7, 2022, WCMA brought forth several proposals to revise the requirements for custom window covering cords in ANSI/WCMA–2018. On July 15, 2022, WCMA issued a ballot to revise ANSI/WCMA–2018 (draft ANSI/WCMA–2022) and the ballot closed on August 15, 2022. The draft balloted ANSI/WCMA–2022 standard includes safety improvements from the ANSI/WCMA–2018 standard. These include: elimination of free-hanging operating and tilt cords, elimination of cord loop lift systems, elimination of continuous cord loop systems for horizontal blinds, and adding deflection and deformation tests for rigid cord shrouds.

Section 9(b)(2) of the CPSA requires the Commission to rely on a voluntary standard if the voluntary standard is likely to reduce the risk of injury and products within the scope of the standard will likely substantially comply with the voluntary standard. For section 9(b)(2) of the CPSA to apply, such voluntary standard must be ''in existence,'' meaning approved by the voluntary standards organization. ANSI/WCMA has not yet approved the balloted draft voluntary standard. Accordingly, the Commission will not rely on the draft balloted ANSI/WCMA–2022 standard for the final rule. In addition, Tab I of the Staff's Final Rule Briefing Package contains a detailed analysis of the draft standard, which finds inadequacies in the proposal that we summarize below.

1. Modified requirements for single-cord retraction devices: Although draft ANSI/WCMA–2022 eliminates cords attached to the Operating Interface (*i.e.,* the part of the cord retractor that the operator pulls on) to prevent the creation of a hazardous loop, the draft revision allows a maximum stroke length of 36 inches. In Tab B of Staff's Final Rule Briefing Package, CPSC staff assesses this revision to be inadequate to eliminate the strangulation hazard, because a 36-inch extended cord could allow a child to wrap the cord around his/her neck.

2. Additional requirements for tension devices used with continuous loop operating systems:

a. The modification in section 6.3.1 of the balloted standard requires tension devices to be attached to the cord or bead chain loop by the manufacturer, and be designed, placed, and shipped such that, unless properly installed, or unless altered from the shipped condition with sequential process (requiring two or more independent steps to be performed in a specific order) or tools, it prevents the window covering from operating fully. This draft requirement does not ensure that tension devices will be effective for the life of the window covering. For example, if an installer cuts the zip tie that is sometimes used to connect tension devices to the headrail, then the tension device would have been altered from its shipping condition with a tool, and operation of the window covering without the tension device would be consistent with section 6.3.1. Therefore, this requirement still allows consumers or the installer to set up the window covering in an unsafe manner while either in a fully operable state by removing the tension device from the loop, or in a partially operable state, by

leaving the tension device on the loop, but not attaching it on the wall.

b. The modification in section 6.3.2, states that the manufacturer shall attach the tension device to the cord or bead chain loop by means of a permanent assembly method. This requirement is intended to ensure that if an installer or consumer attempts to remove the tension device, the device or component will break. CPSC staff is aware of an incident involving a tension device that used one-way snap features, as permitted by the balloted draft standard. The snap features broke off, exposing the continuous loop cord (Figure 20 below, from In-Depth Investigation (IDI)). This incident shows that a permanent assembly method requirement does not ensure that the tension device will remain assembled. CPSC staff assesses that this provision is inadequate to address the risk of injury, because even if the tension device breaks, the looped cord will not necessarily be damaged. Therefore, for hard-to-reach locations, or for people who do not want holes in their walls, removing the tension device may be preferable, and the window covering will remain fully operable.

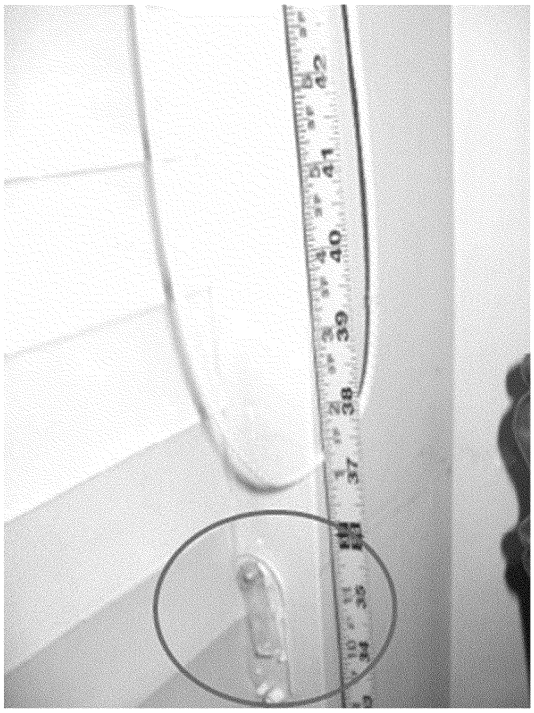


Figure 20. Broken tension device in IDI

c. The modification in section 6.3.3 of the balloted draft standard, states: ''the tension device in conjunction with the product shall maintain tension on the operating cords when properly installed. If the tension device is installed in a location that does not maintain tension on the operating cords, the tension device will prevent the window covering from operating as designed for full operation of the product. The window covering may not operate independently of the Cord or Bead Chain Loop.''

The draft standard defines ''Tension'' as ''The applicable, consistently applied force required to eliminate or prohibit the creation of a hazardous loop in any operating position.'' Yet, in testing a tension device identified as compliant with the draft standard, CPSC staff determined that an amount of tension that allowed full operation of the window covering still allowed a head probe to be inserted into the loop (Figure 21 below).

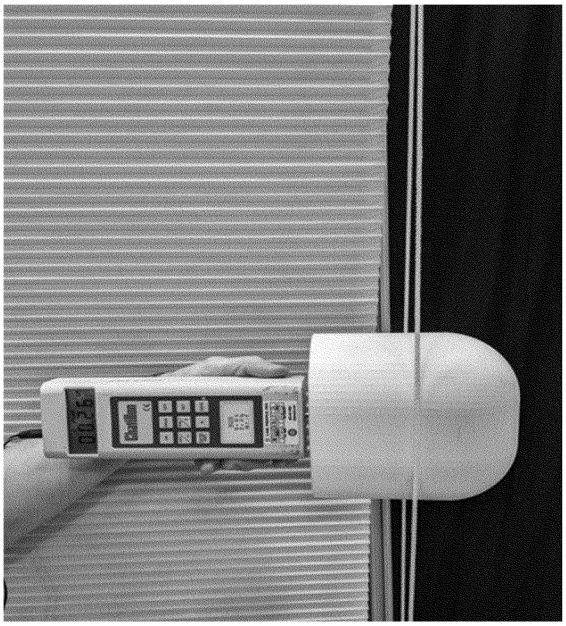


Figure 21. A head probe can pass through properly installed continuous loop under tension

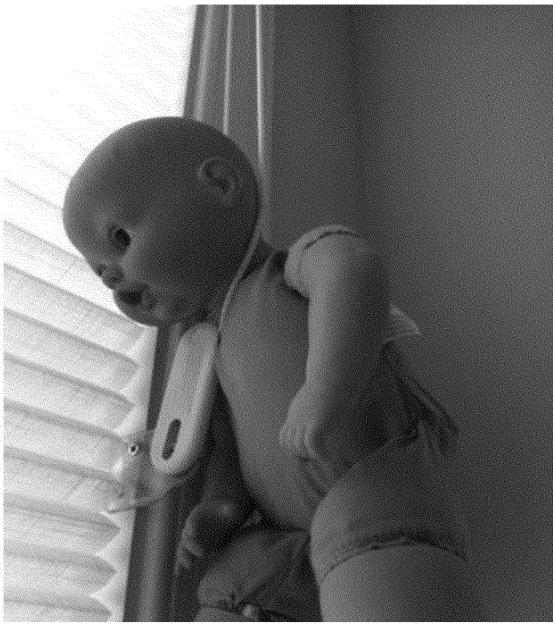


Figure 22. Re-enactment of how a 5-year-old child was found by a consumer with his head caught in a continuous cord loop

Accordingly, staff has concluded that a properly installed tension device that would be acceptable under the balloted standard still allows an accessible hazardous loop, which is also observed in one incident (Figure 23).

Additionally, while the draft ANSI/WCMA–2022 requires the tension device to prevent the window covering from operating, as designed, for full operation of the product, the window covering can be operated partially, as shown in Figure 23. An incident that occurred in 2005 had a window covering with a ''universal cord tensioner'' that limited the operability of the window covering unless the tension device was installed. The plastic universal cord tensioner piece was hanging freely from the cord and not attached to the wall (Figure 24), reflecting that diminished utility was not sufficient motivation for the landlord or residents to repair or replace the tensioner.

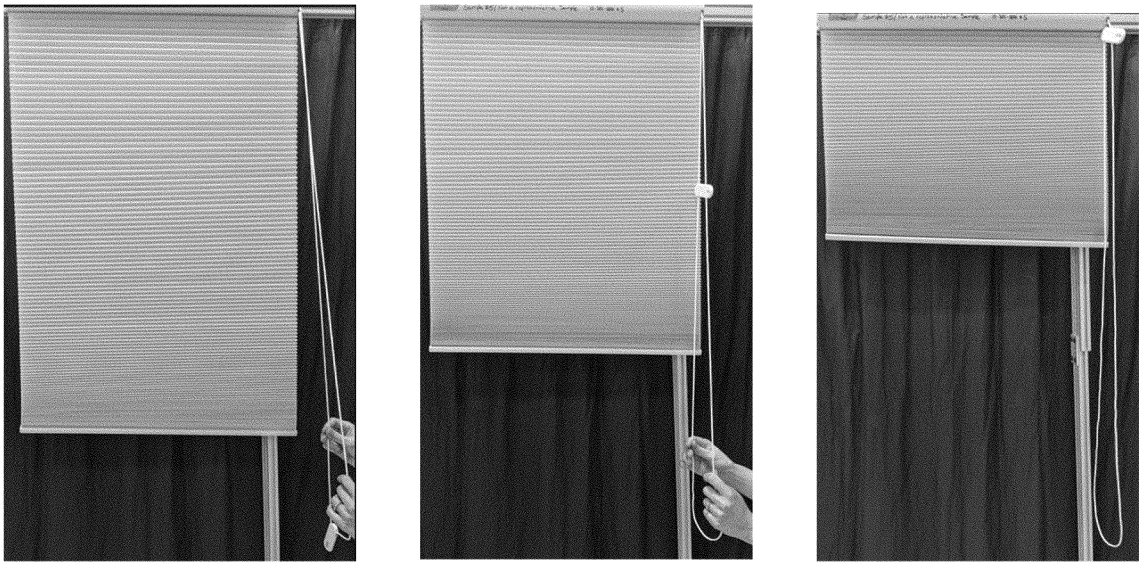


Figure 23. Partially operable window covering when tension device is not attached to a fixed surface

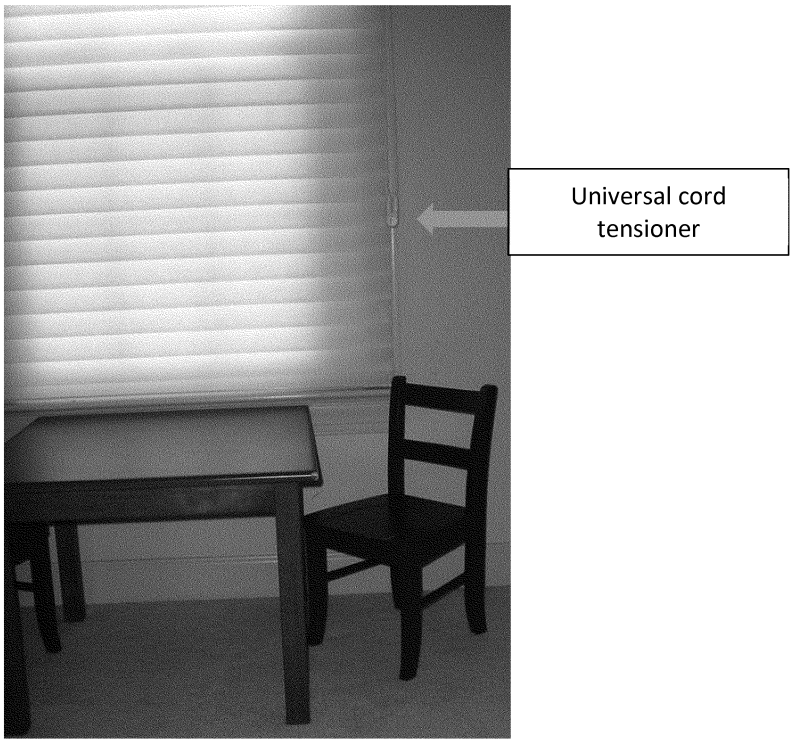


Figure 24. Universal cord tensioner remained unattached to the wall for about 3 years

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3. Exempting curtains and draperies from the scope of the standard. While the balloted draft standard does not require safety measures to prevent cord injuries with draperies and curtains, CPSC staff has identified at least four fatalities involving draperies and curtains; all deaths were a result of continuous loops. There are multiple cordless options available for draperies, including wands and motorized controls, as well as simply pulling the draperies on the traverse rod by hand, with no cord or other control.

E. Changes in the Final Rule

The Commission, therefore, is finalizing the rule generally as proposed, requiring custom window coverings to meet the requirements for stock window coverings in section 4.3.1 of ANSI/WCMA–2018, meaning that custom window coverings must be cordless, have short cords (8 inches or

less), or the cords must be made inaccessible. The final rule allows, as proposed, a rigid cord shroud that meets the requirements of the rule as a method of making standard operating systems (pull cords) and continuous cord loop operating system inaccessible.

Based on the comments, the Commission considered including in the final rule other methods of making operating cords inaccessible or preventing the formation of hazardous loop. As stated in the NPR, and discussed above, continuous cord loop operating systems with external tension devices that are attached on a wall or windowsill can pose a strangulation hazard, because they require the consumer or installer to properly install them to eliminate the hazard, and because external tension devices can break, be removed, or not be installed. Accordingly, they are not acceptable under the final rule. However, passive devices that make an operating cord inaccessible—meaning those installed on the product itself by the manufacturer that cannot be easily defeated, uninstalled, or break, such as a rigid cord shroud for operating cords and a loop cord or bead chain restraining device on a continuous cord loop operating system—eliminate the strangulation hazard and the need to rely on a consumer or installer to make the product safe as installed. The final rule allows these solutions.

Below we explain the requirements associated with these provisions of the final rule. We also set out specific requirements for large window coverings, which are included within the scope of the final rule.

1. Requirements for Rigid Cord Shrouds

The requirements for rigid cord shrouds are being finalized, as proposed. However, the requirements are now contained in § 1260.2(b) of the regulation text, as opposed to § 1260.2(b) and (c), so that the test method for rigid cord shrouds are contained in a single section of the rule. The final rule eliminates hazardous continuous cord loop operating systems; however, manufacturers can still use standard operating systems (operating pull cords or continuous cord loop operating systems) if the cord is not accessible when tested to the requirements of the rule. A rigid cord shroud that meets the rule makes the cords on a continuous cord loop operating system or standard operating system inaccessible.

ANSI/WCMA 2018 defines a ''cord shroud'' as a device or material added to limit the accessibility of a cord or formation of a hazardous loop. Per section 4.3.2.5.2 of the 2018 standard, one of the ways that accessible cords (continuous cord loops and standard operating systems) can meet the standard is to contain the cords in a rigid cord shroud that meets the requirements in sections 6.3.1 (Appendix C: Test Procedure for Accessible Cords) and 6.3.2 (durability, impact, and operational cycle tests). The final rule clarifies in § 1260.2(b) that rigid cord shrouds must meet the requirements in section 6.3. Additionally, as proposed, rigid cord shrouds must also meet the deflection and deformation tests described in § 1260.2(b)(1) and (2). Rigid cord shrouds can be used to enclose continuous cord or bead chain loops. Tab C of Staff's Final Rule Briefing Package contains examples, including pictures of rigid cord shrouds and how they operate.

Staff found two window coverings currently on the market that use rigid cord shrouds. Staff purchased and evaluated these products. Based on staff's examination and the available products on the market, rigid cord shrouds are used to operate window coverings up to at least 76.75 inches (stock) to 96-inches tall (retro-fit, meaning after-market). CPSC's engineering staff further concluded, as described in Tab C of Staff's Final Rule Briefing Package, that a rigid cord shroud can be designed to operate window coverings more than 96 inches tall, if the shroud is made from more rigid materials, such as metal, that meet the deflection requirements in the final rule.

Large rigid cord shrouds may require additional development and tooling for continuous cord loop operating systems with window shades more than 96 inches tall; however, existing shrouds should not require major redesigns because these products have already been developed and only require adjustments to the head and the length of the cord shroud to fit the window covering. Based on engineering staff's review of the rigid cord shrouds currently on the market, which includes shrouds on window coverings up to 96 inches, the Commission finds that extensive development is unnecessary for custom manufacturers to incorporate rigid cord shrouds for window coverings that currently use a continuous bead chain operating system. For these reasons, the Commission determines that a continuous cord loop operating system with a rigid cord shroud could be manufactured to operate window coverings of all sizes and meet the requirements of the final rule.

2. Requirements for Loop Cord and Bead Restraining Devices

The NPR discussed that, unlike tension devices, loop cord and bead chain restraining devices are designed and installed by the manufacturer onto the window covering, are integral to the window covering, and do not need to be attached on the wall to keep the loop taut. The NPR requested comment on the adequacy of loop cord and bead chain restraining devices to address the risk of strangulation on custom window coverings. 87 FR 1031. CPSC received hundreds of comments from businesses opposing elimination of continuous cord loop operating systems to meet the requirements of the rule.

ANSI/WCMA–2018 defines a ''cord and bead chain restraining device'' as a device that prevents the creation of a hazardous loop from an accessible continuous operating cord. According to section 6.5 of the ANSI/WCMA–2018, loop cord and bead chain restraining devices must be subjected to durability, UV stability, and impact testing, and must pass the hazardous loop testing procedure to confirm that a loop cord and bead chain restraining device prevents the creation of a hazardous loop from an accessible continuous cord loop. Tab C of Staff's Final Rule Briefing Package provides staff's assessment that loop cord and bead chain restraining devices are technically feasible to incorporate into custom window coverings, and that they address the continuous cord loop strangulation hazard by preventing the formation of a hazardous loop. However, staff advises that the test sequence identified in section 6.5 of ANSI/WCMA–2018 is not representative of real-world scenarios, and recommends exposing the device to UV light first, and then conducting the operational cyclic test. Staff also recommends incorporating a deflection test that is similar to the one provided in the NPR for rigid cord shrouds to improve the safety of these products by preventing bending to an extent that a child could wrap it around their neck.

The Commission will allow loop cord and bead chain restraining devices (as defined in § 1260.1 of the final rule) as a permissible way to make accessible continuous cord loop operating systems non-hazardous. However, the final rule modifies the requirements for cord and bead chain restraining devices from those in section 6.5 of ANSI/WCMA–2018, to adequately address the risk of strangulation associated with accessible operating cords on custom window coverings. Specifically, the final rule:

- Adds a deflection requirement for loop cord and bead chain restraining

devices that prevents bending of the device to an extent that a child could wrap it around their neck, similar to the deflection requirements for rigid cord shrouds as stated in § 1260.2(b) of the final rule.

- Tests one sample to section 6.5.2.2 of ANSI/WCMA–2018, UV Stability, followed by testing to section 6.5.2.1, Operational Cycle Test. This change in test order will simulate real world conditions of a loop cord and bead chain restraining device exposed to sunlight and operated over the life of the window covering.

3. Requirements for Retractable Cords

In the NPR, the Commission tentatively determined that the retractable cord requirement, as written in ANSI/WCMA–2018 for operating cords on custom window coverings, is not adequate to address the risk of injury, because the maximum cord length and a minimum pull force required to operate the system are not specified in the standard. CPSC requested comments on whether additional requirements for retractable cords, such as a maximum exposed cord length and a minimum pull force for a single retractable cord lift system, can address the strangulation hazard. 87 FR 1031.

The Commission received at least 149 comments stating that retractable cords are safe based on the lack of incidents, and that because retractable cords have not been involved in incidents, retractable cords should not be eliminated by a mandatory standard. A June 21, 2022 letter from consumer advocates to WCMA suggests that retractable cords be allowed in the voluntary standard with the following text: ''All cords must be inaccessible. The maximum allowable cord length is 12 inches from the headrail.'' [31]

The 12-inch exemption is, in part, based on the required steps that a child would need to go through with a retractable cord for it to pose a hazard. Tab B of Staff's Final Rule Briefing Package. Consistent with WCMA's recommendation, CPSC staff considered that while the smallest neck circumference of youngest children at risk, 6- to 9-month-old children, is about 8 inches,[32] children who can climb to the top of the window covering will be older, and they need to be able to hold the cord and wrap it around their neck at the same time, which requires the breadth of their hands to be added to the neck circumference. Therefore, in staff's view, 12 inches is a safe length for the headrail area of a window covering, whereas the 8 inches of cord length that is used to define the allowed short cord could be anywhere on the window covering. For further discussion on this topic, see Tab B and Tab I of Staff's Final Rule Briefing Package.

Accordingly, the final rule allows retractable cords as long as the exposed cord is limited to a maximum of 12 inches from the bottom of the headrail in any state of operation, and the other requirements in § 1260.2(d) are met to ensure full retraction and durability.

4. Consideration of Large Window Coverings

At least eight commenters, including WCMA and seven businesses, raised the concern that available technologies to address the strangulation hazard, such as manual cordless systems, are difficult to implement for very large products. Various commenters also stated that there is an increased presence of taller windows in homes, which will lead to a higher number of taller window coverings installed in homes. Regardless of the height, the hazard patterns associated with window covering cords are the same. Furthermore, the ANSI/WCMA–2018 voluntary standard does not contain a height limit for in-scope window coverings for either stock or custom products. Staff has determined that it is feasible to implement, for example, rigid cord shrouds on window coverings that are larger than 96″ tall. Tab C of Staff's Final Rule Briefing Package.

Because the hazard patterns associated with larger window coverings are the same as hazard patterns seen in shorter window coverings, the potentially increased number of installations of taller window coverings in residences, and the feasibility of applying safer technologies on these products, the Commission will not exclude taller products from the scope of the rule.

Tabs C and F of Staff's Final Rule Briefing Package discuss a later effective date for very tall custom window coverings that raise or lower. The Commission, however, concludes that delaying implementation for two years and thereby creating a novel scheme bifurcated by the height of a window covering, as recommended by staff, is not justified. Although larger-size window coverings may have some additional challenges in complying with the rule, the Commission does not agree with staff that the development and logistics phases for larger-size window coverings require 24 months after publication of the final rule, and concludes that the 180-day effective date period specified by statute can reasonably be applied. First, manufacturers have been aware of CPSC's intention to issue a rule for one year already. CPSC's draft rule for custom window coverings has been available on our website since October 2021, and the proposed rule with a 180-day effective date was published in January 2022. Second, as stated in Staff's Final Rule Briefing Package and in this preamble, Canada's similar rule on window covering cords became effective earlier this year, and the rule applies fully to larger-sized window coverings. Manufacturers have already had two years to design, develop, and test solutions specifically for larger-sized custom window coverings, to come into compliance with Canada's rule. Third, stock window coverings of all sizes are subject to ANSI/WCMA–2018, which also has led to development of cordless solutions that may be transferable to the largest sizes of 10 feet or more in vertical length. Finally, for very tall windows, curtains may provide a readily available substitute for styles of custom window coverings that raise or lower.

F. Window Coverings Substantially Comply With the Voluntary Standard

Section 9(f)(3)(D) of the CPSA requires that when a voluntary standard has been adopted and implemented relating to a risk of injury, to proceed with a final rule, the Commission must find either that compliance with such voluntary standard is not likely to result in the elimination or adequate reduction of such risk of injury; or that it is unlikely that there will be substantial compliance with such voluntary standard. WCMA, the trade association for window coverings and the body that created the voluntary standard, stated in a comment on the ANPR (comment ID: CPSC_2013–0028–1555) that there has been substantial compliance with the voluntary standard ANSI/WCMA since its first publication, and Tab E of Staff's NPR Briefing Package contains a more detailed description of staff's assessment of substantial compliance with the voluntary standard. CPSC received no comment in opposition to the Commission's preliminary determination of substantial compliance in the NPR. Based on the forgoing, the Commission determines that a substantial majority of window coverings sold in the United States comply with ANSI/WCMA–2018. However, as explained throughout this

[31] Letter can be found at: *https://www.regulations.gov/document/CPSC-2013-0028-3664.*

[32] BSI (1990) as cited in Norris, B., & Wilson, J.R. (1995). CHILDATA: The handbook of child measurements and capabilities—Data for design safety. London: Department of Trade and Industry.

preamble and in the final rule, ANSI/WCMA–2018 is inadequate to address the risk of injury associated with custom window coverings.

III. Response to Comments on the NPR

CPSC received 2,060 comments on the NPR for custom window coverings during the comment period, and staff received two late comments in July 2022, which CPSC also considered. Additionally, CPSC held an oral hearing on the proposed rule on March 16, 2022, during which seven presenters also provided comments. All comments, meeting logs, and correspondence regarding custom window coverings have been included on *Regulations.gov* under the CPSC docket number for this rule: CPSC–2013–0028. Below we summarize and respond to significant issues raised by commenters.

A. General Support or Opposition

Comment 1: At least 114 commenters expressed support for the proposed rule. Some commenters stated that, given the hidden nature of the hazard and severity of the risk, a mandatory standard is necessary. Victims' families expressed hope that this rule will prevent corded products, not only in private residences, but also in hotels, rental properties, military housing, public buildings, and in effect, any place where children could be injured or killed in a window covering cord incident, so that no family will bear the pain of losing a child on a window covering cord.

At least 1,842 commenters were against the proposed rule, most suggesting that a regulation will have a negative economic impact on the window covering industry. At least 440 comments stated that the proposed rule is either overreaching or unnecessary because: commenters believe that the current requirements in the ANSI/WCMA–2018 standard are strong; the risk of injury is low; consumers without young children would be adversely impacted by removing corded products; consumers need more window covering options and choices; and businesses will be limited in meeting consumer needs.

Response 1: The Commission agrees that a mandatory rule is required to address the unreasonable risk of injury associated with corded custom window coverings. Staff's NPR and Final Rule Briefing Packages demonstrate that requiring inherently safe custom window coverings is feasible, and that the rule will not affect the utility or availability of custom window coverings, but could affect their cost. However, the net increase in cost for consumers is as little as approximately $24 every time a household replaces *all* of its custom window coverings approximately every 10 years. *See* Table 9, *infra,* and Tab F of Staff's Final Rule Briefing Package (showing that the estimated net cost increase to replace 12 window coverings ranges from $23.67 using less expensive products to $218.82 using more expensive custom window coverings). The Commission finds that this is a reasonable cost to ensure that children avoid death or serious injury on window covering cords.

The feasibility of safer window coverings, and the fact that consumers will pay more for safer window coverings, has already been shown in the stock window covering market. Stock window coverings that meet ANSI/WCMA–2018 requirements for stock products are manufactured to be safe, without regulatory intervention. Voluntary compliance with the ANSI/WCMA standard for stock products did not cause a decline in revenue, by either units or by total revenue, as most of the industry transitioned to cordless-only products, even though the price of some stock coverings nearly doubled. Moreover, Canada's mandatory rule on window coverings is similar to the final rule, and CPSC staff identified no evidence from the Canadian market of a significant reduction in consumer choice as a result of their rule. Rather, the Canadian market has reacted with cost-effective substitutes and redesigned products. The Commission expects a similar result in the U.S. market.

Data show that the strangulation hazard associated with window covering cords is silent, quick, and hidden to consumers. Also, the hazard overwhelmingly involves the death of a child, and in many other cases, a serious injury, such as coma, paralysis, or problems controlling movement; sensory disturbances, including pain; seizures; cognitive and memory deficits; long-term or permanent vegetative state, requiring tracheotomy and gastrointestinal tube feeding. As commenters from victims' families report, the death of a child on a window covering cord results in severe pain and suffering that never goes away.

B. Voluntary Standard

Comment 2: Most of the businesses, including manufacturers, dealers, designers, and sellers who are opposed to the rule, stated that the voluntary standard process has led to substantial improvements in window covering safety, and furthermore, that a mandatory rule is not necessary. However, other commenters, including at least 70 victims' families, consumers, and consumer organizations, stated that a mandatory standard is necessary to address the hazard associated with custom window coverings, because the voluntary standard still allows products with hazardous cords to be sold.

Response 2: Staff has worked closely with the voluntary standards organization, WCMA, to develop and revise the ANSI/WCMA A100.1 standard over the past 26 years. The Commission agrees that the 2018 version of the voluntary standard has significantly reduced the risk of strangulation from stock window coverings, and from inner cords on both stock and custom products. However, the ANSI/WCMA–2018 standard does not eliminate or adequately reduce the risk of injury associated with custom window coverings. Similarly, Tabs B, C, and I of Staff's Final Rule Briefing Package indicate that even though the draft ANSI/WCMA–2022 is an improvement on ANSI/WCMA–2018, if adopted, the revised standard could allow retractable cords with a hazardous length of cord when pulled, and continuous loops with tension devices that pose a strangulation hazard.

Based on staff's review of available technologies for use in manufacturing safer window coverings (Tab C of Staff's Final Rule Briefing Package), the Commission determines that custom window products can be made as safe as stock window coverings, by meeting the same cord requirements. Stock product compliance with ANSI/WCMA–2018 did not cause a decline in revenue, by either units or by total revenue, even though the price of some stock coverings nearly doubled. When Canada issued a similar rule to prevent window covering cord strangulations, the Canadian window covering market responded with cost-effective substitutes and redesigned products.

C. Data Issues

1. NEISS Versus CPSRMS

Comment 3: WCMA stated that the 34 injury reports for custom products from NEISS were combined with anecdotal reports received by CPSC and that the NPR Briefing Package did not explain how NEISS data injury reports were added to the other incident data, and how CPSC ensured that no double-counting occurred.

Response 3: The CPSC data counts are not duplicative. For example, for the data presented in the NPR where staff integrated the reports from NEISS with anecdotal reports in CPSRMS, staff compared the individual NEISS nonfatal injuries with the reports received through CPSRMS, by considering the

injury date, victim age and sex, and the injury scenario description, and staff ensured that no double counting of incidents occurred for the nonfatal incidents.

2. Low Risk

Comment 4: At least 185 commenters, including 158 businesses, suggested that the risk associated with corded window coverings is low and advancements have been made in the voluntary standard that further reduced the hazard. Some commenters compared the number of deaths associated with corded window coverings to other products.

Response 4: The strangulation hazard to young children from window covering cords is serious, with most incidents resulting in death. The strangulation hazard is a ''hidden hazard,'' because many consumers do not understand or appreciate the hazard, and do not take appropriate steps to prevent death and injury from window covering cords. Warning labels and education campaigns have failed to prevent deaths and injuries. Strangulation is quiet, and incidents have occurred with parents in the same room. Telling caregivers to watch children is insufficient to address the risk; for instance, parents leave their children in rooms considered safe, such as a bedroom, or caregivers may be giving attention to other children when a strangulation incident occurs.

As explained above, the ANSI/WCMA–2018 standard, does not adequately address the strangulation risk associated with custom window coverings. However, the ANSI/WCMA–2018 standard does effectively address the hazard for stock products, and its implementation for stock products did not cause a decline in revenue, by either units or by total revenue. Manufacturers can apply similar technologies used in stock window coverings, as well as additional mechanisms, such as retractable cords and loop cord and bead chain restraining devices, to make custom products safer without impacting utility or availability of products, and with a reasonable cost increase per household.

Many commenters cited the anecdotal data that staff presented in the NPR Briefing Package as an indicator of a downward trend in strangulation incidents and a reason why CPSC should not finalize the rule. However, as stated in the NPR, the Commission has no assurance that the data on window covering cord strangulations includes all incidents that may have occurred, either fatal or nonfatal. In the NPR, the Commission stated that the incident data represent a *minimum* number of incidents that are known to have occurred. 87 FR 1022. Additionally, reporting of incidents to CPSRMS is ongoing. For example, since the data analysis was completed for the NPRs in 2021, the number of fatalities reported has risen to eight (from three, as initially reported) in 2020, and six (from zero, as initially reported) in 2021. We expect that these numbers will likely increase over the next year as CPSC receives more data.

D. Economic Issues

1. Alternative Methods for the Regulatory Impact Analysis

Comment 5: Institute for Policy Integrity and WCMA suggested that instead of, or in addition to, a comparison of costs versus benefits, CPSC could have performed a breakeven analysis, citing the Office of Management and Budget (OMB) guidance (Circular A–4) that this method can be appropriate when the benefits cannot be quantified.

Response 5: The Commission agrees that there are unquantifiable benefits for the final rule. However, the benefits in this case can be estimated based on more than 10 years of incident data. Given that CPSC has data for strangulation deaths and has assessed that the final rule would address the hazard patterns, staff was able to calculate benefits and costs associated with the final rule. Furthermore, recognizing that there are possible variations in costs or benefits to consider, staff conducted a sensitivity analysis, including looking at a children's value of statistical life (VSL) of three times the VSL for adults, as discussed in the NPR, as well, and found that in some cases, this type of increased VSL for children could result in the rule having a quantified net benefit. For the final rule, we also discussed the additional unquantifiable benefits, because not all benefits of the rule are represented in the benefits analysis.

Additionally, as one commenter pointed out, the CPSA requires only that the benefits of a CPSC rule ''bear a reasonable relationship to its costs,'' 15 U.S.C. 2058(f)(3)(E), and, as explained in § 1260.4(i) of the regulatory text, the Commission finds such a reasonable relationship exists here. In addition, CPSC is an independent regulatory agency, not an Executive Branch agency, and CPSC is not subject to the requirements in Executive Order (E.O.) 12866 or 13563 that require the agency to ''justify'' the costs, or to comply with OMB Circular A4.

2. Cost of Safer Products

Comment 6: At least 579 commenters, including 331 businesses, stated that safer window coverings are too expensive for some consumers; regulations will increase the cost of window coverings; and motorized window coverings are cost-prohibitive for many consumers.

Response 6: Market data on stock window coverings do not support the commenters' hypothesis regarding the inability of consumers and businesses to adjust to meaningful safety requirements. Voluntary compliance with the ANSI/WCMA–2018 standard for stock products did not cause a decline in revenue, by either units or by total revenue, as most of the industry transitioned to cordless-only products, even though the price of some stock coverings nearly doubled. Multiple commenters representing manufacturers and retailers noted that sales of cordless stock products have *increased* in the past few years, thus, demonstrating consumer demand for cordless products that protect against the death or injury of children as an acceptable replacement for hazardous corded products, even at a higher price.[33]

In 2019, moreover, Canada published the new Corded Window Coverings Regulations to restrict the length of cords and the size of loops allowed on window coverings sold in Canada; the requirements apply to all products, both stock and custom. The evidence from the Canadian custom window coverings market is that the transition to cordless options in the custom market has been relatively inexpensive for consumers. Staff observed that many designs are priced the same for cordless wand options as for the previous corded design, while motorized options add less than $100 to the retail price for commonly ordered sizes.

Lastly, in Table 17 in Tab F of Staff's Final Rule Briefing Package, Table 9, *infra,* staff provides estimated net costs to replace 12 custom window coverings per household, about every 10 years, that are compliant with the rule, showing as little as $24 to replace less expensive vinyl or metal products and up to a net increase of about $219 to replace expensive soft sheer blinds. The Commission finds that the estimated net increase per household, representing a price increase of only about 5% of the total costs of replacing all custom window coverings every 10 years, is a reasonable cost increase to ensure that all children who live or visit the home going forward, are not exposed to the

[33] Based on Euromonitor annual revenue estimates and D&R (2021).

risk of strangulation on a window covering cord.

3. Commercial Establishments

Comment 7: At least 12 businesses raised issues about mandating safer window coverings in commercial and educational buildings and suggested an exemption. Three commenters stated that in an emergency situation, such as a lock down, schoolteachers should be able to close the window coverings quickly and that new systems may require teachers to climb up ladders to operate the window covering, which is impractical and time consuming. One manufacturer stated that based on the NPR, the standard appears to intend to address potential hazards of window coverings in residences, but the scope of the proposed rule covers all custom products. Given the broad interpretation of the definition of ''consumer products'' under the CPSA, the commenter expressed the belief that many of the strictly commercial products could be subject to the regulation, unless the Commission makes clarifying changes to its definition of ''custom window covering.''

Response 7: CPSC generally has jurisdiction over window coverings that are produced or distributed for the use of consumers, as long as the product is customarily produced or distributed for consumer use. 15 U.S.C. 2052(a)(5). Products that do not fall within the CPSA's definition of ''consumer product'' would not be subject to this rule. However, custom window coverings that are produced or distributed for consumer use in residences, schools, recreation, or otherwise, fall within the scope of CPSC's jurisdiction. CPSC staff is not aware of products that are sold solely for use by workers in a specialized context that are not also available for the use and enjoyment of consumers who visit such businesses. If consumers have access to custom window coverings, and are subject to the potential harm, the product is within CPSC's jurisdiction and the safety benefits of this final rule applies to these products.

4. Competition From Overseas Manufacturers

Comment 8: Several commenters claimed that U.S. manufacturers cannot compete with less costly imports, and that unless a firm imported products in bulk, the cost of making many products cordless is more than the cost of the entire imported product. Commenters stated that the rule would make it more difficult to compete with foreign products, especially those from China.

Response 8: This comment is not specifically relevant to custom window coverings, which are the subject of this rulemaking. Custom window coverings may, in fact, be less affected by lower-cost foreign supply than stock window coverings, which have had strong cord safety requirements since 2018. Regardless, imported products will be subject to the same requirements as products made in the United States. The economies of scale should be the same for manufacturers of any nation. We anticipate that the expanded demand for cordless mechanisms should lower the costs of those mechanisms in the medium term, due to economies of scale.

5. Impact on Businesses

Comment 9: At least 1,007 commenters (of which about 938 identified themselves as businesses) stated that the proposed rule would cause a significant impact on their businesses. Particularly, small custom window covering retailers commented that the rule would reduce sales and raise costs. Large suppliers commented that they intended to require licensed dealers to purchase new ''sample books'' costing thousands of dollars each. Large suppliers and associations also provided data on estimated costs of retooling and costs of components at the wholesale level.

Response 9: As explained in the Staff's NPR Briefing Package, CPSC anticipates a significant impact on small businesses in the short term, as firms transition their product lines to comply with the final rule. However, the impact may be less than estimated, given the enforcement of Canada's window covering regulation beginning in May 2022. Companies that sell in both Canada and the United States have already redesigned their custom offerings to be compliant with the Canadian regulation, which is substantively similar to the final rule. These companies already have stock of compliant product designed and ready to sell through small dealers and interior designers.

Although the window covering manufacturing sector is highly fragmented, the custom part of the market is concentrated, with a few large suppliers accounting for approximately 40 percent of the industry revenue. The large suppliers are multinational companies with distribution in multiple countries. This means that those large suppliers already have compliant products available for the Canadian market, and any incremental costs of redesign for the U.S. market will largely fall on those relatively large companies, rather than on their small distributors and dealers. If suppliers in this industry choose to force small distributors to buy new sample books, as alleged by some suppliers, that decision is in no way a requirement of this rule, nor is it an inevitable consequence of this rule.

6. Small Versus Large Businesses

Comment 10: One commenter suggested that a regulation will give larger window covering corporations an unfair advantage because hard window coverings (blinds composed of slats or vanes) can comply with the rule, but small manufacturers who make soft window coverings (composed of a continuous roll of material) cannot comply.

Response 10: Stock window coverings that comply with ANSI/WCMA–2018 are available in both soft and hard types, and implementation of safer window covering technologies has been proven for both types of window coverings. CPSC expects significant cost impacts on small manufacturers of custom products, as discussed in the Regulatory Flexibility Analysis, but these costs are not associated with certain window covering types. The cost impacts of a rule on operating cords for custom window coverings vary by product type, as detailed in Tab F and summarized in Tab G of Staff's Final Rule Briefing Package.

7. Stockpiling Should Not Be Prohibited

Comment 11: One online retailer of blind and shade repair parts suggested that companies should be allowed to purchase whatever products they deem necessary or prefer. This same commenter also asserted that the NPR specifies no consequence for violating the rule and was unclear who will be enforcing the rule.

Response 11: The anti-stockpiling provision is being finalized as proposed, subject to a conforming change to make the implementation of this provision consistent with the 180-day effective date that was proposed and is being adopted. The final rule reflects a balance between the competing policy goals of addressing the hazard and also accounting for realistic supply-chain limits and considering the compliance costs for businesses, and particularly those costs for small entities. A less-specific base period, or a higher proportion above the base production amount, would allow more noncompliant units to be manufactured and sold, which could reduce the burden to industry. However, it would also reduce safety benefits to consumers and force suppliers of compliant units to compete against a larger stockpiled

supply of noncompliant, likely cheaper, units for a longer period of time. Custom products are typically made to order, so it is unlikely that a firm would manufacture large quantities in advance of demand. Therefore, this anti-stockpiling provision should not adversely impact manufacturers' normal operations. However, firms will need to modify their window coverings to comply with the requirements, and the modifications may be costly. Accordingly, CPSC believes it is appropriate to prevent stockpiling of noncompliant custom window coverings.

If a manufacturer or importer violates any provision of a mandatory rule, including the anti-stockpiling provision, CPSC can enforce that provision using authority under section 19(a)(1) of the CPSA, which prohibits the sale, offer for sale, manufacture for sale, distribution in commerce, or importation into the United States, any consumer product that is regulated under the CPSA, that is not in conformity with an applicable consumer product safety rule. 15 U.S.C. 2068(a)(1). CPSC's authority allows for corrective actions, or recalls, refusal of admission and/or seizure of products at the ports, and civil penalties for failure to conform to required regulations.

8. Unquantified Benefits Are Larger Than Estimated

Comment 12: The Institute for Policy Integrity and A. Finkel, economist, suggested that the regulatory analysis in the NPR underestimated the benefits of the rule, by not discussing unquantified, but potentially very large, benefits of the rule. The unquantified benefits suggested included parental grief, reduced cost of litigation for manufacturers and retailers, and averted recall costs. Two commenters specifically cited the example of a Federal Motor Vehicle Safety Standard for rear visibility cameras in passenger cars, where the regulatory impact analysis discussed the large unquantified benefits of reducing parental grief and emotional trauma from causing the death of one's own child, or a relative, or neighbor. One commenter pointed to that standard as an example of an ''experience good,'' where the standard caused people's preferences to change to favor a safety technology with which they were previously unfamiliar.

Response 12: Such potential unquantified benefits would be included in an increased value of statistical life, or VSL, for children. A discussion of this fact is included in the sensitivity analysis in Tab F of Staff's Final Rule Briefing Package and section V of this preamble. CPSC's Injury Cost Model (ICM) takes pain and suffering into account, so a portion of parental grief benefits are accounted for and would be accounted for in an increased VSL for children. Moreover, at this time CPSC cannot accurately assign a value to the potential that people might experience a shift in preferences towards a safer product, although the evidence of continued growth of demand for cordless stock coverings does indicate this is a potential benefit for custom window coverings as well.

9. Value of a Statistical Life

Comment 13: Two commenters (Institute for Policy Integrity and A. Finkel) suggested that CPSC use different references and different theoretical justifications to derive a value of statistical life (VSL) for children.

