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Contents

Federal Register

Vol. 87, No. 228

Tuesday, November 29, 2022

Separate Parts In This Issue

Reader Aids

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

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CFR PARTS AFFECTED IN THIS ISSUE

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

10 CFR
Proposed Rules:
430.....73259

13 CFR
121.....73400
125.....73400
128.....73400
134.....73400

14 CFR
39 (2 documents) 73235, 73238

16 CFR
1216.....73241

21 CFR
1301.....73246
1309.....73246
1316.....73246
Proposed Rules:
101.....73267

33 CFR
100 (2 documents) 73246, 73247
165 (6 documents) 73247, 73249, 73251, 73254, 73256

38 CFR
Proposed Rules:
17.....73268

43 CFR
Proposed Rules:
8360.....73275

46 CFR
Proposed Rules:
541.....73278

50 CFR
679.....73257

Rules and Regulations

Federal Register
Vol. 87, No. 228
Tuesday, November 29, 2022

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2022–0992 Project Identifier MCAI–2022–00173–R; Amendment 39–22229; AD 2022–23–02]

RIN 2120–AA64

Airworthiness Directives; Bell Textron Canada Limited (Type Certificate Previously Held by Bell Helicopter Textron Canada Limited) Helicopters

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: The FAA is superseding Airworthiness Directive (AD) 99–23–18, AD 2005–03–07, AD 2013–12–07, and AD 2014–04–07, which applied to certain Bell Helicopter Textron Canada (now Bell Textron Canada Limited) Model 407 helicopters. AD 99–23–18 required revising the life limits for certain parts, replacing each part that had exceeded its life limit, and revising the Airworthiness Limitation Section (ALS) of the existing maintenance manual. AD 2005–03–07 required establishing a maximum accumulated Retirement Index Number (RIN) count for certain crosstube assemblies and revising the ALS of the existing maintenance manual. AD 2013–12–07 required inspecting the tailboom assembly for a crack, loose rivet, or other damage and depending on the inspection results, replacing certain parts. AD 2014–04–07 required preflight checking, repetitively inspecting for a crack in certain tailbooms, modifying and re-identifying certain tailbooms, installing an improved horizontal stabilizer assembly, and revising the ALS of the existing maintenance manual. Since the FAA issued those ADs, a report was received of a crack on the tailboom lower skin due to fatigue damage and new and more restrictive airworthiness limitations have been issued. This AD was prompted by a report of a crack on the tailboom lower skin due to fatigue damage and the issuance of new and more restrictive airworthiness limitations. This AD requires incorporating into existing maintenance records requirements (airworthiness limitations) as specified in the ALS service information. The FAA is issuing this AD to address the unsafe condition on these products.

DATES: This AD is effective January 3, 2023.

The Director of the Federal Register approved the incorporation by reference of a certain publication listed in this AD as of January 3, 2023.

ADDRESSES:

AD Docket: You may examine the AD docket at *regulations.gov* under Docket No. FAA–2022–0992; or in person at Docket Operations between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this final rule, any comments received, and other information. The address for Docket Operations is U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE, Washington, DC 20590.

Material Incorporated by Reference:

- For service information identified in this final rule, 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.*
- 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. It is also available at *regulations.gov* under Docket No. FAA–2022–0992.

FOR FURTHER INFORMATION CONTACT: Andrea Jimenez, Aerospace Engineer, COS Program Management Section, Operational Safety Branch, Compliance & Airworthiness Division, FAA, 1600 Stewart Ave., Suite 410, Westbury, NY 11590; telephone (516) 228–7330; email *andrea.jimenez@faa.gov*.

SUPPLEMENTARY INFORMATION:

Background

The FAA issued a notice of proposed rulemaking (NPRM) to amend 14 CFR part 39 to supersede AD 99–23–18, Amendment 39–11414 (64 FR 61784, November 15, 1999) (AD 99–23–18), AD 2005–03–07, Amendment 39–13963 (70 FR 7016, February 10, 2005) (AD 2005–03–07), AD 2013–12–07, Amendment 39–17485 (78 FR 38546, June 27, 2013) (AD 2013–12–07), and AD 2014–04–07, Amendment 39–17766 (79 FR 35481, June 23, 2014) (AD 2014–04–07).

AD 99–23–18 applied to all Bell Helicopter Textron Canada (now Bell Textron Canada Limited) Model 407 helicopters. AD 99–23–18 was prompted by an engineering evaluation of additional flight test data, which resulted in redefining the service life for certain parts and revising the ALS of the existing maintenance manual. AD 99–23–18 required revising the life limits for certain parts, and replacing each part that had exceeded its life limit with an airworthy part. AD 99–23–18 also required revising the ALS of the existing maintenance manual to reflect these new life limits and annotating the component history card or equivalent record with the revised life limits.

AD 2005–03–07 applied to Bell Helicopter Textron Canada (now Bell Textron Canada Limited) Model 407 helicopters with certain part-numbered landing gear crosstube assemblies installed. AD 2005–03–07 was prompted by fatigue testing, analysis, and evaluation by the manufacturer that determined that run-on landings impose a high stress on landing gear or crosstubes and may cause cracking in the area above the skid tube saddle. AD 2005–03–07 required establishing a component history card or equivalent record, converting accumulated run-on landings to an accumulated RIN count, and establishing a maximum accumulated RIN for certain crosstube assemblies. AD 2005–03–07 also required replacing any crosstube assembly before it exceeds the maximum RIN life limit and revising the ALS of the existing maintenance manual to reflect this new life limit.

AD 2013–12–07 applied to Bell Helicopter Textron Canada (now Bell Textron Canada Limited) Model 407 helicopters with certain part-numbered tailboom assemblies installed. AD 2013–12–07 was prompted by a stress analysis of the tailboom skin that revealed that

high-stress-concentration areas are susceptible to skin cracking. AD 2013–12–07 required, for certain tailboom assemblies, inspecting the tailboom assembly for a crack or inspecting for a crack around each fastener and above the edge of the upper stabilizer support. AD 2013–12–07 also required, for certain tailboom assemblies, inspecting the tailboom assembly for a crack by using either a 10X or higher power magnifying glass, or by eddy current inspecting.

Additionally, AD 2013–12–07 required inspecting the tailboom assembly for a crack, loose rivet, or other damage, and depending on the inspection results, replacing the tailboom assembly with an airworthy part.

AD 2014–04–07 applied to Bell Helicopter Textron Canada (now Bell Textron Canada Limited) Model 407 helicopters serial numbers (S/Ns) 53000 through 53475, with certain part-numbered tailbooms installed. AD 2014–04–07 was prompted by additional reports of cracked tailboom skins. AD 2014–04–07 required for certain part-numbered tailbooms that have not been modified, conducting daily preflight checks of the tailboom for a crack; and for certain tailbooms, visually inspecting the tailboom for a crack using a 10X or higher power magnifying glass, modifying and re-identifying certain part-numbered tailbooms, and installing an improved horizontal stabilizer assembly. AD 2014–04–07 also required, for certain part-numbered tailbooms, after the modification, establishing a component history card or equivalent record, and revising the existing ALS of the maintenance manual to reflect a new life limit.

Additionally, AD 2014–04–07 required, for certain part-number tailbooms, daily visual inspections of the tailboom for a crack, and using a 10X or higher power magnifying glass, inspecting each tailboom for a loose rivet, crack, skin corrosion, or any other damage. Depending on the inspection results, AD 2014–04–07 required corrective actions, including, if there is a crack, replacing the tailboom assembly.

The NPRM published in the **Federal Register** on August 15, 2022 (87 FR 50005). The NPRM was prompted by Transport Canada AD CF–2021–34, dated October 22, 2021 (Transport Canada AD CF–2021–34), issued by Transport Canada, which is the aviation authority for Canada, to correct an unsafe condition for Bell Textron Canada Limited Model 407 helicopters, S/N 53000 through 53900, 53911 through 54166, and 54300 and subsequent. Transport Canada advises of a report of a crack on the tailboom lower skin due to fatigue damage, which could affect the structural integrity of the tailboom. Transport Canada advises that Bell Textron Canada Limited issued a revision to the ALS, which adds a new inspection zone for tailboom assemblies to address the unsafe condition. Accordingly, Transport Canada AD CF–2021–34 requires compliance with Bell BHT–407–MPI, Chapter 04, ALS, Issue 3, dated June 21, 2021, of Bell Model 407 Maintenance Planning Information, PMC–407–97499–01000–00, Issue No. 005, dated July 6, 2022 (BHT–407–MPI, ALS Issue 3), which includes maintenance tasks and life limits for the tailboom and other parts. The FAA is issuing this AD to address the unsafe condition on these products.

You may examine the Transport Canada AD in the AD docket at *regulations.gov* under Docket No. FAA–2022–0992.

Relationship Between AD 99–23–18, AD 2005–03–07, AD 2013–12–07, AD 2014–04–07, and This AD

AD 99–23–18 and AD 2005–03–07 were prompted by unsafe conditions not related to the tailboom crack that prompted this AD. However, the actions required to address the unsafe conditions in AD 99–23–18 and AD 2005–03–07 are included in BHT–407–MPI, ALS Issue 3. Therefore, the FAA is superseding AD 99–23–18, AD 2005–03–07, AD 2013–12–07, and AD 2014–04–07, in order to reduce the burden on operators by requiring compliance with a single AD in lieu of multiple FAA ADs.

AD 99–23–18 required reducing the life limit for drive ring set part number (P/N) 406–010–126–107 from 49,000 RIN to 48,000 RIN, and replacing each part that has exceeded its life limit. BHT–407–MPI, ALS Issue 3 states the life limit for drive ring set P/N 406–010–126–107 is 100,000 RIN.