Response 13: As evidenced by the many alternative sources and several methods suggested by the commenters, no consensus exists (either in the U.S. or internationally) on what value or method regulators should use in their regulatory analyses. The current range of values in the peer reviewed literature for a child's VSL ranges from less than 1 to more than 7 times the value of an adult VSL, as discussed in more detail in the regulatory analysis. CPSC staff provided a discussion of this range to the sensitivity analysis in Tab F, but did not change in its analysis the core estimate of children's VSL. As noted in the sensitivity analysis, increasing a child VSL to three times the base VSL, $31.5 million, would result in a calculated net benefit for the final rule of $14.3 million.

E. Consumer Issues

1. Accessibility Issues With Disabled Population, People With Short Stature and Seniors

Comment 14: At least 383 comments (331 businesses, 8 consumers, and 44 unknown) stated that having a short cord introduces accessibility issues for various consumers such as people in wheelchairs or who otherwise are challenged to access cords higher up. Some commenters questioned whether the proposed rule is compliant with the Americans with Disabilities Act.

Response 14: The final rule provides several ADA-consistent options to address accessibility of safer window coverings. Sections 308.2 and 308.3 of the 2010 ADA Standards for Accessible Design specify forward and side reach distances that would be applicable to window coverings. Section II.C.7 of this preamble and Tab B of Staff's Final Rule Briefing Package explain the ADA standard and the window covering options in detail.

2. Acknowledgement of Risks Before Ordering

Comment 15: At least 48 commenters (45 businesses) stated that they either currently ask or suggest that consumers acknowledge the strangulation risk associated with cords before ordering a custom corded window covering.

Response 15: Even accepting that consumers may acknowledge the strangulation risk associated with the corded window coverings that they are purchasing, and assuming these acknowledgements are informed rather than pro forma, the hazard with the corded window covering remains. Household members other than the consumer who signed the document, including guests and small children who cannot comprehend the danger, as well as future residents of the home and their guests, also can be unaware of the hazard.

3. Climbing on Ladders or Other Furniture Is Unsafe

Comment 16: At least 56 commenters, including 42 businesses, stated that climbing on ladders or other furniture is unsafe for consumers, particularly older consumers. Due to the short cord requirement, these commenters assert that climbing would be required to operate hard-to-reach window coverings. Some commenters provided statistics on falls.

Response 16: Consumers ordering custom window coverings are unlikely to choose a custom design that requires them to climb on furniture to open their window coverings. Alternative solutions to climbing that can safely replace the existing hazardous cords include poles to operate cordless systems, rigid cord shrouds, loop cord and bead chain restraining devices, as well as retractable devices that would be within easy reach of users. Accordingly, the Commission finds that the final rule would not lead to the unsafe behavior envisioned by these commenters.

4. Exclude Draperies

Comment 17: Several commenters, including two businesses, argued that draperies should be excluded from the rule. One stated that there are no ''aesthetic'' alternatives to cords for draperies. Another commented that there is no evidence that draperies are unsafe because the cords are on pulleys attached to the floor.

Response 17: Multiple cordless options for draperies are available, including wands and motorized

controls, as well as pulling the draperies on the traverse rod by hand, with no cord or other control. Section I.E of this preamble details fatal incidents involving draperies. Corded draperies are common, and often do not have the cord on a loop or attached to the floor as the commenter claims. On the other hand, of the different types of window coverings analyzed in the final regulatory analysis, draperies had the lowest cost of compliance with the final rule, estimated to be near zero, because the cost of a control wand is approximately equal to the cost of the cord it replaces.

5. Informing the Customer

Comment 18: About 593 businesses stated that they regularly educate their clients on safer operating cord options during the ordering process and that consumers make an informed choice by being aware of the hazards associated with the corded product. At least 120 commenters stated that people should be made aware of the dangers and then make their own choice when purchasing a custom window covering.

Response 18: CPSC encourages sellers to inform and educate consumers on the operating systems that contain hazardous cords. However, information and education are not always provided, and where provided they do not negate products being sold and installed with hazardous cords, and that custom window coverings will remain in consumers' homes for many years. If consumers do not appreciate the hidden nature of the hazard, they may choose to buy a hazardous window covering even when children are present in the home. Moreover, as explained above, custom window coverings have a long product life. When a home is sold or rented, a new resident, potentially residents with children, will likely live with the hazardous window covering, without having been warned of the associated hazards. Due to the ineffectiveness of warning labels on such products, even a permanent label may not get the attention of the user. 87 FR 1034–35. Information and education remain important to address the existing cord hazard, but as the incident data reflect, education and warning labels do not adequately address the risk of injury.

6. Parental Responsibility

Comment 19: At least 24 commenters, including 17 businesses, suggested that parents are responsible for supervising their children around window coverings.

Response 19: As reviewed in the NPR and in Staff's NPR Briefing Package, ordinary parental supervision is unlikely to effectively eliminate or reduce the strangulation hazard, because even young children are left unsupervised for a few minutes or more in a room that is considered safe, such as a bedroom or family room. 87 FR 1036–37. Moreover, incidents have occurred even when family members were in the same room as the strangled child. *Id.* Strangulation with cords requires only a few minutes to occur and happens silently. A more effective solution to the window covering cord hazard is to require that window coverings are inherently safe as sold and do not have hazardous operating or inner cords.

7. Rental Leases and Real Estate Documents

Comment 20: To inform renters as well as purchasers, one business suggested informing and disclosing the hazards associated with corded window coverings at the time of rental or sale of the property. Two businesses (Comfortex Window Fashions and Inviting Interior Style) suggested home inspections when dwellings change hands.

Response 20: CPSC agrees with the commenters' concerns regarding window coverings included in rental units where tenants with young children may not have the option of choosing safer window coverings. Moreover, the sale process of a residence is an opportunity to inform buyers about the dangers associated with corded window coverings or to remove and replace hazardous window coverings. Certain state and local authorities may have regulations in place with regard to window coverings in rental homes. However, CPSC does not have the authority to require such practices. CPSC regulates consumer products rather than the terms of property rental or sale contracts, which are generally in the purview of state and local governments. Mandatory visual inspections of installations of corded window coverings would not prevent deaths and injuries without an additional safety rule, because hazardous loops can still be accessible even when cord loops are correctly installed and with tension (*see* Tab I of Staff's Final Rule Briefing Package).

8. Replacement of Old Window Coverings

Comment 21: At least 12 commenters, including 10 businesses, stated that the rule would discourage people from replacing their decades-old, non-compliant blinds and shades containing dangerous cords with new compliant window coverings because they would not want to give up corded products.

Response 21: Market data on stock window coverings does not support the commenters' hypothesis. Voluntary compliance with ANSI/WCMA–2018 for stock products did not cause a decline in revenue, by either units or by total revenue, as most of the industry transitioned to cordless only products. Multiple commenters representing manufacturers and retailers noted that sales of cordless stock products have *increased* in the past few years, thus demonstrating consumer demand for cordless products as an acceptable replacement for corded products. Canada has transitioned to safe window coverings with a similar absence of disruption.

9. Require Professional Installation

Comment 22: As an alternative to the rule, two commenters (one interior designer and one business owner) suggested that CPSC should require that custom window coverings be professionally installed, stating that this would help small businesses and improve consumer safety.

Response 22: CPSC does not have the authority to regulate professional services or home inspections. Implementing these practices would also be more costly than the final rule, without providing as many benefits. The typical cost for adding cordless options to a custom window covering ranges from less than $10 (and in some cases nothing) to about $100, except for some very large, motorized options. This price range is far below the cost of hiring a professional installer for corded custom window coverings. In general, commenters' alternatives would raise costs for installed custom window coverings, while addressing few of the known incidents and fatalities, as well as not addressing the known hazard of corded window coverings.

10. Twisting Wand Takes Time and Effort and Use Is Inconvenient; Poles May Not Work for Elderly

Comment 23: At least 38 commenters, including 36 businesses, stated that using a wand is time consuming and may be difficult for some consumers.

Response 23: The wands that CPSC staff evaluated for this rulemaking are easy to learn about and use. We anticipate that further innovation will make wands even more efficient and easy to use. Some traditional wands used to rotate horizontal slats have thin diameters, which can make such wands more difficult to use compared to rigid cord shrouds, which staff evaluated to have thicker diameters and are more

comfortable to use. The final rule does not require the use of wands. The final rule allows the use of many other types of safe operating systems instead of a wand, such as cordless, retractable cords, cord shrouds, cord restraining devices, or motorized systems.

F. Warnings, Public Awareness, and Education

Comment 24: At least 5 businesses contended that warning labels on the products should be relied on to address the strangulation hazard as they inform the consumer about the hazard. At least 2 other commenters stated that warning labels and educational efforts were tried, did not work, and are insufficient to address the strangulation risk.

Response 24: The NPR explains that consumers are less likely to look for and read safety information on products that they use frequently and are familiar with. 87 FR 1035. Incident data for window covering cords confirms this research, as most of the incident units had a visible warning label on the product. Even well-designed warning labels will have limited effectiveness in communicating the hazard on this type of product. However, the Commission agrees that public awareness is a crucial component in making safe purchasing decisions and safely using window covering products at home. Public information campaigns are on-going. CPSC and the Window Covering Safety Council (WCSC) have joined forces to raise awareness of strangulation risks presented by window covering cords, and October has been designated ''Window Covering Safety Month'' by CPSC and the WCSC since 2003.

Currently, the Commission does not have information to quantify the effectiveness of public information campaigns on reducing the risk of injury associated with corded window coverings. However, information and education campaigns on corded window coverings that have been continuing for decades have not adequately reduced or eliminated serious injuries and deaths, as evidenced by the continuing number of fatalities. Accordingly, the Commission will not rely on education campaigns to address the unreasonable risk of injury associated with operating cords on custom window coverings.

G. Other Product-Related Hazards

1. Access to Battery To Recharge or Replace

Comment 25: At least 15 businesses stated that, with respect to motorized solutions, replacing or swapping batteries located on the headrail is difficult for consumers as they need to climb on ladders. At least 4 commenters also stated that the new rule would increase the use of batteries, which is wasteful for the planet.

Response 25: Staff reports that they found examples of window coverings where the batteries are stored in the bottom rail, making it easier for consumers to recharge or replace batteries. Batteries are rechargeable to reduce waste, and some window coverings are hardwired or solar powered.

2. Button Batteries Used in Remote Controls

Comment 26: At least 3 commenters (WCMA, Parents for Window Blind Safety, and Independent Safety Consulting) suggested that remote controls that contain button batteries should comply with either ASTM F963 or other applicable button battery standards, or simply that battery compartments should have a screw.

Response 26: On August 2, 2022, Congress passed H.R. 5313, or Reese's Law, and the President signed the bill into law on August 16, 2022. Reese's Law directs the Commission to establish a mandatory standard to protect children and other consumers against hazards associated with the accidental ingestion of button cell or coin batteries used in consumer products. Accordingly, staff is preparing a notice of proposed rulemaking for Commission consideration to implement this law. The Commission anticipates that window covering remote controls that use button cell or coin batteries will fall within the scope of that proceeding.

3. Continuous Loops With Tension Devices Are Safe

Comment 27: At least 429 commenters stated that continuous loops with properly attached tension devices are safe and should not be eliminated. Commenters said that windows that are high up, windows over a sink, and windows behind a couch need continuous loops. Other commenters stated that some consumers do not want tension devices attached to the wall.

Response 27: Incident data demonstrate that tension devices may come off the wall or may not be installed at all, and continuous loops may not be taut enough to prevent strangulation incidents. Through testing, staff found that children may be able to insert their head into a properly installed continuous loop system even with a tension device. Accordingly, the Commission concludes that window coverings operated with continuous loops with tension devices can still leave hazardous loops accessible to children and do not adequately address the risk of strangulation.

For the final rule, CPSC staff analyzed how a window covering that is behind a piece of furniture or sink would be operable with a continuous loop if the loop has a tension device to keep the loop taut. Tab B of Staff's Final Rule Briefing Package provides a visual comparison. Tab B explains that the continuous loop would likely remain unattached to the wall with a tension device so that the consumer can pull the loop towards him/her to operate. This means that the continuous loop remains accessible to children and hazardous. Given children's ability to climb and incident data demonstrating this hazard scenario, the Commission concludes that continuous loops that are contained in a rigid shroud or restrained within a passive restraining device are much safer for children and potentially easier to operate for both access and ease of use by consumers.

4. Consumer Preference for Corded Products

Comment 28: At least 2 businesses suggested that they have customers who prefer to use corded window shades because they find them easier to use. Some businesses stated that the ANSI/WCMA–2018 requirement to limit the free hanging cord length to 40% of the product length generated customer complaints, because some of their clients cannot reach the cord with ease. Some businesses stated that they sell custom blinds to nursing homes and retirement homes; the users demand that the cords be long enough to be reached, which usually means 40 inches or more.

Response 28: The final rule's effect on sales for some particular products is accounted for in the regulatory analysis in section V of this preamble, and Tab F of Staff's Final Rule Briefing Package. However, stock products currently on the market that comply with ANSI/WCMA–2018 are available in a variety of materials, sizes, and types to meet consumer needs. Also, custom product requirements in the final rule allow for a variety of solutions to ease the operation of window coverings, including poles for cordless systems, rigid cord shrouds and loop cord and bead chain restraining devices, motorized window shades, and retractable cords. All of these options provide easy reach for consumers. Based on the comments, the final rule for custom window coverings specifically permits corded window coverings that use a single cord retractor, rigid cord shroud, or a cord restraining device, to

create more options for non-motorized safe window coverings, provide options for accessible custom window coverings, and allow for ease of use.

5. Cord Cleats

Comment 29: About 42 commenters stated that cord cleats are provided with corded window coverings and address the hazard.

Response 29: Cord cleats do not adequately address the strangulation hazard associated with window covering cords because such devices rely on consumers to wrap the excess cord around the cord cleat every time they raise or lower the window covering. Incident data demonstrate that consumers may not wrap the cords around the cleat every time they operate the window covering, which results in dangling operating cords with which children can strangle. In one incident, although caregivers normally wrapped the cord around the cleat, on the day of the incident, cords were not wrapped, and the child accessed the cords after climbing on a couch.[34] Further, cord cleats may be accessed by children. In one incident:

> [a] four year old boy moved a small plastic table over near the window, climbed upon the table and reached up and removed the shortened pull cord for the window covering from the ''safety'' cleat. He pulled the cord out and wrapped it around his neck. He then jumped off of the table. The cord broke and he fell to the floor. His parents were able to remove the cord from his neck. The boy recovered from his injuries.[35]

6. Effective Date

Comment 30: At least 401 commenters stated that the proposed six-month-effective-date is very short to meet the proposed requirements; 94 commenters suggested at least one year effective date, three commenters suggested at least an 18 month to 2 years effective date, and seven commenters suggested at least 2 years to comply with the rule. Two commenters submitted the extent of the delays in obtaining equipment, transit time in both sea and air to get equipment and components from overseas suppliers, and delays in lead times for raw materials. One manufacturer, Safe T Shade, stated that ''a 180-day lead time is more than sufficient for a painless Industry implementation,'' and consumer organizations stated that a mandatory standard should be issued as soon as possible.

Response 30: Under section 9(g)(1) of the CPSA, the Commission must find good cause that a later effective date is in the public interest, to extend the effective date of the final rule beyond 180 days. Although most of the comments seeking a later effective date were not specific or substantiated, Table 1a in the Appendix to Tab C of Staff's Final Rule Briefing Package presents the timelines and criteria for creating compliant custom window coverings, such as tooling, transit, and inventory, that a few commenters offered. These commenters provided timelines of 9 to 20 months in obtaining and transporting equipment/materials from overseas suppliers, citing long lead times of 4 to 12 months to acquire necessary equipment and materials, and an additional 1 to 4 months upon delivery to assemble component inventory. Another commenter stated an additional delay related to continued COVID–19 disruptions. Staff believes a later effective date would allow manufacturers more time to redesign, distribute costs of compliance along the entire year, or discontinue product variants that cannot meet compliance. Staff therefore recommended a 1-year effective date, which is greater than the 30–180 day effective date range provided for in CPSA section 9(g)(1), 15 U.S.C. 2058(g)(1), for most custom window coverings.

The Commission has considered the information supplied by commenters and staff's analysis, but does not agree that the development and logistics phases for most custom window coverings to come into compliance requires a one-year effective date from the time of publication of the final rule, nor that a delay beyond the default statutory maximum of 180 days (15 U.S.C. 2058(g)(1)) is in the public interest. First, staff's economic analysis in Tab F does not conclude that a longer effective date creates a material reduction in the estimated costs of the rule, and commenters do not show that this would be the case.

Second, methods of eliminating the window covering cord hazard have been developed for stock window coverings under ANSI/WCMA–2018, and those same methods can be used for, or at a minimum can be adapted to, custom window coverings.

Third, more than two years ago, Canada issued a rule on window covering cords for all window coverings, whether stock or custom, without exceptions. The NPR analyzed the requirements of the Canadian rule and discussed the effective date of that rule. Canada's rule has been enforced since May 2022. Manufacturers of custom window coverings had two years to come into compliance with Canada's rule, and the solutions developed for Canada should be usable in the United States as well. Indeed, a number of commenters arguing for a delayed effective date are known to sell in Canada, and yet they did not address how the Canadian rule impacts compliance with CPSC's final rule. Nor has any party suggested that implementation of the Canadian requirements is causing major disruption in that country.

Fourth, manufacturers have been aware of CPSC's proposed rule for at least one year already, since October 2021 when Staff's NPR Briefing Package was posted on CPSC's website. Moreover, the proposed rule, with a 180-day effective date, was published in the **Federal Register** in January 2022. Thus, a 180-day effective date from publication of a final rule comes on top of a substantial period of time during which manufacturers were aware of the likelihood of a rule.

Accordingly, the Commission does not find good cause in the public interest to delay the effective date for the majority of custom window covering products. A 180-day effective date—the maximum period stated in section 9(g)(1) of the CPSA (15 U.S.C. 2058(g)(1))—allows sufficient time for industry to meet any additional design, development, testing, and logistics concerns with technologies already in use (cordless, short cords, and inaccessible cords) and also specifically with regard to the additional methods to comply (rigid cord shrouds, loop cord and bead chain restraining devices, and retractable cords). The record, including staff's analysis, reflects that cordless options are available for nearly all window covering types and many stock product substitutes are available to consumers.

7. Free Hanging Cords

Comment 31: At least three commenters stated that free hanging cords (meaning a cord that is longer than 8 inches and not restrained) should be prohibited because they pose a higher strangulation risk to a child. At least one manufacturer stated that free hanging cords are a large portion of their business.

Response 31: Free-hanging window covering cords are associated with 18 of 36 custom product strangulations or near strangulations (74 free-hanging cord incidents of the overall total of 209 incidents). Removing free-hanging cords

[34] Id.

[35] Lee, K. (2014). Mechanical Engineering Response to Window Coverings Petition. CPSC memorandum to Rana Balci-Sinha, Project Manager, Window Coverings Petition CP 13–2. U.S. Consumer Product Safety Commission, Rockville, MD. Accessed at *https://www.cpsc.gov/s3fs-public/pdfs/blk_pdf_PetitionRequestingMandatoryStandardforCordedWindowCoverings.pdf.*

from custom window coverings will reduce deaths and injuries. The window covering industry appears to be moving away from free-hanging cords, as WCMA, in their latest draft balloted revision, draft ANSI/WCMA–2022, proposes to remove cord lock systems, and thus free hanging operating pull cords from all custom products, regardless of type, size, and weight of the window covering. As stated earlier, the final rule contains several alternatives to hazardous free-hanging cords, such as rigid cord shrouds, loop cord and bead chain restraining devices, and retractable cords, in addition to manual and motorized cordless lift systems that can replace hazardous cord lock systems.

8. Coverings for High Windows or Windows That Are Hard-to-Reach Are Impossible To Use With an 8-Inch Cord

Comment 32: At least 385 commenters stated that window coverings located at higher locations on a wall, windows behind the kitchen sink, or windows behind furniture, cannot be operated with an 8-inch cord.

Response 32: The rule allows for several safe alternatives for operating cords besides using an 8-inch cord. For custom products in hard-to-reach locations, under the final rule consumers have the option to choose from, among others that could be developed:

- Cordless blinds with an access wand
- Motorized window covering with a remote control
- Single cord retractor systems with a 12-inch stroke
- Rigid cord shroud
- Cord restraining device

9. Manual Spring System Is Not Durable

Comment 33: At least 8 businesses stated that manual spring systems are not durable and break easily.

Response 33: Manual cordless lift systems, popular in stock products, often use a series of constant force springs. If the springs break, the window covering fails safe, because cordless window coverings do not have accessible operating cords. Any spring has a limited fatigue life (number of cycles to failure). Manufacturers can control fatigue life of the lift system by selecting the proper spring size, strength, and number of springs for the lift system.

10. Off-the-Shelf Products

Comment 34: At least 3 commenters suggested that stock products are more dangerous than custom products because stock products are allowed to have longer lengths of accessible pull cords than custom window coverings, stock product customers are less likely to get safety information, and stock products are likely to be installed by consumers who may be unfamiliar with the hazard.

Response 34: Stock window coverings that are compliant with the existing voluntary standard, ANSI/WCMA–2018, cannot have lengthy pull cords as the commenters suggest. All stock products must be cordless, have short cords (equal to or shorter than 8 inches), or have inaccessible cords. Although consumers may not be as knowledgeable as professional installers, most of the custom products involved in the identified strangulation incidents were installed by professionals and still lacked safety devices. Several public commenters state that installers may remove the tension device from a product if the customer does not want it mounted, which allows a free-hanging hazardous loop on the product. Educating consumers is paramount particularly to reduce the risk associated with corded window coverings already installed in consumers' homes. However, as discussed in Staff's Final Rule Briefing Package, education campaigns are insufficient to adequately address the hazard, and manufacturing inherently safe custom window coverings that comply with the requirements for stock products in ANSI/WCMA-2018 is required to address the risk of injury or death.

11. Product Options/Limited Choices for Consumers

Comment 35: At least 321 commenters suggested that consumers may want to have different window covering cord options to serve their different needs and that reducing consumer options is not preferable.

Response 35: The final rule leaves room for operating system options. Manufacturers can develop new operating systems that do not have accessible cords or implement existing solutions such as cordless systems, shrouded or continuous loop systems, or shrouded pull cord systems. These technologies are available and are being used for both stock and custom window coverings.

Suppliers of custom window coverings to the Canadian market have already adjusted their products to comply with Canada's window treatment regulations, which are substantially similar to this final rule. Compliance to the Canadian rule has apparently resulted in changes to advertised product lines; such as those shades that could not meet the inner cord requirements (*e.g.,* light pleated shades, narrow metal blinds) appear to have been removed from the market, as well as some of the largest sizes of other categories. Manufacturers are offering cost-effective redesigns to other product types that are cordless. In addition, manufacturers are offering new designs to replace the discontinued options in Canada, such as shades with light blocking material on the bottom and sheer on the top as a replacement for ''top down/bottom up'' (TDBU) shades. CPSC has no evidence from the Canadian market of a significant reduction in consumer choice. Rather, the market has reacted with cost-effective substitutes and redesigns.

12. Retractable Cords Work Well and Are Safe

Comment 36: At least 149 commenters stated that retractable cords are safe and should not be eliminated as an option to make operating cords inaccessible.

Response 36: CPSC is not aware of incidents associated with retractable cords, and based on the comments received, the final rule provides a retractable cord lift system option for custom window coverings, provided that the system only exposes up to 12 inches of cord from the bottom of the headrail as a stroke length. The Commission adopts a 12-inch cord limit based on staff's analysis (Tab B) demonstrating that it is extremely unlikely for a strangulation to occur in this scenario for both younger and older children, as well as lack of incidents within 12 inches of the headrail.

13. Technology Uavailable To Cover All Products in All Sizes and Weights

Comment 37: At least eight commenters, including WCMA, stated that non-motorized cordless lift systems are not feasible for large window coverings. Commenters stated that continuous loop cords with tie down devices are capable of lifting any size window covering. At least 3 commenters stated that manual cordless lift systems have limitations such as size and weight of the window covering that could limit the application (*e.g.,* for faux wood blinds, a general estimate for the maximum dimensions for cordless is 96 inches wide by 48 inches high and 60 inches wide by 84 inches high). Commenters also stated that there is an increased presence of taller windows in homes.

Response 37: Because hazard patterns in taller window coverings are the same as hazard patterns for shorter window coverings, the potentially increased number of installations of taller window coverings in residences, and the

feasibility of applying safer technologies on these products, the Commission will not exclude taller products from the scope of the rule.

The Commission also considered the comments provided by manufacturers about the limitations for larger products to accommodate the manual cordless systems. Staff reviewed the incident data to determine the largest products that were involved in incidents: the longest product that was involved in a nonfatal incident had a reported length of 112 inches (width was 124 inches). A reported fatality involved a roller shade; based on other dimensions provided in the in-depth investigation (IDI), staff estimates the length as 119 inches (width was estimated as 54 inches).

Based on staff's market research, rigid cord shrouds are currently limited to operating window coverings up to 96 inches tall. Staff reviewed the available technologies on the market and determined that it is feasible to implement rigid cord shrouds, cord or bead chain restraining devices, or retractable cords on larger window coverings (Tab C). Accordingly, the final rule allows for the use of these methods, as long as the products meet the durability performance requirements in the rule.

14. Top-Down-Bottom-Up (TDBU) Shades

Comment 38: About 33 commenters believe that TDBU shades would be eliminated if the proposed rule becomes final. They believe that TDBU shades are safe and should not be eliminated.

Response 38: The final rule does not eliminate TDBU window coverings. Under the final rule a TDBU shade can be manufactured as long as it does not contain hazardous operating cords as stated in the final rule (meaning accessible cords longer than 8 inches). Moreover, inner cords are subject to the final rule under section 15(j) of the CPSA, which incorporates by reference the ANSI/WCMA–2018, requiring that accessible inner cords cannot create a hazardous loop. If the inner cords fail to meet this ANSI/WCMA–2018 requirement, manufacturers can redesign the product to meet the standard. For example, some manufacturers were concerned that TDBU products could not meet the Canadian inner cord requirement (which are more stringent than ANSI/WCMA–2018 requirements). However, Canadian custom window treatment retailers have already adjusted their products to comply with Canada's requirements for inner cords. Manufacturers are offering cost-effective redesigns for TDBU products to replace the discontinued options, such as shades with light blocking material on the bottom and sheer on the top as a replacement for TDBU shades.

15. Training Installers

Comment 39: At least 353 businesses stated that they train their installers so that window coverings and safety devices are properly mounted.

Response 39: Over the lifetime of product use, even properly installed external safety devices such as tension devices may break or come off the wall. Also, consumers who do the installation by themselves may not have the knowledge or ability to properly install the device. Importantly, staff's testing found that a child can fit their head through a properly tensioned cord (Tab I); cord tension devices do not eliminate or adequately reduce the risk of strangulation. Safer options to reduce the risk of injury include passive safety devices that do not rely on consumer behavior to prevent the hazard.

H. Stories of Loss

Comment 40: More than 40 commenters either were personally affected by a window covering cord injury or death or know someone who was affected by a child's death on a window covering cord.

Response 40: The Commission appreciates the courage of these families in sharing their difficult stories of a tragic loss. To each of these parents, family members, and loved ones, we are deeply sorry for your loss. The Commission has taken the information about the interactions and conditions involved in the incidents into consideration in developing its final rules for stock and custom window coverings, in an effort to prevent the tragedy of losing a child to a window covering cord.

I. Comments of the Chief Counsel for the Office of Advocacy, SBA

Comment 41: The Office of Advocacy of the Small Business Administration (Office of Advocacy) states that CPSC's Initial Regulatory Flexibility Act (IRFA) analysis relies on incomplete information and advises that the Commission publish an updated analysis for comment.

Response 41: The Final Regulatory Flexibility Analysis (FRFA) incorporates the changes suggested by the Office of Advocacy. Tab G of Staff's Final Rule Briefing Package provides an estimate for the potential firms that may meet the criteria for small businesses and a more detailed discussion.

Comment 42: The Office of Advocacy stated that CPSC should consider alternatives for the final rule that reduce the burden to small businesses while still meeting the stated objectives of increased child safety. The Office of Advocacy expressed concerns about the costs to comply, time to comply, and whether an updated voluntary standard would adequately address the risk of injury.

Response 42: The Commission considered alternatives to reduce the potential burden of the final rule to small businesses. Alternatives the Commission considered are listed in the Regulatory Flexibility Act analysis in the NPR and this final rule, and included continued work on education efforts, narrowing the scope of the rule, and updating the voluntary standard. For the final rule, the Commission considered an exemption for very large window coverings in response to comments from the SBA's Office of Advocacy and the public, but ultimately determined that it is feasible to make larger window coverings safe in a timely way, and the hazard associated with larger window coverings is the same as that of smaller products. Section II.E.4 of this preamble details the Commission's consideration of larger-sized window coverings.

After considering CPSC staff's analysis and information from commenters, the Commission sets a final rule effective date of 180 days from publication in the **Federal Register** for all custom window coverings, as proposed in the NPR. Section III.G.6 of this preamble explains the Commission's rationale, and that unless the Commission finds good cause in the public interest to delay an effective date, the statutory maximum effective date is 180 days from publication in the **Federal Register**. An effective date of 180 days should be sufficient to complete any additional design, development, testing, and logistics, and to adopt the additional methods of compliance provided in the final rule (rigid cord shrouds, loop cord and bead chain restraining devices, and retractable cords). *See supra,* section III.G.6. This will also allow manufacturers, including small businesses in the U.S. and larger and foreign firms that supply U.S. retailers that are small businesses, more time to source necessary component parts. Many of the firms supplying the U.S. market with custom window coverings, including some small businesses, also supply the same products to the Canadian market, where a similar rule was enforced in May 2022. The industry has already had years to come into compliance with the Canadian rule. So too, CPSC's draft rule has been available

for at least one full year already. As CPSC staff has advised, moreover, compliant stock substitutions are available for most window covering types. These stock solutions also provide a source of design and materials for bringing custom window coverings into compliance.

The reasons for not relying entirely on any voluntary standard are discussed elsewhere in this preamble.

Comment 43: The Office of Advocacy stated that CPSC should consider exceptions in situations where corded window coverings are a necessity, such as under the Americans with Disabilities Act.

Response 43: Section 9 of the CPSA requires the Commission to consider the effects of a rule on elderly and disabled persons. Section II.C.7 of this preamble provides an analysis of the issues raised by commenters with regard to the ADA.

IV. Description of the Final Rule

The need for this rule under sections 7 and 9 of the CPSA arises from a difference in the existing voluntary standard's requirements for operating cords on stock window coverings and operating cords on custom window coverings. Section 4.3.1 of ANSI/WCMA–2018 sets forth the performance requirements for operating cords on stock window coverings (*see* Table 8). The Commission has determined that these operating cord performance requirements are adequate and effective to reduce or eliminate the unreasonable risk of strangulation to children 8 years old or younger on window covering cords (see section II.A of this preamble). Accordingly, in the separate proceeding for stock window coverings, the Commission is incorporating by reference the ''readily observable'' safety characteristics for window covering cords, as addressed by ANSI/WCMA–2018, into a rule that deems the absence of these safety characteristics a substantial product hazard under section 15(a) of the CPSA.

Conversely, the Commission has determined that the requirements for operating cords on custom window coverings in section 4.3.2 of ANSI/WCMA–2018 are inadequate to address the risk of strangulation to children. Accordingly, the Commission finalizes this rule to require that operating cords on custom window coverings comply with the same performance requirements established in section 4.3.1 of ANSI/WCMA–2018 for operating cords on stock window coverings, instead of the weaker requirements in section 4.3.2. The final rule also contains two methods, integrated into a window covering as sold, to make operating cords inaccessible to children 8 years and younger: rigid cord shrouds and retractable cords, and one method to make accessible continuous loops non-hazardous: loop cord and bead chain restraining devices. ANSI/WCMA–18 and the draft ANSI/WCMA–2022 allow these methods with somewhat different requirements from the final rule. Hundreds of commenters requested that we allow these options to remain for custom products. Staff assessed the methods and advised that they could be made safer to address the risk of injury. Accordingly, these methods are allowed in the final rule provided that the methods meet the durability requirements in the final rule.

TABLE 8—COMPARISON OF CUSTOM PRODUCT REQUIREMENTS IN ANSI/WCMA–2018, NPR, AND THE FINAL RULE

Performance requirements	Custom products in ANSI/WCMA 2018	Custom products NPR	Custom products final rule
(No operating cords (cordless)	Allowed	Allowed	Allowed.
Short cord (8 inches or shorter) in any state.	Allowed	Allowed	Allowed.
Inaccessible operating cords	Allowed	Allowed	Allowed.
Rigid cord shrouds (can be used with any operating system).	Allowed if Rigid Cord Shroud meets ANSI/WCMA–2018 test requirements.	Allowed if Rigid Cord Shroud meets ANSI/WCMA–2018 test requirements plus proposed deflection and deformation tests.	Allowed if Rigid Cord Shroud meets ANSI/WCMA–2018 test requirements plus deflection and deformation tests.
Single retractable cord lift system	Allowed, no limit in cord length under tension.	Asked for comments	Allowed provided that it meets complete retraction at 30-gram, non-cord retraction device, and stroke length limited to 12 inches below the headrail.
Non-hazardous Cord Loops using Cord and Bead Chain Restraining Device.	Allowed if device meets ANSI/WCMA–2018 tests.	Asked for comments	Allowed if device meets ANSI/WCMA–2018 tests and test for UV followed by cyclic test and deflection test.
Accessible Operating Cords longer than 8 inches.	Allowed	Prohibited	Prohibited.
Continuous Loops with Tension Devices	Allowed	Prohibited	Prohibited.
Cord Loop Lift Systems	Allowed	Prohibited	Prohibited.

A. Description of Section 1260.1—Scope and Definitions

Section 1260.1, scope and definitions, describes the scope of the final rule and provides relevant definitions for the final rule. Definitions for terms defined in ANSI/WCMA–2018 remain consistent with the voluntary standard. Section 1260.1(a) limits the scope of the final rule to operating cords on custom window coverings because the risks of injury associated with inner cords on custom window coverings, and with operating and inner cords on stock window coverings, are addressed in a separate rule under section 15(j) of the CPSA. Section 1260.1(a) provides an effective date of 180 days after publication of the rule in the **Federal Register**.

Section 1260.1(b) incorporates by reference several definitions in section 3 of ANSI/WCMA–2018. The final rule clarifies the definition of a ''Rigid Cord Shroud'' to include the inaccessibility requirement in Appendix C of ANSI/WCMA–2018, and includes two additional terms to accommodate specification of two additional methods to make custom window covering cords inaccessible to small children, ''Retractable Cord,'' and ''Loop Cord and Bead Chain Restraining Device.'' Below we set forth the terms and explain how these terms are defined in the ANSI standard.

- ''Custom window covering,'' definition 5.01 of ANSI/WCMA–2018, is a window covering that is not a stock window covering.
- ''Stock window covering'' definition 5.02 of ANSI/WCMA–2018, is a product that is a completely or substantially fabricated product prior to being distributed in commerce and is a stock-keeping unit (SKU). For example, even when the seller, manufacturer, or distributor modifies a pre-assembled

product by adjusting to size, attaching the top rail or bottom rail, or tying cords to secure the bottom rail, the product is still considered stock under the ANSI standard. Online sales of the product or the size of the order, such as multi-family housing, do not make the product a non-stock product. These examples are provided in ANSI/WCMA A100.1–2018 to clarify that as long as the product is ''substantially fabricated'' prior to distribution in commerce, subsequent changes to the product do not change its categorization.

- ''Operating cord,'' definition 2.19 of ANSI/WCMA–2018, is a cord that the user manipulates to use the window covering, such as lifting, lowering, tilting, rotating, and traversing. An example operating cord is pictured in Figure 7 of this preamble.
- ''Cord shroud,'' definition 2.09 of ANSI/WCMA–2018, is material that is added around a cord to prevent a child from accessing the cord and to prevent the cord from creating a loop. Defining a cord shroud in the rule is necessary because the rule includes a test for a ''rigid cord shroud'' in § 1260.2(b), to meet the inaccessibility requirement in section 4.3.1.3 of ANSI/WCMA–2018.
- ''Cord retraction device,'' definition 2.08 of ANSI/WCMA–2018, is a passive device which winds and gathers cords when tension is no longer applied by the user.

The definition of ''rigid cord shroud'' in § 1260.1(c) is based on work by the voluntary standards task group in 2018. A ''rigid cord shroud'' is not currently defined in the standard but is a hard material that encases an operating cord to prevent a child from accessing an operating cord. For the final rule, the Commission is clarifying in the definition that ''inflexible material'' is material that makes the cord inaccessible as defined in Appendix C of ANSI/WCMA A100.1–2018.

The final rule includes two new definitions in § 1260.2(d) and (e), to define the two additional methods to make custom window covering cords inaccessible or non-hazardous to children 8 and under: retractable cords and loop cord and bead chain restraining device. These definitions are similar to the definitions in draft ANSI/WCMA–2022, with modifications. A ''retractable cord'' is defined as ''a cord that extends when pulled by a user, and fully retracts when the user releases the cord, rendering the cord inaccessible as defined in Appendix C of ANSI/WCMA A100.1–2018.'' A ''loop cord and bead chain restraining device'' is defined as ''[a] device, integrated to and installed on the window covering, that prevents the creation of hazardous loop from an accessible continuous operating cord.''

The final rule also includes a new definition in § 1260.1(f) for ''operating interface,'' because this term is used to describe requirements for retractable cord devices. An ''operating interface'' is defined as the part of the window covering that the user physically touches or grasp by hand or a tool to operate the window covering, for example a wand to tilt the slats of the product or the bottom rail to raise or lower the product. This definition is similar to the definition in draft ANSI/WCMA–2022, with modifications.

B. Explanation of § 1260.2—Requirements for Operating Cords on Custom Window Coverings

Section 1260.2 sets forth the requirements for operating cords on custom window coverings. Section 1260.2(a) requires that each operating cord on a custom window covering comply with section 4.3.1 of ANSI/WCMA–2018 (operating cord not present (section 4.3.1.1)); operating cord is inaccessible (section 4.3.1.3); or operating cord is eight inches long or shorter in any position of the window covering (section 4.3.1.2), instead of the current requirements for operating cords on custom products in section 4.3.2 of ANSI/WCMA–2018. Section 1260.2(a) includes a revision from the NPR, to allow compliance with section 4.3.2.5.2 of ANSI/WCMA-2018, which is the provision in the voluntary standard setting forth requirements for loop cord and bead chain restraining devices. This addition in the final rule responds to the comments requesting that the rule not eliminate the use of continuous loop cords for custom window coverings by allowing their continued use as long as the hazardous cords are encased in an integrated loop cord or bead chain restraining device that meets the requirements of the rule.

Section 1260.2(b) contains the requirements and test methods for rigid cord shrouds, when they are used to comply with § 1260.2(a). Section 1260.2(b)(1) and (2) contain the test methods to confirm whether a cord shroud is ''rigid.'' The requirements for rigid cord shrouds are not currently in the ANSI/WCMA standard. CPSC staff developed these test methods based on work by an ANSI/WCMA task group in 2018, regarding confirmation that a cord shroud is rigid enough to ensure that the shroud cannot be wrapped around a child's neck or form a hazardous u-shape. The rigid cord shroud requirements include two tests, the ''Center Load'' test and the ''Axial Torque'' test. The Center Load test verifies the stiffness of the cord shroud, by measuring the amount of deflection in the shroud when both ends are mounted and a 5-pound force is applied at the mid-point. This test ensures the shroud is not flexible enough to wrap around a child's neck. The Axial Torque test verifies the cord shroud's opening does not enlarge to create an accessible cord opening when the shroud is twisted.

CPSC is not aware of incidents related to current products with rigid cord shrouds and concludes that shrouds that meet the modifications to the ANSI/WCMA standard will address the strangulation hazard posed by accessible cords. Section II.A of this preamble and Tabs G and H of Staff's NPR Briefing Package contain further explanation and the language related to rigid cord shrouds.

Section 1260.2(c) contains requirements for retractable cords, when they are used to comply with § 1260.2(a), to make an operating cord inaccessible. The requirements in this section were developed by CPSC staff to ensure that children cannot pull on retractable cords and gain sufficient length to wrap the cord around their neck. The requirements limit the stroke length for the cord to 12 inches from the headrail, and require the user interface to be a pole or wand, or other non-cord interface, to prevent the creation of a hazardous loop. The requirements also provide for UV and durability testing, as provided in ANSI/WCMA–2018.

Section 1260.2(d) provides requirements for loop cord and bead chain restraining devices, which are intended to prevent the formation of a hazardous loop. The final rule requires that these devices meet the requirements of section 6.5 of ANSI/WCMA–2018, in addition to UV and durability tests added by the final rule.

C. Explanation of § 1260.3—Prohibited Stockpiling

The purpose of § 1260.3 is to prohibit manufacturers and importers from stockpiling products that will be subject to a mandatory rule. The Commission's authority to issue an anti-stockpiling provision is in section 9(g)(2) of the CPSA. 15 U.S.C. 2058(g)(2). Section 1260.3(a) prohibits manufacturers and importers of custom window coverings from manufacturing or importing custom window coverings that do not comply with the requirements of the final rule in the 180-day period between the date of the final rule's publication in the **Federal Register** and the effective date of the rule, at a rate that is greater than 120 percent of the rate at which they manufactured or imported custom

window coverings during the base period for the manufacturer. The base period is described in § 1260.3(b) as any period of 180 consecutive days, chosen by the manufacturer or importer, in the 5-year period immediately preceding promulgation of the final rule. ''Promulgation'' means the date the final rule is published in the **Federal Register**.

D. Explanation of § 1260.4—Findings

The findings required by section 9 of the CPSA are discussed in the regulatory text.

E. Explanation of § 1260.5—Standards Incorporated by Reference

Section 1260.5 contains the information required by the Office of the Federal Register (OFR) to incorporate by reference the requirements in section 4.3.1, and the relevant definitions in section 3, of ANSI/WCMA–2018. As set forth in section XII of this preamble, the Commission has met the OFR's procedural requirements to incorporate by reference ANSI/WCMA–2018.

F. Explanation of § 1260.6—Severability

Section 1260.6 contains a severability clause. This final rule includes multiple sections and requirements that aim to address the risk associated with strangulation of children 8 years old or younger on custom window coverings with hazardous operating cords, including the scope of the rule to include all custom window coverings, regardless of size, definitions included in the rule, performance requirements for custom window coverings, and performance requirements for methods to make cords inaccessible or non-hazardous. Because the rule includes these multiple requirements, the rule also includes a provision stating the Commission's intent that if certain requirements in the rule are stayed or determined to be invalid by a court, the remaining requirements in the rule should continue in effect.

V. Final Regulatory Analysis

Section 9(f)(2) of the CPSA, 15 U.S.C. 2058(f)(2), requires a consumer product safety rule published in the **Federal Register** to include a final regulatory analysis that contains:

(A) A description of the potential benefits and potential costs of the rule, including costs and benefits that cannot be quantified in monetary terms, and the identification of those likely to receive the benefits and bear the costs.

(B) A description of any alternatives to the final rule which were considered by the Commission, together with a summary description of their potential benefits and costs and a brief explanation of the reasons why these alternatives were not chosen.

(C) A summary of any significant issues raised by the comments submitted during the public comment period in response to the preliminary regulatory analysis, and a summary of the assessment by the Commission of such issues.