AD 2005–03–07 required establishing a maximum accumulated RIN for certain crosstube assemblies of 5,000 RIN and replacing any crosstube assembly before it exceeds the maximum accumulated RIN. BHT–407–MPI, ALS Issue 3 adds an additional life limit to certain part-numbered crosstube assemblies of 2,500 landings or 5,000 RIN.

AD 2013–12–07 required for certain part-numbered tailboom assemblies and with certain hours TIS, inspecting the tailboom assembly for a crack. AD 2013–12–07 also required either inspecting using a 10X or higher power magnifying glass and thereafter repeating that inspection or eddy current inspecting and thereafter repeating the eddy current inspection. Additionally, AD 2013–12–07 required inspecting the tailboom assembly for a loose rivet, crack, or other damage.

BHT–407–MPI, ALS Issue 3 adds tailboom assembly P/N 407–530–013–105 and successive dash numbers, and also specifies for tailboom assembly P/N 407–530–013–105 and successive dash numbers and P/N 407–030–801–201 and successive dash numbers, inspecting for a crack; and for certain tailbooms inspecting using a 10X magnifying glass inspection method, or eddy current inspecting; and for certain tailboom assemblies, inspecting for a crack either with a daily visual inspection or with a 10X magnifying glass inspection method. Additionally, BHT–407–MPI, ALS Issue 3 specifies additional inspection zones, intervals, and criteria.

AD 2014–04–07 required modifying and re-identifying certain part-numbered tailbooms, and for these re-identified tailbooms, establishing a retirement life of 5,000 hours TIS, daily checks for a crack, and recurring inspections using a 10X or higher power magnifying glass for a loose rivet, a crack, skin corrosion, or other damage. BHT–407–MPI, ALS Issue 3 specifies for tailboom P/N 407–530–014–101 and successive dash numbers, and P/N 407–030–801–107 and successive dash numbers, daily and recurring inspections for a crack. BHT–407–MPI, ALS Issue 3 also revises the inspection areas.

Discussion of Final Airworthiness Directive

Comments

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

Conclusion

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 reviewed the relevant data and determined that air safety requires adopting this AD as proposed. Accordingly, the FAA is issuing this AD to address the unsafe condition on these helicopters. This AD is adopted as proposed in the NPRM.

Related Service Information Under 1 CFR Part 51

The FAA reviewed BHT–407–MPI, ALS Issue 3, which specifies certain actions and associated thresholds and

intervals, including life limits and maintenance tasks. These requirements (airworthiness limitations) include new inspection zones and new maintenance tasks (*e.g.,* inspections for cracks) with new compliance times.

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

ADs Mandating Airworthiness Limitations

The FAA has previously mandated airworthiness limitations by mandating each airworthiness limitation task (*e.g.,* inspections and replacements (life limits)) as an AD requirement or issuing ADs that require revising the ALS of the existing maintenance manual or instructions for continued airworthiness to incorporate new or revised inspections and life limits. This AD, however, requires operators to incorporate into maintenance records required by 14 CFR 91.417(a)(2) or 135.439(a)(2), as applicable for your rotorcraft, the requirements (airworthiness limitations) identified in the ALS service information, as described previously. The FAA does not intend this as a substantive change. For these ADs, the ALS requirements for operators are the same but are complied with differently. Requiring the incorporation of the new ALS requirements into the existing maintenance records, rather than requiring individual ALS tasks (*e.g.,* repetitive inspections and replacements), requires operators to record AD compliance once after updating the maintenance records, rather than after every time the ALS task is completed.

Differences Between This AD and the Transport Canada AD or the Service Information

Transport Canada AD CF–2021–34 does not supersede any previously issued Transport Canada ADs, whereas this AD supersedes FAA AD 99–23–18, AD 2005–03–07, AD 2013–12–07, and AD 2014–04–07. The airworthiness limitations specified in Transport Canada AD CF–2021–34 encompass the requirements of AD 99–23–18, AD 2005–03–07, AD 2013–12–07, and AD 2014–04–07.

Additionally, Transport Canada AD CF–2021–34 is applicable to certain serial-numbered Bell Textron Canada Limited Model 407 helicopters, whereas this AD is applicable to all serial-numbered Model 407 helicopters.

The service information specifies replacing each component before exceeding the applicable airworthiness life limit, accomplishing all applicable maintenance tasks within the defined thresholds and intervals, and performing the specified corrective action(s) if a defect is found during the inspection, whereas this AD requires incorporating requirements (airworthiness limitations) into existing maintenance records within 30 days after the effective date of this AD.

Costs of Compliance

The FAA estimates that this AD affect 791 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 AD.

Incorporating requirements (airworthiness limitations) into existing maintenance records takes about 2 work-hours for an estimated cost of $170 per helicopter and $134,470 for the U.S. fleet.

Authority for This Rulemaking

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

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

Regulatory Findings

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

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

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

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

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

List of Subjects in 14 CFR Part 39

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

The Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

■ 2. The FAA amends § 39.13 by:

■ a. Removing Airworthiness Directive 99–23–18, Amendment 39–11414 (64 FR 61784, November 15, 1999); Airworthiness Directive 2005–03–07, Amendment 39–13963 (70 FR 7016, February 10, 2005); Airworthiness Directive 2013–12–07, Amendment 39–17485 (78 FR 38546, June 27, 2013); and Airworthiness Directive 2014–04–07, Amendment 39–17766 (79 FR 35481, June 23, 2014); and

■ b. Adding the following new airworthiness directive:

2022–23–02 Bell Textron Canada Limited (Type Certificate Previously Held by Bell Helicopter Textron Canada Limited): Amendment 39–22229; Docket No. FAA–2022–0992; Project Identifier MCAI–2022–00173–R.

(a) Effective Date

This airworthiness directive (AD) is effective January 3, 2023.

(b) Affected ADs

This AD replaces the ADs specified in paragraphs (b)(1) through (4) of this AD.

(1) AD 99–23–18, Amendment 39–11414 (64 FR 61784, November 15, 1999).

(2) AD 2005–03–07, Amendment 39–13963 (70 FR 7016, February 10, 2005).

(3) AD 2013–12–07, Amendment 39–17485 (78 FR 38546, June 27, 2013).

(4) AD 2014–04–07, Amendment 39–17766 (79 FR 35481, June 23, 2014).

Note 1 to paragraph (b): The requirements of this AD capture the latest tasks and life limits required to prevent the unsafe conditions addressed by the ADs that are identified in paragraphs (b)(1) through (4) of this AD.

(c) Applicability

This AD applies to all Bell Textron Canada Limited (type certificate previously held by Bell Helicopter Textron Canada Limited) Model 407 helicopters, certificated in any category.

(d) Subject

Joint Aircraft Service Component (JASC) Code: 5300, Fuselage Structure.

(e) Unsafe Condition

This AD was prompted by a report of a crack on the tailboom lower skin due to fatigue damage and the issuance of new and more restrictive airworthiness limitations. The FAA is issuing this AD to prevent failure of a part, which could result in loss of control of the helicopter.

(f) Compliance

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

(g) Required Actions

Within 30 days after the effective date of this AD, incorporate into maintenance records required by 14 CFR 91.417(a)(2) or 135.439(a)(2), as applicable for your helicopter, the requirements (airworthiness limitations) specified in Bell BHT–407–MPI, Chapter 04, Airworthiness Limitations Schedule, Issue 3, dated June 21, 2021, of Bell Model 407 Maintenance Planning Information, PMC–407–97499–01000–00, Issue No. 005, dated July 6, 2022.

(h) Provisions for Alternative Requirements (Airworthiness Limitations)

After the actions required by paragraph (g) of this AD have been done, no alternative requirements (airworthiness limitations) are allowed unless they are approved as an alternative method of compliance (AMOC) in accordance with the procedures specified in paragraph (j)(1) of this AD.

(i) Special Flight Permits

Special flight permits may be issued in accordance with 14 CFR 21.197 and 21.199, provided no passengers are onboard.

(j) 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 (k)(1) 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.

(k) Related Information

(1) For more information about this AD, contact Andrea Jimenez, Aerospace Engineer, COS Program Management Section, Operational Safety Branch, Compliance & Airworthiness Division, FAA, 1600 Stewart Ave., Suite 410, Westbury, NY 11590; telephone (516) 228–7330; email *andrea.jimenez@faa.gov.*

(2) The subject of this AD is addressed in Transport Canada AD CF–2021–34, dated October 22, 2021. You may view the Transport Canada AD on the internet at *regulations.gov* in Docket No. FAA–2022–0992.

(l) Material Incorporated by Reference

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

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

(i) Bell BHT–407–MPI, Chapter 04, Airworthiness Limitations Schedule, Issue 3, dated June 21, 2021, of Bell Model 407 Maintenance Planning Information, PMC–407–97499–01000–00, Issue No. 005, dated July 6, 2022.

(ii) [Reserved]

(3) For Bell Textron Canada Limited service information identified in this AD, 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.*

(4) You may view this service information at 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 October 27, 2022.

Christina Underwood,

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

[FR Doc. 2022–26031 Filed 11–28–22; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2022–0808; Project Identifier MCAI–2022–00100–R; Amendment 39–22232; AD 2022–23–05]

RIN 2120–AA64

Airworthiness Directives; Airbus Helicopters

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: The FAA is adopting a new airworthiness directive (AD) for certain Airbus Helicopters Model AS332C, AS332C1, AS332L, AS332L1, and AS332L2 helicopters. This AD was prompted by reports of a crack in the front upper hoist attachment fitting. This AD requires inspecting each affected hoist attachment fitting (fitting) and depending on the results, removing any cracked fitting from service and reporting information. This AD also prohibits installing an affected fitting unless the required actions are accomplished, as specified in a European Union Aviation Safety Agency (EASA) AD, which is incorporated by reference. The FAA is issuing this AD to address the unsafe condition on these products.