The information and analysis in this section is based on Tab F of Staff's Final Rule Briefing Package.

A. Potential Benefits and Costs of the Rule

Based on estimates from the NEISS and CPSC's Injury Cost Model, CPSC staff estimates that 7.6 nonfatal, medically treated injuries and 6.8 fatalities occur annually among all corded window coverings associated with cord types that are within scope of this rule (Chowdhury 2022). Staff estimates the societal costs of these injuries to be about $72 million annually. Overall, staff found that fatalities account for an overwhelming majority of societal costs at $71.4 million annually, and that nonfatal injuries account for about $498,000 in societal costs annually.

Staff estimates the societal cost of deaths and injuries attributable to custom window covering products, that would not otherwise be addressed by the 15(j) rule's provisions for inner cords on both stock and custom window coverings, to be $31.6 million annually (about 44 percent of the total), based on a CPSC staff review of incidents and values, using the ICM and a Value of Statistical Life (VSL) of $10.5 million. Staff calculated the present value of the societal cost [36] of deaths and injuries for each blind type, based on each type's expected product life. Staff combined these societal unit costs with corded custom window covering sales in 2020, to generate a gross annual societal cost of $24.35 million. Finally, staff adjusts this estimate for the expected effectiveness of the final rule to estimate a total annual benefit of $23 million.

The final rule would impose costs on manufacturers of custom window covering products. Manufacturers would likely pass much of incremental per-unit manufacturing cost to consumers in the form of higher prices. Based on component cost estimates, assembly/manufacturing costs, consumer surplus loss, and proportions of domestic manufacturing, the incremental cost per corded custom window covering produced would range from nothing to approximately $35 and is highly dependent on product type. The final rule would not result in any cost increases for already cordless custom window coverings. Accordingly, staff combined the value of the number of *corded* custom window coverings that were shipped in 2020, estimated to be $15.85 million, with the per-unit cost increase to generate an aggregate cost estimate ranging between $54.4 million and $114 million. An additional cost estimate for the research, development, implementation, time, and retooling required for some corded product amounts to approximately $14.7 million. Including this value results in a total aggregate cost estimate range of $54.4 million to $129 million annually.

To provide an accessible framework to perceive how the additional cost of the final rule impacts consumers, staff converted costs and benefits of the rule into a calculated net cost per household, based on the data point that the average detached, single-family household has 12 window coverings. Table 9 contains the estimated household net costs from replacing all window coverings in the home with products compliant with the final rule.

TABLE 9—HOUSEHOLD NET COSTS FROM FINAL RULE

WC types	Mean unit price [1]	Household cost to update WC (pre-rule) [2] = [1] × 12 households	Low-End cost per unit [3]	Benefit per unit [4]	Net per unit [5] = [4] − [3]	Household net cost [6] = [5] × 12 households
Vinyl/Metal	$37.36	$448.32	$3.03	$1.06	($1.97)	($23.67)
Wood/Faux Wood	69.79	837.48	6.38	1.61	(4.77)	(57.24)
Cellular Shade	94.51	1,134.12	5.73	2.04	(3.69)	(44.25)

[36] Calculating the annual societal costs per window covering unit, staff divided that total societal cost by an estimate of 145 million corded custom window coverings in use for the year of 2020, which resulted in a per-unit societal cost of $0.22 per corded custom window covering in use.

TABLE 9—HOUSEHOLD NET COSTS FROM FINAL RULE—Continued

WC types	Mean unit price [1]	Household cost to update WC (pre-rule) [2] = [1] × 12 households	Low-End cost per unit [3]	Benefit per unit [4]	Net per unit [5] = [4] − [3]	Household net cost [6] = [5] × 12 households
Pleated Shade	54.53	654.36	2.20	2.12	(0.08)	(0.94)
Roman Shade	69.36	832.32	5.63	2.43	(3.20)	
Roller Shade	64.04	768.48	5.19	2.04	(3.15)	(37.83)
Soft Sheer	250.00	3,000.00	20.28	2.04	(18.24)	(218.82)

Table 9 shows the net price increase to replace 12 window coverings based on the type of custom window covering. For example, horizontal blinds composed of metal or vinyl have a low-end, per-unit cost estimate of $3.03 and a per-unit benefit estimate of $1.06 (assuming the base VSL). This translates into a net cost of the final rule of $1.97 (assuming the base VSL) for metal/vinyl horizontal blinds. Using the assumption of 12 window coverings per household, this equates to a net cost of the rule (above the benefits provided) of $23.67 per household every time a household updates their custom window coverings, about once every 10 years. For metal or vinyl horizontal blinds, $23.67 is slightly more than 5 percent of the total cost of $448.32 that a household would spend to update their window coverings.

The cost impact from the final rule may be less than estimated, however, due to the enforcement of Canada's regulations beginning in May 2022.[37] Companies that sell in both Canada and the United States have already redesigned their custom offerings to be compliant with the Canadian regulations, which are substantively similar to those being finalized here. Those companies may already have stock of compliant product designed and available to sell to the U.S. market through small dealers and interior designers.

Based on staff's estimated benefits and costs, which does not account for efficiencies resulting from prior safety innovation in stock window coverings or custom window coverings for Canada, net benefits (*i.e.,* benefits minus costs) for the market of custom window coverings (*i.e.,* excluding stock window covering products, and the benefits of the separate rule for inner cords on custom window coverings) amounts to approximately −$31.3 million to about −$106 million annually.

Staff also conducted a sensitivity analysis for a few variables, including the value of statistical life (VSL). In the NPR, the Commission invited comment on a potentially higher VSL for children, up to three times the base level (3 × $10.5 million for a total of $31.5 million). 87 FR 1044–45. CPSC received comments in support of a child-focused VSL, with alternative methods suggested. Staff considered a higher VSL for children in the sensitivity analysis. With a VSL value of $31.5 million, benefits exceed costs by approximately $14.3 million annually. Staff also highlights the unquantified benefits of the final rule, including the emotional distress level of caregivers that will be reduced by the final rule. This benefit is not directly accounted for in the primary VSL estimate of $10.5 million. The value of the shock or perceived guilt related to a caregiver's inattentiveness could be significant, as it could result in large reductions to physical wellbeing or income loss.

To issue this final rule, the Commission must find that the costs of the rule bear a reasonable relationship to the benefits of the rule. A reasonable relationship between costs and benefits requires the Commission to exercise judgement, and to balance whether the risks involved warrant the cost to address the risks. The Commission has conducted this balancing, and finds that the predicted benefits expected from the rule bear a reasonable relationship to the anticipated costs of the rule because, among other reasons, the severity of the injury is usually death to a child, the cost per household is reasonable particularly in light of the long life of the products, and similar operating cord requirements have been successfully implemented, without substantial market disruption, for stock window coverings in the U.S. as well as for stock and custom window coverings in Canada. *See* § 1260.4(i) of the regulatory text.

B. Regulatory Alternatives to the Final Rule

1. No Action Alternative

Under this alternative the status quo would be maintained. No costs are associated with this alternative. However, this alternative does not adequately address the fatal and nonfatal injuries involving corded custom window coverings.

2. Rely Upon or Improve Voluntary Standard for Window Coverings

Another alternative is to adopt the recently balloted draft voluntary standard (ANSI/WCMA–2022) as a mandatory standard in this final rule, without waiting for the standard to become effective. In July 2022, WCMA issued a ballot to revise the 2018 voluntary standard. The proposed revisions would prohibit standard operating systems (operating pull cords) and the use of continuous loop systems in custom horizontal blinds only. CPSC staff voted against the ballot on August 15, 2022, stating that hazardous cords remain an option for operating cords on all other custom products other than horizontal blinds,[38] leaving a maximum of 87 incidents (fatal and non-fatal) unaddressed covering the time period from 2009 through 2021.[39] Staff also assessed the balloted draft standard's requirements for retractable cords inadequate because they allow for a 36-inch retractable cord (2 feet longer than the final rule) and because the UV test method allows for testing only a section of a rigid cord shroud (instead of the complete sample). Based on the assessment in Tab I of Staff's Final Rule Briefing Package, the Commission finds that the draft balloted standard is inadequate to address the risk of strangulation to children.

Adopting the balloted draft standard would narrow the benefits as well as the costs. The estimated costs would range from approximately $32 million to $72.5 million, but benefits using the base VSL would be just $9.6 million, leaving an unaddressed potential benefit of $13.4 million representing continued serious injuries and deaths. This unaddressed potential benefit is 58.3 percent of the total $23 million potential benefits (in

[37] *https://laws-lois.justice.gc.ca/eng/regulations/SOR-2019-97/FullText.html.*

[38] CPSC staff letter is available at *https://www.regulations.gov/document/CPSC-2013-0028-3667.*

[39] Includes custom/unknown product categories, and continuous loops/unknown cord types.

value of lives saved and injuries prevented) estimated under the final rule. Hazardous cords would remain an option on custom shades, custom vertical blinds, and curtains/drapes, meaning an estimated 7.4 million units of custom products sold annually going forward.

A related alternative might be for Commission staff to continue participating in, and encouraging safety improvements to, the voluntary standard for window coverings. This option would be similar to the ''no action alternative,'' with the key difference being that the Commission could direct staff to pursue safety improvements in the voluntary standard, including applying relevant conditions on stock products to custom, in the same manner that staff has been pursuing unsuccessfully for many years, as a conditional alternative to a mandatory standard developed by the Commission. The Commission could reconsider a mandatory standard if efforts to improve the voluntary standard on custom products remain unsatisfactory.

This option is unlikely to address the unreasonable risk of injury associated with operating cords on custom window coverings. The protracted and incompletely successful history of the voluntary standard process on this issue demonstrates that continuing to wait for ANSI/WCMA to address the injuries in the voluntary standard will result in additional deaths and injuries to children, with little hope of progress if the Commission does not pursue rulemaking. Based on 26 years of experience with the voluntary standards process for this hazard, the Commission will not choose this option.

As a third alternative, the Commission could wait and see whether ANSI and/or WCMA approve a revised standard, and then either rely upon it as a voluntary standard, or proceed to a final rule with similar provisions as in this final rule. This alternative would either produce a similar cost-benefit ratio as for the final rule adopted here (with lower costs but also lower benefits), or delay the implementation of a rule, like the one here, that more fully addresses the strangulation hazard. This alternative would risk the lives of more children to strangulation on hazardous custom products, and the Commission does not adopt it.

Furthermore, this approach might not allow the full range of consumer protections afforded by this final rule. For example, if the Commission chose to address custom horizontal blinds by relying on a voluntary standard under section 15(j) of the CPSA, then additional methods to make cords inaccessible on horizontal blinds, such as rigid cord shrouds and loop cord and bead chain restraining devices, could not be subject to any requirement that is not ''readily observable,'' and so might not be subject to durability requirements like those in the final rule.

Based on the forgoing, the Commission concludes that the voluntary standards process is unlikely to lead to an adequate, or more beneficial and less costly, outcome for all custom window covering product types in the short or long run.

3. Later Effective Date

The NPR proposed an effective date that is 180 days after the final rule is published in the **Federal Register**. Under section 9(g)(1) of the CPSA, the Commission must find good cause that is in the public interest to extend the effective date of the final rule beyond 180 days. Many commenters stated that CPSC should set a longer effective date for the final rule, as detailed in section III.G.6 of this preamble. The Commission reviewed and considered the commenters' concerns and staff's assessment of them, but finds that good cause in the public interest does not exist to extend the effective date beyond the default statutory maximum of 180 days from publication in the **Federal Register**.

4. Narrow Final Rule to Vertical Blinds, Curtains, and Drapes

The Commission could narrow the final rule to vertical blinds, curtains, and drapes on the grounds that cords are not important to the operation of these products. These products typically offer cordless options at no additional cost for most applications because a plastic rod can be used for operation. Narrowing the final rule to these three product types would lessen the cost impact and make it unlikely that any window covering product would need to be phased out or changed substantially as a result of the rule. Although some consumers may require motorization for these products if operating cords are not available, which would dramatically increase the cost, this is unlikely to be a scenario that applies to many consumers. Some consumers may also prefer decorative cords that exceed the length described in the final rule, which would result in lower utility for these particular consumers should those decorative cords be removed.

Under this alternative, the benefits and costs would be limited to vertical blinds, curtains, and drapes, which accounted for approximately 30 percent of 2020 window covering product shipments. However, the number of injuries and deaths associated with these products represents a small fraction of the total for operating cords on custom window coverings. This would equate to annual net benefits of approximately $7.8 million under the baseline VSL. The estimated net benefits of this option would be greater than the final rule due to the large costs to conform for the other product types, however a large fraction of the deaths and injuries would not be addressed.

5. Continue and Improve Information and Education Campaign

The Commission could seek to improve its current information and education campaign concerning the strangulation hazard associated with corded window covering products. This alternative could be implemented without regard for regulatory action such as this final rule. Based on the continuing number of fatalities associated with window covering cords, however, the effective injury reduction of campaigns, such as those the Commission has sponsored for years, is most likely very small. The Commission will not rely on this option because information and education campaigns appear to be no more than slightly effective at reducing or preventing injuries associated with window coverings.

6. Adopt Canadian Window Covering Mandatory Standard

Under this alternative the Commission could adopt the Canadian Corded Window Coverings Regulations (SOR/2019–97), as it is generally similar to the final rule. Staff estimates that this option would add more costs without adding more benefits than the final rule, although staff notes that it would provide some unquantifiable benefits related to harmonization of product standards for firms operating in both countries. The additional costs under this scenario are associated with requirements in the Canadian regulation that are more burdensome than the final rule, such as the pull force and inner cord requirements for products.[40] Under this alternative, net benefits are less than the final rule as the additional costs are expected to be greater than the

[40] See Tabs G and I of the NPR Staff Briefing Package available at Available at: *https://www.cpsc.gov/s3fs-public/NPRs-Add-Window-Covering-Cords-to-Substantial-Product-Hazard-List-Establish-Safety-Standard-for-Operating-Cords-on-Custom-Window-Coverings-updated-10-29-2021.pdf?VersionId=HIM05bK3WDLRZrlNGogQLknhFvhtx3PD.*

unquantifiable benefit of standard harmonization.

C. Summary of Significant Economic Issues Raised by the Comments

Commenters raised issues regarding CPSC's cost-benefit method, the cost of safer window coverings to consumers, safer window coverings in commercial buildings, competition from foreign manufacturers, the impact of the rule on businesses (including small versus large businesses), the anti-stockpiling provision, unquantified benefits in the NPR, and CPSC's VSL for children. Section III.D of this preamble summarizes and responds to the economic issues raised by the commenters.

VI. Final Regulatory Flexibility Act Analysis

Whenever an agency publishes a final rule, the Regulatory Flexibility Act (5 U.S.C. 601–612) requires that the agency prepare a final regulatory flexibility analysis that describes the impact the rule would have on small businesses and other entities. In this section we summarize information and analysis in Tab G of Staff's Final Rule Briefing Package. A FRFA must contain

(1) a statement of the need for, and objectives of, the rule;

(2) a statement of the significant issues raised by the public comments in response to the initial regulatory flexibility analysis, a statement of the assessment of the agency of such issues, and a statement of any changes made in the proposed rule as a result of such comments;

(3) the response of the agency to any comments filed by the Chief Counsel for the Office of Advocacy of the SBA in response to the proposed rule, and a detailed statement of any change made to the proposed rule in the final rule as a result of the comments;

(4) a description of and an estimate of the number of small entities to which the rule will apply or an explanation of why no such estimate is available;

(5) a description of the projected reporting, recordkeeping and other compliance requirements of the rule, including an estimate of the classes of small entities which will be subject to the requirement and the type of professional skills necessary for preparation of the report or record; and

(6) a description of the steps the agency has taken to minimize the significant economic impact on small entities consistent with the stated objectives of applicable statutes, including a statement of the factual, policy, and legal reasons for selecting the alternative adopted in the final rule and why each one of the other significant alternatives to the rule considered by the agency which affect the impact on small entities was rejected.

A. Reason for Agency Action

The final rule is intended to address an unreasonable risk of strangulation to children 8 years and younger involving corded custom window covering products. An average of 6.8 fatal injuries (excluding inner cords and lifting loops) involving all corded window covering products that have operating cords annually to children less than 8 years old (Tab A, Chowdhury, 2022). The societal costs of these fatal and nonfatal injuries amount to approximately $72 million. The final rule would only address the proportion of these injuries attributable to operating cords on custom products which, based on a CPSC review of 209 reported incidents, would be approximately $31.6 million annually (Tab F, Bailey, 2022).

B. Objectives of and Legal Basis for the Rule

The objective of the rule is to reduce or eliminate an unreasonable risk of serious injury or death to children 8 years old or younger by strangulation on corded custom window coverings, by promulgating a consumer product safety standard pursuant to the CPSA.

C. Comments of the Chief Counsel for the Office of Advocacy, SBA

The Office of Advocacy submitted several points on the proposed rule. Consistent with one of the comments by the Office of Advocacy, the Commission is reducing the burden of the final rule by allowing, in addition to rigid cord shrouds as a method to make cords inaccessible, a retractable cord or a loop cord or bead restraining device, as long as such devices meet the requirements in the final rule. The Office of Advocacy's comments are summarized and responded to in section III.I of this preamble.

D. Significant Economic Issues Raised by the Public

Section III.D of this preamble summarizes and responds to the significant economic issues raised by the commenters.

E. Small Entities to Which the Rule Will Apply

The North American Industry Classification System (NAICS) defines product codes for U.S. firms. Firms that manufacture window coverings may list their business under the NAICS product code for blinds and shades manufacturers (337920 Blind and Shade Manufacturing) or retailers (442291 Window Treatment Stores).[41] Window coverings can be sold in a variety of retail channels and could be listed under a large number of NAICS codes. These could include but are not limited to 442299 (All Other Home Furnishings Stores), 452210 (Department Stores), 452311 (Warehouse Clubs and Supercenters), 454110 (Electronic Shopping and Mail-Order Houses), and 454390 (Other Direct Selling Establishments).

Under SBA guidelines, a manufacturer of window coverings is categorized as small if the firm has less than 1,000 employees (NAICS code 337920). Importers would be considered small if the firm has less than 100 employees. CPSC staff estimates that there are approximately 83 importers that meet the SBA guidelines for a small business (Bailey 2021). Most retailers of window coverings would be considered small if they have sales revenue less than $8.0 million (NAICS codes 442291, 454390). Department stores, warehouse clubs, and electronic shopping and mail order houses must have revenues less than $35 million, $32 million, and $41.5 million, respectively, to be considered small. Based on 2017 Census Bureau Statistics of US Businesses (SUSB) data, there were 1,898 blinds and shades manufacturers, (NAICS 337920), and retailers (NAICS 442291).[42] Of these, 1,840 firms (302 manufacturers and 1,538 retailers) are small entities by SBA guidelines.

Nearly all of the 302 small manufacturers identified are far below the 1,000 employee SBA threshold; 238 of the manufacturers have fewer than 20 employees and 151 have fewer than 5 employees. CPSC staff estimates that the annual revenue for the firms with fewer than 20 employees to be under $250,000.[43] Most of the firms with fewer than 5 employees manufacture custom window coverings on a per order basis. The annual revenue for these manufacturers is most likely below

[41] The two product codes 337920 and 442291 encompass most products in the window coverings market. However, some drapery and curtain manufacturers may be listed under 322230, stationary product manufacturing.

[42] This estimate focuses strictly on firms where window coverings are a majority of the operation. The other NAICS codes provided (322230, 454390, 442299, 452210, 452311, 454110) may include firms participating in the window coverings market but most likely account for a very small share of the firm's operation. In addition, it is possible some retailers of window coverings are listed under NAICS code 541410 Interior Design Services.

[43] Based on Census Bureau SUSB data, a review of firm financial reports, and Dun & Bradstreet reports.

$100,000, based on SUSB payroll data from the U.S. Census Bureau.

F. Compliance Requirements of the Final Rule, Including Reporting and Recordkeeping Requirements

To eliminate the strangulation hazard on cords, the final rule establishes a performance standard that requires custom window coverings to meet the same requirements in section 4.3.1 of the voluntary standard ANSI/WCMA–2018 that apply to stock window coverings. To comply with the performance requirements, all accessible operating cords will need to be removed, made inaccessible, or shortened to less than 8 inches. The final rule provides two methods to make cords inaccessible (rigid cord shrouds and retractable cord devices) and one method that would remove the hazard from an accessible cord (cord or bead restraining device). Products that use one of these methods to meet the requirements must also conduct additional testing on durability, as set forth in the rule.

Under section 14 of the CPSA, as codified in 16 CFR part 1110, manufacturers and importers of general use custom window coverings must certify, based on a test of each product or upon a reasonable testing program, that their window coverings comply with the requirements of the final rule. Manufacturers and importers of custom window coverings that are also children's products, as defined in 16 CFR part 1200, must use a CPSC-accepted third party conformity assessment body to test products for compliance, and issue a certificate of compliance based on such third-party testing. Testing and certification requirements are detailed in section X of this preamble.

G. Costs of the Final Rule That Would Be Incurred by Small Manufacturers

Custom window covering manufacturers would most likely adopt cordless lift operation systems to comply with the final rule. As discussed in Tab F of Staff's Final Rule Briefing Package, the cost to modify window covering lift systems to comply with the final rule ranges from $2.99 to $9.77 per horizontal blind, $2.18 to $35 per shade, and no expected cost increase for vertical blinds and curtains/drapes. CPSC staff estimates of redesign costs—where solutions are not already developed based on the stock window covering market, the Canadian market, or otherwise—equate to approximately $772,500, assuming a 2-year period for purposes of that analysis. Only manufacturers with at least 75 employees are anticipated to perform this investment as this is a significant investment for smaller manufacturers with fewer employees and lower annual revenues. Likely these manufacturers will either purchase the necessary completed hardware or license a patented solution from a larger firm.

However, as noted, the actual impact may be less, due in part to the enforcement of Canada's regulations beginning in May 2022. Companies that sell in both Canada and the U.S. have already redesigned their custom offerings to be compliant with the Canadian regulations, which are substantially similar to the final rule, so already have stock of compliant product designed and ready to sell through small dealers and interior designers.

Manufacturers would likely incur some additional costs to certify that their window coverings meet the requirements of the final rule as required by section 14 of the CPSA. The certification must be based on a test of each product or a reasonable testing program. WCMA has already developed a certification program for window covering products titled ''Best for Kids,'' which includes third party testing of products for accessible cords. CPSC staff assesses this certification would meet the requirements as outlined in section 14 of the CPSA. Based on price quotes from testing laboratory services for consumer products, the cost of the certification testing will range from $290 to $540 per window covering model. Note that the requirement to certify compliance with all product safety rules, based on a reasonable testing program, is a requirement of the CPSA and not of the final rule.

Depending on the type of window covering, a reasonable testing program for general-use window coverings could entail a simple visual inspection of products by the manufacturer. Therefore, the cost of a reasonable testing program for compliance of general use window coverings with the final rule is likely much lower than the cost of conducting a third-party certification test of each product, as required for children's products.

H. Impact on Small Manufacturers

To comply with the final rule, small manufacturers are expected to incur redesign and incremental component costs for some product lines which currently are not available in inaccessible cord variants. CPSC does not expect small manufacturers to suffer a disproportionate cost effect from the final rule as the cost calculations and research were completed on a per unit basis, and CPSC expects little if any direct redesign costs for small manufacturers. CPSC staff estimates that small manufacturers of window coverings are likely to incur, at a minimum, a 2 percent impact to their custom window covering revenue from the final rule. This implies that if custom products account for all of a firm's revenue, then the minimum impact of the final rule is 2 percent of revenue.

Generally, staff considers an impact to be potentially significant if it exceeds 1 percent of a firm's revenue. As the smallest estimate of incremental compliance cost from Panchal (2016) is 2 percent of retail price, the final rule could have a significant impact on manufacturers of custom window coverings. This effect is dependent on the share of annual revenues attributable to custom products. For example, if a small firm only manufactures custom cellular shades, then staff expects the lowest possible compliance cost of 2 percent of retail price. For small importers, the cost effect as a percent of revenue is dependent on the firm's custom window covering imports as a percent of total revenue. Any small importer with at least 50 percent of their revenues related to custom window covering products affected by the final rule could be significantly impacted. This is due to the lowest expected compliance cost equating to 2 percent of retail price, which at a 50 percent custom product share would equate to a 1 percent minimum impact on annual revenues. CPSC expects the final rule to have a significant effect on a substantial number of small firms.

I. Federal Rules Which May Duplicate, Overlap, or Conflict With the Final Rule

CPSC staff has not identified any other Federal rules that duplicate, overlap, or conflict with the final rule.

J. Alternatives for Reducing the Adverse Impact on Small Entities

A FRFA should contain ''a description of the steps the agency has taken to minimize the significant economic impact on small entities consistent with the stated objectives of applicable statutes, including a statement of the factual, policy, and legal reasons for selecting the alternative adopted in the final rule and why each one of the other significant alternatives to the rule considered by the agency which affect the impact on small entities was rejected.'' 5 U.S.C. 604. The Commission considered several alternatives to the final rule that could reduce the impact on small entities.

Alternatives considered are discussed in section V.B of this preamble.

VII. Environmental Considerations

Generally, the Commission's regulations are considered to have little or no potential for affecting the human environment, and environmental assessments and impact statements are not usually required. *See* 16 CFR 1021.5(a). The final rule to establish a safety standard for operating cords on custom window coverings is not expected to have an adverse impact on the environment and is considered to fall within the ''categorical exclusion'' for the purposes of the National Environmental Policy Act. 16 CFR 1021.5(c).

VIII. Paperwork Reduction Act

This final rule contains information collection requirements that are subject to public comment and review by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (PRA; 44 U.S.C. 3501–3521). Under the PRA, an agency must publish the following information:

- a title for the collection of information;
- a summary of the collection of information;
- a brief description of the need for the information and the proposed use of the information;
- a description of the likely respondents and proposed frequency of response to the collection of information;
- an estimate of the burden that will result from the collection of information; and
- notice that comments may be submitted to OMB.

44 U.S.C. 3507(a)(1)(D). In accordance with this requirement, the Commission provides the following information:

Title: Amendment to Third Party Testing of Children's Products, approved previously under OMB Control No. 3041–0159.

Summary, Need, and Use of Information: The final consumer product safety standard prescribes the safety requirements for operating cords on custom window coverings, and requires that these cords meet the same requirements for operating cords on stock window coverings, as set forth in the voluntary standard, section 4.3.1 of ANSI/WCMA–2018. These requirements are intended to reduce or eliminate an unreasonable risk of death or injury to children 8 years old and younger from strangulation.

Some custom window coverings are considered children's products. A ''children's product'' is a consumer product that is ''designed or intended primarily for children 12 years of age or younger.'' 15 U.S.C. 2052(a)(2). The Commission's regulation at 16 CFR part 1200 further interprets the term. Section 14 of the CPSA requires that children's products be tested by a third party conformity assessment body, and that the manufacturer of the product, including an importer, must issue a children's product certificate (CPC). Based on such third party testing, a manufacturer or importer must attest to compliance with the applicable consumer product safety rule by issuing the CPC. The requirement to test and certify children's products fall within the definition of ''collection of information,'' as defined in 44 U.S.C. 3502(3).

The requirements for the CPCs are stated in section 14 of the CPSA, and in the Commission's regulation at 16 CFR parts 1107 and 1110. Among other requirements, each certificate must identify the manufacturer or private labeler issuing the certificate and any third-party conformity assessment body on who's testing the certificate depends, the date and place of manufacture, the date and place where the product was tested, each party's name, full mailing address, telephone number, and contact information for the individual responsible for maintaining records of test results. The certificates must be in English. The certificates must be furnished to each distributor or retailer of the product and to the CPSC, if requested.

The Commission already has an OMB control number, 3041–0159, for children's product testing and certification. The final rule amends this collection of information to add window coverings that are children's products.

Respondents and Frequency: Respondents include manufacturers and importers of custom window coverings that are children's products. Manufacturers and importers must comply with the information collection requirements when custom window coverings that are children's products are manufactured or imported.

Estimated Burden: CPSC has estimated the respondent burden in hours, and the estimated labor costs to the respondent.

Estimate of Respondent Burden: The hourly reporting burden imposed on firms that manufacture or import children's product custom window coverings includes the time and cost to maintain records related to third party testing, and to issue a CPC.

TABLE 9—ESTIMATED ANNUAL REPORTING BURDEN

Burden type	Total annual reponses	Length of response (hours)	Annual burden (hours)
Third-party recordkeeping, certification	24,850	1.0	24,850

Three types of third-party testing of children's products are required: certification testing, material change testing, and periodic testing. Requirements state that manufacturers conduct sufficient testing to ensure that they have a high degree of assurance that their children's products comply with all applicable children's product safety rules before such products are introduced into commerce. If a manufacturer conducts periodic testing, they are required to keep records that describe how the samples of periodic testing are selected.

CPSC estimates that 0.1 percent of all custom window coverings sold annually, 24,850 window coverings, are children's products and would be subject to third-party testing, for which 1.0 hours of recordkeeping and record maintenance will be required. Thus, the total hourly burden of the recordkeeping associated with certification is 24,850 hours ($1.0 \times 24{,}850$).

Labor Cost of Respondent Burden. According to the U.S. Bureau of Labor Statistics (BLS), Employer Costs for Employee Compensation, the total compensation cost per hour worked for all private industry workers was $40.90 (March 2022, *https://www.bls.gov/ncs/ect/*). Based on this analysis, CPSC staff estimates that labor cost of respondent burden would impose a cost to industry of approximately $1,016,365 annually (24,850 hours × $40.90 per hour).

Cost to the Federal Government. The estimated annual cost of the information collection requirements to the Federal Government is approximately $4,254, which includes 60 staff hours to examine and evaluate the information as needed for compliance activities. This is based on a GS–12, step 5 level salaried employee. The average hourly wage rate for a mid-level salaried GS–12 employee in the Washington, DC metropolitan area (effective as of January 2022) is $48.78 (GS–12, step 5). This represents 68.8 percent of total compensation (U.S. Bureau of Labor Statistics, ''Employer Costs for Employee Compensation,'' March 2022, percentage of wages and salaries for all civilian management, professional, and related employees: *https://www.bls.gov/ncs/ect/.* Adding an additional 31.2 percent for benefits brings average annual compensation for a mid-level salaried GS–12 employee to $70.90 per hour. Assuming that approximately 60 hours will be required annually, this results in an annual cost of $4,254 ($70.90 per hour × 60 hours = $ 4,254.07).

CPSC did not receive any comments on the burden estimate provided in the NPR (87 FR 1048–49). CPSC has submitted the information collection requirements of this final rule to OMB for review in accordance with PRA requirements. 44 U.S.C. 3507(d).

IX. Preemption

Executive Order (E.O.) 12988, *Civil Justice Reform* (Feb. 5, 1996), directs agencies to specify the preemptive effect of a rule in the regulation. 61 FR 4729 (Feb. 7, 1996). The final regulation for operating cords on custom window coverings is issued under authority of the CPSA. 15 U.S.C. 2051–2089. Section 26 of the CPSA provides that whenever a consumer product safety standard under the Act is in effect and applies to a risk of injury associated with a consumer product, no State or political subdivision of a State shall have any authority either to establish or to continue in effect any provision of a safety standard or regulation which prescribes any requirements as to the performance, composition, contents, design, finish, construction, packaging or labeling of such product which are designed to deal with the same risk of injury associated with such consumer product, unless such requirements are identical to the requirements of the Federal standard. 15 U.S.C. 2075(a).

The Federal Government, or a state or local government, may establish or continue in effect a non-identical requirement for its own use that is designed to protect against the same risk of injury as the CPSC standard if the Federal, state, or local requirement provides a higher degree of protection than the CPSA requirement. *Id.* 2075(b). In addition, states or political subdivisions of a state may apply for an exemption from preemption regarding a consumer product safety standard, and the Commission may issue a rule granting the exemption if it finds that the state or local standard: (1) provides a significantly higher degree of protection from the risk of injury or illness than the CPSA standard, and (2) does not unduly burden interstate commerce. *Id.* 2075(c).

Thus, absent exemption, the final rule for operating cords on custom window coverings preempts non-identical state or local requirements for operating cords on custom window coverings designed to protect against the same risk of injury and prescribing requirements regarding the performance of operating cords on custom window coverings.

X. Testing, Certification, and Notice of Requirements

Section 14(a) of the CPSA includes requirements for certifying that children's products and non-children's products comply with applicable mandatory standards. 15 U.S.C. 2063(a). Section 14(a)(1) addresses required certifications for non-children's products, and sections 14(a)(2) and (a)(3) address certification requirements specific to children's products.

A ''children's product'' is a consumer product that is ''designed or intended primarily for children 12 years of age or younger.'' *Id.* 2052(a)(2). The following factors are relevant when determining whether a product is a children's product:

- manufacturer statements about the intended use of the product, including a label on the product if such statement is reasonable;
- whether the product is represented in its packaging, display, promotion, or advertising as appropriate for use by children 12 years of age or younger;
- whether the product is commonly recognized by consumers as being intended for use by a child 12 years of age or younger; and
- the Age Determination Guidelines issued by CPSC staff in September 2002, and any successor to such guidelines.

Id. ''For use'' by children 12 years and younger generally means that children will interact physically with the product based on reasonably foreseeable use. 16 CFR 1200.2(a)(2). Children's products may be decorated or embellished with a childish theme, be sized for children, or be marketed to appeal primarily to children. *Id.* § 1200.2(d)(1).

CPSC estimates that approximately 0.1 percent of custom window coverings are specifically designed for children, and based on the factors listed above, fall within the definition of a ''children's product.'' This final rule requires custom window coverings that are children's products to meet the third-party testing and certification requirements in section 14(a) of the CPSA. The Commission's requirements for certificates of compliance are codified at 16 CFR part 1110.

Non-Children's Products. Section 14(a)(1) of the CPSA requires every manufacturer (which includes importers)[44] of a non-children's product that is subject to a consumer product safety rule under the CPSA or a similar rule, ban, standard, or regulation under any other law enforced by the Commission to certify that the product complies with all applicable CSPSC-enforced requirements. 15 U.S.C. 2063(a)(1).

Children's Products. Section 14(a)(2) of the CPSA requires the manufacturer or private labeler of a children's product that is subject to a children's product safety rule to certify that, based on a third-party conformity assessment body's testing, the product complies with the applicable children's product safety rule. *Id.* 2063(a)(2). Section 14(a) also requires the Commission to publish a notice of requirements (NOR) for a third-party conformity assessment body (*i.e.,* testing laboratory) to obtain accreditation to assess conformity with a children's product safety rule. *Id.* 2063(a)(3)(A). Because some custom window coverings are children's products, the final rule is a children's product safety rule, as applied to those products. Accordingly, this final rule also includes a final NOR.

The Commission published a final rule, codified at 16 CFR part 1112, entitled *Requirements Pertaining to Third Party Conformity Assessment Bodies,* which established requirements and criteria concerning testing laboratories. 78 FR 15836 (Mar. 12, 2013). Part 1112 includes procedures for CPSC to accept a testing laboratory's accreditation and lists the children's product safety rules for which CPSC has published NORs. When CPSC issues a new NOR, it must amend part 1112 to include that NOR. Accordingly, as part of this final rule for operating cords on custom window coverings, the Commission also amends part 1112 to add the ''Safety Standard for Operating Cords on Custom Window Coverings'' to

[44] The CPSA defines a ''manufacturer'' as ''any person who manufactures or imports a consumer product.'' 15 U.S.C. 2052(a)(11).

the list of children's product safety rules for which CPSC has issued an NOR.

Testing laboratories that apply for CPSC acceptance to test custom window coverings that are children's products for compliance with the new rule would have to meet the requirements in part 1112. When a laboratory meets the requirements of a CPSC-accepted third party conformity assessment body, the laboratory can apply to CPSC to include 16 CFR part 1260, *Safety Standard for Operating Cords on Custom Window Coverings,* in the laboratory's scope of accreditation of CPSC safety rules listed on the CPSC website at: *www.cpsc.gov/labsearch*.

XI. Effective Date

The Administrative Procedure Act (APA) generally requires that the effective date of a rule be at least 30 days after publication of a final rule. 5 U.S.C. 553(d). Section 9(g)(1) of the CPSA states that a consumer product safety rule shall specify the date such rule is to take effect, and that the effective date must be at least 30 days after promulgation, but cannot exceed 180 days from the date a rule is promulgated, unless the Commission finds, for good cause shown, that a later effective date is in the public interest and publishes its reasons for such finding. The NPR proposed an effective date of 180 days after publication of the final rule in the **Federal Register**. The Commission received over 400 comments on the proposed effective date. Consumer organizations stated that a mandatory standard should be issued as soon as possible, and one supplier of cordless lifting systems (Safe T Shade) stated that 180-day lead time is more than sufficient for industry implementation. Other commenters, however, requested that the Commission lengthen the effective date to allow for product development, training, and marketing of new designs to meet the requirements of the final rule. Some estimated lengthy delays in obtaining equipment and materials, but failed to provide specific justifications. Even the most detailed comments were unpersuasive. For example, two international firms with large Canadian operations (Hunter Douglas and Blinds To Go) failed to address the significance of the similar Canadian standard, while another comment identified the filer inconsistently as Springs Window Furnishings, Springs Window Fashions, or Spring Window Fashions, creating doubt whether the drafters were familiar with the company's operations.

The Commission considered staff's analysis of the effective date and information supplied by commenters, but does not agree that most custom window covering manufacturers require more than 180 days after publication of the final rule to come into compliance, and does not find good cause within the public interest to extend this effective date beyond 180 days. The basis for the Commission's decision to set the effective date at the 180-day upper bound set forth in section 9(g)(1) of the CPSA, is provided in Tabs C and F of Staff's Final Rule Briefing Package, and in sections II.E.4 and III.G.6 of this preamble.

XII. Incorporation by Reference

The Commission incorporates by reference certain provisions of ANSI/WCMA A100.1—2018, American National Standard for Safety of Corded Window Covering Products. The Office of the Federal Register (OFR) has regulations concerning incorporation by reference. 1 CFR part 51. The OFR revised these regulations to require that, for a final rule, agencies must discuss in the preamble the ways that the materials the agency incorporates by reference are reasonably available to interested persons, or how the agency worked to make the materials reasonably available. In addition, the preamble of the final rule must summarize the material. 1 CFR 51.5(a).

Sections I.B.2(d), II, IV, and Tables 3 and 7 of this preamble summarize of the requirements in ANSI/WCMA A100.1—2018, which is incorporated by reference. ANSI/WCMA A100.1—2018 is copyrighted. The public may view a read-only copy of ANSI/WCMA A100.1—2018 free of charge at: *https://wcmanet.com/wp-content/uploads/2021/07/WCMA-A100-2018_v2_websitePDF.pdf.* Alternatively, interested parties may inspect a copy of the standard free of charge by contacting Alberta E. Mills, Office of the Secretary, U.S. Consumer Product Safety Commission, 4330 East West Highway, Bethesda, MD 20814; telephone: 301–504–7479; email: *cpsc-os@cpsc.gov.* To download or print the standard, interested persons may purchase a copy of ANSI/WCMA A100.1—2018 from WCMA, through its website (*https://wcmanet.com*), or contacting the Window Covering Manufacturers Association, Inc., 355 Lexington Avenue, New York, New York 10017; telephone: 212.297.2122.

XIII. Commission Findings

The CPSA requires the Commission to make certain findings when issuing a consumer product safety standard. These findings are contained in the regulatory text.

XIV. Congressional Review Act

The Congressional Review Act (CRA; 5 U.S.C. 801–808) states that, before a rule may take effect, the agency issuing the rule must submit the rule, and certain related information, to each House of Congress and the Comptroller General. 5 U.S.C. 801(a)(1). The submission must indicate whether the rule is a ''major rule.'' The CRA states that the Office of Information and Regulatory Affairs (''OIRA'') determines whether a rule qualifies as a ''major rule.'' Pursuant to the CRA, OIRA designated this rule as a ''major rule,'' as defined in 5 U.S.C. 804(2). To comply with the CRA, CPSC will submit the required information to each House of Congress and the Comptroller General.

List of Subjects

16 CFR Part 1112

Administrative practice and procedure, Audit, Consumer protection, Reporting and recordkeeping requirements, Third-party conformity assessment body.

16 CFR Part 1260

Administrative practice and procedure, Consumer protection, Cords, Imports, Incorporation by reference, Infants and children, Window coverings.

For the reasons discussed in the preamble, the Commission amends chapter II, subchapter B, of title 16 of the Code of Federal Regulations as follows:

PART 1112—REQUIREMENTS PERTAINING TO THIRD PARTY CONFORMITY ASSESSMENT BODIES

■ 1. The authority citation for part 1112 continues to read as follows:

Authority: Pub. L. 110–314, section 3, 122 Stat. 3016, 3017 (2008); 15 U.S.C. 2063.

■ 2. Amend § 1112.15 by adding paragraph (b)(53) to read as follows:

§ 1112.15 When can a third party conformity assessment body apply for CPSC acceptance for a particular CPSC rule or test method?

* * * * *

(b) * * *

(53) 16 CFR part 1260, Safety Standard for Operating Cords on Custom Window Coverings.

* * * * *

■ 3. Add part 1260 to read as follows:

PART 1260—SAFETY STANDARD FOR OPERATING CORDS ON CUSTOM WINDOW COVERINGS

Sec.

Authority: 15 U.S.C. 2056, 15 U.S.C. 2058, and 5 U.S.C. 553.

§ 1260.1 Scope and definitions.

(a) This part establishes a consumer product safety standard for operating cords on custom window coverings. The effective date of this part is May 30, 2023.

(b) The consumer product safety standard in this part relies on the following definitions in section 3 of ANSI/WCMA A100.1—2018 (incorporated by reference, see § 1260.5):

(1) *Custom window covering* (custom blinds, shades, and shadings) has the same meaning as defined in section 3, definition 5.01, of ANSI/WCMA A100.1—2018, as any window covering that is not classified as a stock window covering.

(2) *Stock window covering* (stock blinds, shades, and shadings) has the same meaning as defined in section 3, definition 5.02, of ANSI/WCMA A100.1—2018, as a window covering that is completely or substantially fabricated prior to being distributed in commerce and is a specific stock-keeping unit (SKU). Even when the seller, manufacturer, or distributor modifies a pre-assembled product by adjusting to size, attaching the top rail or bottom rail, or tying cords to secure the bottom rail, the product is still considered stock. Online sales of the product or the size of the order such as multi-family housing do not make the product a non-stock product. These examples are provided in ANSI/WCMA A100.1—2018 to clarify that as long as the product is ''substantially fabricated'' prior to distribution in commerce, subsequent changes to the product do not change its categorization.

(3) *Operating cord* has the same meaning as defined in section 3, definition 2.19, of ANSI/WCMA A100.1—2018, as the portion of the cord that the user manipulates directly during operation (including lifting, lowering, tilting, rotating, and traversing).

(4) *Cord shroud* has the same meaning as defined in section 3, definition 2.09, of ANSI/WCMA A100.1—2018, as a device or material added to limit the accessibility of a cord or formation of a hazardous loop.

(5) *Cord retraction device* has the same meaning as defined in section 3, definition 2.08, of ANSI/WCMA A100.1—2018, as a passive device which winds and gathers cords when tension is no longer applied by the user.

(6) *Rigid cord shroud* is a cord shroud that is constructed of inflexible material, rendering the cord inaccessible as defined in Appendix C of ANSI/WCMA A100.1—2018, to prevent a child from accessing a window covering cord.

(7) *Retractable cord* is a cord that extends when pulled by a user, and fully retracts when the user releases the cord, rendering the cord inaccessible as defined in Appendix C of ANSI/WCMA A100.1—2018.

(8) *Loop cord and bead chain restraining device* is a device, integrated to and installed on the window covering, that prevents the creation of hazardous loop from an accessible continuous operating cord.

(9) *Operating interface* is the part of the window covering that the user physically touches or grasps by hand or a tool to operate the window covering, for example a wand to tilt the slats of the product or the bottom rail to raise or lower the product.

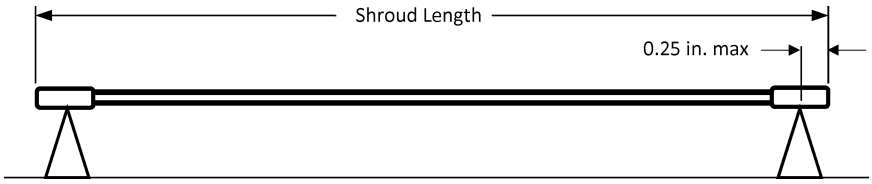
§ 1260.2 Requirements.

(a) *Requirements for operating cords.* Each custom window covering shall comply with section 4.3.1 or 4.3.2.5.2, instead of section 4.3.2, of ANSI/WCMA A100.1—2018 (incorporated by reference, see § 1260.5).

(b) *Requirements for rigid cord shrouds.* If a custom window covering complies with paragraph (a) of this section by using a rigid cord shroud to make an operating cord inaccessible, the rigid cord shroud shall meet the requirements in section 6.3, of ANSI/WCMA A100.1—2018 and shall not have an accessible cord when tested for cord accessibility using the test methods defined in paragraphs (b)(1) and (2) of this section.

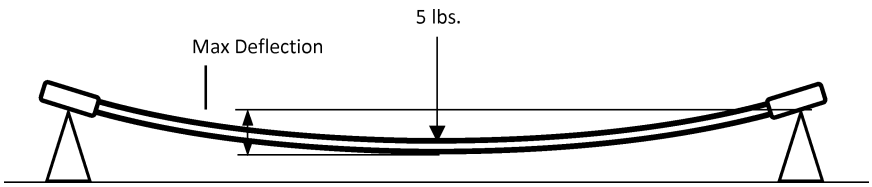
(1) *Test methods for rigid cord shrouds: Center load test.* (i) Support each end of the rigid cord shroud, but do not restrict the rotation along the axial direction. Supports must be within 0.25 inches from the ends of the shroud as shown in figure 1 to this paragraph (b)(1)(i).

Figure 1 to Paragraph (b)(1)(i)—Rigid Cord Shroud Test Set-Up



(ii) Apply a 5-pound force at the center of the rigid cord shroud for at least 5 seconds as shown in figure 2 to this paragraph (b)(1)(ii).

Figure 2 to Paragraph (b)(1)(ii)—Rigid Cord Shroud Center Load Test and Deflection Measurement

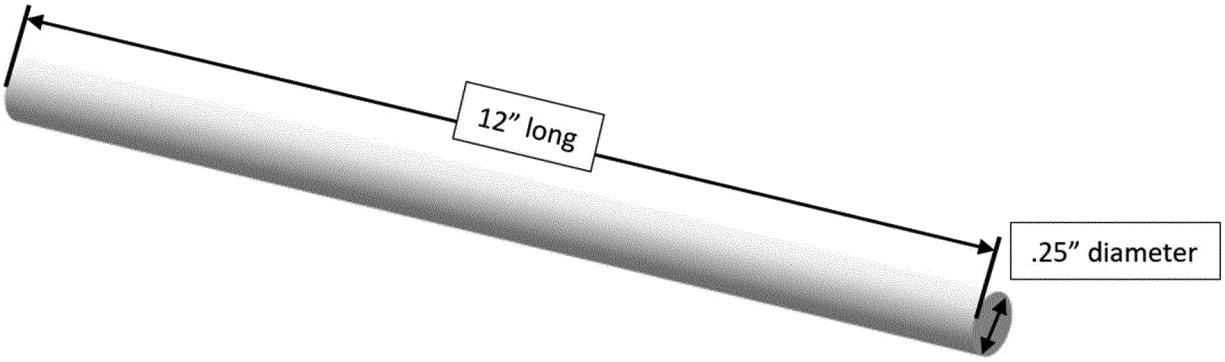


(iii) Measure the maximum deflection of the shroud, while the 5-pound force is applied.

(iv) For rigid cord shrouds that are ≤19 inches, the deflection shall not exceed 1 inch. For every additional 19 inches in shroud length, the shroud can deflect an additional inch. See figure 2 to paragraph (b)(1)(ii) of this section.

(v) While continuing to apply the 5-pound force, determine if the cord(s) can be contacted by the cord shroud accessibility test probe shown in figure 3 to this paragraph (b)(1)(v). If the cord shroud accessibility test probe can touch any cord, the cord(s) are considered accessible.

Figure 3 to Paragraph (b)(1)(v)—Cord Shroud Accessibility Test Probe



(2) *Test methods for rigid cord shrouds: Axial torque test.* (i) Mount one end of the rigid cord shroud and restrict the rotation along the axial direction.

(ii) Apply a 4.4 in-lb. (0.5Nm) torque along the other end of the rigid cord shroud for 5 seconds.

(iii) While continuing to apply the torque, determine if the cord(s) can be contacted by the cord shroud accessibility test probe shown in figure 3 to paragraph (b)(1)(v) of this section. If the cord shroud accessibility test probe can touch any cord, the cord(s) are considered accessible.

(c) *Requirements for cord retraction devices.* If a custom window covering complies with paragraph (a) of this section using a cord retraction device, the cord retraction device shall meet the requirements in paragraphs (c)(1) through (4) of this section.

(1) When a 30 grams mass is applied to the operating interface, the cord retraction device shall maintain full retraction of the retractable cord such that the retractable cord is not accessible per Appendix C of ANSI/WCMA A100.1—2018.

(2) The maximum stroke length for a cord retraction device is 12 inches measured from the bottom of the headrail.

(3) The operating interface for cord retraction devices may not be a cord of any length including a short static or access cord. It may be a ring and pole, a wand or any other design that cannot bend on itself, eliminating the potential of creating a hazardous loop.

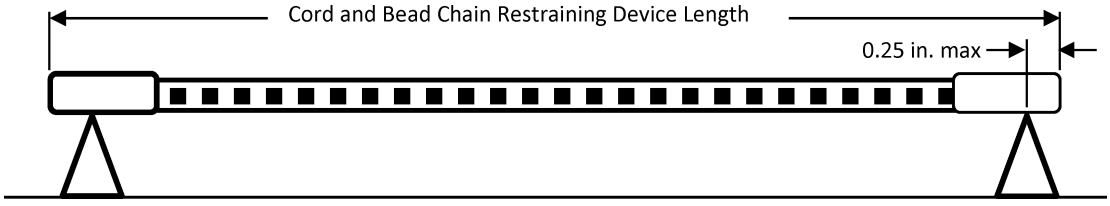
(4) The cord retraction device shall have a service life of at least 5,000 cycles after exposed portions or components have been subjected to 500 hours of ultraviolet (UV) exposure per American Association of Textile Chemists and Colorists (AATCC) Test Method 16–2004, Option 3 of ANSI/WCMA A100.1—2018.

(d) *Requirements for loop cord and bead chain restraining devices.* If a custom window covering complies with paragraph (a) of this section using a loop cord and bead chain restraining device, the loop cord and bead chain restraining device shall meet the requirements in section 6.5, of ANSI/WCMA A100.1—2018 with an additional test as defined in paragraph (d)(l) of this section, and shall not form a hazardous loop when tested for a hazardous loop using the test methods defined in paragraphs (d)(2) and (3) of this section.

(1) *Test methods for loop cord and bead chain restraining device: UV stability and operational cycle test.* One sample loop cord and bead chain restraining device shall be tested to section 6.5.2.2, UV Stability, of ANSI/WCMA A100.1—2018, followed by section 6.5.2.1, Operational Cycle Test, of ANSI/WCMA A100.1—2018.

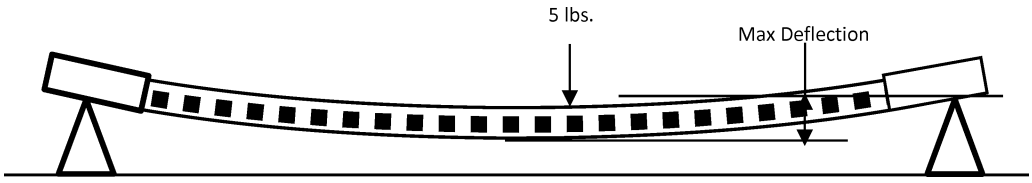
(2) *Test methods for loop cord and bead chain restraining device: Center load test.* (i) Support each end of the loop cord and bead chain restraining device, but do not restrict the rotation along the axial direction. Supports must be within 0.25 inches from the ends of the shroud as shown in figure 4 to this paragraph (d)(2)(i).

Figure 4 to Paragraph (d)(2)(i)—Cord and Bead Chain Restraining Device Test Set-Up



(ii) Apply a 5-pound force at the center of the cord and bead chain restraining device for at least 5 seconds as shown in figure 5 to this paragraph (d)(2)(ii).

Figure 5 to Paragraph (d)(2)(ii)—Loop Cord and Bead Chain Restraining Device Center Load Test and Deflection Measurement



(iii) Measure the maximum deflection of the cord and bead chain restraining device, while the 5-pound force is applied.

(iv) For cord and bead chain restraining device that are ≤19 inches, the deflection shall not exceed 1 inch. For every additional 19 inches in shroud length, the shroud can deflect an additional inch. See figure 5 to paragraph (d)(2)(ii) of this section.

(v) While continuing to apply the 5-pound force, determine if the cord(s) create an opening between the cord and the restraining device. If the hazardous loop head probe (Figure D1 of ANSI/WCMA A1001–2018) can pass through the opening, the opening is considered a hazardous loop.

(3) *Test methods for cord and bead chain restraining devices: Axial torque test.* (i) Mount one end of the cord and bead chain restraining device and restrict the rotation along the axial direction.

(ii) Apply a 4.4 in-lb. (0.5 Nm) torque along the other end of the cord and bead chain restraining device for 5 seconds. While continuing to apply the torque, determine if the cord(s) if the cord(s) create an opening between the cord and the restraining device. If the hazardous loop head probe (Figure D1 of ANSI/WCMA A1001—2018) can pass through the opening, the opening is considered a hazardous loop.

§ 1260.3 Prohibited stockpiling.

(a) *Prohibited acts.* Manufacturers and importers of custom window coverings shall not manufacture or import custom window coverings that do not comply with the requirements of this part in any 180-day period between November 28, 2022, and May 30, 2023, at a rate that is greater than 120 percent of the rate at which they manufactured or imported custom window coverings during the base period for the manufacturer.

(b) *Base period.* The base period for custom window coverings is any period of 180 consecutive dates, chosen by the manufacturer or importer, in the 5-year period immediately preceding November 28, 2022.

§ 1260.4 Findings.

(a) *General.* Section 9(f) of the Consumer Product Safety Act (15 U.S.C. 2058(f)) requires the Commission to make findings concerning the following topics and to include the findings in the rule.

Note 1 to paragraph (a): Because the findings are required to be published in the rule, they reflect the information that was available to the Consumer Product Safety Commission (Commission, CPSC) when the standard was issued on November 28, 2022.

(b) *Degree and nature of the risk of injury.* (1) Operating cords on custom window coverings present an unreasonable risk of strangulation, including death and serious injury, to children 8 years old and younger. If children can access a window covering cord that is longer than 8 inches, children can wrap the cord around their neck, or insert their head into a loop formed by the cord and strangle. Strangulation can lead to serious injuries with permanent debilitating outcomes or death.

(2) Strangulation deaths and injuries on window covering cords are a ''hidden hazard'' because consumers do not understand or appreciate the hazard, or how quickly and silently strangulation occurs. Because young children may be left unsupervised for a few minutes or more in a room that is considered safe, such as a bedroom or family room, adult supervision is unlikely to eliminate or reduce the hazard. Children can wrap the cord around their neck, insert their head into a cord loop and get injured or die silently in a few minutes in any room, with or without supervision.

(3) Safety devices such as cord cleats and tension devices are unlikely to be effective to eliminate or substantially reduce the hazard. Cord cleats, for example, need to be attached on the wall and caregivers must wrap the cord around the cleat each and every time the window covering is raised or lowered. As incident data show, children can still access and become entangled in cords by climbing on furniture. Tension devices also need to be attached on the wall or windowsill, which may not occur (and may not be permitted in rental homes); even if properly installed, depending on how taut the cord loop is, it can still allow a child's head to enter the opening as observed in the incident data.

(4) A user research study found a lack of awareness on cord entanglement among caregivers; lack of awareness of the speed and mechanism of the injury; difficulty using and installing safety devices as primary reasons for not using them; and inability to recognize the purpose of the safety devices provided with window coverings. Warning labels are not likely to be effective because consumers are less likely to look for and read safety information about the products that they use frequently and are familiar with. Many of the children at risk of strangulation, those 8 years old and younger, cannot read or appreciate warning labels. Most of the window covering units involved in strangulation incidents had the permanent warning label on the product. Even well-designed warning labels will have limited effectiveness in communicating the hazard on this type of product.

(5) Every custom product sold with an accessible operating cord presents a hidden hazard to young children and can remain a hazard in the household for one to two decades or longer. Some consumers may believe that because they do not currently have young children living with them or visiting them, accessible operating cords on window coverings are not a safety hazard. However, window coverings last a long time, family circumstances change, and when homes are sold or new renters move in, the existing window coverings, if they are functional, usually remain installed and could be hazardous to new occupants with young children.

(6) Window coverings that comply with the operating cord requirements for stock window covering requirements in section 4.3.1 of ANSI/WCMA A100.1—2018 (incorporated by reference, see § 1260.5) adequately address the strangulation hazard, by not allowing hazardous cords on the product by design, and therefore do not rely on consumer action. CPSC finds that all of the operating cord incidents it identified as involving custom window coverings likely would have been prevented if the requirements in section 4.3.1 of ANSI/WCMA A100.1—2018 were in effect and covered the incident products.

(7) CPSC databases contain incident data showing a total of 209 reported fatal and nonfatal strangulations on window coverings among children eight years and younger, from January 2009

through December 2021. Nearly 48 percent of the reported incidents were fatal (100 of 209). Sixteen of the surviving victims required hospitalization, and six survived a hypoxic-ischemic episode or were pulseless and in full cardiac arrest when found, suffered severe neurological sequalae ranging from loss of memory to a long-term or permanent vegetative state requiring tracheotomy and gastrointestinal tube feeding. One victim remained hospitalized for 72 days, was released with 75 percent permanent brain damage, and is confined to a bed.

(8) Based on CPSC's Injury Cost Model, approximately 7.6 medically treated nonfatal injuries to children 8 years and younger occurred annually in the United States from 2009 through 2021. Based on National Center for Health Statistics (NCHS) data and a separate study of child strangulations, a minimum of approximately 6.8 fatal strangulations related to window covering operating cords (excluding inner cords and lifting loops) occurred per year in the United States among children under eight years old from 2009–2020.

(c) *Number of consumer products subject to the rule.* Approximately 145 million corded custom window coverings were in use in the United States in 2020. About 25 million custom window coverings were shipped in the U.S. in 2020, and about 15.9 million of these were corded custom window coverings.

(d) *The public need for custom window coverings and the effects of the rule on their utility, cost, and availability.* (1) Consumers commonly use window coverings in their homes to control light coming in through windows, for privacy, and for decoration. The window covering market is divided into stock and custom products. The final rule addresses hazards associated with custom window coverings, which present the same risk of strangulation as stock window coverings, but custom window coverings allow consumers to choose from a wider variety of materials, colors, operating systems, or sizes, than stock products.

(2) The Commission does not expect the final rule to have a substantial effect on the utility or availability of custom window coverings, and the impact on cost depends on the product type. The Commission considered whether some consumers, such as the elderly and disabled, or those with windows in hard-to-reach locations, would experience a loss of utility from the removal of accessible operating cords from custom window coverings. The final rule mitigates any potential loss in utility by including several methods to make operating cords safer while still providing ease of use, including rigid cord shrouds, retractable cords, and loop cord and bead restraining devices, to assist consumers to raise and lower custom window coverings. Additionally, consumers can choose to use a remote-controlled operating system, or other tools, such as a pole, to operate the window covering.

(3) Retail prices of custom window coverings vary substantially. The least expensive units for an average size window retail for less than $40, while some more expensive units may retail for several thousand dollars. Custom window covering prices may increase to reflect the added cost of modifying or redesigning products to comply with the final rule. If the costs associated with redesigning or modifying a custom window covering to comply with the standard results in the manufacturer discontinuing that model, there would be some loss in availability of that type.

(4) Although prices of stock window coverings have increased since ANSI/WCMA A100.1—2018 went into effect in 2018, sales of stock products remain consistent. For custom products, which have higher prices on average, consumers very well may be willing to pay more for a safer window covering without affecting sales, similar to stock window coverings. The regulatory analysis in the final rule states that the estimated net cost increase per household to replace all custom window products in a home to be as low as $24 for less expensive products, representing only a 5% increase in cost. Such cost increase is nominal to prevent the hidden strangulation hazard to children on window coverings for the 10 years custom window coverings are likely to be used.

(e) *Other means to achieve the objective of the rule, while minimizing adverse effects on competition and manufacturing.* (1) The Commission considered alternatives to achieving the rule's objective of reducing the unreasonable risks to children of injury and death associated with operating cords on custom window coverings. For example, the Commission considered relying on compliance with the voluntary standard and education campaigns rather than issuing a mandatory rule for operating cords on custom window coverings. This is the approach CPSC has relied on to date, and it would have minimal costs; however, it is unlikely to further reduce the risk of injury from operating cords on custom window coverings.

(2) Similarly, the Commission considered narrowing the scope of the rule to address only the hazards associated with operating cords on custom vertical blinds, curtains, and drapes, because cords are not critical to the operation of these products. Narrowing the rule to these three product types would lessen the cost impact and make it unlikely that any particular product type and/or size would be eliminated, and costs would be near $0 because using plastic rods for operation is very similar to cords in cost. However, only 3 of the 36 custom product incidents (all are fatalities) were associated with vertical blinds, and there were no curtain or drape incidents where the stock/custom classification could be determined. This option would not result in an effective reduction in injuries and deaths.

(3) Other alternatives the Commission considered include: adopting the Canadian standard for window covering cords, which would increase the costs to comply with the rule with no additional benefits, and adopting a draft revised version of the voluntary standard, which the Commission staff has determined is inadequate to address the risk of injury because the revised standard would still allow accessible cords to remain available for sale to consumers.

(4) The Commission also considered setting a later effective date. Based on the record before the Commission, including the severity of the strangulation hazard to children, the advanced state of compliance with similar requirements for stock window coverings in the United States and for stock and custom window coverings in Canada, and the long pendency of this proceeding, the final rule provides an effective date that is 180 days after publication of the final rule, as proposed.

(f) *Unreasonable risk.* (1) Based on CPSC's Injury Cost Model, about 185 medically treated nonfatal injuries are predicted to have occurred annually from 2009 through 2020, involving children eight years and younger. Based on a review of National Center for Health Statistics (NCHS data) and a separate study of child strangulations, a minimum of 8.1 fatal strangulations related to window covering cords occurred per year in the United States among children under five years old from 2009–2020. Based on reviews of CPSC databases, we found reports of a total of 209 reported fatal and nonfatal strangulations on window coverings among children eight years and younger, from January 2009 through December 2021. Nearly 48 percent were

fatal incident reports (100 of 209), while the remaining were near-miss nonfatal incidents.

(2) The Commission estimates that the rule would result in aggregate benefits of about $31.6 million annually due to a reduction in deaths and injuries caused by custom window coverings. Of the potential modifications for which staff was able to estimate the potential cost, the lowest costs were about $2.18 per unit, although costs for some units are likely $0. Effective performance requirements for operating cords on window coverings are well known and already utilized for lower-priced stock window coverings. Technologies to address hazardous window covering cords are also known and utilized on stock products.

(3) The determination of whether a consumer product safety rule is reasonably necessary to reduce an unreasonable risk of injury involves balancing the degree and nature of the risk of injury addressed by the rule against the probable effect of the rule on the utility, cost, or availability of the product. The Commission does not expect the final rule to have a substantial effect on the utility or availability of custom window coverings. The rule may impact the cost of custom window coverings, but consumers already pay more for custom window coverings, and are likely willing to pay more for safer products.

(4) ANSI/WCMA–2018 eliminated the strangulation hazard on stock window coverings, which did not negatively impact sales of stock products; sales increased and cordless technologies became well-developed. The final rule will extend the requirements for stock products to custom window coverings. The Commission expects that the custom window covering market will absorb this cost, just as seen in the stock window covering market. This fact is also observed in the Canadian window covering market after Canada implemented a rule that eliminates hazardous cords on all window covering products. Staff identified no evidence from the Canadian market of a significant reduction in consumer choice as a result of their rule. Rather, the Canadian market has reacted with cost-effective substitutes and redesigned products.

(5) Weighing the possibility of increased costs for custom window coverings with the continuing deaths and injuries to young children, the Commission concludes that custom window coverings with hazardous operating cords pose an unreasonable risk of injury and death and finds that the final rule is reasonably necessary to reduce that unreasonable risk of injury and death.

(6) The Commission also finds that an effective date of 180 days after publication is reasonably necessary to address the unreasonable risk of strangulation from operating cords on custom window coverings. Section 9(g)(1) of the CPSA (15 U.S.C. 2058(g)(1)) sets a presumptive maximum effective date of 180 days after publication of the rule. To extend this period, the Commission must find good cause that doing so is within the public interest. When balancing the risk of severe harm and death to young children over the entire service life of noncompliant window coverings, against the possibility that some styles of custom window coverings may be less available during a transition period and stock products or other custom styles might need to be used instead, the Commission finds that the public interest is better served by protecting the safety of children and families.

(g) *Public interest.* The final rule is intended to address an unreasonable risk of injury and death posed by hazardous operating cords on custom window coverings. Adherence to the requirements of the final rule will significantly reduce or eliminate a hidden hazard, strangulation deaths and injuries to children 8 years old and younger, without major disruption to industry or consumers; thus, the Commission finds that promulgation of the rule is in the public interest.

(h) *Voluntary standards.* The Commission is aware of one national voluntary standard, ANSI/WCMA A100.1—2018, as well as European, Australian, and Canadian standards. Among these, the Commission considers the Canadian standard to be the most stringent because it applies to all window coverings. ANSI/WCMA A100.1—2018 contains adequate performance requirements to address the risk of strangulation on inner cords for both stock and custom window coverings and contains adequate requirements to address the risk of injury on operating cords for stock products. The Commission also finds that custom window coverings substantially comply with the voluntary standard. However, the Commission finds that operating cord requirements for custom window coverings in ANSI/WCMA A100.1—2018 are inadequate to address the risk of injury, because the voluntary standard allows accessible and hazardous operating cords to be present on custom products. Thus, the Commission finds that compliance with an existing voluntary standard is not likely to result in the elimination or adequate reduction of the risk of injury presented by custom window coverings.

(i) *Relationship of benefits to costs.* (1) The aggregate benefits of the rule are conservatively estimated to be about $23 million annually with the base value of statistical life (VSL); and the lowest cost of the rule is estimated to be about $54.4 million annually. Recent studies suggest that the VSL for children could be higher than that for adults. In other words, consumers might be willing to pay more to reduce the risk of premature death of children than to reduce the risk of premature death of adults. A review of the literature conducted for the CPSC suggested that the VSL for children could exceed that of adults by a factor of 1.2 to 3, with a midpoint of around 2 (Industrial Economics, Incorporated (IEc), 2018). ''Memorandum to CPSC: Valuing Reductions in Fatal Risks to Children.'' Cambridge, MA (available at: *https://www.cpsc.gov/s3fs-public/VSL_Children_Report_FINAL_20180103.pdf*). The Commission received positive comment on increasing the VSL for children by a factor of 3. Staff provided a sensitivity analysis for the final rule demonstrating how the ratio of costs and benefits change based on several variables, including a higher VSL for children. When staff increased the VSL by a factor of 3 for children (value of $31.5 million), the benefits of the rule exceed costs by approximately $14.3 million.

(2) Staff's benefits and costs analysis also highlights unquantified benefits regarding the emotional distress of caregivers that could also be reduced by the final rule. This benefit is not directly accounted for in the primary VSL estimate of $10.5 million. The value of the shock or perceived guilt related to a caregiver's inattentiveness could be significant, as it could result in large reductions to physical wellbeing or income loss.

(3) To determine how the final rule impacts consumers, staff converted costs and benefits of the rule into a calculated net cost per household, based on the data point that the average detached, single-family household has 12 window coverings. This analysis translates into a net cost of the final rule of $1.97 for metal or vinyl horizontal blinds. Using the assumption of 12 window coverings per household, this equates to a net cost of the rule (above the benefits provided) of $23.67 per household every time a household updates their custom window coverings, about once every 10 years. For metal or vinyl horizontal blinds, $23.67 is slightly more than 5 percent of the total cost of $448.32 that a household would

spend to update their window coverings.

(4) We note that economies of scale associated with the voluntary standard for stock product operating cords, and the Canadian standard, may have reduced costs associated with cordless components since Commission staff developed the bases for their cost estimates as early as 2016. Additionally, custom window coverings have a longer product life, which increases the benefit of improving safety beyond the levels Commission staff determined for both stock and customer window coverings.

(5) Based on this analysis, the Commission finds that the benefits expected from the rule bear a reasonable relationship to the anticipated costs of the rule.

(j) *Least burdensome requirement that would adequately reduce the risk of injury.* (1) The Commission considered less-burdensome alternatives to the final rule, detailed in paragraph (e) of this section, but finds that none of these alternatives would adequately reduce the risk of injury.

(2) The Commission considered relying on voluntary recalls, compliance with the voluntary standard, and education campaigns, rather than issuing a mandatory standard. These alternatives would have minimal costs but would be unlikely to reduce the risk of injury from custom window coverings that contain hazardous cords.

(3) The Commission considered issuing a standard that applies only to certain types of window coverings such as vertical blinds. This would impose lower costs on manufacturers but is unlikely to adequately reduce the risk of injury because it would only address incidents associated with those types. Based on the custom product incident data, only 8.3 percent of the incidents involved vertical blinds and 22.2 percent involved faux wood/wood blinds. The Commission considered adopting the Canadian standard for window covering cords, which would increase the costs to comply with the rule with no additional benefits and/or providing a longer effective date. And the Commission considered adopting a 2022 draft revision of the voluntary standard but finds the requirements in the standard inadequate to address the risk of injury.

§ 1260.5 Standards incorporated by reference.

(a) Certain material is incorporated by reference into this part with the approval of the Director of the Federal Register under 5 U.S.C. 552(a) and 1 CFR part 51. All approved material is available for inspection at the U.S. Consumer Product Safety Commission (CPSC) and at the National Archives and Records Administration (NARA). Contact CPSC at: Office of the Secretary, U.S. Consumer Product Safety Commission, 4330 East West Highway, Bethesda, MD 20814, telephone (301) 504–7479, email: *cpsc-os@cpsc.gov.* 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 source(s) listed in the following paragraphs of this section.

(b) Window Covering Manufacturers Association, Inc., 355 Lexington Avenue, New York, New York 10017, telephone: 212.297.2122, *https://wcmanet.com.*

(1) ANSI/WCMA A100.1—2018, American National Standard for Safety of Corded Window Covering Products, approved January 8, 2018; IBR approved for §§ 1260.1, 1260.2, and 1260.4.

(i) *Read-only copy. https://www.wcmanet.com/pdf/WCMA-A100.1-2018_view-only_v2.pdf.*

(ii) *Purchase. https://webstore.ansi.org/Standards/WCMA/ANSIWCMAA1002018.*

(2) [Reserved]

§ 1260.6 Severability.

The provisions of this part are separate and severable from one another. If any provision is stayed or determined to be invalid, it is the Commission's intention that the remaining provisions shall continue in effect.

Alberta E. Mills,

Secretary, Consumer Product Safety Commission.

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Part IV

Central Intelligence Agency

Privacy Act of 1974; System of Records; Notice

CENTRAL INTELLIGENCE AGENCY

Privacy Act of 1974; System of Records

AGENCY: Central Intelligence Agency.

ACTION: Notice of Modified Systems of Records and Rescindment of Systems of Records Notices.

SUMMARY: Notice is hereby given that the Central Intelligence Agency (''CIA'' or ''the Agency'') is submitting to the **Federal Register** a total of forty two (42) System of Records Notices (SORNs), and nineteen (19) General Routine Uses. Of the total package, CIA has significantly modified seven (7) existing SORNs, rescinded five (5) SORNs, created two (2) new SORNs. With respect to CIA's routine uses, the Agency modified one (1) General Routine Use, and created five (5) new General Routine Uses. (CIA–33) is not reissued and remains in effect as published on July 22, 2005. The remaining SORNs and General Routine Uses contain updates with respect to organizational changes at CIA, as well as new requirements set by OMB.

DATES: This action is effective November 28, 2022, subject to a 30-day period in which to comment on the routine uses. Please submit any comments by December 28, 2022.

ADDRESSES: Comments may be submitted by the following methods: By mail to Kristi L. Scott, Privacy and Civil Liberties Officer, Central Intelligence Agency, Washington, DC 20505, by telephone at (571) 280–2700, or by email to *FedRegComments@ucia.gov.* Please include ''NOTICE OF ROUTINE USES AND NEW AND MODIFIED CIA SORNS'' in the subject line of the message.

FOR FURTHER INFORMATION CONTACT: Kristi L. Scott, Privacy and Civil Liberties Officer, Central Intelligence Agency, Washington, DC 20505, (571) 280–2700.

SUPPLEMENTARY INFORMATION: CIA's Office of Privacy and Civil Liberties (OPCL) conducted an omnibus review of all Agency SORNs. OPCL determined that CIA's SORNs and General Routine Uses (RUs) could be enhanced in accordance with OMB's updated guidance outlined in A–108. Rather than issuing piecemeal revisions, OPCL is hereby republishing the updated notices for all of its SORNs and corresponding RUs in a consolidated publication. By issuing a consolidated publication of all of its SORNs, OPCL intends to ease the administrative burden of the public having to search through multiple **Federal Register** volumes.

As such, CIA is publishing a total of forty two (42) SORNs in this volume. Of this total, CIA has modified seven (7) existing SORNs; rescinded four (4) SORNs; and created two (2) new SORNs. CIA is also republishing a total of nineteen (19) General RUs that are applicable to all CIA SORNs. CIA also modified one (1) General RU and created five (5) new General Routine Uses to conform to OMB guidance.

New SORNs

The new CIA SORNs are to account for the Agency's Environmental Safety Records (CIA–42) and CIA's Insider Threat Program (CIA–43). As part of operating its property, CIA maintains records that document facility safety requirements, such as repairs to property, building, and maintenance requests. With respect to CIA's Insider Threat Program, CIA is publishing this new SORN to reflect changes to Executive Orders, policies, and practices, to deter insider threat activities, and educate the CIA workforce on insider threat matters.

Modified SORNs

The modified SORNs reflect the organizational changes of CIA's directorates, including updates to authorities, purposes, categories of records, categories of individuals, and record controls. CIA modified (CIA–10), Parking Records, to include reasonable accommodations and business analytics to improve parking lot availability. CIA updated (CIA–13), Component Human Resource Records, to update new categories of individuals in order to improve efficiencies for onboarding prospective CIA employees. CIA updated (CIA–16), Employee Clinical and Psychiatric Records, to more accurately describe modernization efforts at the Agency. CIA updated (CIA–17), Applicant Clinical and Psychiatric Records, to include additional categories of individuals covered and records contained in the system of records to include individuals eligible to participate in the CIA's medical program. CIA updated (CIA–18), Psychological Testing Records, to more accurately describe the categories of individuals and categories of records maintained in the system of records. CIA updated (CIA–19), Agency Human Resource Records, to more accurately describe official personnel files of former and current CIA staff. CIA updated (CIA–26), Office of General Counsel Records, to reflect business modernization efforts to work on legal documents.

The modified SORNs have undergone non-substantive modifications to reflect new Agency titles, to note different internal record locations, and to cite to new authorities. CIA has not made any modifications to (CIA–32) Community Management Records.

Rescinded SORNs

CIA has rescinded four (4) SORNs that are no longer necessary due to changes in CIA's organizational structure or the decommission of certain systems of records. More specifically, (CIA–11), Accountable Property Records, was established to enable authorized personnel to document accountability for CIA nonexpendable property and to track, inventory, audit, and report on accountable property. The records are now maintained and retrieved by a serial number of the accountable property item or by location of such accountable property, instead of by name or other personal identifier.

(CIA–20), Official Personnel Files, was established to enable authorized human resources personnel to administer routine personnel transactions including: personnel assignments, performance evaluations, promotions, adverse actions, counseling, retirement determinations and qualifications, separations, medical or insurance claims, employment verification, and statistical reports. Although the records in this system are still managed by the CIA's Office of Personnel Resources, the records are now maintained in the Privacy Act system covered by (CIA–19), Agency Human Resources Records. Due to the CIA's unique personnel authorities, Official Personnel Files of current and former agency employees are maintained and located on CIA premises. However, duplicate copies are also maintained separately by the Office of Personnel Management (OPM) for the administration of Federal employee benefit programs and fall within the scope of OPM/GOVT–1, General Personnel Records.

(CIA–23), Intelligence Community Security Clearance and Access Approval Repository, was established to enable authorized personnel to verify individual security clearances or security access approvals throughout the Intelligence Community, in order to appropriately authorize and control access to classified and compartmented information. This database now operates under the authorities and direction of the Office of the Director of National Intelligence (ODNI) and is covered by (ODNI–12), Intelligence Community Security Clearance and Access Approval Repository.

Finally, (CIA–33), National Intelligence Council Records, was

established to enable authorized personnel to provide classified and unclassified information within the CIA and to appropriate Intelligence Community elements and U.S. Government officials for the conduct of authorized activities in support intelligence support of policymakers and other senior intelligence consumers. This database now operates under the authorities of the Office of the Director of National Intelligence (ODNI) and is covered by ODNI–15, Mission Outreach and Collaboration Records.

The SORN citations designated to the rescinded SORNs will be reserved in the Agency's full republication, below, for ease of reference.

Statement of General Routine Uses

The Agency significantly modified one (1) General Routine Use, and added five (5) new General Routine Uses to its ''Statement of General Routine Uses,'' in order to clarify and increase the public's knowledge of the circumstances in which the Agency may disclose, as a routine use, records from Privacy Act systems of records and to enhance the Agency's ability to share information essential to the conduct of its national security mission.

The Agency proposes renumbering General Routine Use 14 as General Routine Use 19, and: (1) requiring the disclosure under this routine use be approved by the Director of the CIA, or designee; (2) requiring the concurrence of the Privacy and Civil Liberties Officer; and (3) requiring a written assessment that the anticipated benefits outweigh the potential risks resulting from dissemination and whether the receiving entities will be subject to further restrictions on the use and dissemination of the record.

Additionally, CIA proposes adding new General Routine Uses 14 and 15 to ensure that the Agency can lawfully disclose records when reasonably necessary to identify, assess, and respond to breaches. The Agency proposes adding General Routine Use 16 to authorize the CIA to disclose records when required to elicit information or cooperation from the recipient of the information when CIA performs its authorized activities. The Agency proposes adding Routine Use 17 to authorize responsible CIA personnel to disclosure records when necessary to conduct or report the progress and/or results of an investigation or inquiry into claims of discrimination or harassment brought pursuant to either federal employment laws or internal Agency regulations. Finally, the Agency proposes adding General Routine Use 18 to authorize CIA to disclose ODNI or ODNI-related records to ODNI when necessary to perform functions or services for which CIA has been engaged by ODNI.

The remaining General Routine Uses underwent minor updates to reduce redundant language and better articulate the recipient(s) of the records, as well as the purpose(s) for which the CIA discloses the records. Additionally, many of the CIA SORNs retain their Privacy Act system of records specific routine uses limited to the disclosures of records maintained in the corresponding Privacy Act system of records, as published in the SORNs below. The Agency is providing an opportunity for interested persons to submit comments on the Agency's General Routine Uses, as well as the Privacy Act system of records-specific routine uses. Unless CIA determines that, based on the submitted comments, substantial modifications are required, the routine uses will take effect 30 days after publication.

Nothing in the new or modified SORNs, or new or modified General Routine Uses, changes the Central Intelligence Agency's authorities regarding the collection and maintenance of information about citizens and lawful permanent residents of the United States, nor do the changes impact any individual's rights to access or to amend their records pursuant to the Privacy Act.

In accordance with 5 U.S.C. 552a(r), the Agency has provided a report to OMB and Congress on the new, modified, and rescinded system of records.

Dated: November 10, 2022.

Kristi L. Scott,

Privacy and Civil Liberties Officer, Central Intelligence Agency.

Statement of General Routine Uses for the Central Intelligence Agency

The following routine uses apply to, and are incorporated by reference into, each system of records maintained by the CIA:

1. Disclosure of a record indicating or relating to a violation or potential violation of law, whether civil, criminal or regulatory in nature, and whether arising by general statute or particular program pursuant thereto, to the appropriate agency whether federal, state, local or foreign, charged with the responsibility of investigating or prosecuting such violation, charged with the responsibility to take appropriate administrative action, or charged with enforcing or implementing the law related to the violation or potential violation.

2. Disclosure to a federal, state or local agency maintaining civil, criminal, relevant enforcement information, or other pertinent information, such as current licenses, to the extent necessary to obtain information relevant to a Central Intelligence Agency decision concerning hiring or retention of an employee, issuance of a security clearance or special access, or performance of the CIA's acquisition functions.

3. Disclosure to a federal, state, or local agency, or other appropriate entities or individuals, in connection with the hiring or retention of an employee, the issuance of a security clearance or special access, the reporting or an investigation of an employee, the letting of a contract, or the issuance of a license, grant or other benefit, to the extent that the information is relevant and necessary to the entity's decision on the matter.

4. Disclosure in the course of presenting information or evidence to a court, magistrate, special master, administrative law judge, or administrative board or panel, including disclosures made pursuant to statutes or regulations governing the conduct of such proceedings.

5. Disclosure to the Office of Management and Budget (OMB) in connection with the review of private relief legislation, as set forth in OMB Circular No. A–19, or its successor, at any stage of the legislative coordination and clearance process.

6. Disclosure to the National Archives and Records Administration (NARA) in records management inspections conducted under the authority of 44 U.S.C. 2904 and 2906.

7. Disclosure to a federal, state, or local agency, other appropriate entities or individuals, or, through established liaison channels, to select foreign governments, provided such disclosure is compatible with the purpose for which the record was collected and is undertaken to enable the Central Intelligence Agency to carry out its intelligence mission in support of U.S. national security objectives under authorizing laws, statutes, policies, and regulations or any successor order, national security directives applicable to the Agency and implementing procedures approved by the Attorney General promulgated pursuant to such Orders and directives, as well as statutes, Executive orders and directives of general applicability. This routine is not intended to supplant the other routine uses published by the Central Intelligence Agency.

8. Disclosure to a Member of Congress or Congressional staffer acting upon the

Member's behalf in response to an inquiry from that Member or staffer made at the written request of the constituent who is the subject of the record.

9. Disclosure to the public or to the media for release to the public, to enable the CIA to respond to charges of illegal or improper activity, professional misconduct, or incompetence when such allegations have become publicly known, and the General Counsel in consultation with the Privacy and Civil Liberties Officer, determines that such disclosures are necessary to preserve public confidence in the Agency and the integrity of its processes, or to demonstrate the accountability of the Agency and its employees, and such disclosures do not clearly constitute an unwarranted invasion of personal privacy.

10. Disclosure to any Federal agency when information obtained from that agency is used in compiling the record, and the record is relevant to the official responsibilities of that agency.

11. Disclosure to representatives of the Department of Justice or of any other entity responsible for representing the interests of the Central Intelligence Agency in connection with judicial, administrative, or other proceedings. Records may also be disclosed to representatives of the Department of Justice and other U.S. Government entities designated by the CIA to represent CIA interests, to the extent necessary to obtain advice on any matter.

12. Disclosure to individual Members or staff of the Senate Select Committee on Intelligence and the House Permanent Select Committee on Intelligence in connection with the exercise of the Committees' intelligence oversight and legislative functions, when such limited disclosures are necessary to a lawful activity of the United States, and the CIA General Counsel has determined that such disclosures are otherwise lawful.

13. Disclosure to the President's Intelligence Advisory Board, the Intelligence Oversight Board, any successor organizations, and other intelligence or independent oversight entities established by the President or Congress, when the Director of the Central Intelligence Agency determines that such disclosures will assist these entities in the performance of their oversight functions.

14. Disclosure to appropriate Federal agencies, entities, and individuals when the CIA: (1) suspects or has confirmed that there has been a breach of a Privacy Act system of records; (2) has determined that as a result of the suspected or confirmed breach there is a risk of harm to individuals, the CIA (including its information systems, programs and operations), the Federal Government, or national security; and (3) the disclosure made to such agencies, entities, and individuals is reasonably necessary to assist in connection with the CIA's efforts to respond to the suspected or confirmed breach or to prevent, minimize, or remedy such harm.

15. Disclosure to appropriate Federal agencies, entities, and individuals when the CIA determines that information from a Privacy Act system of records is reasonably necessary to assist the recipient agency, entity or individual in: (1) responding to a suspected or confirmed breach; or (2) preventing, minimizing, or remedying the risk of harm to individuals, the recipient agency or entity (including its information systems, programs, and operations), the Federal Government, or national security, resulting from a suspected or confirmed breach.

16. Disclosure to any individual or entity that the CIA has reason to believe possesses information regarding a matter within the jurisdiction of the CIA, to the extent deemed to be necessary in order to elicit such information or cooperation from the recipient for use in the performance of an authorized activity.

17. Disclosure to complainants, Responsible Management Officials (RMOs), witnesses, and other individuals to the extent necessary to conduct or report the progress and/or results of an investigation or inquiry into claims of discrimination or harassment brought pursuant to either federal employment laws or internal Agency regulations.

18. Disclosure to the Office of the Director of National Intelligence (ODNI) to the extent that CIA maintains ODNI or ODNI-related records pursuant to a service level agreement, when access to such records is necessary to perform the function or service for which the CIA has been engaged by ODNI.

19. In accordance with the CIA's approved Attorney General Guidelines, disclosure to other appropriate recipients, if such dissemination is necessary to a lawful activity of the United States, including for a foreign intelligence, counterintelligence, and counterterrorism purpose, with approval from the Director of the CIA or designee, concurrence by the Privacy and Civil Liberties Officer, and concurrence by the General Counsel after consultation with the National Security Division of the Department of Justice. Any such disclosure will require a written assessment that the anticipated benefits outweigh the potential risks resulting from dissemination and whether the receiving entities will be subject to further restrictions on the use and dissemination of the record.

Privacy Act Systems of Records Notices

CIA–1

SYSTEM NAME AND NUMBER:

Financial Records (CIA–1).

SECURITY CLASSIFICATION:

The classification of records in this system can range from UNCLASSIFIED to TOP SECRET.