DATES: This AD is effective January 3, 2023.

The Director of the Federal Register approved the incorporation by reference of a certain publication listed in this AD as of January 3, 2023

AD Docket: You may examine the AD docket at *regulations.gov* under Docket No. FAA–2022–0808; or in person at Docket Operations between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this final rule, the EASA AD, any comments received, and other information. The address for Docket Operations is U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE, Washington, DC 20590.

Material Incorporated by Reference:

- For service information identified in this final rule, contact EASA, Konrad-Adenauer-Ufer 3, 50668 Cologne, Germany; telephone +49 221 8999 000; email *ADs@easa.europa.eu;* internet *easa.europa.eu.* You may find the EASA material on the EASA website at *ad.easa.europa.eu.*
- 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. It is also available at *regulations.gov* under Docket No. FAA–2022–0808.

Other Related Service Information: For Airbus Helicopters service information identified in this final rule, contact Airbus Helicopters, 2701 North Forum Drive, Grand Prairie, TX 75052, United States; phone: (972) 641–0000 or (800) 232–0323; fax (972) 641–3775; email: *customersupport.helicopters@airbus.com;* website: *airbus.com/helicopters/services/technical-support.html.* This service information is also available at the contact information under *Material Incorporated by Reference* above.

FOR FURTHER INFORMATION CONTACT: Kristin Bradley, COS Program Manager, COS Program Management Section, Operational Safety Branch, FAA, 10101 Hillwood Pkwy., Fort Worth, TX 76177; telephone: (817) 222–5110; email: *kristin.bradley@faa.gov*.

SUPPLEMENTARY INFORMATION:

Background

EASA, which is the Technical Agent for the Member States of the European Union, has issued EASA Emergency AD 2022–0016–E, dated January 26, 2022 (EASA AD 2022–0016–E), to correct an unsafe condition for Airbus Helicopters (AH), formerly Eurocopter, Eurocopter France, Aerospatiale, Model AS 332 C, AS 332 C1, AS 332 L, AS 332 L1, and AS 332 L2 helicopters, equipped with front upper fitting manufacturer part number (MP/N) 332A87–1116–21, rear upper fitting MP/N 332A87–1117–20, or lower fitting MP/N 332A87–1176–20.

The FAA issued a notice of proposed rulemaking (NPRM) to amend 14 CFR part 39 by adding an AD that would apply to certain Airbus Helicopters Model AS332C, AS332C1, AS332L, AS332L1, and AS332L2 helicopters, with a front upper fitting MP/N 332A87–1116–21, rear upper fitting MP/N 332A87–1117–20, or lower fitting MP/N 332A87–1176–20, installed. The NPRM published in the **Federal Register** on July 6, 2022 (87 FR 40164). The NPRM was prompted by an occurrence of a front upper fitting crack reported on a helicopter equipped with a double hoist design, installed per a supplemental type certificate (STC). The STC has not been validated by the FAA; however, other hoists may have design similarities with the affected fitting installed. In the NPRM, the FAA proposed to require inspecting each affected fitting and depending on the results, removing any cracked fitting from service. The NPRM also proposed to require reporting results of the inspection to the manufacturer, as specified in EASA AD 2022–0016–E.

The FAA is issuing this AD to address cracking of the front upper fitting, which could affect the structural integrity of a fitting, possibly leading to an in-flight detachment of the hoist support, and consequent damage to the helicopter or injury to a person being lifted. See EASA AD 2022–0016–E for additional background information.

Discussion of Final Airworthiness Directive

Comments

The FAA received a comment from Airbus Helicopters. The following presents the comment received on the NPRM and the FAA's response to the comment.

Request To Require Returning Parts

Airbus Helicopter requested the FAA change the AD to require returning a cracked fitting to Airbus Helicopters for further engineering investigation as required by EASA AD 2022–0016–E.

The FAA disagrees with this request because the FAA does not have the authority to direct operators to return defective components to the manufacturer. However, operators may choose to return a cracked fitting to Airbus Helicopters as this AD does not prohibit an operator from returning a part to a manufacturer. Additionally, this AD requires reporting inspection results to Airbus Helicopters within a specific compliance time. Airbus Helicopters will have direct knowledge of any non-compliances and can work with operators to return the parts at their discretion.

Conclusion

These helicopters have been approved by EASA and are approved for operation in the United States. Pursuant to the FAA's bilateral agreement with the European Union, EASA has notified the FAA of the unsafe condition described in its AD. The FAA reviewed the relevant data, considered the comment received, and determined that air safety requires adopting this AD as proposed. Accordingly, the FAA is issuing this AD to address the unsafe condition on these helicopters. Except for minor editorial changes, this AD is adopted as proposed in the NPRM.

Related Service Information Under 1 CFR Part 51

EASA AD 2022–0016–E requires a one-time inspection of the front upper fitting MP/N 332A87–1116–21, rear upper fitting MP/N 332A87–1117–20, and lower fitting MP/N 332A87–1176–20 for a crack. If there is a crack, EASA AD 2022–0016–E requires replacing the affected fitting. EASA AD 2022–0016–E also prohibits installing an affected fitting on any helicopter unless it passes the required inspection.

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 **ADDRESSES**.

Other Related Service Information

The FAA reviewed Airbus Helicopters Emergency Alert Service Bulletin 25.03.95, Revision 0, dated January 25, 2022. This service information specifies procedures for inspecting and replacing an affected fitting. This service information also specifies reporting certain information to Airbus Helicopters, and for a cracked fitting, returning the fitting to Airbus Helicopters.

Differences Between This AD and the EASA AD

EASA AD 2022–0016–E requires a compliance time of before next hoist operation or within 30 days, whichever occurs first after its effective date, whereas this AD requires a compliance time of within 30 hours time-in-service or within 30 days, whichever occurs first after the effective date of this AD. Where the service information referenced in EASA AD 2022–0016–E specifies to perform a dye penetrant inspection ''if you are not sure,'' this AD would not require that action. Where EASA AD 2022–0016–E requires returning a fitting that is required to be removed as a result of the inspection, this AD does not.

Interim Action

The FAA considers this AD an interim action. If final action is later identified, the FAA might consider further rulemaking then.

Costs of Compliance

The FAA estimates that this AD, affects 7 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 AD.

Inspecting all hoist attachment fittings takes about 0.5 work-hour for an estimated cost of $42.50 per helicopter and $298 for the U.S. fleet.

Replacing the front upper fitting takes about 4 hours and parts cost $834 for an estimated cost of $1,174 per front upper fitting.

Replacing the rear upper fitting takes about 4 hours and parts cost $1,040 for an estimated cost of $1,380 per rear upper fitting.

Replacing the lower fitting takes about 4 hours and parts cost $1,874 for an estimated cost of $2,214 per lower fitting.

The FAA estimates that it takes about 1 hour per product to comply with the reporting requirement in this AD. The average labor rate is $85 per hour. Based on these figures, the FAA estimates the cost of reporting the inspection results on U.S. operators to be $595 or $85 per product.

Paperwork Reduction Act

A federal agency may not conduct or sponsor, and a person is not required to respond to, nor shall a 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. The OMB Control Number for this information collection is 2120–0056. Public reporting for this collection of information is estimated to take approximately 1 hour per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. All responses to this collection of information are mandatory. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to: Information Collection Clearance Officer, Federal Aviation Administration, 10101 Hillwood Parkway, Fort Worth, TX 76177–1524.

Authority for This Rulemaking

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

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

Regulatory Findings

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

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

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

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

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

List of Subjects in 14 CFR Part 39

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

The Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

2022–23–05 Airbus Helicopters: Amendment 39–22232; Docket No. FAA–2022–0808; Project Identifier MCAI–2022–00100–R.

(a) Effective Date

This airworthiness directive (AD) is effective January 3, 2023.

(b) Affected ADs

None.

(c) Applicability

This AD applies to Airbus Helicopters Model AS332C, AS332C1, AS332L, AS332L1, and AS332L2 helicopters, certificated in any category, with a front upper hoist attachment fitting manufacturer part number (MP/N) 332A87–1116–21, rear upper hoist attachment fitting MP/N 332A87–1117–20, or lower hoist attachment fitting MP/N 332A87–1176–20, installed.

(d) Subject

Joint Aircraft Service Component (JASC) Code: 2500, Cabin Equipment/Furnishings.

(e) Unsafe Condition

This AD was prompted by reports of a crack on the front upper hoist attachment fitting. The FAA is issuing this AD to detect and address this unsafe condition, which could affect the structural integrity of a hoist attachment fitting, possibly leading to an in-flight detachment of the hoist support, and consequent damage to the helicopter or injury to a person being lifted.

(f) Compliance

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

(g) Requirements

Except as specified in paragraph (h) of this AD: Comply with all required actions and compliance times specified in, and in accordance with, European Union Aviation Safety Agency Emergency AD 2022–0016–E, dated January 26, 2022 (EASA AD 2022–0016–E).

(h) Exceptions to EASA AD 2022–0016–E

(1) Where EASA AD 2022–0016–E refers to its effective date, this AD requires using the effective date of this AD.

(2) Where EASA AD 2022–0016–E requires a compliance time of before next hoist operation or within 30 days, whichever occurs first after the effective date of EASA AD 2022–0016–E, this AD requires a compliance time of within 30 hours time-in-service or within 30 days, whichever occurs first after the effective date of this AD.

(3) Where the service information referenced in EASA AD 2022–0016–E specifies discarding parts, this AD requires removing those parts from service.

(4) Where EASA AD 2022–0016–E specifies replacing parts and the service information referenced in EASA AD 2022–0016–E specifies returning parts to the manufacturer, this AD requires removing those parts from service.