SYSTEM LOCATION:

Central Intelligence Agency, Washington, DC 20505.

SYSTEM MANAGER(S):

Chief Financial Officer, Central Intelligence Agency, Washington, DC 20505.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

The National Security Act of 1947, as amended, 50 U.S.C. 3036 *et seq.;* the Central Intelligence Agency Act of 1949, as amended, 50 U.S.C. 3501 *et seq.;* the Central Intelligence Agency Retirement Act, 50 U.S.C. 2001 *et seq.;* Executive Order 12333, as amended, 73 FR 45325.

PURPOSE(S) OF THE SYSTEM:

Records in this system are used by authorized personnel to: ensure process integrity; enable the CIA and the Director of the CIA to carry out their lawful and authorized responsibilities; provide accounting data to track items such as budget and expenses to allow the CIA to acquire goods and services and provide an accounting infrastructure; provide travel services; and develop financial management expertise for fiscal resource utilization and control; and determine whether the commitment and expenditure of CIA funds is authorized, approved, and certified by officials to whom such authority has been delegated.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Current and former CIA staff and contract employees, and military and civilian personnel detailed to CIA; and personal services independent contractors, industrial contractors, commercial vendors, and consultants to the CIA.

CATEGORIES OF RECORDS IN THE SYSTEM:

This system contains financial accounts and records concerning CIA expenditures. This includes: records

relating to financial transactions associated with commercial vendors and contracts; official travel orders, records of funds advanced and transportation furnished, copies of travel claims and accountings, visas, and passports; records concerning claims submitted for financial review, including all financial documentation accumulated in the collection and settlement of amounts due the agency from employees and former employees; records tracking general accounting data, including the status of funds advanced to individuals for official purposes and the procurement of materials and services; records on certifying officers, contracting officers, approving officers, cash custodians and credit card holders, including authorizing letters and signature cards; and records for the processing of personal property claims and related activity.

RECORD SOURCE CATEGORIES:

CIA employees and other individuals requiring parking permits at CIA-controlled facilities.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

In addition to the disclosures generally permitted under 5 U.S.C. Section 552a(b), this information is set forth in the ''Statement of General Routine Uses for the Central Intelligence Agency,'' set out above, which is incorporated herein by reference.

POLICIES AND PRACTICES FOR STORAGE OF RECORDS:

Paper and other hard-copy records are stored in secured areas within the CIA or in CIA-controlled facilities. Electronic records are stored in secure file-servers located within CIA-controlled facilities.

POLICIES AND PRACTICES FOR RETRIEVAL OF RECORDS:

Records in this system may be retrieved by name, chart number, social security number, CIA employee number, or other unique personal identifier by automated or hand search based on extant indices and automated capabilities utilized in the normal course of business. Under applicable law and regulations, all searches of this system of records will be performed in CIA offices by CIA personnel.

POLICIES AND PRACTICES FOR RETENTION AND DISPOSAL OF RECORDS:

All records are maintained and disposed of in accordance with applicable Records Control Schedules issued or approved by the National Archives and Records Administration.

ADMINISTRATIVE, TECHNICAL, AND PHYSICAL SAFEGUARDS:

Records are maintained in secure, restricted areas and are accessed only by personnel who have a need for the records in the performance of their official duties and have been authorized for such access. Electronic authorization and authentication access controls are required to prevent against unauthorized access, use, and disclosure.

RECORD ACCESS PROCEDURES:

Requests from individuals should be addressed as indicated in the notification procedures section below. Regulations for access to individual records or for appealing an initial determination by CIA concerning the access to records are published in the **Federal Register** (32 CFR 1901.11–.45).

CONTESTING RECORD PROCEDURES:

Requests from individuals to correct or amend records should be addressed as indicated in the notification procedures section below. CIA's regulations regarding requests for amendments to, or disputing the contents of, individual records or for appealing an initial determination by CIA concerning these matters are published in the **Federal Register** (32 CFR 1901.21–.32, 32 CFR 1901.42).

NOTIFICATION PROCEDURES:

Individuals seeking to learn if this system of records contains information about them should direct their inquiries to: Information and Privacy Coordinator, Central Intelligence Agency, Washington, DC 20505. Identification requirements are specified in the CIA rules published in the **Federal Register** (32 CFR 1901.12–.14). Individuals must comply with these rules in order for their request to be processed.

EXEMPTIONS PROMULGATED FOR THE SYSTEM:

Certain records contained within this system of records may be exempted from certain provisions of the Privacy Act, 5 U.S.C. 552a, pursuant to 5 U.S.C. 552a(d)(5), (j)(1), and (k).

HISTORY:

70 FR 42417, July 22, 2005.

CIA–2

SYSTEM NAME AND NUMBER:

Training Records (CIA–2).

SECURITY CLASSIFICATION:

The classification of records in this system can range from UNCLASSIFIED to TOP SECRET.

SYSTEM LOCATION:

Central Intelligence Agency, Washington, DC 20505.

SYSTEM MANAGER(S):

Chief, Training and Development Office, Central Intelligence Agency, Washington, DC 20505.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

The National Security Act of 1947, as amended, 50 U.S.C. 3036 *et seq.;* the Central Intelligence Agency Act of 1949, as amended, 50 U.S.C. 3501 *et seq.;* Executive Order 12333, as amended, 73 FR 45325.

PURPOSE(S) OF THE SYSTEM:

Records in this system are used by authorized personnel to: ensure process integrity; enable the CIA and the Director of the CIA to carry out their lawful and authorized responsibilities; manage training activities for individuals assigned to the CIA; process requests for internal and external training for CIA staff and contract employees, personal services independent contractors, industrial contractors, and military and civilian personnel detailed to CIA; update and provide reference for CIA employee training records; and facilitate the process for selecting instructors for the CIA off-campus education program.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

CIA staff and contract employees, other federal employees, CIA personal services independent contractors, and industrial contractors to CIA who have completed internal and CIA-sponsored external training courses or programs; and instructors and potential instructors for the CIA off-campus education program.

CATEGORIES OF RECORDS IN THE SYSTEM:

Transcripts of CIA-sponsored training; student and instructor biographic data; course information; and names of CIA employees responsible for approving CIA-sponsored training.

RECORD SOURCE CATEGORIES:

Individuals covered by this system; students and instructors in CIA internal and CIA-sponsored external training; and training facilities and other educational institutions.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

In addition to the disclosures generally permitted under 5 U.S.C. Section 552a(b), this information is set forth in the ''Statement of General Routine Uses for the Central Intelligence Agency,'' set out above, which is incorporated herein by reference.

POLICIES AND PRACTICES FOR STORAGE OF RECORDS:

Paper and other hard-copy records are stored in secured areas within the CIA or in CIA-controlled facilities. Electronic records are stored in secure file-servers located within CIA-controlled facilities.

POLICIES AND PRACTICES FOR RETRIEVAL OF RECORDS:

Records in this system may be retrieved by name, chart number, social security number, CIA employee number, or other unique personal identifier by automated or hand search based on extant indices and automated capabilities utilized in the normal course of business. Under applicable law and regulations, all searches of this system of records will be performed in CIA offices by CIA personnel.

POLICIES AND PRACTICES FOR RETENTION AND DISPOSAL OF RECORDS:

All records are maintained and disposed of in accordance with applicable Records Control Schedules issued or approved by the National Archives and Records Administration.

ADMINISTRATIVE, TECHNICAL, AND PHYSICAL SAFEGUARDS:

Records are maintained in secure, restricted areas and are accessed only by personnel who have a need for the records in the performance of their official duties and have been authorized for such access. Electronic authorization and authentication access controls are required to prevent against unauthorized access, use, and disclosure.

RECORD ACCESS PROCEDURES:

Requests from individuals should be addressed as indicated in the notification procedures section below. Regulations for access to individual records or for appealing an initial determination by CIA concerning the access to records are published in the **Federal Register** (32 CFR 1901.11–.45).

CONTESTING RECORD PROCEDURES:

Requests from individuals to correct or amend records should be addressed as indicated in the notification procedures section below. CIA's regulations regarding requests for amendments to, or disputing the contents of, individual records or for appealing an initial determination by CIA concerning these matters are published in the **Federal Register** (32 CFR 1901.21–.32, 32 CFR 1901.42).

NOTIFICATION PROCEDURES:

Individuals seeking to learn if this system of records contains information about them should direct their inquiries to: Information and Privacy Coordinator, Central Intelligence Agency, Washington, DC 20505. Identification requirements are specified in the CIA rules published in the **Federal Register** (32 CFR 1901.12–.14). Individuals must comply with these rules in order for their request to be processed.

EXEMPTIONS PROMULGATED FOR THE SYSTEM:

Certain records contained within this system of records may be exempted from certain provisions of the Privacy Act, 5 U.S.C. 552a, pursuant to 5 U.S.C. 552a(d)(5), (j)(1), and (k).

HISTORY:

70 FR 42417, July 22, 2005.

CIA–3

SYSTEM NAME AND NUMBER:

Language Program Records (CIA–3).

SECURITY CLASSIFICATION:

The classification of records in this system can range from UNCLASSIFIED to TOP SECRET.

SYSTEM LOCATION:

Central Intelligence Agency, Washington, DC 20505.

SYSTEM MANAGER(S):

Chief, Training and Development Office, Central Intelligence Agency, Washington, DC 20505.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

The National Security Act of 1947, as amended, 50 U.S.C. 3036 *et seq.;* the Central Intelligence Agency Act of 1949, as amended, 50 U.S.C. 3501 *et seq.;* Executive Order 12333, as amended, 73 FR 45325.

PURPOSE(S) OF THE SYSTEM:

Records in this system are used by authorized personnel to: ensure process integrity; enable the CIA and the Director of the CIA to carry out their lawful and authorized responsibilities; provide information concerning language proficiency of CIA and non-CIA personnel who have taken internal or CIA-sponsored external language training or testing; monitor student performance; and conduct research and compile statistics on a variety of matters related to language learning and testing.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

CIA staff and contract employees, and other individuals who have participated in CIA-managed or CIA-sponsored language training and testing.

CATEGORIES OF RECORDS IN THE SYSTEM:

Biographic data; test scores; training reports from instructors; training requests from sponsoring office(s); and attendance reports.

RECORD SOURCE CATEGORIES:

Students and instructors in CIA internal or CIA-sponsored external language training courses.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

In addition to the disclosures generally permitted under 5 U.S.C. Section 552a(b), this information is set forth in the ''Statement of General Routine Uses for the Central Intelligence Agency,'' set out above, which is incorporated herein by reference.

POLICIES AND PRACTICES FOR STORAGE OF RECORDS:

Paper and other hard-copy records are stored in secured areas within the CIA or in CIA-controlled facilities. Electronic records are stored in secure file-servers located within CIA-controlled facilities.

POLICIES AND PRACTICES FOR RETRIEVAL OF RECORDS:

Records in this system may be retrieved by name, chart number, social security number, CIA employee number, or other unique personal identifier by automated or hand search based on extant indices and automated capabilities utilized in the normal course of business. Under applicable law and regulations, all searches of this system of records will be performed in CIA offices by CIA personnel.

POLICIES AND PRACTICES FOR RETENTION AND DISPOSAL OF RECORDS:

All records are maintained and disposed of in accordance with applicable Records Control Schedules issued or approved by the National Archives and Records Administration.

ADMINISTRATIVE, TECHNICAL, AND PHYSICAL SAFEGUARDS:

Records are maintained in secure, restricted areas and are accessed only by personnel who have a need for the records in the performance of their official duties and have been authorized for such access. Electronic authorization and authentication access controls are required to protect against unauthorized access, use, and disclosure.

RECORD ACCESS PROCEDURES:

Requests from individuals should be addressed as indicated in the notification procedures section below. Regulations for access to individual records or for appealing an initial determination by CIA concerning the access to records are published in the **Federal Register** (32 CFR 1901.11–.45).

CONTESTING RECORD PROCEDURES:

Requests from individuals to correct or amend records should be addressed as indicated in the notification procedures section below. CIA's regulations regarding requests for amendments to, or disputing the contents of, individual records or for appealing an initial determination by CIA concerning these matters are published in the **Federal Register** (32 CFR 1901.21–.32, 32 CFR 1901.42).

NOTIFICATION PROCEDURES:

Individuals seeking to learn if this system of records contains information about them should direct their inquiries to: Information and Privacy Coordinator, Central Intelligence Agency, Washington, DC 20505. Identification requirements are specified in the CIA rules published in the **Federal Register** (32 CFR 1901.12–.14). Individuals must comply with these rules in order for their request to be processed.

EXEMPTIONS PROMULGATED FOR THE SYSTEM:

Certain records contained within this system of records may be exempted from certain provisions of the Privacy Act, 5 U.S.C. 552a, pursuant to 5 U.S.C. 552a(d)(5), (j)(1), and (k).

HISTORY:

70 FR 42417, July 22, 2005.

CIA–4

SYSTEM NAME AND NUMBER:

CIA Declassification Center (CDC) External Liaison Records (CIA–4).

SECURITY CLASSIFICATION:

The classification of records in this system can range from UNCLASSIFIED to SECRET.

SYSTEM LOCATION:

Central Intelligence Agency, Washington, DC 20505.

SYSTEM MANAGER(S):

Chief, External Referral & Liaison Branch/CIA Declassification Center, Central Intelligence Agency, Washington, DC 20505.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

The National Security Act of 1947, as amended, 50 U.S.C. 3036 *et seq.;* the Central Intelligence Agency Act of 1949, as amended, 50 U.S.C. 3501 *et seq.;* Executive Order 13526, 75 FR 705, or its successor.

PURPOSE(S) OF THE SYSTEM:

Records in this system are used by authorized personnel to: ensure process integrity; enable the CIA and the Director of the CIA to carry out their lawful and authorized responsibilities; and maintain a current list of points of contact at U.S. government agencies on declassification issues, in accordance with E.O. 13526, or its successor.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Individuals at U.S. government agencies who serve as points of contact for dealings with the CDC External Referral & Liaison Branch.

CATEGORIES OF RECORDS IN THE SYSTEM:

Biographic information including name, social security number, position, title/rank, and expertise; locator information including telephone numbers, fax numbers, and addresses (primary, email, and pouch); and information related to security clearances and access approvals, including clearances held, current status of clearances, and period of certification.

RECORD SOURCE CATEGORIES:

Individuals covered by this system, and points of contact provided by U.S. government agencies.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

In addition to the disclosures generally permitted under 5 U.S.C. Section 552a(b), this information is set forth in the ''Statement of General Routine Uses for the Central Intelligence Agency,'' set out above, which is incorporated herein by reference.

POLICIES AND PRACTICES FOR STORAGE OF RECORDS:

Paper and other hard-copy records are stored in secured areas within the CIA or in CIA-controlled facilities. Electronic records are stored in secure file-servers located within CIA-controlled facilities.

POLICIES AND PRACTICES FOR RETRIEVAL OF RECORDS:

Records in this system may be retrieved by name, chart number, social security number, CIA employee number, or other unique personal identifier by automated or hand search based on extant indices and automated capabilities utilized in the normal course of business. Under applicable law and regulations, all searches of this system of records will be performed in CIA offices by CIA personnel.

POLICIES AND PRACTICES FOR RETENTION AND DISPOSAL OF RECORDS:

All records are maintained and disposed of in accordance with applicable Records Control Schedules issued or approved by the National Archives and Records Administration.

ADMINISTRATIVE, TECHNICAL, AND PHYSICAL SAFEGUARDS:

Records are maintained in secure, restricted areas and are accessed only by personnel who have a need for the records in the performance of their official duties and have been authorized for such access. Electronic authorization and authentication access controls are required to prevent against unauthorized access, use, and disclosure.

RECORD ACCESS PROCEDURES:

Requests from individuals should be addressed as indicated in the notification procedures section below. Regulations for access to individual records or for appealing an initial determination by CIA concerning the access to records are published in the **Federal Register** (32 CFR 1901.11–.45).

CONTESTING RECORD PROCEDURES:

Requests from individuals to correct or amend records should be addressed as indicated in the notification procedures section below. CIA's regulations regarding requests for amendments to, or disputing the contents of, individual records or for appealing an initial determination by CIA concerning these matters are published in the **Federal Register** (32 CFR 1901.21–.32, 32 CFR 1901.42).

NOTIFICATION PROCEDURES:

Individuals seeking to learn if this system of records contains information about them should direct their inquiries to: Information and Privacy Coordinator, Central Intelligence Agency, Washington, DC 20505. Identification requirements are specified in the CIA rules published in the **Federal Register** (32 CFR 1901.12–.14). Individuals must comply with these rules in order for their request to be processed.

EXEMPTIONS PROMULGATED FOR THE SYSTEM:

Certain records contained within this system of records may be exempted from certain provisions of the Privacy Act, 5 U.S.C. 552a, pursuant to 5 U.S.C. 552a(d)(5), (j)(1), and (k).

HISTORY:

70 FR 42417, July 22, 2005.

CIA–5

SYSTEM NAME AND NUMBER:

Center for the Study of Intelligence (CSI) Records (CIA–5).

SECURITY CLASSIFICATION:

The classification of records in this system can range from UNCLASSIFIED to TOP SECRET.

SYSTEM LOCATION:

Central Intelligence Agency, Washington, DC 20505.

SYSTEM MANAGER(S):

Director, Center for the Study of Intelligence, Central Intelligence Agency, Washington, DC 20505.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

The National Security Act of 1947, as amended, 50 U.S.C. 3036 *et seq.;* the Central Intelligence Agency Act of 1949, as amended, 50 U.S.C. 3501 *et seq.;* Executive Order 12333 as amended, 73 FR 45325.

PURPOSE(S) OF THE SYSTEM:

Records in this system are used by authorized personnel to: ensure process integrity; enable the CIA and the Director of the CIA to carry out their lawful and authorized responsibilities; and record experiences of current and former CIA associates for use in CSI projects.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Current and former CIA staff and contract employees, personal services independent contractors to CIA, and current and former employees detailed to the CIA who have participated in an ''oral history'' program, or worked with CSI.

CATEGORIES OF RECORDS IN THE SYSTEM:

Names, biographic data and the content of information provided by individuals who have participated in CSI's ''oral history'' program, or worked with CSI.

RECORD SOURCE CATEGORIES:

Individuals covered by this system; and CIA records.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

In addition to the disclosures generally permitted under 5 U.S.C. Section 552a(b), this information is set forth in the ''Statement of General Routine Uses for the Central Intelligence Agency,'' set out above, which is incorporated herein by reference.

POLICIES AND PRACTICES FOR STORAGE OF RECORDS:

Paper and other hard-copy records are stored in secured areas within the CIA or in CIA-controlled facilities. Electronic records are stored in secure file-servers located within CIA-controlled facilities.

POLICIES AND PRACTICES FOR RETRIEVAL OF RECORDS:

Records in this system may be retrieved by name, chart number, social security number, CIA employee number, or other unique personal identifier by automated or hand search based on extant indices and automated capabilities utilized in the normal course of business. Under applicable law and regulations, all searches of this system of records will be performed in CIA offices by CIA personnel.

POLICIES AND PRACTICES FOR RETENTION AND DISPOSAL OF RECORDS:

All records are maintained and disposed of in accordance with applicable Records Control Schedules issued or approved by the National Archives and Records Administration.

ADMINISTRATIVE, TECHNICAL, AND PHYSICAL SAFEGUARDS:

Records are maintained in secure, restricted areas and are accessed only by personnel who have a need for the records in the performance of their official duties and have been authorized for such access. Electronic authorization and authentication access controls are required to prevent against unauthorized access, use, and disclosure.

RECORD ACCESS PROCEDURES:

Requests from individuals should be addressed as indicated in the notification procedures section below. Regulations for access to individual records or for appealing an initial determination by CIA concerning the access to records are published in the **Federal Register** (32 CFR 1901.11–.45).

CONTESTING RECORD PROCEDURES:

Requests from individuals to correct or amend records should be addressed as indicated in the notification procedures section below. CIA's regulations regarding requests for amendments to, or disputing the contents of, individual records or for appealing an initial determination by CIA concerning these matters are published in the **Federal Register** (32 CFR 1901.21–.32, 32 CFR 1901.42).

NOTIFICATION PROCEDURES:

Individuals seeking to learn if this system of records contains information about them should direct their inquiries to: Information and Privacy Coordinator, Central Intelligence Agency, Washington, DC 20505. Identification requirements are specified in the CIA rules published in the **Federal Register** (32 CFR 1901.12–.14). Individuals must comply with these rules in order for their request to be processed.

EXEMPTIONS PROMULGATED FOR THE SYSTEM:

Certain records contained within this system of records may be exempted from certain provisions of the Privacy Act, 5 U.S.C. 552a, pursuant to 5 U.S.C. 552a(d)(5), (j)(1), and (k).

HISTORY:

70 FR 42417, July 22, 2005.

CIA–6

SYSTEM NAME AND NUMBER:

Manuscript Review Records (CIA–6).

SECURITY CLASSIFICATION:

The classification of records in this system can range from UNCLASSIFIED to TOP SECRET.

SYSTEM LOCATION:

Central Intelligence Agency, Washington, DC 20505.

SYSTEM MANAGER(S):

Chair, Publications Review Board, Central Intelligence Agency, Washington, DC 20505.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

The National Security Act of 1947, as amended, 50 U.S.C. 3036 *et seq.;* the Central Intelligence Agency Act of 1949, as amended, 50 U.S.C. 3501 *et seq.;* Executive Order 12333, as amended, 73 FR 45325; Executive Order 13526, 75 FR 705, or its successor; Executive Order 12968, 60 FR 40245, as amended by Executive Order 13467, 73 FR 38103; *Snepp* v. *United States,* 444 U.S. 507 (1980).

PURPOSE(S) OF THE SYSTEM:

Records in this system are used by authorized personnel: to ensure process integrity; to enable the CIA and the Director of the CIA to carry out their lawful and authorized responsibilities; as references for manuscripts, meeting minutes, official memoranda, bibliographic files, and related documents which have been submitted for review in compliance with applicable regulations; and to facilitate review of new manuscript submissions of proposed publications or speeches authored or given by present or former employees and other authors obligated to submit writings or oral presentations for pre-publication review.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Current and former CIA employees; other authors obligated to submit writings or oral presentations for pre-publication review; and individuals otherwise involved in pre-publication review matters with CIA.

CATEGORIES OF RECORDS IN THE SYSTEM:

Manuscripts and other writings submitted for pre-publication review; Publication Review Board meeting

minutes, official memoranda, bibliographic files, and related documents; and Publication Review Board Reference Center documentation.

RECORD SOURCE CATEGORIES:

Current and former CIA employees and other obligated authors; Publication Review Board members and staff; and other CIA personnel involved in the publications review process.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

In addition to the disclosures generally permitted under 5 U.S.C. Section 552a(b), this information is set forth in the ''Statement of General Routine Uses for the Central Intelligence Agency,'' set out above, which is incorporated herein by reference.

POLICIES AND PRACTICES FOR STORAGE OF RECORDS:

Paper and other hard-copy records are stored in secured areas within the CIA or in CIA-controlled facilities. Electronic records are stored in secure file-servers located within CIA-controlled facilities.

POLICIES AND PRACTICES FOR RETRIEVAL OF RECORDS:

Records in this system may be retrieved by name, chart number, social security number, CIA employee number, or other unique personal identifier by automated or hand search based on extant indices and automated capabilities utilized in the normal course of business. Under applicable law and regulations, all searches of this system of records will be performed in CIA offices by CIA personnel.

POLICIES AND PRACTICES FOR RETENTION AND DISPOSAL OF RECORDS:

All records are maintained and disposed of in accordance with applicable Records Control Schedules issued or approved by the National Archives and Records Administration.

ADMINISTRATIVE, TECHNICAL, AND PHYSICAL SAFEGUARDS:

Records are maintained in secure, restricted areas and are accessed only by personnel who have a need for the records in the performance of their official duties and have been authorized for such access. Electronic authorization and authentication access controls are required to prevent against unauthorized access, use, and disclosure.

RECORD ACCESS PROCEDURES:

Requests from individuals should be addressed as indicated in the notification procedures section below. Regulations for access to individual records or for appealing an initial determination by CIA concerning the access to records are published in the **Federal Register** (32 CFR 1901.11–.45).

CONTESTING RECORD PROCEDURES:

Requests from individuals to correct or amend records should be addressed as indicated in the notification procedures section below. CIA's regulations regarding requests for amendments to, or disputing the contents of, individual records or for appealing an initial determination by CIA concerning these matters are published in the **Federal Register** (32 CFR 1901.21–.32, 32 CFR 1901.42).

NOTIFICATION PROCEDURES:

Individuals seeking to learn if this system of records contains information about them should direct their inquiries to: Information and Privacy Coordinator, Central Intelligence Agency, Washington, DC 20505. Identification requirements are specified in the CIA rules published in the **Federal Register** (32 CFR 1901.12–.14). Individuals must comply with these rules in order for their request to be processed.

EXEMPTIONS PROMULGATED FOR THE SYSTEM:

Certain records contained within this system of records may be exempted from certain provisions of the Privacy Act, 5 U.S.C. 552a, pursuant to 5 U.S.C. 552a(d)(5), (j)(1), and (k).

HISTORY:

70 FR 42417, July 22, 2005.

CIA–7

SYSTEM NAME AND NUMBER:

Security Access Records (CIA–7).

SECURITY CLASSIFICATION:

The classification of records in this system can range from UNCLASSIFIED to TOP SECRET.

SYSTEM LOCATION:

Central Intelligence Agency, Washington, DC 20505.

SYSTEM MANAGER(S):

Director of Security, Central Intelligence Agency, Washington, DC 20505.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

The National Security Act of 1947, as amended, 50 U.S.C. 3036 *et seq.;* the Central Intelligence Agency Act of 1949, as amended, 50 U.S.C. 3501 *et seq.;* Federal Information Security Modernization Act of 2014, 44 U.S.C. 3551 *et seq.;* Executive Order 12333, as amended, 73 FR 45325.

PURPOSE(S) OF THE SYSTEM:

Records in this system are used by authorized personnel to: ensure process integrity; enable the CIA and the Director of the CIA to carry out their lawful and authorized responsibilities; verify individuals' authorization to access CIA buildings and facilities, including, but not limited to, Agency information systems and resources; create a record of individuals' access to CIA-controlled buildings and facilities; facilitate the issuance and retrieval of visitor and temporary badges; and provide statistical data on building and facility access patterns for resource planning purposes.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

CIA employees and other individuals submitted for authorization to access CIA-controlled buildings and facilities.

CATEGORIES OF RECORDS IN THE SYSTEM:

Personal identification information; building and entrance information; entry or exit data and codes; credential information; and facility activity and access information.

RECORD SOURCE CATEGORIES:

CIA badge system; after-hours building and facility logs; visitor-no-escort badge record cards; and permits and identification sources.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

In addition to the disclosures generally permitted under 5 U.S.C. Section 552a(b), this information is set forth in the ''Statement of General Routine Uses for the Central Intelligence Agency,'' set out above, which is incorporated herein by reference.

POLICIES AND PRACTICES FOR STORAGE OF RECORDS:

Paper and other hard-copy records are stored in secured areas within the CIA or in CIA-controlled facilities. Electronic records are stored in secure file-servers located within CIA-controlled facilities.

POLICIES AND PRACTICES FOR RETRIEVAL OF RECORDS:

Records in this system may be retrieved by name, chart number, social security number, CIA employee number, or other unique personal identifier by automated or hand search based on extant indices and automated capabilities utilized in the normal course of business. Under applicable law and regulations, all searches of this system of records will be performed in CIA offices by CIA personnel.

POLICIES AND PRACTICES FOR RETENTION AND DISPOSAL OF RECORDS:

All records are maintained and disposed of in accordance with applicable Records Control Schedules issued or approved by the National Archives and Records Administration.

ADMINISTRATIVE, TECHNICAL, AND PHYSICAL SAFEGUARDS:

Records are maintained in secure, restricted areas and are accessed only by personnel who have a need for the records in the performance of their official duties and have been authorized for such access. Electronic authorization and authentication access controls are required to prevent against unauthorized access, use, and disclosure.

RECORD ACCESS PROCEDURES:

Requests from individuals should be addressed as indicated in the notification procedures section below. Regulations for access to individual records or for appealing an initial determination by CIA concerning the access to records are published in the **Federal Register** (32 CFR 1901.11–.45).

CONTESTING RECORD PROCEDURES:

Requests from individuals to correct or amend records should be addressed as indicated in the notification procedures section below. CIA's regulations regarding requests for amendments to, or disputing the contents of, individual records or for appealing an initial determination by CIA concerning these matters are published in the **Federal Register** (32 CFR 1901.21–.32, 32 CFR 1901.42).

NOTIFICATION PROCEDURES:

Individuals seeking to learn if this system of records contains information about them should direct their inquiries to: Information and Privacy Coordinator, Central Intelligence Agency, Washington, DC 20505. Identification requirements are specified in the CIA rules published in the **Federal Register** (32 CFR 1901.12–.14). Individuals must comply with these rules in order for their request to be processed.

EXEMPTIONS PROMULGATED FOR THE SYSTEM:

Certain records contained within this system of records may be exempted from certain provisions of the Privacy Act, 5 U.S.C. 552a, pursuant to 5 U.S.C. 552a(d)(5), (j)(1), and (k).

HISTORY:

70 FR 42417, July 22, 2005.

CIA–8

SYSTEM NAME AND NUMBER:

Security Operations Records (CIA–8).

SECURITY CLASSIFICATION:

The classification of records in this system can range from UNCLASSIFIED to TOP SECRET.

SYSTEM LOCATION:

Central Intelligence Agency, Washington, DC 20505.

SYSTEM MANAGER(S):

Director of Security, Central Intelligence Agency, Washington, DC 20505.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

The National Security Act of 1947, as amended, 50 U.S.C. 3036 *et seq.;* the Central Intelligence Agency Act of 1949, as amended, 50 U.S.C. 3501 *et seq.;* Executive Order 12333, as amended, 73 FR 45325.

PURPOSE(S) OF THE SYSTEM:

Records in this system are used by authorized personnel to: ensure process integrity; enable the CIA and the Director of the CIA to carry out their lawful and authorized responsibilities; track events, individuals, and groups of individuals that may pose a threat to the CIA; assist CIA security officials in identifying present and future threats to CIA-controlled property or facilities and CIA personnel; track traffic violations, security incidents, and access control issues; serve as a statistical and management reporting tool; and facilitate court cases or other legal proceedings.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Individuals, including CIA employees, who have contacted or been referred to the CIA's Security Operations Center; individuals, including CIA employees, who have been responsible for or suspected of security incidents, or have witnessed, reported, or investigated security incidents involving CIA information, and/or CIA-controlled property or facilities; individuals who have had restrictions imposed upon their entrance to CIA-controlled property or facilities; and individuals involved in traffic violations on CIA-controlled property or facilities.

CATEGORIES OF RECORDS IN THE SYSTEM:

Personal identification and event information that includes: biographic information, including name, social security number, and CIA identification information; information on security-related incidents occurring on CIA-controlled property or facilities, including date and place of incidents, subject matter or incident description, arrests and violation information, including court disposition and vehicular information where appropriate.

RECORD SOURCE CATEGORIES:

Individuals covered by this system of records; members of the general public; CIA employees; and employees of other federal agencies and state and local governments.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

In addition to the disclosures generally permitted under 5 U.S.C. Section 552a(b), this information is set forth in the ''Statement of General Routine Uses for the Central Intelligence Agency,'' set out above, which is incorporated herein by reference.

POLICIES AND PRACTICES FOR STORAGE OF RECORDS:

Paper and other hard-copy records are stored in secured areas within the CIA or in CIA-controlled facilities. Electronic records are stored in secure file-servers located within CIA-controlled facilities.

POLICIES AND PRACTICES FOR RETRIEVAL OF RECORDS:

Records in this system may be retrieved by name, chart number, social security number, CIA employee number, or other unique personal identifier by automated or hand search based on extant indices and automated capabilities utilized in the normal course of business. Under applicable law and regulations, all searches of this system of records will be performed in CIA offices by CIA personnel.

POLICIES AND PRACTICES FOR RETENTION AND DISPOSAL OF RECORDS:

All records are maintained and disposed of in accordance with applicable Records Control Schedules issued or approved by the National Archives and Records Administration.

ADMINISTRATIVE, TECHNICAL, AND PHYSICAL SAFEGUARDS:

Records are maintained in secure, restricted areas and are accessed only by personnel who have a need for the records in the performance of their official duties and have been authorized for such access. Electronic authorization and authentication access controls are required to prevent against unauthorized access, use, and disclosure.

RECORD ACCESS PROCEDURES:

Requests from individuals should be addressed as indicated in the notification procedures section below. Regulations for access to individual

records or for appealing an initial determination by CIA concerning the access to records are published in the **Federal Register** (32 CFR 1901.11–.45).

CONTESTING RECORD PROCEDURES:

Requests from individuals to correct or amend records should be addressed as indicated in the notification procedures section below. CIA's regulations regarding requests for amendments to, or disputing the contents of, individual records or for appealing an initial determination by CIA concerning these matters are published in the **Federal Register** (32 CFR 1901.21–.32, 32 CFR 1901.42).

NOTIFICATION PROCEDURES:

Individuals seeking to learn if this system of records contains information about them should direct their inquiries to: Information and Privacy Coordinator, Central Intelligence Agency, Washington, DC 20505. Identification requirements are specified in the CIA rules published in the **Federal Register** (32 CFR 1901.12–.14). Individuals must comply with these rules in order for their request to be processed.

EXEMPTIONS PROMULGATED FOR THE SYSTEM:

Certain records contained within this system of records may be exempted from certain provisions of the Privacy Act, 5 U.S.C. 552a, pursuant to 5 U.S.C. 552a(d)(5), (j)(1), and (k).

HISTORY:

70 FR 42417, July 22, 2005.

CIA–9

SYSTEM NAME AND NUMBER:

Industrial Security Clearance Records (CIA–9).

SECURITY CLASSIFICATION:

The classification of records in this system can range from UNCLASSIFIED to TOP SECRET.

SYSTEM LOCATION:

Central Intelligence Agency, Washington, DC 20505.

SYSTEM MANAGER(S):

Procurement Executive, Office of the Chief Financial Officer, Central Intelligence Agency, Washington, DC 20505.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

The National Security Act of 1947, as amended, 50 U.S.C. 3036 *et seq.;* the Central Intelligence Agency Act of 1949, as amended, 50 U.S.C. 3501 *et seq.;* Executive Order 12333, as amended, 73 FR 45325 Executive Order 10450, 5 U.S.C. 7311 note; Executive Order 13526, 60 FR 40245, as amended by Executive Order 13467, 73 FR 38103; Executive Order 13526, 75 FR 705; and Executive Order 13587, 76 FR 63811.

PURPOSE(S) OF THE SYSTEM:

Records in this system are used by authorized personnel to: ensure process integrity; enable the CIA and the Director of the CIA to carry out their lawful and authorized responsibilities; document security clearance(s) held by industrial contractors, commercial vendors, and persons in the private sector associated with the CIA; and provide a reference to answer inquiries on security clearances.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Industrial contractors and commercial vendors; and persons in the private sector associated with the CIA who are submitted for industrial security clearances.

CATEGORIES OF RECORDS IN THE SYSTEM:

Biographic data, including name, address, position, date of birth, and social security number; and security clearance information.

RECORD SOURCE CATEGORIES:

Individuals who hold or have held security clearances and the organizations with which they are employed or otherwise associated; and certification of clearance from the Center for CIA Security.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

In addition to the disclosures generally permitted under 5 U.S.C. Section 552a(b), this information is set forth in the ''Statement of General Routine Uses for the Central Intelligence Agency,'' set out above, which is incorporated herein by reference.

POLICIES AND PRACTICES FOR STORAGE OF RECORDS:

Paper and other hard-copy records are stored in secured areas within the CIA or in CIA-controlled facilities. Electronic records are stored in secure file-servers located within CIA-controlled facilities.

POLICIES AND PRACTICES FOR RETRIEVAL OF RECORDS:

Records in this system may be retrieved by name, chart number, social security number, CIA employee number, or other unique personal identifier by automated or hand search based on extant indices and automated capabilities utilized in the normal course of business. Under applicable law and regulations, all searches of this system of records will be performed in CIA offices by CIA personnel.

POLICIES AND PRACTICES FOR RETENTION AND DISPOSAL OF RECORDS:

All records are maintained and disposed of in accordance with applicable Records Control Schedules issued or approved by the National Archives and Records Administration.

ADMINISTRATIVE, TECHNICAL, AND PHYSICAL SAFEGUARDS:

Records are maintained in secure, restricted areas and are accessed only by personnel who have a need for the records in the performance of their official duties and have been authorized for such access. Electronic authorization and authentication access controls are required to prevent against unauthorized access, use, and disclosure.

RECORD ACCESS PROCEDURES:

Requests from individuals should be addressed as indicated in the notification procedures section below. Regulations for access to individual records or for appealing an initial determination by CIA concerning the access to records are published in the **Federal Register** (32 CFR 1901.11–.45).

CONTESTING RECORD PROCEDURES:

Requests from individuals to correct or amend records should be addressed as indicated in the notification procedures section below. CIA's regulations regarding requests for amendments to, or disputing the contents of, individual records or for appealing an initial determination by CIA concerning these matters are published in the **Federal Register** (32 CFR 1901.21–.32, 32 CFR 1901.42).

NOTIFICATION PROCEDURES:

Individuals seeking to learn if this system of records contains information about them should direct their inquiries to: Information and Privacy Coordinator, Central Intelligence Agency, Washington, DC 20505. Identification requirements are specified in the CIA rules published in the **Federal Register** (32 CFR 1901.12–.14). Individuals must comply with these rules in order for their request to be processed.

EXEMPTIONS PROMULGATED FOR THE SYSTEM:

Certain records contained within this system of records may be exempted from certain provisions of the Privacy Act, 5 U.S.C. 552a, pursuant to 5 U.S.C. 552a(d)(5), (j)(1), and (k).

HISTORY:

70 FR 42417, July 22, 2005.

CIA–10

SYSTEM NAME AND NUMBER:

Parking Records (CIA–10).

SECURITY CLASSIFICATION:

The classification of records in this system can range from UNCLASSIFIED to TOP SECRET.

SYSTEM LOCATION:

Central Intelligence Agency, Washington, DC 20505.

SYSTEM MANAGER(S):

Director, Office of Facilities, Central Intelligence Agency, Washington, DC 20505.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

The National Security Act of 1947, as amended, 50 U.S.C. 3036 *et seq.;* the Central Intelligence Agency Act of 1949, as amended, 50 U.S.C. 3501 *et seq.;* Executive Order 12333, as amended, 73 FR 45325; the Federal Management Regulation, 41 CFR parts 102–74.265–310 and 102–76, Subpart B.

PURPOSE(S) OF THE SYSTEM:

Records in this system are used by authorized personnel to: ensure process integrity; provide a data source for statistical and pattern analysis to support resource planning and business analytics; enable the CIA and the Director of the CIA to carry out their lawful and authorized responsibilities; document and improve the allocation and utilization of parking at CIA-managed or controlled facilities; and support parking enforcement.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

CIA employees and any other individuals requiring parking permits at CIA-managed or controlled facilities.

CATEGORIES OF RECORDS IN THE SYSTEM:

Names of individuals requesting parking permits, their office location and phone number, grade, badge number, vehicle license number, and any relevant medical information needed for individuals requiring reasonable accommodation for parking or ADA accessible parking.

RECORD SOURCE CATEGORIES:

Information may be provided by CIA employees and other eligible individuals requiring parking permits at CIA-managed or controlled facilities.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

In addition to the disclosures generally permitted under 5 U.S.C. Section 552a(b), this information is set forth in the ''Statement of General Routine Uses for the Central Intelligence Agency,'' set out above, which is incorporated herein by reference.

POLICIES AND PRACTICES FOR STORAGE OF RECORDS:

Paper and other hard-copy records are stored in secured areas within the CIA or in CIA-controlled facilities. Electronic records are stored in secure file-servers located within CIA-controlled facilities.

POLICIES AND PRACTICES FOR RETRIEVAL OF RECORDS:

Records in this system may be retrieved by name, chart number, social security number, CIA employee number, or other unique personal identifier by automated or hand search based on extant indices and automated capabilities utilized in the normal course of business. Under applicable law and regulations, all searches of this system of records will be performed in CIA offices by CIA personnel.

POLICIES AND PRACTICES FOR RETENTION AND DISPOSAL OF RECORDS:

All records are maintained and disposed of in accordance with applicable Records Control Schedules issued or approved by the National Archives and Records Administration.

ADMINISTRATIVE, TECHNICAL, AND PHYSICAL SAFEGUARDS:

Records are maintained in secure, restricted areas and are accessed only by personnel who have a need for the records in the performance of their official duties and have been authorized for such access. Electronic authorization and authentication access controls are required to prevent against unauthorized access, use, and disclosure.

RECORD ACCESS PROCEDURES:

Requests from individuals should be addressed as indicated in the notification procedures section below. Regulations for access to individual records or for appealing an initial determination by CIA concerning the access to records are published in the **Federal Register** (32 CFR 1901.11–.45).

CONTESTING RECORD PROCEDURES:

Requests from individuals to correct or amend records should be addressed as indicated in the notification procedures section below. CIA's regulations regarding requests for amendments to, or disputing the contents of, individual records or for appealing an initial determination by CIA concerning these matters are published in the **Federal Register** (32 CFR 1901.21–32, 32 CFR 1901.42).

NOTIFICATION PROCEDURES:

Individuals seeking to learn if this system of records contains information about them should direct their inquiries to: Information and Privacy Coordinator, Central Intelligence Agency, Washington, DC 20505. Identification requirements are specified in the CIA rules published in the **Federal Register** (32 CFR 1901.12–.14). Individuals must comply with these rules in order for their request to be processed.

EXEMPTIONS PROMULGATED FOR THE SYSTEM:

Certain records contained within this system of records may be exempted from certain provisions of the Privacy Act, 5 U.S.C. 552a, pursuant to 5 U.S.C. 552a(d)(5), (j)(1), and (k).

HISTORY:

70 FR 42417, July 22, 2005.

CIA–11 [rescinded]

SORN CIA–11 is RESCINDED and the number held in reserve.

SYSTEM NAME AND NUMBER:

Accountable Property Records (CIA–11).

HISTORY:

70 FR 42417, July 22, 2005.

CIA–12

SYSTEM NAME AND NUMBER:

Vehicle Operator Records (CIA–12).

SECURITY CLASSIFICATION:

The classification of records in this system can range from UNCLASSIFIED to TOP SECRET.

SYSTEM LOCATION:

Central Intelligence Agency, Washington, DC 20505.

SYSTEM MANAGER(S):

Chief, Transportation Support, Central Intelligence Agency, Washington, DC 20505.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

The National Security Act of 1947, as amended, 50 U.S.C. 3036 *et seq.;* the Central Intelligence Agency Act of 1949, as amended, 50 U.S.C. 3501 *et seq.;* Executive Order 12333, as amended, 73 FR 45325.

PURPOSE(S) OF THE SYSTEM:

Records in this system are used by authorized personnel to: ensure process integrity; enable the CIA and the Director of the CIA to carry out their lawful and authorized responsibilities; document CIA staff and contract employees who are qualified to drive buses, trucks, and other specialty vehicles in the course of their CIA

employment duties; and issue official U.S. Government driver's licenses and renewals.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

CIA staff and contract employees, personal services independent contractors, or industrial contractors who have licenses to drive buses, trucks, and other specialty vehicles as part of their official CIA employment duties.

CATEGORIES OF RECORDS IN THE SYSTEM:

Biographic data on employees; medical qualification forms; driver test data; license numbers; registers of permits issued; and accident report records.

RECORD SOURCE CATEGORIES:

CIA staff and contract employees, personal services independent contractors, and industrial contractors; and federal, state, and local law enforcement agencies as their records relate to competency testing and accident reporting.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

In addition to the disclosures generally permitted under 5 U.S.C. Section 552a(b), this information is set forth in the ''Statement of General Routine Uses for the Central Intelligence Agency,'' set out above, which is incorporated herein by reference.

POLICIES AND PRACTICES STORAGE OF RECORDS:

Paper and other hard-copy records are stored in secured areas within the CIA or in CIA-controlled facilities. Electronic records are stored in secure file-servers located within CIA-controlled facilities.

POLICIES AND PRACTICES FOR RETRIEVAL OF RECORDS:

Records in this system may be retrieved by name, chart number, social security number, CIA employee number, or other unique personal identifier by automated or hand search based on extant indices and automated capabilities utilized in the normal course of business. Under applicable law and regulations, all searches of this system of records will be performed in CIA offices by CIA personnel.

POLICIES AND PRACTICES FOR RETENTION AND DISPOSAL OF RECORDS:

All records are maintained and disposed of in accordance with applicable Records Control Schedules issued or approved by the National Archives and Records Administration.

ADMINISTRATIVE, TECHNICAL, AND PHYSICAL SAFEGUARDS:

Records are maintained in secure, restricted areas and are accessed only by personnel who have a need for the records in the performance of their official duties and have been authorized for such access. Electronic authorization and authentication access controls are required to prevent against unauthorized access, use, and disclosure.

RECORD ACCESS PROCEDURES:

Requests from individuals should be addressed as indicated in the notification procedures section below. Regulations for access to individual records or for appealing an initial determination by CIA concerning the access to records are published in the **Federal Register** (32 CFR 1901.11–.45).

CONTESTING RECORD PROCEDURES:

Requests from individuals to correct or amend records should be addressed as indicated in the notification procedures section below. CIA's regulations regarding requests for amendments to, or disputing the contents of, individual records or for appealing an initial determination by CIA concerning these matters are published in the **Federal Register** (32 CFR 1901.21–.32, 32 CFR 1901.42).

NOTIFICATION PROCEDURES:

Individuals seeking to learn if this system of records contains information about them should direct their inquiries to: Information and Privacy Coordinator, Central Intelligence Agency, Washington, DC 20505. Identification requirements are specified in the CIA rules published in the **Federal Register** (32 CFR 1901.12–.14). Individuals must comply with these rules in order for their request to be processed.

EXEMPTIONS PROMULGATED FOR THE SYSTEM:

Certain records contained within this system of records may be exempted from certain provisions of the Privacy Act, 5 U.S.C. 552a, pursuant to 5 U.S.C. 552a(d)(5), (j)(1), and (k).

HISTORY:

70 FR 42417, July 22, 2005.

CIA–13

SYSTEM NAME AND NUMBER:

Component Human Resource Records (CIA–13).

SECURITY CLASSIFICATION:

The classification of records in this system can range from UNCLASSIFIED to TOP SECRET.

SYSTEM LOCATION:

Central Intelligence Agency, Washington, DC 20505.

SYSTEM MANAGER(S):

Office of Personnel Resources and affiliated component level offices, Central Intelligence Agency, Washington, DC 20505.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

The National Security Act of 1947, as amended, 50 U.S.C. 3036 *et seq.;* the Central Intelligence Agency Act of 1949, as amended, 50 U.S.C. 3501 *et seq.;* the Central Intelligence Agency Retirement Act, 50 U.S.C. 2001 *et seq.;* Executive Order 12333, as amended, 73 FR 45325.

PURPOSE(S) OF THE SYSTEM:

Records in this system are used by authorized personnel to: ensure process integrity; provide a data source for statistical and pattern analysis to support resource planning and business analytics; enable the CIA and the Director of the CIA to carry out their lawful and authorized responsibilities; facilitate and expedite processing or procedural requirements related to personnel management, including employee evaluations, assignments, and re-assignments, promotions and within-grade increases, authorization of training, awards, and leave; organizational, staffing and budgetary planning; and as a basis for administrative, disciplinary or other adverse action.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Current and former CIA staff and contract employees; and military and civilian personnel detailed or assigned to the CIA.

CATEGORIES OF RECORDS IN THE SYSTEM:

Memoranda, correspondence, and other documents, including supervisors' working files maintained by Agency offices and components, concerning individuals covered by this system on matters involving: performance appraisals; travel, financial, retirement; and claims information; time and attendance, including leave information; official evaluations of performance, conduct, and suitability; formal education, certification, training, and testing; special qualifications or restrictions; home address, phone number(s), and other emergency contact information; limited medical information, including self-disclosed disabilities and job-related injuries; skills assessment data; workplace locator information; cables and dispatches of administrative and operational significance; employee

evaluation panel files; employee awards; and background data documenting reasons for personnel actions, decisions, or recommendations made about an employee, including adverse or other personnel action(s).

RECORD SOURCE CATEGORIES:

Information may be provided by individuals covered by the system; educational institutions and private organizations; CIA employees; and other federal agencies.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

In addition to the disclosures generally permitted under 5 U.S.C. Section 552a(b), this information is set forth in the ''Statement of General Routine Uses for the Central Intelligence Agency,'' set out above, which is incorporated herein by reference.

POLICIES AND PRACTICES FOR STORAGE OF RECORDS:

Paper and other hard-copy records are stored in secured areas within the CIA or in CIA-controlled facilities. Electronic records are stored in secure file-servers located within CIA-controlled facilities.

POLICIES AND PRACTICES FOR RETRIEVAL OF RECORDS:

Records in this system may be retrieved by name, chart number, social security number, CIA employee number, or other unique personal identifier by automated or hand search based on extant indices and automated capabilities utilized in the normal course of business. Under applicable law and regulations, all searches of this system of records will be performed in CIA offices by CIA personnel.

POLICIES AND PRACTICES FOR RETENTION AND DISPOSAL OF RECORDS:

All records are maintained and disposed of in accordance with applicable Records Control Schedules issued or approved by the National Archives and Records Administration.

ADMINISTRATIVE, TECHNICAL, AND PHYSICAL SAFEGUARDS:

Records are maintained in secure, restricted areas and are accessed only by personnel who have a need for the records in the performance of their official duties and have been authorized for such access. Electronic authorization and authentication access controls are required to prevent against unauthorized access, use, and disclosure.

RECORD ACCESS PROCEDURES:

Requests from individuals should be addressed as indicated in the notification procedures section below. Regulations for access to individual records or for appealing an initial determination by CIA concerning the access to records are published in the **Federal Register** (32 CFR 1901.11–.45).

CONTESTING RECORD PROCEDURES:

Requests from individuals to correct or amend records should be addressed as indicated in the notification procedures section below. CIA's regulations regarding requests for amendments to, or disputing the contents of, individual records or for appealing an initial determination by CIA concerning these matters are published in the **Federal Register** (32 CFR 1901.21–.32, 32 CFR 1901.42).

NOTIFICATION PROCEDURES:

Individuals seeking to learn if this system of records contains information about them should direct their inquiries to: Information and Privacy Coordinator, Central Intelligence Agency, Washington, DC 20505. Identification requirements are specified in the CIA rules published in the **Federal Register** (32 CFR 1901.12–.14). Individuals must comply with these rules in order for their request to be processed.

EXEMPTIONS PROMULGATED FOR THE SYSTEM:

Certain records contained within this system of records may be exempted from certain provisions of the Privacy Act, 5 U.S.C. 552a, pursuant to 5 U.S.C. 552a(d)(5), (j)(1), and (k).

HISTORY:

70 FR 42417, July 22, 2005.

CIA–14

SYSTEM NAME AND NUMBER:

Information Release Records (CIA–14).

SECURITY CLASSIFICATION:

The classification of records in this system can range from UNCLASSIFIED to TOP SECRET.

SYSTEM LOCATION:

Central Intelligence Agency, Washington, DC 20505.

SYSTEM MANAGER(S):

Chief of Information Management Services, Central Intelligence Agency, Washington, DC 20505.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

The National Security Act of 1947, as amended, 50 U.S.C. 3036 *et seq.;* the Central Intelligence Agency Act of 1949, as amended, 50 U.S.C. 3501 *et seq.;* the Freedom of Information Act, 5 U.S.C. 552; the Privacy Act, 5 U.S.C. 552a; the President John F. Kennedy Assassination Records Collection Act of 1992, 44 U.S.C. 2107 note; the Nazi War Crimes Disclosure Act, 5 U.S.C. 552 note; the Japanese Imperial Government Records Disclosure Act, 5 U.S.C. 552 note; Executive Order 12333, as amended, 73 FR 45325; Executive Order 13526, 75 FR 705, or its successor.

PURPOSE(S) OF THE SYSTEM:

Records in this system are used by authorized personnel to: ensure process integrity; enable the CIA and the Director of the CIA to carry out their lawful and authorized responsibilities; support the review, redaction, and release of CIA records pursuant to federal statutes and Executive Orders; formulate responses to Freedom of Information Act (FOIA), Privacy Act (PA), Executive Order 13526 (E.O.), or its successor, and special search requests; provide reference in processing cases under administrative appeal and civil litigation; provide documentation for referral to other federal agencies for their review pursuant to E.O. 13526, or its successor, and the third agency rule; and generate external reports as required by federal statutes and internal reports for use by CIA officials.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Individuals who make information release requests to CIA under provisions of the Freedom of Information Act (FOIA), Privacy Act (PA), and Executive Order 13526 (E.O.); individuals who make special search requests and other related individuals; and individuals who are the subject of FOIA/PA/E.O. and special search requests and other related individuals.

CATEGORIES OF RECORDS IN THE SYSTEM:

FOIA/PA/E.O. requests and processing files including correspondence and supporting documents; documents responsive to FOIA/PA/E.O. and special search requests; duplicate files maintained by Directorate Information Review Officers (IROs) and component focal points; weekly reports of FOIA/PA/E.O. case activity and status; and indices related to special searches.

RECORD SOURCE CATEGORIES:

Individuals who make FOIA/PA/E.O. and special search requests, and related individuals; and CIA components that provide information in response to FOIA/PA/E.O. and special search requests.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

In addition to the disclosures generally permitted under 5 U.S.C. Section 552a(b), this information is set forth in the ''Statement of General Routine Uses for the Central Intelligence Agency,'' set out above, which is incorporated herein by reference.

POLICIES AND PRACTICES FOR STORAGE OF RECORDS:

Paper and other hard-copy records are stored in secured areas within the CIA or in CIA-controlled facilities. Electronic records are stored in secure file-servers located within CIA-controlled facilities.

POLICIES AND PRACTICES FOR RETRIEVAL OF RECORDS:

Records in this system may be retrieved by name, chart number, social security number, CIA employee number, or other unique personal identifier by automated or hand search based on extant indices and automated capabilities utilized in the normal course of business. Under applicable law and regulations, all searches of this system of records will be performed in CIA offices by CIA personnel.

POLICIES AND PRACTICES FOR RETENTION AND DISPOSAL OF RECORDS:

All records are maintained and disposed of in accordance with applicable Records Control Schedules issued or approved by the National Archives and Records Administration.

ADMINISTRATIVE, TECHNICAL, AND PHYSICAL SAFEGUARDS:

Records are maintained in secure, restricted areas and are accessed only by personnel who have a need for the records in the performance of their official duties and have been authorized for such access. Electronic authorization and authentication access controls are required to prevent against unauthorized access, use, and disclosure.

RECORD ACCESS PROCEDURES:

Requests from individuals should be addressed as indicated in the notification procedures section below. Regulations for access to individual records or for appealing an initial determination by CIA concerning the access to records are published in the **Federal Register** (32 CFR 1901.11–.45).

CONTESTING RECORD PROCEDURES:

Requests from individuals to correct or amend records should be addressed as indicated in the notification procedures section below. CIA's regulations regarding requests for amendments to, or disputing the contents of, individual records or for appealing an initial determination by CIA concerning these matters are published in the **Federal Register** (32 CFR 1901.21–.32, 32 CFR 1901.42).

NOTIFICATION PROCEDURES:

Individuals seeking to learn if this system of records contains information about them should direct their inquiries to: Information and Privacy Coordinator, Central Intelligence Agency, Washington, DC 20505. Identification requirements are specified in the CIA rules published in the **Federal Register** (32 CFR 1901.12–.14). Individuals must comply with these rules in order for their request to be processed.

EXEMPTIONS PROMULGATED FOR THE SYSTEM:

Certain records contained within this system of records may be exempted from certain provisions of the Privacy Act, 5 U.S.C. 552a, pursuant to 5 U.S.C. 552a(d)(5), (j)(1), and (k).

HISTORY:

70 FR 42417, July 22, 2005.

CIA–15

SYSTEM NAME AND NUMBER:

Guest Speaker Records (CIA–15).

SECURITY CLASSIFICATION:

The classification of records in this system can range from UNCLASSIFIED to TOP SECRET.

SYSTEM LOCATION:

Central Intelligence Agency, Washington, DC 20505.

SYSTEM MANAGER(S):

Chief Information Officer, Central Intelligence Agency, Washington, DC 20505.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

The National Security Act of 1947, as amended, 50 U.S.C. 3036 *et seq.;* the Central Intelligence Agency Act of 1949, as amended, 50 U.S.C. 3501 *et seq.;* Executive Order 12333, as amended, 73 FR 45325.

PURPOSE(S) OF THE SYSTEM:

Records in this system are used by authorized personnel: to ensure process integrity; to enable the CIA and the Director of the CIA to carry out their lawful and authorized responsibilities; and for curriculum development and selection of speakers for training courses and special presentations. Biographic data may be used as part of the official file for personal services contracts.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Individuals under consideration for guest speaker engagements, training courses, and other presentations; such individuals may include members of the academic and business world as well as present and former senior CIA and other government officials.

CATEGORIES OF RECORDS IN THE SYSTEM:

Biographic data including academic credentials; publicly available information, including publications authored by the potential speaker; correspondence; and administrative records.

RECORD SOURCE CATEGORIES:

Individuals covered by this system; CIA employees; academic institutions and private organizations; libraries and commercial databases; and federal agencies.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

In addition to the disclosures generally permitted under 5 U.S.C. Section 552a(b), this information is set forth in the ''Statement of General Routine Uses for the Central Intelligence Agency,'' set out above, which is incorporated herein by reference.

POLICIES AND PRACTICES FOR STORAGE OF RECORDS:

Paper and other hard-copy records are stored in secured areas within the CIA or in CIA-controlled facilities. Electronic records are stored in secure file-servers located within CIA-controlled facilities.

POLICIES AND PRACTICES FOR RETRIEVAL OF RECORDS:

Records in this system may be retrieved by name, chart number, social security number, CIA employee number, or other unique personal identifier by automated or hand search based on extant indices and automated capabilities utilized in the normal course of business. Under applicable law and regulations, all searches of this system of records will be performed in CIA offices by CIA personnel.

POLICIES AND PRACTICES FOR RETENTION AND DISPOSAL OF RECORDS:

All records are maintained and disposed of in accordance with applicable Records Control Schedules issued or approved by the National Archives and Records Administration.

ADMINISTRATIVE, TECHNICAL, AND PHYSICAL SAFEGUARDS:

Records are maintained in secure, restricted areas and are accessed only by

personnel who have a need for the records in the performance of their official duties and have been authorized for such access. Electronic authorization and authentication access controls are required to prevent against unauthorized access, use, and disclosure.

RECORD ACCESS PROCEDURES:

Requests from individuals should be addressed as indicated in the notification procedures section below. Regulations for access to individual records or for appealing an initial determination by CIA concerning the access to records are published in the **Federal Register** (32 CFR 1901.11–.45).

CONTESTING RECORD PROCEDURES:

Requests from individuals to correct or amend records should be addressed as indicated in the notification procedures section below. CIA's regulations regarding requests for amendments to, or disputing the contents of, individual records or for appealing an initial determination by CIA concerning these matters are published in the **Federal Register** (32 CFR 1901.21–.32, 32 CFR 1901.42).

NOTIFICATION PROCEDURES:

Individuals seeking to learn if this system of records contains information about them should direct their inquiries to: Information and Privacy Coordinator, Central Intelligence Agency, Washington, DC 20505. Identification requirements are specified in the CIA rules published in the **Federal Register** (32 CFR 1901.12–.14). Individuals must comply with these rules in order for their request to be processed.

EXEMPTIONS PROMULGATED FOR THE SYSTEM:

Certain records contained within this system of records may be exempted from certain provisions of the Privacy Act, 5 U.S.C. 552a, pursuant to 5 U.S.C. 552a(d)(5), (j)(1), and (k).

HISTORY:

70 FR 42417, July 22, 2005.

CIA–16

SYSTEM NAME AND NUMBER:

Employee Clinical and Psychiatric Records (CIA–16).

SECURITY CLASSIFICATION:

The classification of records in this system can range from UNCLASSIFIED to TOP SECRET.

SYSTEM LOCATION:

Central Intelligence Agency, Washington, DC 20505.

SYSTEM MANAGER(S):

Director, Office of Medical Services, Central Intelligence Agency, Washington, DC 20505.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

The National Security Act of 1947, as amended, 50 U.S.C. 3036 *et seq.;* the Central Intelligence Agency Act of 1949, as amended, 50 U.S.C. 3501 *et seq.;* the Genetic Information Nondiscrimination Act of 2008, as amended, 42 U.S.C. 2000ff *et seq.;* the Rehabilitation Act of 1973, as amended, 29 U.SC. 791 *et seq.;* Executive Order 12333, as amended, 73 FR 45325.

PURPOSE(S) OF THE SYSTEM:

Records in this system are used by authorized personnel to: ensure process integrity; enable the CIA and the Director of the CIA to carry out their lawful and authorized responsibilities; provide a data source for statistical and pattern analysis to support resource planning and business analytics; maintain complete and accurate clinical and psychiatric records on all CIA employees and other eligible individuals, their dependents, military and civilian employees detailed to CIA and select Intelligence Community elements, and retired or separated employees; respond to requirements relating to occupational health and medical surveillance; evaluate the medical suitability of personnel for assignment, travel, fitness-for-duty, health maintenance and in reviewing applications for medical disability retirement; track the safety and health status of CIA employees and other eligible individuals, components, sites, and operations; and refer individuals for specialty medical assistance, as appropriate.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Current and former CIA staff, contract employees, and other eligible individuals and their dependents; contractors; military and civilian personnel detailed to the CIA and their dependents; retired or separated CIA personnel; and physicians who provide services to any of the categories of individuals listed above.

CATEGORIES OF RECORDS IN THE SYSTEM:

Reports of medical examinations and related documents; personal medical histories; laboratory data; X-rays; private physician reports; reports of on-the-job injuries and illnesses; results of psychiatric screening and testing; reports of psychiatric interviews; records of immunizations; records on individuals covered by this system receiving psychiatric counseling; other medical materials relating to occupational health, medical surveillance, safety training, and preventative medicine; and/or any other types of individually identifiable health information generated or used in the course of medical or psychiatric treatment. The system may also include biographic and professional credential information on physicians providing evaluations and/or treatments.

RECORD SOURCE CATEGORIES:

Information may be provided by individuals covered by this system. Additional record sources may include routine medical processing and reports from private physicians or medical facilities, when written permission is granted by the individual.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

In addition to the disclosures generally permitted under 5 U.S.C. Section 552a(b), this information is set forth in the ''Statement of General Routine Uses for the Central Intelligence Agency,'' set out above, which is incorporated herein by reference. In addition to the General Routine Uses incorporated by references, the following additional routine uses also apply to this SORN:

20. Disclosure to a public health authority (domestic or foreign) that is authorized by law to collect or receive such information for the purpose of preventing or controlling disease, injury, or disability, including but not limited to the conduct of public health investigations or interventions.

21. Disclosure to the Office of Personnel Management in the case of an employee who applies for medical disability, and to the Department of Labor in the case of an employee who applies for Worker's Compensation benefits.

22. Disclosure to another health care provider, a group health plan, a health insurance issuer, or a health maintenance organization for purposes of carrying out treatment, payment, or health care operations.

POLICIES AND PRACTICES FOR STORAGE OF RECORDS:

Paper and other hard-copy records are stored in secured areas within the CIA or in CIA-controlled facilities. Electronic records are stored in secure file-servers located within CIA-controlled facilities.

POLICIES AND PRACTICES FOR RETRIEVAL OF RECORDS:

Records in this system may be retrieved by name, chart number, social security number, CIA employee number, or other unique personal identifier by automated or hand search based on extant indices and automated capabilities utilized in the normal course of business. Under applicable law and regulations, all searches of this system of records will be performed in CIA offices by CIA personnel.

POLICIES AND PRACTICES FOR RETENTION AND DISPOSAL OF RECORDS:

All records are maintained and disposed of in accordance with applicable Records Control Schedules issued or approved by the National Archives and Records Administration.

ADMINISTRATIVE, TECHNICAL, AND PHYSICAL SAFEGUARDS:

Records are maintained in secure, restricted areas and are accessed only by personnel who have a need for the records in the performance of their official duties and have been authorized for such access. Electronic authorization and authentication access controls are required to prevent against unauthorized access, use, and disclosure.

RECORD ACCESS PROCEDURES:

Requests from individuals should be addressed as indicated in the notification procedures section below. Regulations for access to individual records or for appealing an initial determination by CIA concerning the access to records are published in the **Federal Register** (32 CFR 1901.11–.45).

CONTESTING RECORD PROCEDURES:

Requests from individuals to correct or amend records should be addressed as indicated in the notification procedures section below. CIA's regulations regarding requests for amendments to, or disputing the contents of, individual records or for appealing an initial determination by CIA concerning these matters are published in the **Federal Register** (32 CFR 1901.21–.32, 32 CFR 1901.42).

NOTIFICATION PROCEDURES:

Individuals seeking to learn if this system of records contains information about them should direct their inquiries to: Information and Privacy Coordinator, Central Intelligence Agency, Washington, DC 20505. Identification requirements are specified in the CIA rules published in the **Federal Register** (32 CFR 1901.12–.14). Individuals must comply with these rules in order for their request to be processed.

EXEMPTIONS PROMULGATED FOR THE SYSTEM:

Certain records contained within this system of records may be exempted from certain provisions of the Privacy Act, 5 U.S.C. 552a, pursuant to 5 U.S.C. 552a(d)(5), (j)(1), and (k).

HISTORY:

70 FR 42417, July 22, 2005.

CIA–17

SYSTEM NAME AND NUMBER:

Applicant Clinical and Psychiatric Records (CIA–17).

SECURITY CLASSIFICATION:

The classification of records in this system can range from UNCLASSIFIED to TOP SECRET.

SYSTEM LOCATION:

Central Intelligence Agency, Washington, DC 20505.

SYSTEM MANAGER(S):

Director, Office of Medical Services, Central Intelligence Agency, Washington, DC 20505.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

The National Security Act of 1947, as amended, 50 U.S.C. 3036 *et seq.;* the Central Intelligence Agency Act of 1949, as amended, 50 U.S.C. 3501 *et seq.;* the Genetic Information Nondiscrimination Act of 2008, as amended, 42 U.S.C. 2000ff *et seq.;* the Rehabilitation Act of 1973, as amended, 29 U.SC. 791 *et seq.;* Executive Order 12333, as amended, 73 FR 45325.

PURPOSE(S) OF THE SYSTEM:

Records in this system are used by authorized personnel to: ensure process integrity; enable the CIA and the Director of the CIA to carry out their lawful and authorized responsibilities; provide a data source for statistical and pattern analysis to support resource planning and business analytics; maintain complete and accurate clinical and psychiatric records on all individuals applying for CIA and/or other federal employment; evaluate the medical suitability of applicants; and serve as a basis for the Employee Clinical and Psychiatric Record once an applicant is hired by the CIA or other select Intelligence Community element.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Current and former applicants for employment with the CIA, and any other individuals eligible to participate in the CIA's medical program.

CATEGORIES OF RECORDS IN THE SYSTEM:

Reports of medical examinations and related documents; personal medical histories; laboratory data; results of psychiatric screening and testing; reports of psychiatric interviews; and/or any other types of individually identifiable health information generated or used in the course of applicant medical or psychiatric evaluations.

RECORD SOURCE CATEGORIES:

Information may be provided by individuals covered by this system. Additional record sources may include routine medical processing and reports from private physicians or medical facilities, when written permission is granted by the applicant.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

In addition to the disclosures generally permitted under 5 U.S.C. Section 552a(b), this information is set forth in the ''Statement of General Routine Uses for the Central Intelligence Agency,'' set out above, which is incorporated herein by reference. In addition to the General Routine Uses incorporated by reference, the following additional routine use also applies to this SORN:

20. Disclosure to a public health authority (domestic or foreign) that is authorized by law to collect or receive such information for the purpose of preventing or controlling disease, injury, or disability, including but not limited to the conduct of public health investigations or interventions.

POLICIES AND PRACTICES FOR STORAGE OF RECORDS:

Paper and other hard-copy records are stored in secured areas within the CIA or in CIA-controlled facilities. Electronic records are stored in secure file-servers located within CIA-controlled facilities.

POLICIES AND PRACTICES FOR RETRIEVAL OF RECORDS:

Records in this system may be retrieved by name, chart number, social security number, CIA employee number, or other unique personal identifier by automated or hand search based on extant indices and automated capabilities utilized in the normal course of business. Under applicable law and regulations, all searches of this system of records will be performed in CIA offices by CIA personnel.

POLICIES AND PRACTICES FOR RETENTION AND DISPOSAL OF RECORDS:

All records are maintained and disposed of in accordance with applicable Records Control Schedules issued or approved by the National Archives and Records Administration.

ADMINISTRATIVE, TECHNICAL, AND PHYSICAL SAFEGUARDS:

Records are maintained in secure, restricted areas and are accessed only by personnel who have a need for the records in the performance of their official duties and have been authorized for such access. Electronic authorization and authentication access controls are required to prevent against unauthorized access, use, and disclosure.

RECORD ACCESS PROCEDURES:

Requests from individuals should be addressed as indicated in the notification procedures section below. Regulations for access to individual records or for appealing an initial determination by CIA concerning the access to records are published in the **Federal Register** (32 CFR 1901.11–.45).

CONTESTING RECORD PROCEDURES:

Requests from individuals to correct or amend records should be addressed as indicated in the notification procedures section below. CIA's regulations regarding requests for amendments to, or disputing the contents of, individual records or for appealing an initial determination by CIA concerning these matters are published in the **Federal Register** (32 CFR 1901.21–.32, 32 CFR 1901.42).

NOTIFICATION PROCEDURES:

Individuals seeking to learn if this system of records contains information about them should direct their inquiries to: Information and Privacy Coordinator, Central Intelligence Agency, Washington, DC 20505. Identification requirements are specified in the CIA rules published in the **Federal Register** (32 CFR 1901.12–.14). Individuals must comply with these rules in order for their request to be processed.

EXEMPTIONS PROMULGATED FOR THE SYSTEM:

Certain records contained within this system of records may be exempted from certain provisions of the Privacy Act, 5 U.S.C. 552a, pursuant to 5 U.S.C. 552a(d)(5), (j)(1), and (k).

HISTORY:

70 FR 42417, July 22, 2005.

CIA–18

SYSTEM NAME AND NUMBER:

Psychological Testing Data Records (CIA–18).

SECURITY CLASSIFICATION:

The classification of records in this system can range from UNCLASSIFIED to TOP SECRET.

SYSTEM LOCATION:

Central Intelligence Agency, Washington, DC 20505.

SYSTEM MANAGER(S):

Director, Office of Medical Services, Central Intelligence Agency, Washington, DC 20505.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

The National Security Act of 1947, as amended, 50 U.S.C. 3036 *et seq.;* the Central Intelligence Agency Act of 1949, as amended, 50 U.S.C. 3501 *et seq.;* the Genetic Information Nondiscrimination Act of 2008, as amended, 42 U.S.C. 2000ff *et seq.;* the Rehabilitation Act of 1973, as amended, 29 U.SC. 791 *et seq.;* Executive Order 12333, as amended, 73 FR 45325.

PURPOSE(S) OF THE SYSTEM:

Records in this system are used by authorized personnel to: ensure process integrity; enable the CIA and the Director of the CIA to carry out their lawful and authorized responsibilities; provide a data source for statistical and pattern analysis to support resource planning and business analytics; maintain psychological testing records; track individual test results which aid CIA management and advisory personnel, who have a need-to-know, in decision making; produce research reports of aggregate data for appropriate CIA officials and components; and examine the relationship between test scores and other variables of interest such as job performance.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Applicants for employment with the CIA and/or other select Intelligence Community elements; current and former CIA staff, contract employees, and other eligible individuals and their dependents; contractors, military and civilian personnel detailed to the CIA and their dependents; and retired or separated CIA personnel.

CATEGORIES OF RECORDS IN THE SYSTEM:

Psychological testing records, to include raw test data, testing scores, reports, and writing samples.

RECORD SOURCE CATEGORIES:

Individuals to whom records in this system pertain and who have completed a variety of psychological tests and interview sessions with CIA medical officers, as well as individuals involved in the assessment of test data.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

In addition to the disclosures generally permitted under 5 U.S.C. Section 552a(b), this information is set forth in the ''Statement of General Routine Uses for the Central Intelligence Agency,'' set out above, which is incorporated herein by reference. In addition to the General Routine Uses incorporated by reference, the following additional routine uses also apply to this SORN:

20. Disclosure to a public health authority (domestic or foreign) that is authorized by law to collect or receive such information for the purpose of preventing or controlling disease, injury, or disability, including but not limited to the conduct of public health investigations or interventions.

21. Disclosure to the Office of Personnel Management in the case of an employee who applies for medical disability, and to the Department of Labor in the case of an employee who applies for Worker's Compensation benefits.

22. Disclosure to another health care provider, a group health plan, a health insurance issuer, or a health maintenance organization for purposes of carrying out treatment, payment, or health care operations.

POLICIES AND PRACTICES FOR STORAGE OF RECORDS:

Paper and other hard-copy records are stored in secured areas within the CIA or in CIA-controlled facilities. Electronic records are stored in secure file-servers located within CIA-controlled facilities.

POLICIES AND PRACTICES FOR RETRIEVAL OF RECORDS:

Records in this system may be retrieved by name, chart number, social security number, CIA employee number, or other unique personal identifier by automated or hand search based on extant indices and automated capabilities utilized in the normal course of business. Under applicable law and regulations, all searches of this system of records will be performed in CIA offices by CIA personnel.

POLICIES AND PRACTICES FOR RETENTION AND DISPOSAL OF RECORDS:

All records are maintained and disposed of in accordance with applicable Records Control Schedules issued or approved by the National Archives and Records Administration.

ADMINISTRATIVE, TECHNICAL, AND PHYSICAL SAFEGUARDS:

Records are maintained in secured, restricted areas and are accessed only by personnel who have a need for the records in the performance of their official duties and have been authorized for such access. Electronic authorization

and authentication access controls are required to prevent against unauthorized access, use, and disclosure.

RECORD ACCESS PROCEDURES:

Requests from individuals should be addressed as indicated in the notification procedures section below. Regulations for access to individual records or for appealing an initial determination by CIA concerning the access to records are published in the **Federal Register** (32 CFR 1901.11–.45).

CONTESTING RECORD PROCEDURES:

Requests from individuals to correct or amend records should be addressed as indicated in the notification procedures section below. CIA's regulations regarding requests for amendments to, or disputing the contents of, individual records or for appealing an initial determination by CIA concerning these matters are published in the **Federal Register** (32 CFR 1901.21–.32, 32 CFR 1901.42).

NOTIFICATION PROCEDURES:

Individuals seeking to learn if this system of records contains information about them should direct their inquiries to: Information and Privacy Coordinator, Central Intelligence Agency, Washington, DC 20505. Identification requirements are specified in the CIA rules published in the **Federal Register** (32 CFR 1901.12–.14). Individuals must comply with these rules in order for their request to be processed.

EXEMPTIONS PROMULGATED FOR THE SYSTEM:

Certain records contained within this system of records may be exempted from certain provisions of the Privacy Act, 5 U.S.C. 552a, pursuant to 5 U.S.C. 552a(d)(5), (j)(1), and (k).

HISTORY:

70 FR 42417, July 22, 2005.

CIA–19

SYSTEM NAME AND NUMBER:

Agency Human Resource Records (CIA–19).

SECURITY CLASSIFICATION:

The classification of records in this system can range from UNCLASSIFIED to TOP SECRET.

SYSTEM LOCATION:

Central Intelligence Agency, Washington, DC 20505.

SYSTEM MANAGER(S):

Director, Office of Personnel Resources, Central Intelligence Agency, Washington, DC 20505.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

The National Security Act of 1947, as amended, 50 U.S.C. 3036 *et seq.;* the Central Intelligence Agency Act of 1949, as amended, 50 U.S.C. 3501 *et seq.;* the Central Intelligence Agency Retirement Act, 50 U.S.C. 2001 *et seq.;* Executive Order 9397, as amended, 73 FR 70239; Executive Order 12333, as amended, 73 FR 45325.

PURPOSE(S) OF THE SYSTEM:

Records in this system are used by authorized personnel to: ensure process integrity; provide a data source for statistical and pattern analysis to support resource planning and business analytics; enable the CIA and the Director of the CIA to carry out their lawful and authorized responsibilities; serve as the primary human resources management system for the CIA; maintain a comprehensive and continuing record of an individual's service, status, skills, and personnel history; perform centralized personnel functions such as employment, separation of employment, payroll, position and personnel staffing, and general employee transactions; administer systems dependent on personnel data such as insurance, medical and health care, and authorized retirement and retirement savings; compute salary, attendance, leave, benefits and entitlements for payroll and its dependent systems including insurance, medical and health care, and authorized retirement and retirement savings systems; maintain applicant and employee biographic and demographic data; compile statistical reports for CIA management on workforce strength, distribution and utilization of staffing, average grades and salaries, diversity and inclusion demographics, projected retirements, profiles of CIA skills and qualifications, comparative rates on promotions, separations, new employees, and reasons for separations; provide information and statistics for heads of Career Services to assist in administering career development and evaluation programs, including promotion rates and headroom, performance appraisal report ratings, qualifications, changes in their Career Services; assess staffing patterns, grade and salary data for office heads required for staffing and budget projections; provide information and statistics for components responsible for administering recruitment, hospitalization, insurance, and authorized retirement and retirement savings programs; report statistical data calls regarding workforce questions, and provide records of employee transactions to responsible CIA officials and to the employees themselves.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Current and former CIA staff and contract employees; military and civilian personnel detailed to the CIA; applicants in process for CIA employment; candidates for CIA awards; dependents and beneficiaries designated by CIA employees who were participants in authorized retirement systems, retirement savings programs, and other federal benefit programs; and certain OSS veterans.

CATEGORIES OF RECORDS IN THE SYSTEM:

Biographic data including records on education, military service data, insurance, medical and retirement status and locator information on individuals covered by this system; employment information including records on applicant tracking, job matching, seasonal and cooperative employment programs, and information on those separating from CIA employment; personnel information including records on employment history, leave, time and attendance, fitness-for-duty and performance appraisal reports, awards, travel, training, job injury, worker's compensation records and security clearance information; CIA personnel information including records on position and job title information, qualifications and skills assessments, authorized personnel staffing data, levels, and patterns; financial information relating to payroll and authorized retirement and retirement savings accounts, including authorized or required payroll deductions or contributions for federal, state and local taxes, other tax documentation, and retirement, insurance and leave entitlements; banking instructions for dissemination of salary paychecks; contracts relating to contract employees and independent contractors; and financial disclosure forms submitted pursuant to the Ethics in Government Act. Due to CIA's unique personnel authorities, this system also contains the Official Personnel Files of current and former CIA staff used by the Office of Personnel Management for the administration of Federal employee benefit programs, to include insurance, savings and retirement programs. Duplicate copies that fall within the scope of OPM GOVT–1 ''General Personnel Records'' are also maintained separately by OPM.

RECORD SOURCE CATEGORIES:

Information may be provided by individuals covered by this system; educational institutions and private organizations; physicians and medical practitioners; and other U.S. government departments and agencies.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

In addition to the disclosures generally permitted under 5 U.S.C. 552a(b), this information is set forth in the ''Statement of General Routine Uses for the Central Intelligence Agency,'' set out above, which is incorporated herein by reference. In addition to the General Routine Uses incorporated by reference, the following additional routine uses also apply to this SORN:

20. Disclosure to the Office of Personnel Management for the administration of Federal benefit programs and other services under relevant laws and regulations governing federal employment, to include authorized insurance, savings and retirement programs.

21. Disclosure to the Department of Labor, Social Security Administration, or other Federal, state or municipal agencies when necessary to adjudicate a claim or provide benefits under programs managed by such entities.

POLICIES AND PRACTICES FOR STORAGE OF RECORDS:

Paper and other hard-copy records are stored in secured areas within the CIA or in CIA-controlled facilities. Electronic records are stored in secure file-servers located within CIA-controlled facilities.

POLICIES AND PRACTICES FOR RETRIEVAL OF RECORDS:

Records in this system may be retrieved by name, chart number, social security number, CIA employee number, or other unique personal identifier by automated or hand search based on extant indices and automated capabilities utilized in the normal course of business. Under applicable law and regulations, all searches of this system of records will be performed in CIA offices by CIA personnel.

POLICIES AND PRACTICES FOR RETENTION AND DISPOSAL OF RECORDS:

All records are maintained and disposed of in accordance with applicable Records Control Schedules issued or approved by the National Archives and Records Administration.

ADMINISTRATIVE, TECHNICAL, AND PHYSICAL SAFEGUARDS:

Records are maintained in secure, restricted areas and are accessed only by personnel who have a need for the records in the performance of their official duties and have been authorized for such access. Electronic authorization and authentication access controls are required to prevent against unauthorized access, use, and disclosure.

RECORD ACCESS PROCEDURES:

Requests from individuals should be addressed as indicated in the notification procedures section below. Regulations for access to individual records or for appealing an initial determination by CIA concerning the access to records are published in the **Federal Register** (32 CFR 1901.11–.45).

CONTESTING RECORD PROCEDURES:

Requests from individuals to correct or amend records should be addressed as indicated in the notification procedures section below. CIA's regulations regarding requests for amendments to, or disputing the contents of, individual records or for appealing an initial determination by CIA concerning these matters are published in the **Federal Register** (32 CFR 1901.21–.32, 32 CFR 1901.42).

NOTIFICATION PROCEDURES:

Individuals seeking to learn if this system of records contains information about them should direct their inquiries to: Information and Privacy Coordinator, Central Intelligence Agency, Washington, DC 20505. Identification requirements are specified in the CIA rules published in the **Federal Register** (32 CFR 1901.12–.14). Individuals must comply with these rules in order for their request to be processed.

EXEMPTIONS PROMULGATED FOR THE SYSTEM:

Certain records contained within this system of records may be exempted from certain provisions of the Privacy Act, 5 U.S.C. 552a, pursuant to 5 U.S.C. 552a(d)(5), (j)(1), and (k).

HISTORY:

70 FR 42417, July 22, 2005.

CIA–20 [rescinded]

SORN CIA–20 is RESCINDED and the number held in reserve.

SYSTEM NAME AND NUMBER:

Official Personnel Files (CIA–20).

HISTORY:

70 FR 42417, July 22, 2005.

CIA–21

SYSTEM NAME AND NUMBER:

Applicant Records (CIA–21).

SECURITY CLASSIFICATION:

The classification of records in this system can range from UNCLASSIFIED to TOP SECRET.

SYSTEM LOCATION:

Central Intelligence Agency, Washington, DC 20505.

SYSTEM MANAGER(S):

Chief, Recruitment Center, Central Intelligence Agency, Washington, DC 20505.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

The National Security Act of 1947, as amended, 50 U.S.C. 3036 *et seq.;* the Central Intelligence Agency Act of 1949, as amended, 50 U.S.C. 3501 *et seq.;* Executive Order 12333, as amended, 73 FR 45325.

PURPOSE(S) OF THE SYSTEM:

Records are used by CIA human resources management officials and other authorized personnel: to ensure process integrity; to enable the CIA and the Director of the CIA to carry out their lawful and authorized responsibilities; to review an applicant's or prospective applicant's qualifications; for security background investigations; for suitability determinations; for medical screening; and to determine whether employment with the CIA will be offered.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Applicants or prospective applicants for employment with the CIA.

CATEGORIES OF RECORDS IN THE SYSTEM:

Records concerning the applicant or prospective applicant, including: biographic data, medical and employment history statements, educational transcripts, and personal references; and records relating to employment processing, including: interview reports, test results, correspondence, review comments, and general processing records.

RECORD SOURCE CATEGORIES:

CIA applicants or prospective applicants; applicant or prospective applicant references; educational institutions and private organizations; physicians and medical practitioners; CIA employees; and other federal agencies.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

In addition to the disclosures generally permitted under 5 U.S.C. Section 552a(b), this information is set forth in the ''Statement of General

Routine Uses for the Central Intelligence Agency,'' set out above, which is incorporated herein by reference.

POLICIES AND PRACTICES FOR STORAGE OF RECORDS:

Paper and other hard-copy records are stored in secured areas within the CIA or in CIA-controlled facilities. Electronic records are stored in secure file-servers located within CIA-controlled facilities.

POLICIES AND PRACTICES FOR RETRIEVAL OF RECORDS:

Records in this system may be retrieved by name, chart number, social security number, CIA employee number, or other unique personal identifier by automated or hand search based on extant indices and automated capabilities utilized in the normal course of business. Under applicable law and regulations, all searches of this system of records will be performed in CIA offices by CIA personnel.

POLICIES AND PRACTICES FOR RETENTION AND DISPOSAL OF RECORDS:

All records are maintained and disposed of in accordance with applicable Records Control Schedules issued or approved by the National Archives and Records Administration.

ADMINISTRATIVE, TECHNICAL, AND PHYSICAL SAFEGUARDS:

Records are maintained in secure, restricted areas and are accessed only by personnel who have a need for the records in the performance of their official duties and have been authorized for such access. Electronic authorization and authentication access controls are required to prevent against unauthorized access, use, and disclosure.

RECORD ACCESS PROCEDURES:

Requests from individuals should be addressed as indicated in the notification procedures section above below. Regulations for access to individual records or for appealing an initial determination by CIA concerning the access to records are published in the **Federal Register** (32 CFR 1901.11–.45).

CONTESTING RECORD PROCEDURES:

Requests from individuals to correct or amend records should be addressed as indicated in the notification procedures section below. CIA's regulations regarding requests for amendments to, or disputing the contents of, individual records or for appealing an initial determination by CIA concerning these matters are published in the **Federal Register** (32 CFR 1901.21–.32, 32 CFR 1901.42).

NOTIFICATION PROCEDURES:

Individuals seeking to learn if this system of records contains information about them should direct their inquiries to: Information and Privacy Coordinator, Central Intelligence Agency, Washington, DC 20505. Identification requirements are specified in the CIA rules published in the **Federal Register** (32 CFR 1901.12–.14). Individuals must comply with these rules in order for their request to be processed.

EXEMPTIONS PROMULGATED FOR THE SYSTEM:

Certain records contained within this system of records may be exempted from certain provisions of the Privacy Act, 5 U.S.C. 552a, pursuant to 5 U.S.C. 552a(d)(5), (j)(1), and (k).