(5) Where the service information referenced in EASA AD 2022–0016–E specifies reporting inspection results to Airbus Helicopters immediately after each inspection, this AD requires reporting inspection results at the following compliance times:

(i) If there is not a crack, within 30 days after the inspection.

(ii) If there is a crack, before the next hoist operation.

(6) Where the service information referenced in EASA AD 2022–0016–E specifies to perform a dye penetrant inspection ''if you are not sure,'' this AD does not require a dye penetrant inspection.

(7) This AD does not mandate compliance with the ''Remarks'' section of EASA AD 2022–0016–E.

(i) 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 (j) 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.

(j) Additional Information

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

(k) Material Incorporated by Reference

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

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

(i) European Union Aviation Safety Agency (EASA) Emergency AD 2022–0016–E, dated January 26, 2022.

(ii) [Reserved]

(3) For EASA Emergency AD 2022–0016–E, contact EASA, Konrad-Adenauer-Ufer 3, 50668 Cologne, Germany; telephone +49 221 8999 000; email *ADs@easa.europa.eu;* internet *easa.europa.eu.* You may find the EASA material on the EASA website at *ad.easa.europa.eu.*

(4) You may view this service information at 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 October 27, 2022.

Christina Underwood,

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

[FR Doc. 2022–26011 Filed 11–28–22; 8:45 am]

BILLING CODE 4910–13–P

CONSUMER PRODUCT SAFETY COMMISSION

16 CFR Part 1216

[Docket No. CPSC–2009–0066]

Safety Standard for Infant Walkers

AGENCY: Consumer Product Safety Commission.

ACTION: Direct final rule.

SUMMARY: In June 2010, the U.S. Consumer Product Safety Commission (CPSC) published a consumer product safety standard for infant walkers under section 104 of the Consumer Product Safety Improvement Act of 2008 (CPSIA), incorporating by reference the 2007 version of ASTM's voluntary standard for infant walkers that was in effect at the time, with modifications approved by the Commission. ASTM updated its standard for infant walkers in 2012, and CPSC accepted the revised voluntary standard, without any modifications, as the mandatory standard for infant walkers. ASTM has notified CPSC of a 2022 update to the infant walkers voluntary standard. This direct final rule updates the mandatory standard for infant walkers to incorporate by reference ASTM's 2022 version of the voluntary standard.

DATES: The rule is effective on February 25, 2023, unless CPSC receives a significant adverse comment by December 29, 2022. If CPSC receives such a comment, it will publish a document in the **Federal Register**, withdrawing this direct final rule before its effective date. The incorporation by reference of the publication listed in this rule is approved by the Director of the Federal Register as of February 25, 2023.

ADDRESSES: You can submit comments, identified by Docket No. CPSC–2009–0066, by any of the following methods:

Electronic Submissions: Submit electronic comments to the Federal eRulemaking Portal at: *www.regulations.gov.* Follow the instructions for submitting comments. Do not submit through this website: confidential business information, trade secret information, or other sensitive or protected information that you do not want to be available to the public. CPSC typically does not accept comments submitted by electronic mail (email), except as described below.

Mail/Hand Delivery/Courier/Confidential Written Submissions: CPSC encourages you to submit electronic comments by using the Federal eRulemaking Portal. You may, however, submit comments by mail, hand delivery, or courier to: Office of the Secretary, Consumer Product Safety Commission, 4330 East West Highway, Bethesda, MD 20814; telephone: (301) 504–7479.

Instructions: All submissions must include the agency name and docket number. CPSC may post all comments without change, including any personal identifiers, contact information, or other personal information provided, to: *www.regulations.gov.* If you wish to submit confidential business information, trade secret information, or other sensitive or protected information that you do not want to be available to the public, you may submit such comments by mail, hand delivery, or courier, or you may email them to: *cpsc-os@cpsc.gov.*

Docket: For access to the docket to read background documents or comments received, go to: *www.regulations.gov,* and insert the docket number, CPSC–2009–0066, into the ''Search'' box, and follow the prompts.

FOR FURTHER INFORMATION CONTACT: Keysha Walker, Compliance Officer, U.S. Consumer Product Safety Commission, 4330 East West Highway, Bethesda, MD 20814; telephone: (301) 504–6820; email: *KWalker@cpsc.gov.*

SUPPLEMENTARY INFORMATION:

A. Background

1. Statutory Authority

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

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

2. Safety Standard for Infant Walkers

Under section 104(b)(1) of the CPSIA, the Commission adopted a mandatory rule for infant walkers, codified in 16 CFR part 1216. The rule incorporated by reference ASTM F977–07, *Standard Consumer Safety Specification for Infant Walkers,* with numerous modifications. 75 FR 35266 (June 21, 2010). ASTM revised the voluntary standard in 2012, to ASTM F977–12. In June 2013, the Commission accepted the revision to the standard as the

mandatory standard for infant walkers, without any modifications, and published a direct final rule to incorporate by reference ASTM F977–12 into 16 CFR part 1216. 78 FR 37706 (June 24, 2013). ASTM revised the voluntary standard in 2018 (ASTM F977–18) and 2022 (ASTM F977–22) without notifying CPSC.