HISTORY:

87 FR 67669, November 09, 2022.
70 FR 42417, July 22, 2005.

CIA–22

SYSTEM NAME AND NUMBER:

Personnel Security Records (CIA–22).

SECURITY CLASSIFICATION:

The classification of records in this system can range from UNCLASSIFIED to TOP SECRET.

SYSTEM LOCATION:

Central Intelligence Agency, Washington, DC 20505.

SYSTEM MANAGER(S):

Director of Security, Central Intelligence Agency, Washington, DC 20505.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

The National Security Act of 1947, as amended, 50 U.S.C. 3036 *et seq.;* the Central Intelligence Agency Act of 1949, as amended, 50 U.S.C. 3501 *et seq.;* Executive Order 12333, as amended, 73 FR 45325; Executive Order 10450, 5 U.S.C. 7311 note; Executive Order 13526, 60 FR 40245, as amended by Executive Order 13467, 73 FR 38103; Executive Order 13526, 75 FR 705, or its successor; Executive Order 13587, 76 FR 63811.

PURPOSE(S) OF THE SYSTEM:

Records in this system are used by authorized personnel to: ensure process integrity; enable the CIA and the Director of the CIA to carry out their lawful and authorized responsibilities; to document personnel security and suitability decisions; assist with security eligibility determinations and employment or assignment suitability decisions in accordance with applicable statutes, Executive Orders, Director of Central Intelligence Directives, CIA regulations, and other applicable law; record information regarding security eligibility determinations and employment or assignment suitability decisions concerning individuals who are under consideration for affiliation or continued affiliation with the CIA, or access or continued access to classified or otherwise protected CIA information, projects, or facilities; verify individual security clearances or access approvals; and record information relevant to investigations into possible violations of CIA rules and regulations, including the possible loss or compromise of classified or protected CIA information.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Current and former applicants for CIA employment; CIA staff and contract employees; personal services independent contractors and industrial contractors; military and civilian personnel detailed to the CIA; individuals of security interest to CIA; persons of, or contemplated for, substantive affiliation with, or service to, the CIA; persons on whom the CIA has conducted or is conducting an investigation; and federal, civilian, and military personnel with whom the CIA conducts liaison.

CATEGORIES OF RECORDS IN THE SYSTEM:

Biographic data (including name, sex, date and place of birth, social security number, and completed security questionnaires); authorizations for the release of financial, travel, employment, housing, educational, and other information; summaries or reports of information obtained from other CIA records such as personnel, medical, or counterintelligence records; financial disclosure forms submitted by CIA personnel; travel data on individuals covered by this system; correspondence pertaining to an individual's suitability for CIA assignment or affiliation, and the individual's security eligibility for access to classified information, projects, or facilities; investigative reports, investigative information, and data pertaining to actual or purported compromises of classified or otherwise protected information; appraisals that summarize investigative results and provide the decision or rationale for determining whether an individual should receive access to classified information, projects, or facilities, or is suitable for CIA affiliation or assignment; documentation of, or relating to, interim or final actions relating to issues of security, discipline, or the grant, denial, suspension, or revocation of a CIA security clearance, access approval, or security approval;

and secrecy agreements executed by individuals covered by this system.

RECORD SOURCE CATEGORIES: INDIVIDUALS COVERED BY THIS SYSTEM OF RECORDS:

Personal and business references provided by the individual or developed during the course of an investigation; educational institutions and private organizations; federal, state, and local government entities; public sources such as newspapers and periodicals, consumer reporting agencies, financial, travel, educational, employment-related, and other commercial sources; and classified and unclassified reporting on investigations and investigative materials.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

In addition to the disclosures generally permitted under 5 U.S.C. Section 552a(b), information on additional routine uses is set forth in the ''Statement of General Routine Uses for the Central Intelligence Agency,'' set out above, which is incorporated herein by reference. In addition to the General Routine Uses incorporated by reference, the following additional routine use also applies to this SORN:

20. Records in this system are used to provide information, including biographic information and records of security breaches, to other federal agencies involved in national security matters in the following circumstances: to respond to national agency checks; to certify security clearances and access approvals; and to provide information relevant to espionage investigations.

POLICIES AND PRACTICES FOR STORAGE OF RECORDS:

Paper and other hard-copy records are stored in secured areas within the CIA or in CIA-controlled facilities. Electronic records are stored in secure file-servers located within CIA-controlled facilities.

POLICIES AND PRACTICES FOR RETRIEVAL OF RECORDS:

Records in this system may be retrieved by name, chart number, social security number, CIA employee number, or other unique personal identifier by automated or hand search based on extant indices and automated capabilities utilized in the normal course of business. Under applicable law and regulations, all searches of this system of records will be performed in CIA offices by CIA personnel.

POLICIES AND PRACTICES FOR RETENTION AND DISPOSAL OF RECORDS:

All records are maintained and disposed of in accordance with applicable Records Control Schedules issued or approved by the National Archives and Records Administration.

ADMINISTRATIVE, TECHNICAL, AND PHYSICAL SAFEGUARDS:

Records are maintained in secure, restricted areas and are accessed only by personnel who have a need for the records in the performance of their official duties and have been authorized for such access. Electronic authorization and authentication access controls are required to prevent against unauthorized access, use, and disclosure.

RECORD ACCESS PROCEDURES:

Requests from individuals should be addressed as indicated in the notification procedures section below. Regulations for access to individual records or for appealing an initial determination by CIA concerning the access to records are published in the **Federal Register** (32 CFR 1901.11–.45).

CONTESTING RECORD PROCEDURES:

Requests from individuals to correct or amend records should be addressed as indicated in the notification procedures section below. CIA's regulations regarding requests for amendments to, or disputing the contents of individual records or for appealing an initial determination by CIA concerning these matters are published in the **Federal Register** (32 CFR 1901.21–.32, 32 CFR 1901.42).

NOTIFICATION PROCEDURES:

Individuals seeking to learn if this system of records contains information about them should direct their inquiries to: Information and Privacy Coordinator, Central Intelligence Agency, Washington, DC 20505. Identification requirements are specified in the CIA rules published in the **Federal Register** (32 CFR 1901.12–.14). Individuals must comply with these rules in order for their request to be processed.

EXEMPTIONS PROMULGATED FOR THE SYSTEM:

Certain records contained within this system of records may be exempted from certain provisions of the Privacy Act, 5 U.S.C. 552a, pursuant to 5 U.S.C. 552a(d)(5), (j)(1), and (k).

HISTORY:

70 FR 42417, July 22, 2005.

CIA–23 [rescinded]

SORN CIA–23 is RESCINDED and the number held in reserve.

SYSTEM NAME AND NUMBER:

Intelligence Community Security Clearance and Access Approval Repository (CIA–23).

HISTORY:

70 FR 42417, July 22, 2005.

CIA–24

SYSTEM NAME AND NUMBER:

Polygraph Records (CIA–24).

SECURITY CLASSIFICATION:

The classification of records in this system can range from UNCLASSIFIED to TOP SECRET.

SYSTEM LOCATION:

Central Intelligence Agency, Washington, DC 20505.

SYSTEM MANAGER(S):

Director of Security, Central Intelligence Agency, Washington, DC 20505.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

The National Security Act of 1947, as amended, 50 U.S.C. 3036 *et seq.;* the Central Intelligence Agency Act of 1949, as amended, 50 U.S.C. 3501 *et seq.;* Executive Order 12333, as amended, 73 FR 45325; Executive Order 10450, 5 U.S.C. 7311 note; Executive Order 13526, 75 FR 705, or its successor; Executive Order 12968, 60 FR 40245, as amended by Executive Order 13467, 73 FR 38103.

PURPOSE(S) OF THE SYSTEM:

Records in this system are used by authorized personnel to: ensure process integrity; enable the CIA and the Director of the CIA to carry out their lawful and authorized responsibilities; document polygraph results; assist with security eligibility determinations and employment or assignment suitability decisions in accordance with applicable statutes, Executive Orders, Director of Central Intelligence Directives, CIA regulations, and other applicable law; and to assist with investigations into possible violations of CIA rules and regulations, including the possible loss or compromise of classified or protected CIA information.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Current and former applicants for CIA employment; CIA staff and contract employees; personal services independent contractors and industrial contractors; military and civilian personnel detailed to the CIA; individuals of security interest to CIA; persons of, or contemplated for, substantive affiliation with, or service to, the CIA; and persons on whom the CIA has conducted or is conducting an investigation.

CATEGORIES OF RECORDS IN THE SYSTEM:

Polygraph reports; polygraph charts; polygraph tapes; and notes from

polygraph interviews or activities related to polygraph interviews.

RECORD SOURCE CATEGORIES:

Individuals covered by this system of records.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

In addition to the disclosures generally permitted under 5 U.S.C. Section 552a(b), this information is set forth in the ''Statement of General Routine Uses for the Central Intelligence Agency,'' set out above, which is incorporated herein by reference.

POLICIES AND PRACTICES FOR STORAGE OF RECORDS:

Paper and other hard-copy records are stored in secured areas within the CIA or in CIA-controlled facilities. Electronic records are stored in secure file-servers located within CIA-controlled facilities.

POLICIES AND PRACTICES FOR RETRIEVAL OF RECORDS:

Records in this system may be retrieved by name, chart number, social security number, CIA employee number, or other unique personal identifier by automated or hand search based on extant indices and automated capabilities utilized in the normal course of business. Under applicable law and regulations, all searches of this system of records will be performed in CIA offices by CIA personnel.

POLICIES AND PRACTICES FOR RETENTION AND DISPOSAL OF RECORDS:

All records are maintained and disposed of in accordance with applicable Records Control Schedules issued or approved by the National Archives and Records Administration.

ADMINISTRATIVE, TECHNICAL, AND PHYSICAL SAFEGUARDS:

Records are maintained in secure, restricted areas and are accessed only by personnel who have a need for the records in the performance of their official duties and have been authorized for such access. Electronic authorization and authentication access controls are required to protect against unauthorized access, use, and disclosure.

RECORD ACCESS PROCEDURES:

Requests from individuals should be addressed as indicated in the notification procedures section below. Regulations for access to individual records or for appealing an initial determination by CIA concerning the access to records are published in the **Federal Register** (32 CFR 1901.11–.45).

CONTESTING RECORD PROCEDURES:

Requests from individuals to correct or amend records should be addressed as indicated in the notification procedures section below. CIA's regulations regarding requests for amendments to, or disputing the contents of, individual records or for appealing an initial determination by CIA concerning these matters are published in the **Federal Register** (32 CFR 1901.21–.32, 32 CFR 1901.42).

NOTIFICATION PROCEDURES:

Individuals seeking to learn if this system of records contains information about them should direct their inquiries to: Information and Privacy Coordinator, Central Intelligence Agency, Washington, DC 20505. Identification requirements are specified in the CIA rules published in the **Federal Register** (32 CFR 1901.12–.14). Individuals must comply with these rules in order for their request to be processed.

EXEMPTIONS PROMULGATED FOR THE SYSTEM:

Certain records contained within this system of records may be exempted from certain provisions of the Privacy Act, 5 U.S.C. 552a, pursuant to 5 U.S.C. 552a(d)(5), (j)(1), and (k).

HISTORY:

70 FR 42417, July 22, 2005.

CIA–25

SYSTEM NAME AND NUMBER:

Office of the Director Action Center (DAC) Records (CIA–25).

SECURITY CLASSIFICATION:

The classification of records in this system can range from UNCLASSIFIED to TOP SECRET.

SYSTEM LOCATION:

Central Intelligence Agency, Washington, DC 20505.

SYSTEM MANAGER(S):

Chief, DAC, Central Intelligence Agency, Washington, DC 20505.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

The National Security Act of 1947, as amended, 50 U.S.C. 3036 *et seq.;* the Central Intelligence Agency Act of 1949, as amended, 50 U.S.C. 3501 *et seq.;* Executive Order 12333, as amended, 73 FR 45325.

PURPOSE(S) OF THE SYSTEM:

Records in this system are used by authorized personnel to: ensure process integrity; enable the CIA and the Director of the CIA to carry out their lawful and authorized responsibilities; document the activities and policy decisions of the Director of the CIA; and serve as reference material for business areas within the purview of the Office of the Director.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Individuals who send correspondence to, or receive correspondence from, the Office of the Director; and individuals who are the subject of correspondence to or from the Office of the Director.

CATEGORIES OF RECORDS IN THE SYSTEM:

Correspondence and documents addressed to, received by, or originated in the Office of the Director concerning: matters of policy, operations, and security within the purview of the Director of the CIA; Congressional inquiries; and inquiries from the members of the general public.

RECORD SOURCE CATEGORIES:

U.S. Government records; publicly available information from the media, libraries, and commercial databases; and Executive branch and Congressional officials and staff members, and members of the general public who send correspondence to, or receive correspondence from, the Office of the Director of Central Intelligence.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

In addition to the disclosures generally permitted under 5 U.S.C. Section 552a(b), information on additional routine uses is set forth in the ''Statement of General Routine Uses for the Central Intelligence Agency,'' set out above, which is incorporated herein by reference. In addition to the General Routine Uses incorporated by reference, the following additional routine use also applies to this SORN:

20. Correspondence contained in this system of records may be provided to U.S. Government agencies, other than the CIA, when it is determined that such other agencies can more appropriately handle the matters addressed in the correspondence.

POLICIES AND PRACTICES FOR STORAGE OF RECORDS:

Paper and other hard-copy records are stored in secured areas within the CIA or in CIA-controlled facilities. Electronic records are stored in secure file-servers located within CIA-controlled facilities.

POLICIES AND PRACTICES FOR RETRIEVAL OF RECORDS:

Records in this system may be retrieved by name, chart number, social security number, CIA employee number, or other unique personal identifier by

automated or hand search based on extant indices and automated capabilities utilized in the normal course of business. Under applicable law and regulations, all searches of this system of records will be performed in CIA offices by CIA personnel.

POLICIES AND PRACTICES FOR RETENTION AND DISPOSAL OF RECORDS:

All records are maintained and disposed of in accordance with applicable Records Control Schedules issued or approved by the National Archives and Records Administration.

ADMINISTRATIVE, TECHNICAL, AND PHYSICAL SAFEGUARDS:

Records are maintained in secure, restricted areas and are accessed only by personnel who have a need for the records in the performance of their official duties and have been authorized for such access. Electronic authorization and authentication access controls are required to prevent against unauthorized access, use, and disclosure.

RECORD ACCESS PROCEDURES:

Requests from individuals should be addressed as indicated in the notification procedures section below. Regulations for access to individual records or for appealing an initial determination by CIA concerning the access to records are published in the **Federal Register** (32 CFR 1901.11–.45).

CONTESTING RECORD PROCEDURES:

Requests from individuals to correct or amend records should be addressed as indicated in the notification procedures section below. CIA's regulations regarding requests for amendments to, or disputing the contents of, individual records or for appealing an initial determination by CIA concerning these matters are published in the **Federal Register** (32 CFR 1901.21–.32, 32 CFR 1901.42).

NOTIFICATION PROCEDURES:

Individuals seeking to learn if this system of records contains information about them should direct their inquiries to: Information and Privacy Coordinator, Central Intelligence Agency, Washington, DC 20505. Identification requirements are specified in the CIA rules published in the **Federal Register** (32 CFR 1901.12–.14). Individuals must comply with these rules in order for their request to be processed.

EXEMPTIONS PROMULGATED FOR THE SYSTEM:

Certain records contained within this system of records may be exempted from certain provisions of the Privacy Act, 5 U.S.C. 552a, pursuant to 5 U.S.C. 552a(d)(5), (j)(1), and (k).

HISTORY:

70 FR 42417, July 22, 2005.

CIA–26

SYSTEM NAME AND NUMBER:

Office of General Counsel Records (CIA–26).

SECURITY CLASSIFICATION:

The classification of records in this system can range from UNCLASSIFIED to TOP SECRET.

SYSTEM LOCATION:

Central Intelligence Agency, Washington, DC 20505.

SYSTEM MANAGER(S):

General Counsel, Office of General Counsel, Central Intelligence Agency, Washington, DC 20505.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

The National Security Act of 1947, as amended, 50 U.S.C. 3036 *et seq.;* the Central Intelligence Agency Act of 1949, as amended, 50 U.S.C. 3501 *et seq.;* Executive Order 12333, as amended, 73 FR 45325.

PURPOSE(S) OF THE SYSTEM:

Records in this system are used by authorized personnel to: ensure process integrity; enable the CIA and the Director of the CIA to carry out their lawful and authorized responsibilities; provide a data source for statistical and pattern analysis to support resource planning and business analytics; provide legal advice and representation to the CIA and to the Director of the CIA; provide factual information necessary for the preparation of legal documents, including pleadings, subpoenas, motions, affidavits, declarations, testimonies, briefs, legal opinions, litigation reports prepared for the Department of Justice, reports(including to law enforcement agencies), and other general attorney work product; provide a historical record of all private attorneys who have received security clearances and/or access approvals to receive and discuss U.S. Government information necessary to their representation of CIA-affiliated clients, and record the nature, scope and duration of private attorneys' legal representations of CIA-affiliated clients; and maintain a record of federal, state, local, international, or foreign litigation, administrative claims, and other legal matters in which CIA is a party or has an interest.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Current and former CIA staff and contract employees, personal services independent contractors, employees of industrial contractors, military and civilian personnel detailed or assigned to the CIA; applicants for employment with the CIA; current and former employees and contractors of U.S. Government agencies; individuals in contact with the CIA, including individuals whose inquiries concerning the CIA or the Intelligence Community (IC) are forwarded to the Office of General Counsel for response; attorneys, court staff, or support staff in private practice who hold CIA security clearances or access approvals; individuals in government, academia, the business community, or other elements of the private sector with expertise on matters of interest to the Office of General Counsel or relating to financial transactions associated with commercial vendors and contracts; and individuals who may be involved in matters which implicate the CIA's and/or the IC's legal authorities, responsibilities, and obligations, including but not limited to administrative claimants, grievants, parties in litigation, witnesses, staff, targets or potential targets of investigations or intelligence collection; and individuals who are interviewed by, or provide information to the CIA or the IC.

CATEGORIES OF RECORDS IN THE SYSTEM:

Legal documents, including but not limited to pleadings, subpoenas, motions, research opinions, affidavits, declarations, briefs, memoranda, reports, including litigation reports, and legal opinions; biographic information for private attorneys, including Social Security Number, date and place of birth, education, law firm (if any), office addresses, fax and telephone numbers, bar memberships, legal specialties and/or areas of practice, names of CIA-affiliated clients, and date and type of security clearance and/or access approval pending or granted; crimes reports filed with or obtained from the U.S. Department of Justice or other appropriate law enforcement agencies concerning individuals covered by this system of records; internal CIA documents and cables concerning individuals covered by this system of records; and correspondence with members of the public, members of the U.S. Congress, Congressional staff, oversight entities, and federal, state, local, international and foreign agencies, courts, private sector entities, and administrative tribunals.

RECORD SOURCE CATEGORIES:

Information may be provided by individuals covered by this system; CIA

internally derived information; other U.S. Government entities; state, local, and private agencies and courts, and publicly available information.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

In addition to the disclosures generally permitted under 5 U.S.C. Section 552a(b), this information is set forth in the ''Statement of General Routine Uses for the Central Intelligence Agency,'' set out above, which is incorporated herein by reference.

POLICIES AND PRACTICES FOR STORAGE OF RECORDS:

Paper and other hard-copy records are stored in secured areas within the CIA or in CIA-controlled facilities. Electronic records are stored in secure file-servers located within CIA-controlled facilities.

POLICIES AND PRACTICES FOR RETRIEVAL OF RECORDS:

Records in this system may be retrieved by name, chart number, social security number, CIA employee number, or other unique personal identifier by automated or hand search based on extant indices and automated capabilities utilized in the normal course of business. Under applicable law and regulations, all searches of this system of records will be performed in CIA offices by CIA personnel.

POLICIES AND PRACTICES FOR RETENTION AND DISPOSAL OF RECORDS:

All records are maintained and disposed of in accordance with applicable Records Control Schedules issued or approved by the National Archives and Records Administration.

ADMINISTRATIVE, TECHNICAL, AND PHYSICAL SAFEGUARDS:

Records are maintained in secure, restricted areas and are accessed only by personnel who have a need for the records in the performance of their official duties and have been authorized for such access. Electronic authorization and authentication access controls are required to prevent against unauthorized access, use, and disclosure.

RECORD ACCESS PROCEDURES:

Requests from individuals should be addressed as indicated in the notification procedures section below. Regulations for access to individual records or for appealing an initial determination by CIA concerning the access to records are published in the **Federal Register** (32 CFR 1901.11–.45).

CONTESTING RECORD PROCEDURES:

Requests from individuals to correct or amend records should be addressed as indicated in the notification procedures section below. CIA's regulations regarding requests for amendments to, or disputing the contents of, individual records or for appealing an initial determination by CIA concerning these matters are published in the **Federal Register** (32 CFR 1901.21–.32, 32 CFR 1901.42).

NOTIFICATION PROCEDURES:

Individuals seeking to learn if this system of records contains information about them should direct their inquiries to: Information and Privacy Coordinator, Central Intelligence Agency, Washington, DC 20505. Identification requirements are specified in the CIA rules published in the **Federal Register** (32 CFR 1901.12–.14). Individuals must comply with these rules in order for their request to be processed.

EXEMPTIONS PROMULGATED FOR THE SYSTEM:

Certain records contained within this system of records may be exempted from certain provisions of the Privacy Act, 5 U.S.C. 552a, pursuant to 5 U.S.C. 552a(d)(5), (j)(1), and (k).

HISTORY:

70 FR 42417, July 22, 2005.

CIA–27

SYSTEM NAME AND NUMBER:

Office of Equal Employment Opportunity (OEEO) Records (CIA–27).

SECURITY CLASSIFICATION:

The classification of records in this system can range from UNCLASSIFIED to TOP SECRET.

SYSTEM LOCATION:

Central Intelligence Agency, Washington, DC 20505.

SYSTEM MANAGER(S):

Director, Office of Equal Employment Opportunity, Central Intelligence Agency, Washington, DC 20505.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

The National Security Act of 1947, as amended, 50 U.S.C. 3036 *et seq.;* the Central Intelligence Agency Act of 1949, as amended, 50 U.S.C. 3501 *et seq.;* Equal Employment Opportunity Act of 1972, 42 U.S.C. 2000e *et seq.;* Age Discrimination in Employment Act, 29 U.S.C. 633a; the Rehabilitation Act of 1973, as amended, 29 U.S.C. 701 *et seq.;* Executive Order 12333, as amended, 73 FR 45325; Executive Order 11478, as amended by Executive Order 13097, 63 FR 30097 and Executive Order 13152, 65 FR 26115.

PURPOSE(S) OF THE SYSTEM:

Records in this system are used by authorized personnel to: ensure process integrity; enable the CIA and the Director of the CIA to carry out their lawful and authorized responsibilities; process EEO complaints; harassment complaints, provide information for review by the Equal Employment Opportunity Commission, including statistics; provide information for federal court review; track requests and provide reasonable accommodations through the provision of products and services to individuals who make requests for such accommodations; and track applications for retirement on the basis of medical disabilities.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Current and former CIA staff and contract employees, personal services independent contractors, industrial contractors, and military and civilian personnel detailed to the CIA; and applicants for employment with the CIA.

CATEGORIES OF RECORDS IN THE SYSTEM:

Documents and materials relating to EEO counselings or complaints, including: data collected by an EEO Counselor or Investigator which bears on charges of discrimination or harassment brought by a complainant; sworn affidavits from the complainant, the alleged discriminating officer(s), and other individuals as appropriate; other documents or statistical evidence considered pertinent to the case which assists the CIA or an authorized adjudicator in making a decision; requests made by individuals or offices for reasonable accommodations, records related to an OEEO or harassment complaint, and the products or services provided in response to such requests; and information regarding individuals who apply for retirement on the basis of medical disabilities, and other individuals with medical disabilities.

RECORD SOURCE CATEGORIES:

Individuals covered by this system; applicants for employment with the CIA; individuals who provide information during the investigation of EEO complaints; and medical and psychiatric personnel.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

In addition to the disclosures generally permitted under 5 U.S.C. Section 552a(b), this information is set forth in the ''Statement of General Routine Uses for the Central Intelligence

Agency,'' set out above, which is incorporated herein by reference.

POLICIES AND PRACTICES FOR STORAGE OF RECORDS:

Paper and other hard-copy records are stored in secured areas within the CIA or in CIA-controlled facilities. Electronic records are stored in secure file-servers located within CIA-controlled facilities.

POLICIES AND PRACTICES FOR RETRIEVAL OF RECORDS:

Records in this system may be retrieved by name, chart number, social security number, CIA employee number, or other unique personal identifier by automated or hand search based on extant indices and automated capabilities utilized in the normal course of business. Under applicable law and regulations, all searches of this system of records will be performed in CIA offices by CIA personnel.

POLICIES AND PRACTICES FOR RETENTION AND DISPOSAL OF RECORDS:

All records are maintained and disposed of in accordance with applicable Records Control Schedules issued or approved by the National Archives and Records Administration.

ADMINISTRATIVE, TECHNICAL, AND PHYSICAL SAFEGUARDS:

Records are maintained in secure, restricted areas and are accessed only by personnel who have a need for the records in the performance of their official duties and have been authorized for such access. Electronic authorization and authentication access controls are required to prevent against unauthorized access, use, and disclosure.

RECORD ACCESS PROCEDURES:

Requests from individuals should be addressed as indicated in the notification procedures section below. Regulations for access to individual records or for appealing an initial determination by CIA concerning the access to records are published in the **Federal Register** (32 CFR 1901.11–.45).

CONTESTING RECORD PROCEDURES:

Requests from individuals to correct or amend records should be addressed as indicated in the notification procedures section below. CIA's regulations regarding requests for amendments to, or disputing the contents of, individual records or for appealing an initial determination by CIA concerning these matters are published in the **Federal Register** (32 CFR 1901.21–.32, 32 CFR 1901.42).

NOTIFICATION PROCEDURES:

Individuals seeking to learn if this system of records contains information about them should direct their inquiries to: Information and Privacy Coordinator, Central Intelligence Agency, Washington, DC 20505. Identification requirements are specified in the CIA rules published in the **Federal Register** (32 CFR 1901.12–.14). Individuals must comply with these rules in order for their request to be processed.

EXEMPTIONS PROMULGATED FOR THE SYSTEM:

Certain records contained within this system of records may be exempted from certain provisions of the Privacy Act, 5 U.S.C. 552a, pursuant to 5 U.S.C. 552a(d)(5), (j)(1), and (k).

HISTORY:

70 FR 42417, July 22, 2005.

CIA–28

SYSTEM NAME AND NUMBER:

Congressional Liaison Records (CIA–28).

SECURITY CLASSIFICATION:

The classification of records in this system can range from UNCLASSIFIED to TOP SECRET.

SYSTEM LOCATION:

Central Intelligence Agency, Washington, DC 20505.

SYSTEM MANAGER(S):

Director, Office of Congressional Affairs, Central Intelligence Agency, Washington, DC 20505.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

The National Security Act of 1947, as amended, 50 U.S.C. 3036 *et seq.;* the Central Intelligence Agency Act of 1949, as amended, 50 U.S.C. 3501 *et seq.;* Executive Order 12333, as amended, 73 FR 45325.

PURPOSE(S) OF THE SYSTEM:

Records in this system are used by authorized personnel to: ensure process integrity; enable the CIA and the Director of the CIA to carry out their lawful and authorized responsibilities; document constituent or other inquiries forwarded by members of Congress and staff to the CIA and CIA's responses to those inquiries; coordinate and prepare memoranda and position papers reflecting CIA's views on proposed legislation; facilitate Congressional briefings by maintaining a record of CIA's positions on issues of interest to particular members of Congress and staff; and provide guidance to employees on Congressional matters.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Current and former members of the U.S. Congress and Congressional staff; individuals whose inquiries relating to CIA matters are forwarded by members of the U.S. Congress or Congressional staff to CIA for response, and CIA employees wishing to contact members of Congress or Congressional staff on official matters.

CATEGORIES OF RECORDS IN THE SYSTEM:

Correspondence and other documents between CIA's Office of Congressional Affairs, members of Congress, Congressional staff, constituents, and other CIA offices and/or U.S. Government entities regarding inquiries made by constituents or others and sent to the CIA for response; and memoranda, correspondence, position papers, and other documents used to support CIA's liaison with members of Congress, staff, and their offices and committees, including memoranda documenting substantive briefings and debriefings, as well as reports provided to the CIA by Congressional personnel.

RECORD SOURCE CATEGORIES:

Current and former members of the U.S. Congress and their staffs; CIA employees; individuals whose inquiries relating to CIA matters are forwarded by members or staff of the U.S. Congress to the CIA for response.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

In addition to the disclosures generally permitted under 5 U.S.C. 552a(b), this information is set forth in the ''Statement of General Routine Uses for the Central Intelligence Agency,'' set out above, which is incorporated herein by reference.

POLICIES AND PRACTICES FOR STORAGE OF RECORDS:

Paper and other hard-copy records are stored in secured areas within the CIA or in CIA-controlled facilities. Electronic records are stored in secure file-servers located within CIA-controlled facilities.

POLICIES AND PRACTICES FOR RETRIEVAL OF RECORDS:

Records in this system may be retrieved by name, chart number, social security number, CIA employee number, or other unique personal identifier by automated or hand search based on extant indices and automated capabilities utilized in the normal course of business. Under applicable law and regulations, all searches of this system of records will be performed in CIA offices by CIA personnel.

POLICIES AND PRACTICES FOR RETENTION AND DISPOSAL OF RECORDS:

All records are maintained and disposed of in accordance with applicable Records Control Schedules issued or approved by the National Archives and Records Administration.

ADMINISTRATIVE, TECHNICAL, AND PHYSICAL SAFEGUARDS:

Records are maintained in secure, restricted areas and are accessed only by personnel who have a need for the records in the performance of their official duties and have been authorized for such access. Electronic authorization and authentication access controls are required to prevent against unauthorized access, use, and disclosure.

RECORD ACCESS PROCEDURES:

Requests from individuals should be addressed as indicated in the notification procedures section below. Regulations for access to individual records or for appealing an initial determination by CIA concerning the access to records are published in the **Federal Register** (32 CFR 1901.11–.45).

CONTESTING RECORD PROCEDURES:

Requests from individuals to correct or amend records should be addressed as indicated in the notification procedures section below. CIA's regulations regarding requests for amendments to, or disputing the contents of, individual records or for appealing an initial determination by CIA concerning these matters are published in the **Federal Register** (32 CFR 1901.21–.32, 32 CFR 1901.42).

NOTIFICATION PROCEDURES:

Individuals seeking to learn if this system of records contains information about them should direct their inquiries to: Information and Privacy Coordinator, Central Intelligence Agency, Washington, DC 20505. Identification requirements are specified in the CIA rules published in the **Federal Register** (32 CFR 1901.12–.14). Individuals must comply with these rules in order for their request to be processed.

EXEMPTIONS PROMULGATED FOR THE SYSTEM:

Certain records contained within this system of records may be exempted from certain provisions of the Privacy Act, 5 U.S.C. 552a, pursuant to 5 U.S.C. 552a(d)(5), (j)(1), and (k).

HISTORY:

70 FR 42417, July 22, 2005.

CIA–29

SYSTEM NAME AND NUMBER:

Public Affairs Records (CIA–29).

SECURITY CLASSIFICATION:

The classification of records in this system can range from UNCLASSIFIED to TOP SECRET.

SYSTEM LOCATION:

Central Intelligence Agency, Washington, DC 20505.

SYSTEM MANAGER(S):

Director, Office of Public Affairs, Central Intelligence Agency, Washington, DC 20505.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

The National Security Act of 1947, as amended, 50 U.S.C. 3036 *et seq.;* the Central Intelligence Agency Act of 1949, as amended, 50 U.S.C. 3501 *et seq.;* Executive Order 12333, as amended, 73 FR 45325.

PURPOSE(S) OF THE SYSTEM:

Records in this system are used by authorized personnel to: ensure process integrity; enable the CIA and the head of the CIA to carry out their lawful and authorized responsibilities; provide a record of significant media coverage of the CIA; provide a record of contact with media representatives by the Office of Public Affairs; maintain a record of correspondence between members of the general public who raise questions about CIA activities; and maintain a record of CIA personnel media contacts.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Members of the general public who have written to the CIA to inquire about CIA activities; CIA personnel who have reported media contacts; and media representatives.

CATEGORIES OF RECORDS IN THE SYSTEM:

Media coverage, including newspaper and magazine articles, which mentions the CIA; correspondence between media representatives and the Office of Public Affairs; memoranda of conversations between the Office of Public Affairs and media representatives; correspondence from the general public regarding CIA, and CIA responses; internal CIA memoranda concerning the subject matter of this records system; and names of CIA personnel who have reported media contacts.

RECORD SOURCE CATEGORIES:

Publicly available information from the media, libraries, and commercial databases; CIA records concerning CIA activities and the subject matter of media contacts; and individuals covered by this system of records.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

In addition to the disclosures generally permitted under 5 U.S.C. Section 552a(b), this information is set forth in the ''Statement of General Routine Uses for the Central Intelligence Agency,'' set out above, which is incorporated herein by reference.

POLICIES AND PRACTICES FOR STORAGE OF RECORDS:

Paper and other hard-copy records are stored in secured areas within the CIA or in CIA-controlled facilities. Electronic records are stored in secure file-servers located within CIA-controlled facilities.

POLICIES AND PRACTICES FOR RETRIEVAL OF RECORDS:

Records in this system may be retrieved by name, chart number, social security number, CIA employee number, or other unique personal identifier by automated or hand search based on extant indices and automated capabilities utilized in the normal course of business. Under applicable law and regulations, all searches of this system of records will be performed in CIA offices by CIA personnel.

POLICIES AND PRACTICES FOR RETENTION AND DISPOSAL OF RECORDS:

All records are maintained and disposed of in accordance with applicable Records Control Schedules issued or approved by the National Archives and Records Administration.

ADMINISTRATIVE, TECHNICAL, AND PHYSICAL SAFEGUARDS:

Records are maintained in secure, restricted areas and are accessed only by personnel who have a need for the records in the performance of their official duties and have been authorized for such access. Electronic authorization and authentication access controls are required to prevent against unauthorized access, use, and disclosure.

RECORD ACCESS PROCEDURES:

Requests from individuals should be addressed as indicated in the notification procedures section below. Regulations for access to individual records or for appealing an initial determination by CIA concerning the access to records are published in the **Federal Register** (32 CFR 1901.11–.45).

CONTESTING RECORD PROCEDURES:

Requests from individuals to correct or amend records should be addressed as indicated in the notification procedures section below. CIA's

regulations regarding requests for amendments to, or disputing the contents of, individual records or for appealing an initial determination by CIA concerning these matters are published in the **Federal Register** (32 CFR 1901.21–.32, 32 CFR 1901.42).

NOTIFICATION PROCEDURES:

Individuals seeking to learn if this system of records contains information about them should direct their inquiries to: Information and Privacy Coordinator, Central Intelligence Agency, Washington, DC 20505. Identification requirements are specified in the CIA rules published in the **Federal Register** (32 CFR 1901.12–.14). Individuals must comply with these rules in order for their request to be processed.

EXEMPTIONS PROMULGATED FOR THE SYSTEM:

Certain records contained within this system of records may be exempted from certain provisions of the Privacy Act, 5 U.S.C. 552a, pursuant to 5 U.S.C. 552a(d)(5), (j)(1), and (k).

HISTORY:

70 FR 42417, July 22, 2005.

CIA–30

SYSTEM NAME AND NUMBER:

Inspector General Research Records (CIA–30).

SECURITY CLASSIFICATION:

The classification of records in this system can range from UNCLASSIFIED to TOP SECRET.

SYSTEM LOCATION:

Central Intelligence Agency, Washington, DC 20505.

SYSTEM MANAGER(S):

Inspector General, Central Intelligence Agency, Washington, DC 20505.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

The National Security Act of 1947, as amended, 50 U.S.C. 3036 *et seq.;* the Central Intelligence Agency Act of 1949, as amended, 50 U.S.C. 3501 *et seq.;* The Inspector General Act of 1978, as amended, Executive Order 12333, as amended, 73 FR 45325.

PURPOSE(S) OF THE SYSTEM:

Records in this system are used by authorized personnel to: ensure process integrity; enable the CIA and the Director of the CIA to carry out their lawful and authorized responsibilities; and for reference use in connection with Executive branch and Congressional committee reviews of CIA activities.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

CIA personnel; and other individuals whose names appear in documents assembled primarily from other CIA records systems by the Inspector General in relation to Executive branch commission and Congressional committee reviews conducted between 1972 and 1976 concerning Agency activities.

CATEGORIES OF RECORDS IN THE SYSTEM:

CIA documents that are pertinent to Executive branch commission and Congressional committee reviews of CIA activities.

RECORD SOURCE CATEGORIES:

CIA employees; CIA records; and records of Executive branch commissions and Congressional committees.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

In addition to the disclosures generally permitted under 5 U.S.C. Section 552a(b), this information is set forth in the ''Statement of General Routine Uses for the Central Intelligence Agency,'' set out above, which is incorporated herein by reference.

POLICIES AND PRACTICES FOR STORAGE OF RECORDS:

Paper and other hard-copy records are stored in secured areas within the CIA or in CIA-controlled facilities. Electronic records are stored in secure file-servers located within CIA-controlled facilities.

POLICIES AND PRACTICES FOR RETRIEVAL OF RECORDS:

Records in this system may be retrieved by name, chart number, social security number, CIA employee number, or other unique personal identifier by automated or hand search based on extant indices and automated capabilities utilized in the normal course of business. Under applicable law and regulations, all searches of this system of records will be performed in CIA offices by CIA personnel.

POLICIES AND PRACTICES FOR RETENTION AND DISPOSAL OF RECORDS:

All records are maintained and disposed of in accordance with applicable Records Control Schedules issued or approved by the National Archives and Records Administration.

ADMINISTRATIVE, TECHNICAL, AND PHYSICAL SAFEGUARDS:

Records are maintained in secure, restricted areas and are accessed only by personnel who have a need for the records in the performance of their official duties and have been authorized for such access. Electronic authorization and authentication access controls are required to protect against unauthorized access, use, and disclosure.

RECORD ACCESS PROCEDURES:

Requests from individuals should be addressed as indicated in the notification procedures section below. Regulations for access to individual records or for appealing an initial determination by CIA concerning the access to records are published in the **Federal Register** (32 CFR 1901.11–.45).

CONTESTING RECORD PROCEDURES:

Requests from individuals to correct or amend records should be addressed as indicated in the notification procedures section below. CIA's regulations regarding requests for amendments to, or disputing the contents of, individual records or for appealing an initial determination by CIA concerning these matters are published in the **Federal Register** (32 CFR 1901.21–.32, 32 CFR 1901.42).

NOTIFICATION PROCEDURES:

Individuals seeking to learn if this system of records contains information about them should direct their inquiries to: Information and Privacy Coordinator, Central Intelligence Agency, Washington, DC 20505. Identification requirements are specified in the CIA rules published in the **Federal Register** (32 CFR 1901.12–.14). Individuals must comply with these rules in order for their request to be processed.

EXEMPTIONS PROMULGATED FOR THE SYSTEM:

Certain records contained within this system of records may be exempted from certain provisions of the Privacy Act, 5 U.S.C. 552a, pursuant to 5 U.S.C. 552a(d)(5), (j)(1), and (k).

HISTORY:

70 FR 42417, July 22, 2005.

CIA–31

SYSTEM NAME AND NUMBER:

Inspector General Investigation and Interview Records (CIA–31)

SECURITY CLASSIFICATION:

The classification of records in this system can range from UNCLASSIFIED to TOP SECRET.

SYSTEM LOCATION:

Central Intelligence Agency, Washington, DC 20505.

SYSTEM MANAGER(S):

Inspector General, Central Intelligence Agency, Washington, DC 20505.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

The National Security Act of 1947, as amended, 50 U.S.C. 3036 *et seq.;* the Central Intelligence Agency Act of 1949, as amended, 50 U.S.C. 3501 *et seq.;* Executive Order 12333, as amended, 73 FR 45325.

PURPOSE(S) OF THE SYSTEM:

Records in this system are used by authorized personnel to: ensure process integrity; enable the CIA and the Director of the CIA to carry out their lawful and authorized responsibilities; and maintain a detailed record of the investigative activities of the CIA Office of Inspector General, including investigations of grievances and allegations of misconduct by CIA personnel; to provide information to CIA management regarding personnel matters; and to assist in the evaluation of current and proposed programs, policies, and activities.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

CIA staff and contract employees, personal services independent contractors, industrial contractors, persons with other contractual relationships, or other relationships with the CIA, persons who are interviewed by or provide information to the Office of the Inspector General, persons involved with or knowledgeable about matters being investigated or inspected by the Office of Inspector General, and persons who have filed grievances with the Office of Inspector General or CIA components.

CATEGORIES OF RECORDS IN THE SYSTEM:

Reports of interviews, signed statements, correspondence, reports of investigations, forms, cables, internal CIA memoranda, prior criminal records of individuals covered by the system, and other materials relating to employee grievances and other matters of interest to or inspected by the Office of Inspector General.

RECORD SOURCE CATEGORIES:

CIA records; CIA staff and contract employees, personal services independent contractors, industrial contractors, and military and civilian detailees to CIA; federal, state, and local officials; foreign governments; private citizens, including U.S. citizens and foreign nationals.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

In addition to the disclosures generally permitted under 5 U.S.C. Section 552a(b), information on additional routine uses is set forth in the ''Statement of General Routine Uses for the Central Intelligence Agency,'' set out above, which is incorporated herein by reference. In addition to the General Routine Uses incorporated by reference, the following additional routine uses also apply to this SORN:

20. Records in this system are used and disclosed as necessary by members of the Office of Inspector General in the investigation or inspection of matters of interest or concern to the Director of the CIA, Inspector General, and senior Agency officials, including grievances and allegations of misconduct by Agency employees, and to provide information to Agency management regarding personnel matters, and for evaluating current and proposed programs, policies and activities, selected assignments, and requests for awards or promotions.

21. Records in this system that indicate a violation or potential violation of law, whether civil, criminal, or regulatory in nature, and whether arising by general statute or particular program, or by rule, regulation, or order pursuant thereto, or that indicate a violation or potential violation of a contractual obligation, may be disclosed to the appropriate agency, whether federal, state, local, foreign, or international, charged with the responsibility for investigating or prosecuting such violation, enforcing or implementing such statute, rule, regulation, or order, or with enforcing such contract.

22. Records in the system may be disclosed to a federal, state, local, foreign, or international agency, or to an individual or organization, when necessary to elicit information relevant to an Office of Inspector General investigation, inspection, inquiry, decision, or recommendation.

23. Records in the system may be disclosed to a federal, state, local, foreign, or international agency when requested in connection with the assignment, hiring, or retention of an individual, the issuance or revocation of a security clearance, letting of a contract, or any authorized inquiry or investigation to the extent that the information is relevant to the requesting agency's decision on the matter.

24. Records in the system may be disclosed to any federal agency when documents, witness statements, or other information obtained from that agency are used in compiling the system record, or when the record is relevant to the official responsibilities of that agency.

25. Unclassified records in the system, or unclassified portions thereof, including information identifying individuals covered by the system, may be disclosed to the public when the matter under investigation has become public knowledge or the Inspector General determines that such disclosure is necessary to preserve confidence in the integrity of the Inspector General process, or is necessary to demonstrate the accountability of CIA employees, officers, or individuals covered by the system, unless it is determined that release of the specific information in the context of a particular case would constitute an unwarranted invasion of personal privacy.

26. Records in the system pertaining to an employee grievance may be disclosed to any party to that grievance except for records that disclose the identity of a non-party who requested confidentiality and provided a statement during the grievance process.

27. Records in the system may be disclosed in the course of presenting evidence to a court, magistrate, or administrative tribunal, including disclosures in the course of settlement negotiations, or pursuant to statutes or regulations governing the conduct of such proceedings.

28. Records in the system may be disclosed to representatives of the Department of Justice or of any other agency that is responsible for representing Agency interests in connection with judicial, administrative, or other proceedings. Records may also be disclosed to the Department of Justice to the extent necessary to obtain its advice on any matter relevant to an Office of Inspector General investigation.

29. Records in the system may be disclosed to the Senate Select Committee on Intelligence and the House Permanent Select Committee on Intelligence, or other congressional committees, or the staffs thereof, in connection with their oversight and legislative functions.

30. Records in the system may be disclosed to the President's Foreign Intelligence Advisory Board, and the Intelligence Oversight Board, and any successor organizations, when requested by those entities, or when the Inspector General determines that disclosure will assist in the performance of their oversight functions.

POLICIES AND PRACTICES FOR STORAGE OF RECORDS:

Paper and other hard-copy records are stored in secured areas within the CIA or in CIA-controlled facilities. Electronic records are stored in secure file-servers located within CIA-controlled facilities.

POLICIES AND PRACTICES FOR RETRIEVAL OF RECORDS:

Records in this system may be retrieved by name, chart number, social security number, CIA employee number, or other unique personal identifier by automated or hand search based on extant indices and automated capabilities utilized in the normal course of business. Under applicable law and regulations, all searches of this system of records will be performed in CIA offices by CIA personnel.

POLICIES AND PRACTICES FOR RETENTION AND DISPOSAL OF RECORDS:

All records are maintained and disposed of in accordance with applicable Records Control Schedules issued or approved by the National Archives and Records Administration.

ADMINISTRATIVE, TECHNICAL, AND PHYSICAL SAFEGUARDS:

Records are maintained in secured, restricted areas and are accessed only by personnel who have a need for the records in the performance of their official duties and have been authorized for such access. Electronic authorization and authentication access controls are required to prevent against unauthorized access, use, and disclosure.

RECORD ACCESS PROCEDURES:

Requests from individuals should be addressed as indicated in the notification procedures section below. Regulations for access to individual records or for appealing an initial determination by CIA concerning the access to records are published in the **Federal Register** (32 CFR 1901.11–.45).

CONTESTING RECORD PROCEDURES:

Requests from individuals to correct or amend records should be addressed as indicated in the notification procedures section below. CIA's regulations regarding requests for amendments to, or disputing the contents of, individual records or for appealing an initial determination by CIA concerning these matters are published in the **Federal Register** (32 CFR 1901.21–.32, 32 CFR 1901.42).

NOTIFICATION PROCEDURES:

Individuals seeking to learn if this system of records contains information about them should direct their inquiries to: Information and Privacy Coordinator, Central Intelligence Agency, Washington, DC 20505. Identification requirements are specified in the CIA rules published in the **Federal Register** (32 CFR 1901.12–.14). Individuals must comply with these rules in order for their request to be processed.

EXEMPTIONS PROMULGATED FOR THE SYSTEM:

Certain records contained within this system of records may be exempted from certain provisions of the Privacy Act, 5 U.S.C. 552a, pursuant to 5 U.S.C. 552a(d)(5), (j)(1), and (k).

HISTORY:

70 FR 42417, July 22, 2005.

CIA–33 [rescinded]

SORN CIA–33 is RESCINDED and the number held in reserve.

SYSTEM NAME AND NUMBER:

National Intelligence Council Records (CIA–33).

HISTORY:

70 FR 42417, July 22, 2005.

CIA–34

SYSTEM NAME AND NUMBER:

Arms Control Records (CIA–34).

SECURITY CLASSIFICATION:

The classification of records in this system can range from UNCLASSIFIED to TOP SECRET.

SYSTEM LOCATION:

Central Intelligence Agency, Washington, DC 20505.

SYSTEM MANAGER(S):

Director, Weapons and Counter-proliferation Mission Center, Central Intelligence Agency, Washington, DC 20505.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

The National Security Act of 1947, as amended, 50 U.S.C. 3036 *et seq.;* the Central Intelligence Agency Act of 1949, as amended, 50 U.S.C. 3501 *et seq.;* Executive Order 12333, as amended, 73 FR 45325; Executive Order 13526, 75 FR 705, or its successor.

PURPOSE(S) OF THE SYSTEM:

Records in this system are used by authorized personnel to: ensure process integrity, enable the CIA and the Director of the CIA to carry out their lawful and authorized responsibilities; and provide classified and unclassified information to appropriate CIA and Intelligence Community officials for the conduct of authorized activities, including support to the negotiation and assessment of arms control agreements.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Individuals who have employment, detailee, liaison, or contractual relationships with the Weapons and Counter-proliferation mission Center (WCPMC), including personal services independent contractors and industrial contractors; individuals who visit, contact, or otherwise participate in the activities of WCPMC.

CATEGORIES OF RECORDS IN THE SYSTEM:

Records in this system include administrative, biographic, and contact information; publicly available information on events of interest to the arms control community; classified reporting on events of interest to the arms control community; and documents identifying classified source documents and their recipients.

RECORD SOURCE CATEGORIES:

Individuals who are the subject of records in this system; U.S. Government employees, agencies, and organizations; publicly available information obtained from the media, libraries, and commercial databases; unclassified and classified reporting and intelligence source documents; and correspondence.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Records from this system of records may be disclosed to other U.S. Government organizations in order to facilitate any security, employment, or contractual decisions by those organizations. Records also may be disclosed to other U.S. Government organizations as necessary for the protection of intelligence sources and methods and in support of intelligence operations, analysis, and reporting. In addition to the disclosures generally permitted under 5 U.S.C. Section 552a(b), information on additional routine uses is set forth in the ''Statement of General Routine Uses for the Central Intelligence Agency,'' set out above, which is incorporated herein by reference.

POLICIES AND PRACTICES FOR STORAGE OF RECORDS:

Paper and other hard-copy records are stored in secured areas within the CIA or in CIA-controlled facilities. Electronic records are stored in secure file-servers located within CIA-controlled facilities.

POLICIES AND PRACTICES FOR RETRIEVAL OF RECORDS:

Records in this system may be retrieved by name, chart number, social security number, CIA employee number, or other unique personal identifier by automated or hand search based on extant indices and automated capabilities utilized in the normal course of business. Under applicable law and regulations, all searches of this system of records will be performed in CIA offices by CIA personnel.

POLICIES AND PRACTICES FOR RETENTION AND DISPOSAL OF RECORDS:

All records are maintained and disposed of in accordance with applicable Records Control Schedules issued or approved by the National Archives and Records Administration.

ADMINISTRATIVE, TECHNICAL, AND PHYSICAL SAFEGUARDS:

Records are maintained in secure, restricted areas and are accessed only by personnel who have a need for the records in the performance of their official duties and have been authorized for such access. Electronic authorization and authentication access controls are required to prevent against unauthorized access, use, and disclosure.

RECORD ACCESS PROCEDURES:

Requests from individuals should be addressed as indicated in the notification procedures section below. Regulations for access to individual records or for appealing an initial determination by CIA concerning the access to records are published in the **Federal Register** (32 CFR 1901.11–.45).

CONTESTING RECORD PROCEDURES:

Requests from individuals to correct or amend records should be addressed as indicated in the notification procedures section below. CIA's regulations regarding requests for amendments to, or disputing the contents of, individual records or for appealing an initial determination by CIA concerning these matters are published in the **Federal Register** (32 CFR 1901.21–.32, 32 CFR 1901.42).

NOTIFICATION PROCEDURES:

Individuals seeking to learn if this system of records contains information about them should direct their inquiries to: Information and Privacy Coordinator, Central Intelligence Agency, Washington, DC 20505. Identification requirements are specified in the CIA rules published in the **Federal Register** (32 CFR 1901.12–.14). Individuals must comply with these rules in order for their request to be processed.

EXEMPTIONS PROMULGATED FOR THE SYSTEM:

Certain records contained within this system of records may be exempted from certain provisions of the Privacy Act, 5 U.S.C. 552a, pursuant to 5 U.S.C. 552a(d)(5), (j)(1), and (k).

HISTORY:

70 FR 42417, July 22, 2005.

CIA–35

SYSTEM NAME AND NUMBER:

Directorate of Science & Technology (DS&T) Private Sector Contact Information (CIA–35).

SECURITY CLASSIFICATION:

The classification of records in this system can range from UNCLASSIFIED to TOP SECRET.

SYSTEM LOCATION:

Central Intelligence Agency, Washington, DC 20505.

SYSTEM MANAGER(S):

Director, DS&T Administrative Resources Center, Central Intelligence Agency, Washington, DC 20505.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

The National Security Act of 1947, as amended, 50 U.S.C. 3036 *et seq.;* the Central Intelligence Agency Act of 1949, as amended, 50 U.S.C. 3501 *et seq.;* Executive Order 12333, as amended, 73 FR 45325.

PURPOSE(S) OF THE SYSTEM:

Records in this system are used by authorized personnel to: ensure process integrity; enable the CIA and the Director of the CIA to carry out their lawful and authorized responsibilities; provide reference information; and facilitate communication by CIA with private sector experts.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Individuals in the private sector who work or have worked on CIA personal services or industrial contracts; individuals about whom there is publicly-available information identifying a scientific, technical or related expertise of interest to CIA; and CIA staff and contract employees, and other individuals affiliated with CIA who work on CIA projects with private sector experts.

CATEGORIES OF RECORDS IN THE SYSTEM:

Biographic information, including areas of expertise.

RECORD SOURCE CATEGORIES:

Individuals who are the subject of records in the system; and publicly available information obtained from the media, libraries, and commercial databases.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

In addition to the disclosures generally permitted under 5 U.S.C. Section 552a(b), this information is set forth in the ''Statement of General Routine Uses for the Central Intelligence Agency,'' set out above, which is incorporated herein by reference.

POLICIES AND PRACTICES FOR STORAGE OF RECORDS:

Paper and other hard-copy records are stored in secured areas within the CIA or in CIA-controlled facilities. Electronic records are stored in secure file-servers located within CIA-controlled facilities.

POLICIES AND PRACTICES FOR RETRIEVAL OF RECORDS:

Records in this system may be retrieved by name, chart number, social security number, CIA employee number, or other unique personal identifier by automated or hand search based on extant indices and automated capabilities utilized in the normal course of business. Under applicable law and regulations, all searches of this system of records will be performed in CIA offices by CIA personnel.

POLICIES AND PRACTICES FOR RETENTION AND DISPOSAL OF RECORDS:

All records are maintained and disposed of in accordance with applicable Records Control Schedules issued or approved by the National Archives and Records Administration.

ADMINISTRATIVE, TECHNICAL, AND PHYSICAL SAFEGUARDS:

Records are maintained in secure, restricted areas and are accessed only by personnel who have a need for the records in the performance of their official duties and have been authorized for such access. Electronic authorization and authentication access controls are required to prevent against unauthorized access, use, and disclosure.

RECORD ACCESS PROCEDURES:

Requests from individuals should be addressed as indicated in the notification procedures section below. Regulations for access to individual records or for appealing an initial determination by CIA concerning the access to records are published in the **Federal Register** (32 CFR 1901.11–.45).

CONTESTING RECORD PROCEDURES:

Requests from individuals to correct or amend records should be addressed as indicated in the notification procedures section below. CIA's regulations regarding requests for amendments to, or disputing the contents of, individual records or for appealing an initial determination by CIA concerning these matters are published in the **Federal Register** (32 CFR 1901.21–.32, 32 CFR 1901.42).

NOTIFICATION PROCEDURES:

Individuals seeking to learn if this system of records contains information about them should direct their inquiries to: Information and Privacy Coordinator, Central Intelligence Agency, Washington, DC 20505. Identification requirements are specified in the CIA rules published in the **Federal Register** (32 CFR 1901.12–.14). Individuals must comply with these rules in order for their request to be processed.

EXEMPTIONS PROMULGATED FOR THE SYSTEM:

Certain records contained within this system of records may be exempted from certain provisions of the Privacy Act, 5 U.S.C. 552a, pursuant to 5 U.S.C. 552a(d)(5), (j)(1), and (k).

HISTORY:

70 FR 42417, July 22, 2005.

CIA–36

SYSTEM NAME AND NUMBER:

Alumni Communications Records (CIA–36).

SECURITY CLASSIFICATION:

The classification of records in this system can range from UNCLASSIFIED to TOP SECRET.

SYSTEM LOCATION:

Central Intelligence Agency, Washington, DC 20505.

SYSTEM MANAGER(S):

Director, DS&T Investment Program Office, Central Intelligence Agency, Washington, DC 20505.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

The National Security Act of 1947, as amended, 50 U.S.C. 3036 *et seq.;* the Central Intelligence Agency Act of 1949, as amended, 50 U.S.C. 3501 *et seq.;* Executive Order 12333, as amended, 73 FR 45325.

PURPOSE(S) OF THE SYSTEM:

Records in this system are used by authorized personnel to: ensure process integrity; enable the CIA and the Director of the CIA to carry out their lawful and authorized responsibilities; verify the identities of individuals contacting the Port; continue communications with individuals who contact the Port; and record a summary of the conversations and any resulting actions.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Former CIA employees who voluntarily contact the Alumni Communications Port to offer comments, insights or suggestions.

CATEGORIES OF RECORDS IN THE SYSTEM:

Biographic data (including name, contact information such as address or phone number, and Social Security Number or CIA identifier); and correspondence and memoranda regarding the content of conversations with former employees and any resulting actions.

RECORD SOURCE CATEGORIES:

Individuals who voluntarily contact the Alumni Communications Port; and CIA employees.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

In addition to the disclosures generally permitted under 5 U.S.C. Section 552a(b), this information is set forth in the ''Statement of General Routine Uses for the Central Intelligence Agency,'' set out above, which is incorporated herein by reference.

POLICIES AND PRACTICES FOR STORAGE OF RECORDS:

Paper and other hard-copy records are stored in secured areas within the CIA or in CIA-controlled facilities. Electronic records are stored in secure file-servers located within CIA-controlled facilities.

POLICIES AND PRACTICES FOR RETRIEVAL OF RECORDS:

Records in this system may be retrieved by name, chart number, social security number, CIA employee number, or other unique personal identifier by automated or hand search based on extant indices and automated capabilities utilized in the normal course of business. Under applicable law and regulations, all searches of this system of records will be performed in CIA offices by CIA personnel.

POLICIES AND PRACTICES FOR RETENTION AND DISPOSAL OF RECORDS:

All records are maintained and disposed of in accordance with applicable Records Control Schedules issued or approved by the National Archives and Records Administration.

ADMINISTRATIVE, TECHNICAL, AND PHYSICAL SAFEGUARDS:

Records are maintained in secure, restricted areas and are accessed only by personnel who have a need for the records in the performance of their official duties and have been authorized for such access. Electronic authorization and authentication access controls are required to protect against unauthorized access, use, and disclosure.

RECORD ACCESS PROCEDURES:

Requests from individuals should be addressed as indicated in the notification procedures section below. Regulations for access to individual records or for appealing an initial determination by CIA concerning the access to records are published in the **Federal Register** (32 CFR 1901.11–.45).

CONTESTING RECORD PROCEDURES:

Requests from individuals to correct or amend records should be addressed as indicated in the notification procedures section below. CIA's regulations regarding requests for amendments to, or disputing the contents of, individual records or for appealing an initial determination by CIA concerning these matters are published in the **Federal Register** (32 CFR 1901.21–.32, 32 CFR 1901.42).

NOTIFICATION PROCEDURES:

Individuals seeking to learn if this system of records contains information about them should direct their inquiries to: Information and Privacy Coordinator, Central Intelligence Agency, Washington, DC 20505. Identification requirements are specified in the CIA rules published in the **Federal Register** (32 CFR 1901.12–.14). Individuals must comply with these rules in order for their request to be processed.

EXEMPTIONS PROMULGATED FOR THE SYSTEM:

Certain records contained within this system of records may be exempted from certain provisions of the Privacy Act, 5 U.S.C. 552a, pursuant to 5 U.S.C. 552a(d)(5), (j)(1), and (k).

HISTORY:

70 FR 42417, July 22, 2005.

CIA–37

SYSTEM NAME AND NUMBER:

Directorate of Operations Records (CIA–37).

SECURITY CLASSIFICATION:

The classification of records in this system can range from UNCLASSIFIED to TOP SECRET.

SYSTEM LOCATION:

Central Intelligence Agency, Washington, DC 20505.

SYSTEM MANAGER(S):

Chief, DO Information Management Staff, Central Intelligence Agency, Washington, DC 20505.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

The National Security Act of 1947, as amended, 50 U.S.C. 3036 *et seq.;* the Central Intelligence Agency Act of 1949, as amended, 50 U.S.C. 3501 *et seq.;*

Executive Order 12333, as amended, 73 FR 45325.

PURPOSE(S) OF THE SYSTEM:

Records in this system are used by authorized personnel to: ensure process integrity, enable the CIA and the Director of the CIA to carry out their lawful and authorized responsibilities, and maintain a record of the operational activities of the Directorate of Operations of the Central Intelligence Agency.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Individuals who are of foreign intelligence or foreign counterintelligence interest to the CIA, either because of their actual, apparent, or potential association with foreign intelligence or foreign counterintelligence activities, or because they are of actual or potential use to the CIA.

CATEGORIES OF RECORDS IN THE SYSTEM:

Documents recording the operational activities of the Directorate of Operations (DO) of the Central Intelligence Agency.

RECORD SOURCE CATEGORIES:

Foreign intelligence and counterintelligence sources; U.S. Government agencies; CIA predecessor organizations; publicly available information; and state and local agencies.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Records from this system of records may be provided to selected federal agencies, including the Federal Bureau of Investigation, military departments and, through established liaison channels, to selected foreign government agencies, as necessary for the conduct of foreign intelligence and counterintelligence operations by the CIA and other U.S. Government entities authorized to conduct such operations. In addition to the disclosures generally permitted under 5 U.S.C. Section 552a(b), information on additional routine uses is set forth in the ''Statement of General Routine Uses for the Central Intelligence Agency,'' set out above, which is incorporated herein by reference.

POLICIES AND PRACTICES FOR STORAGE OF RECORDS:

Paper and other hard-copy records are stored in secured areas within the CIA or in CIA-controlled facilities. Electronic records are stored in secure file-servers located within CIA-controlled facilities.

POLICIES AND PRACTICES FOR RETRIEVAL OF RECORDS:

Records in this system may be retrieved by name, chart number, social security number, CIA employee number, or other unique personal identifier by automated or hand search based on extant indices and automated capabilities utilized in the normal course of business. Under applicable law and regulations, all searches of this system of records will be performed in CIA offices by CIA personnel.

POLICIES AND PRACTICES FOR RETENTION AND DISPOSAL OF RECORDS:

All records are maintained and disposed of in accordance with applicable Records Control Schedules issued or approved by the National Archives and Records Administration.

ADMINISTRATIVE, TECHNICAL, AND PHYSICAL SAFEGUARDS:

Records are maintained in secure, restricted areas and are accessed only by personnel who have a need for the records in the performance of their official duties and have been authorized for such access. Electronic authorization and authentication access controls are required to prevent against unauthorized access, use, and disclosure.

RECORD ACCESS PROCEDURES:

Requests from individuals should be addressed as indicated in the notification procedures section below. Regulations for access to individual records or for appealing an initial determination by CIA concerning the access to records are published in the **Federal Register** (32 CFR 1901.11–.45).

CONTESTING RECORD PROCEDURES:

Requests from individuals to correct or amend records should be addressed as indicated in the notification procedures section below. CIA's regulations regarding requests for amendments to, or disputing the contents of, individual records or for appealing an initial determination by CIA concerning these matters are published in the **Federal Register** (32 CFR 1901.21–.32, 32 CFR 1901.42).

NOTIFICATION PROCEDURES:

Individuals seeking to learn if this system of records contains information about them should direct their inquiries to: Information and Privacy Coordinator, Central Intelligence Agency, Washington, DC 20505. Identification requirements are specified in the CIA rules published in the **Federal Register** (32 CFR 1901.12–.14). Individuals must comply with these rules in order for their request to be processed.

EXEMPTIONS PROMULGATED FOR THE SYSTEM:

Certain records contained within this system of records may be exempted from certain provisions of the Privacy Act, 5 U.S.C. 552a, pursuant to 5 U.S.C. 552a(d)(5), (j)(1), and (k).

HISTORY:

70 FR 42417, July 22, 2005.

CIA–39

SYSTEM NAME AND NUMBER:

Customer Relations Records (CIA–39).

SECURITY CLASSIFICATION:

The classification of records in this system can range from UNCLASSIFIED to TOP SECRET.

SYSTEM LOCATION:

Central Intelligence Agency, Washington, DC 20505.

SYSTEM MANAGER(S):

Directorate of Analysis Information Management Officer, Central Intelligence Agency, Washington, DC 20505.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

The National Security Act of 1947, as amended, 50 U.S.C. 3036 *et seq.;* the Central Intelligence Agency Act of 1949, as amended, 50 U.S.C. 3501 *et seq.;* Executive Order 12333, as amended, 73 FR 45325.

PURPOSE(S) OF THE SYSTEM:

Records in this system are used by authorized personnel to: ensure process integrity; enable the CIA and the Director of the CIA to carry out their lawful and authorized responsibilities; maintain dissemination lists for CIA finished intelligence products, in order to ensure proper dissemination of classified and unclassified products; maintain a record of disseminations; maintain a list of topics of interest to particular intelligence customers; and document customer feedback on particular products.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Current and former intelligence customers including U.S. policymakers, U.S. Government personnel, and other authorized recipients of CIA intelligence products.

CATEGORIES OF RECORDS IN THE SYSTEM:

Biographic information including names, addresses, contact information, security clearances and access approvals, and subjects of intelligence interest to individuals covered by this system of records; documents containing comments and feedback from individuals covered by this system of records.

RECORD SOURCE CATEGORIES:

Individuals who are the subjects of records in this system; CIA personnel; and other U.S. Government personnel.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

In addition to the disclosures generally permitted under 5 U.S.C. Section 552a(b), this information is set forth in the ''Statement of General Routine Uses for the Central Intelligence Agency,'' set out above, which is incorporated herein by reference.

POLICIES AND PRACTICES FOR STORAGE OF RECORDS:

Paper and other hard-copy records are stored in secured areas within the CIA or in CIA-controlled facilities. Electronic records are stored in secure file-servers located within CIA-controlled facilities.

POLICIES AND PRACTICES FOR RETRIEVAL OF RECORDS:

Records in this system may be retrieved by name, position title, chart number, social security number, CIA employee number, or other unique personal identifier by automated or hand search based on extant indices and automated capabilities utilized in the normal course of business. Under applicable law and regulations, all searches of this system of records will be performed in CIA offices by CIA personnel.

POLICIES AND PRACTICES FOR RETENTION AND DISPOSAL OF RECORDS:

All records are maintained and disposed of in accordance with applicable Records Control Schedules issued or approved by the National Archives and Records Administration.

ADMINISTRATIVE, TECHNICAL, AND PHYSICAL SAFEGUARDS:

Records are maintained in secure, restricted areas and are accessed only by personnel who have a need for the records in the performance of their official duties and have been authorized for such access. Electronic authorization and authentication access controls are required to prevent against unauthorized access, use, and disclosure.

RECORD ACCESS PROCEDURES:

Requests from individuals should be addressed as indicated in the notification procedures section below. Regulations for access to individual records or for appealing an initial determination by CIA concerning the access to records are published in the **Federal Register** (32 CFR 1901.11–.45).

CONTESTING RECORD PROCEDURES:

Requests from individuals to correct or amend records should be addressed as indicated in the notification procedures section below. CIA's regulations regarding requests for amendments to, or disputing the contents of, individual records or for appealing an initial determination by CIA concerning these matters are published in the **Federal Register** (32 CFR 1901.21–.32, 32 CFR 1901.42).

NOTIFICATION PROCEDURES:

Individuals seeking to learn if this system of records contains information about them should direct their inquiries to: Information and Privacy Coordinator, Central Intelligence Agency, Washington, DC 20505. Identification requirements are specified in the CIA rules published in the **Federal Register** (32 CFR 1901.12–.14). Individuals must comply with these rules in order for their request to be processed.

EXEMPTIONS PROMULGATED FOR THE SYSTEM:

Certain records contained within this system of records may be exempted from certain provisions of the Privacy Act, 5 U.S.C. 552a, pursuant to 5 U.S.C. 552a(d)(5), (j)(1), and (k).

HISTORY:

70 FR 42417, July 22, 2005.

CIA–40

SYSTEM NAME AND NUMBER:

Research System Records (CIA–40).

SECURITY CLASSIFICATION:

The classification of records in this system can range from UNCLASSIFIED to TOP SECRET.

SYSTEM LOCATION:

Central Intelligence Agency, Washington, DC 20505.

SYSTEM MANAGER(S):

Directorate of Analysis Information Management Officer, Central Intelligence Agency, Washington, DC 20505.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

The National Security Act of 1947, as amended, 50 U.S.C. 3036 *et seq.;* the Central Intelligence Agency Act of 1949, as amended, 50 U.S.C. 3501 *et seq.;* Executive Order 12333, as amended, 73 FR 45325.

PURPOSE(S) OF THE SYSTEM:

Records in this system are used by authorized personnel to: ensure process integrity; enable the CIA and the Director of the CIA to carry out their lawful and authorized responsibilities; provide a repository of classified and unclassified information on topics of foreign intelligence and counterintelligence interest to the CIA; assist the CIA's Directorate of Analysis to fulfill its mission of providing timely, accurate, and objective intelligence analysis on the full range of national security threats and foreign policy issues facing the United States; and provide a reference file for publicly available publications pertaining to intelligence.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Individuals of foreign intelligence or counterintelligence interest to the CIA, including individuals associated with international terrorism, international organized crime, or international narcotics trafficking activities; and individuals who have written on the general topic of intelligence.

CATEGORIES OF RECORDS IN THE SYSTEM:

Classified intelligence reporting, including reports from other U.S. Government agencies and foreign government information; and publicly available information from the media, libraries, and commercial databases.

RECORD SOURCE CATEGORIES:

CIA staff and contract employees, personal services independent contractors, and industrial contractors; U.S. Government agencies; publicly available information from the media, libraries, and commercial databases; and foreign intelligence and counterintelligence sources.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

In addition to the disclosures generally permitted under 5 U.S.C. Section 552a(b), this information is set forth in the ''Statement of General Routine Uses for the Central Intelligence Agency,'' set out above, which is incorporated herein by reference.

POLICIES AND PRACTICES FOR STORAGE OF RECORDS:

Paper and other hard-copy records are stored in secured areas within the CIA or in CIA-controlled facilities. Electronic records are stored in secure file-servers located within CIA-controlled facilities.

POLICIES AND PRACTICES FOR RETRIEVAL OF RECORDS:

Records in this system may be retrieved by name, chart number, social security number, CIA employee number, or other unique personal identifier by automated or hand search based on extant indices and automated

capabilities utilized in the normal course of business. Under applicable law and regulations, all searches of this system of records will be performed in CIA offices by CIA personnel.

POLICIES AND PRACTICES FOR RETENTION AND DISPOSAL OF RECORDS:

All records are maintained and disposed of in accordance with applicable Records Control Schedules issued or approved by the National Archives and Records Administration.

ADMINISTRATIVE, TECHNICAL, AND PHYSICAL SAFEGUARDS:

Records are maintained in secure, restricted areas and are accessed only by personnel who have a need for the records in the performance of their official duties and have been authorized for such access. Electronic authorization and authentication access controls are required to prevent against unauthorized access, use, and disclosure.

RECORD ACCESS PROCEDURES:

Requests from individuals should be addressed as indicated in the notification procedures section below. Regulations for access to individual records or for appealing an initial determination by CIA concerning the access to records are published in the **Federal Register** (32 CFR 1901.11–.45).

CONTESTING RECORD PROCEDURES:

Requests from individuals to correct or amend records should be addressed as indicated in the notification procedures section below. CIA's regulations regarding requests for amendments to, or disputing the contents of, individual records or for appealing an initial determination by CIA concerning these matters are published in the **Federal Register** (32 CFR 1901.21–.32, 32 CFR 1901.42).

NOTIFICATION PROCEDURES:

Individuals seeking to learn if this system of records contains information about them should direct their inquiries to: Information and Privacy Coordinator, Central Intelligence Agency, Washington, DC 20505. Identification requirements are specified in the CIA rules published in the **Federal Register** (32 CFR 1901.12–.14). Individuals must comply with these rules in order for their request to be processed.

EXEMPTIONS PROMULGATED FOR THE SYSTEM:

Certain records contained within this system of records may be exempted from certain provisions of the Privacy Act, 5 U.S.C. 552a, pursuant to 5 U.S.C. 552a(d)(5), (j)(1), and (k).

HISTORY:

70 FR 42417, July 22, 2005.

CIA–41

SYSTEM NAME AND NUMBER:

Intelligence Analysis Records (CIA–41).

SECURITY CLASSIFICATION:

The classification of records in this system can range from UNCLASSIFIED to TOP SECRET.

SYSTEM LOCATION:

Central Intelligence Agency, Washington, DC 20505.

SYSTEM MANAGER(S):

Directorate of Analysis Information Management Officer, Central Intelligence Agency, Washington, DC 20505.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

The National Security Act of 1947, as amended, 50 U.S.C. 3036 *et seq.;* the Central Intelligence Agency Act of 1949, as amended, 50 U.S.C. 3501 *et seq.;* Executive Order 12333, as amended, 73 FR 45325.

PURPOSE(S) OF THE SYSTEM:

Records in this system are used by authorized personnel to: ensure process integrity, enable the CIA and the Director of the CIA to carry out their lawful and authorized responsibilities; and assist the CIA's Directorate of Analysis to fulfill its mission of providing timely, accurate, and objective intelligence analysis on the full range of national security threats and foreign policy issues facing the United States, including key foreign countries, regional conflicts, and issues that transcend national boundaries such as terrorism, weapons proliferation, and narcotics trafficking.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Individuals of foreign intelligence or counterintelligence interest to the CIA, including individuals associated with international terrorism, international organized crime, or international narcotics trafficking activities.

CATEGORIES OF RECORDS IN THE SYSTEM:

Intelligence reports and other information that supports the analytic mission of the CIA's Directorate of Analysis.

RECORD SOURCE CATEGORIES:

CIA staff and contract employees, personal services independent contractors, and industrial contractors; U.S. Government agencies; publicly available information from the media, libraries, and commercial databases; and foreign intelligence and counterintelligence sources.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

In addition to the disclosures generally permitted under 5 U.S.C. Section 552a(b), this information is set forth in the ''Statement of General Routine Uses for the Central Intelligence Agency,'' set out above, which is incorporated herein by reference.

POLICIES AND PRACTICES FOR STORAGE OF RECORDS:

Paper and other hard-copy records are stored in secured areas within the CIA or in CIA-controlled facilities. Electronic records are stored in secure file-servers located within CIA-controlled facilities.

POLICIES AND PRACTICES FOR RETRIEVAL OF RECORDS:

Records in this system may be retrieved by name, chart number, social security number, CIA employee number, or other unique personal identifier by automated or hand search based on extant indices and automated capabilities utilized in the normal course of business. Under applicable law and regulations, all searches of this system of records will be performed in CIA offices by CIA personnel.

POLICIES AND PRACTICES FOR RETENTION AND DISPOSAL OF RECORDS:

All records are maintained and disposed of in accordance with applicable Records Control Schedules issued or approved by the National Archives and Records Administration.

ADMINISTRATIVE, TECHNICAL, AND PHYSICAL SAFEGUARDS:

Records are maintained in secure, restricted areas and are accessed only by personnel who have a need for the records in the performance of their official duties and have been authorized for such access. Electronic authorization and authentication access controls are required to prevent against unauthorized access, use, and disclosure.

RECORD ACCESS PROCEDURES:

Requests from individuals should be addressed as indicated in the notification procedures section below. Regulations for access to individual records or for appealing an initial determination by CIA concerning the access to records are published in the **Federal Register** (32 CFR 1901.11–.45).

CONTESTING RECORD PROCEDURES:

Requests from individuals to correct or amend records should be addressed as indicated in the notification procedures section below. CIA's regulations regarding requests for amendments to, or disputing the contents of, individual records or for appealing an initial determination by CIA concerning these matters are published in the **Federal Register** (32 CFR 1901.21–.32, 32 CFR 1901.42).

NOTIFICATION PROCEDURES:

Individuals seeking to learn if this system of records contains information about them should direct their inquiries to: Information and Privacy Coordinator, Central Intelligence Agency, Washington, DC 20505. Identification requirements are specified in the CIA rules published in the **Federal Register** (32 CFR 1901.12–.14). Individuals must comply with these rules in order for their request to be processed.

EXEMPTIONS PROMULGATED FOR THE SYSTEM:

Certain records contained within this system of records may be exempted from certain provisions of the Privacy Act, 5 U.S.C. 552a, pursuant to 5 U.S.C. 552a(d)(5), (j)(1), and (k).

HISTORY:

70 FR 42417, July 22, 2005.

CIA–42

SYSTEM NAME AND NUMBER:

Insider Threat Program Records (CIA–42).

SECURITY CLASSIFICATION:

The classification of records in this system can range from UNCLASSIFIED to TOP SECRET.

SYSTEM LOCATION:

Central Intelligence Agency, Washington, DC 20505.

SYSTEM MANAGER(S):

Chief, Insider Threat Program, Central Intelligence Agency, Washington, DC 20505.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

The National Security Act of 1947, as amended, 50 U.S.C. 3036 *et seq.;* the Central Intelligence Agency Act of 1949, as amended, 50 U.S.C. 3501 *et seq.;* the Counterintelligence Enhancement Act of 2002, Title IX of the Intelligence Authorization Act, FY03, Public Law 107–306, sec. 901 *et seq.;* Executive Order 12333, as amended, 73 FR 45325; Executive Order 10450, 18 FR 2489; Executive Order 12968, 60 FR 40245, as amended by Executive Order 13467, 73 FR 38103; Executive Order 13526, 75 FR 705, or its successor; Executive Order 13587, 76 FR 63811; Presidential Memorandum, National Insider Threat Policy and Minimum Standards for Executive Branch Insider Threat Programs (Nov. 21, 2012).

PURPOSE(S) OF THE SYSTEM:

Records in this system are used by authorized personnel to: ensure process integrity; enable the CIA and the Director of the CIA to carry out their lawful and authorized responsibilities to detect and deter insider threats who may cause damage to national security; provide a data source for statistical and pattern analysis to support resource planning and business analytics; monitor, detect, deter, and/or mitigate insider threats to include accessing, gathering, integrating, assessing, and sharing information and data derived from offices across the organization for centralized analysis, reporting, and response; monitor user activity on classified and other computer networks controlled by the CIA; evaluate personnel security information; establish procedures for insider threat response actions, such as inquiries clarifying or resolving insider threat matters; and educate personnel on the subject of insider threat in order to identify and prevent vulnerabilities that may do harm to the national security of the United States through espionage, terrorism, unauthorized disclosure of national security information, and loss or degradation of Agency resources or capabilities.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Current and former CIA staff, including individuals who may have access to CIA systems; contract employees; military and civilian personnel detailed to the CIA; witnesses who provide statements or information related to insider threat investigations; and other individuals who hold a security clearance, who have or had authorized access to CIA buildings, facilities, and infrastructures who may have exhibited actual, probable or conceivable indications of insider threat behavior or activities.

CATEGORIES OF RECORDS IN THE SYSTEM:

Information or data derived from such information that is necessary to identify, analyze, or resolve insider threat matters, including but not limited to:

All relevant foreign intelligence, counterintelligence, and security databases and files, including personnel security files, polygraph examination reports, facility access records, security violation files, travel records, foreign contact reports, and financial disclosure filings;

All relevant unclassified and classified network information generated by information assurance elements, including, but not limited to: personnel usernames and aliases, levels of network access, audit data, unauthorized use of removable media, print logs, and other data needed for clarification or resolution of an insider threat concern; and

All relevant human resources databases and files including personnel files, payroll and voucher files, outside work and activities requests, disciplinary files, personal contact records, as may be necessary for resolving or clarifying insider threat matters, and analysis pertaining to matters, behaviors or conduct indicating that a particular individual credibly poses an insider threat to the CIA.

RECORD SOURCE CATEGORIES:

Information may be provided by individuals covered by this system; CIA internally derived information, foreign intelligence and counterintelligence sources; other U.S. Government and foreign government entities; state, local, and private entities; and publicly available information.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

In addition to the disclosures generally permitted under 5 U.S.C. Section 552a(b), this information is set forth in the ''Statement of General Routine Uses for the Central Intelligence Agency,'' set out above, which is incorporated herein by reference. In addition to the General Routine Uses incorporated by reference, the following additional routine use also applies to this SORN:

20. Disclosure to the ODNI and other elements of the Intelligence Community (IC) as necessary to conduct audit or oversight operations, meet applicable reporting requirements and anticipate, prevent or detect insider threat within the IC.

POLICIES AND PRACTICES FOR STORAGE OF RECORDS:

Paper and other hard-copy records are stored in secured areas within the CIA or in CIA-controlled facilities. Electronic records are stored in secure file-servers located within CIA-controlled facilities.

POLICIES AND PRACTICES FOR RETRIEVAL OF RECORDS:

Records in this system may be retrieved by name, social security number, or other unique personal identifier by automated or hand search based on extant indices and automated

capabilities utilized in the normal course of business. Under applicable law and regulations, all searches of this system of records will be performed in CIA offices by Agency personnel.

POLICIES AND PRACTICES FOR RETENTION AND DISPOSAL OF RECORDS:

All records are maintained and disposed of in accordance with applicable Records Control Schedules issued or approved by the National Archives and Records Administration (NARA).

ADMINISTRATIVE, TECHNICAL, AND PHYSICAL SAFEGUARDS:

Records are maintained in secure, restricted areas and are accessed only by personnel who have a need for the records in the performance of their official duties and have been authorized for such access. Electronic authorization and authentication access controls are required to prevent against unauthorized access and disclosure.

RECORD ACCESS PROCEDURES:

Requests from individuals should be addressed as indicated in the Notification Procedures section below. Regulations for access to individual records or for appealing an initial determination by CIA concerning the access to records are published in the **Federal Register** (32 CFR 1901.11–.45).

CONTESTING RECORD PROCEDURES:

Requests from individuals to correct or amend records should be addressed as indicated in the Notification Procedures section below. CIA's regulations regarding requests for amendments to, or disputing the contents of, individual records or for appealing an initial determination by CIA concerning these matters are published in the **Federal Register** (32 CFR 1901.21–.32, 32 CFR 1901.42).

NOTIFICATION PROCEDURES:

Individuals seeking to learn if this system of records contains information about them should direct their inquiries to: Information and Privacy Coordinator, Central Intelligence Agency, Washington, DC 20505. Identification requirements are specified in the CIA rules published in the **Federal Register** (32 CFR 1901.12–.14). Individuals must comply with these rules in order for their request to be processed.

EXEMPTIONS PROMULGATED FOR THE SYSTEM:

Certain records contained within this system of records may be exempted from certain provisions of the Privacy Act, 5 U.S.C. 552a, pursuant to 5 U.S.C. 552a(d)(5), (j)(1), and (k).

HISTORY:

None.

CIA–43

SYSTEM NAME AND NUMBER:

Environmental Safety Records (CIA–43).

SECURITY CLASSIFICATION:

The classification of records in this system can range from UNCLASSIFIED to TOP SECRET.

SYSTEM LOCATION:

Central Intelligence Agency, Washington, DC 20505.

SYSTEM MANAGER(S):

Director, Office of Facilities, Central Intelligence Agency, Washington, DC 20505.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

The National Security Act of 1947, as amended, 50 U.S.C. 403 *et seq.;* the Central Intelligence Agency Act of 1949, as amended, 50 U.S.C. 403a *et seq.;* the Occupational Safety and Health Act, as amended, 29 U.S.C. 668; Executive Order 12196, 45 FR 12769; Executive Order 12333, as amended, 73 FR 45325.

PURPOSE(S) OF THE SYSTEM:

Records in this system are used by authorized personnel to: ensure process integrity; provide a data source for statistical and pattern analysis to support resource planning and business analytics; enable the CIA and the Director of the CIA to carry out their lawful and authorized responsibilities; document and track incident, injury, and illness on CIA-owned or managed property and facilities; track the environmental safety and health status of CIA employees, components, sites, and operations to identify causal trends and develop policies and standards; and address safety issues or concerns.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

CIA staff and contract employees; military and civilian employees detailed to CIA; and other non-Agency employees including vendors, visitors and other affected individuals, as applicable, involved in safety incidents resulting in injuries and illness.

CATEGORIES OF RECORDS IN THE SYSTEM:

Reports of incidents, injuries, and illnesses; materials relating to environmental health and safety issues; records of training provided; biographic and limited medical information on individuals involved in or affected by reported incidents, including information on supervisors, witnesses, and medical personnel who provided services to the categories of individuals listed above.

RECORD SOURCE CATEGORIES:

Information may be provided by CIA employees and other individuals involved in incident, injury, and illness reporting.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND PURPOSES OF SUCH USES:

In addition to the disclosures generally permitted under 5 U.S.C. Section 552a(b), this information is set forth in the ''Statement of General Routine Uses for the Central Intelligence Agency,'' set out above, which is incorporated herein by reference. In addition to the General Routine Uses incorporated by reference, the following additional routine use also applies to this SORN:

20. Disclosure to the Office of Personnel Management in the case of an employee who applies for medical disability, and to the Department of Labor in the case of an employee who applies for Worker's Compensation benefits.

POLICIES AND PRACTICES FOR STORAGE OF RECORDS:

Paper and other hard-copy records are stored in secured areas within the CIA or in CIA-controlled facilities. Electronic records are stored in secure file-servers located within CIA-controlled facilities.

POLICIES AND PRACTICES FOR RETRIEVAL OF RECORDS:

Records in this system may be retrieved by name, chart number, social security number, CIA employee number, or other unique personal identifier by automated or hand search based on extant indices and automated capabilities utilized in the normal course of business. Under applicable law and regulations, all searches of this system of records will be performed in CIA offices by Agency personnel.

POLICIES AND PRACTICES FOR RETENTION AND DISPOSAL OF RECORDS:

All records are maintained and disposed of in accordance with applicable Records Control Schedules issued or approved by the National Archives and Records Administration (NARA).

ADMINISTRATIVE, TECHNICAL, AND PHYSICAL SAFEGUARDS:

Records are maintained in secure, restricted areas and are accessed only by personnel who have a need for the records in the performance of their official duties and have been authorized

for such access. Electronic authorization and authentication access controls are required to prevent against unauthorized access, use, and disclosure.

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Certain records contained within this system of records may be exempted from certain provisions of the Privacy Act, 5 U.S.C. 552a, pursuant to 5 U.S.C. 552a(d)(5), (j)(1), and (k).

HISTORY:

None.

[FR Doc. 2022–24981 Filed 11–25–22; 8:45 am]

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