On August 29, 2022, ASTM notified CPSC that it has once more revised the voluntary standard for infant walkers, by approving ASTM F977–22e1 on June 1, 2022. On September 9, 2022, the Commission published a notice of availability in the **Federal Register** regarding the revised voluntary standard and sought comments on the effect of the revisions on the safety of the standard for infant walkers. 87 FR 55413 (Sep. 9, 2022). One comment was submitted by the Juvenile Products Manufacturers Association, expressing support for the revised voluntary standard and asserting that the revision improves safety.

As discussed in section B. Revisions to ASTM F977, based on CPSC staff's review of ASTM F977–22e1,[1] the Commission will allow the revised voluntary standard to become the mandatory standard because it improves the safety of infant walkers.[2] Accordingly, by operation of law under section 104(b)(4)(B) of the CPSIA, ASTM F977–22e1 will become the mandatory consumer product safety standard for infant walkers on February 25, 2023. 15 U.S.C. 2056a(b)(4)(B). This direct final rule updates 16 CFR part 1216 to incorporate by reference the revised voluntary standard, ASTM F977–22e1.

B. Revisions to ASTM F977

The ASTM standard for infant walkers includes performance requirements, test methods, and requirements for warning labels and instructional literature, to reduce or prevent death or injuries to children (such as cuts and bruises, burns, and skull fractures). ASTM approved a revised version of ASTM F977 on June 15, 2022, and published that ASTM F977–22 revision. In July 2022, however, ASTM made editorial changes and published ASTM F977–22e1 as another revision.[3] ASTM notified CPSC of the ASTM F977–22e1 revision on August 29, 2022.

The Commission concludes that ASTM F977–22e1 improves the safety of infant walkers. Because ASTM did not notify CPSC of changes made to the standard in ASTM F977–18 and ASTM F977–22, the Commission is now evaluating the substantive and non-substantive changes made to ASTM F977–12 in the 2018 and 2022 versions of the standard, as carried through in the 2022e1 version.

1. Background Information on Tipping Tests

The ASTM F977 standard includes several tests to evaluate the safety of infant walkers, including among others, the *Tipping Resistance Against an Immovable Object* test, *Occupant Leaning Over Edge/Occupant Leaning Outward Over Edge of Walker* test, and the *Prevention of Falls Down Step(s)* test. The following discussion explains how these particular tests are performed, as background for the later discussion of ASTM's changes to the standard.

Tipping Resistance Against an Immovable Object (6.1.1/7.3.1)

This test simulates the walker tipping over while the wheels are stopped against an immovable object. It is conducted by chocking, or preventing the wheels of the walker from moving, and pulling the walker with a horizontal force toward the chocks until it tips over. This test is conducted in both the forward and rearward directions.

Occupant Leaning Over Edge (6.1.2)/ Occupant Leaning Outward Over Edge of Walker (7.3.4)

This test simulates a child leaning over the edge of the walker, which may cause the walker to tip. It is conducted with a Federal Aviation Administration Civil Aeronautical Medical Institute (CAMI) dummy in both the forward and sideward directions on the floor. This test is also performed after the *Steps Tests* (described below) with a 17-lb force applied on an aluminum angle affixed on top of the walker with the CAMI dummy removed. This ensures the simulated child cannot cause the walker to fall over at the step edge.

Prevention of Falls Down Step(s) (6.3)/ Step(s) Tests (7.6)

This multipart test simulates a child traveling in the walker, reaching the edge of the stairs, and potentially falling down the stairs. It is conducted by placing and centering the infant walker on top of the test platform surface in the forward direction a certain distance, d, from the edge of the test platform. With a dummy in the seat of the walker, an 8-lb weight is attached to the walker. When this weight is released, the walker accelerates to the specified speed to the edge of the test platform, or edge of the stairs, potentially falling. This test is performed separately in the forward, rearward, and sideward directions.

If the walker is stopped on the edge of the test platform by various methods employed by manufacturers, such as friction pads, it is still possible for the child to lean and cause the walker to fall down the stairs. The *Occupant Leaning Outward Over Edge of Walker* test, explained above, evaluates the product's ability to prevent this, and to perform this test, the dummy must be removed. This test is conducted for both forward and sideward directions.

2. Comparison and Review of ASTM F977–12 to Revisions Contained in ASTM F977–22e1

a. Revisions in ASTM F977–18

Substantive Changes in ASTM F977–18

ASTM F977–18 made no substantive changes to ASTM F977–12.

Non-Substantive Changes in ASTM F977–18

The following changes to ASTM F977–18 are strictly editorial and do not affect testing or performance requirements.

- Section 1.6, part of the *Scope,* adds ''environmental'' to the type of appropriate practices to establish for the health and safety of testers. This section reminds testers that they are responsible for establishing appropriate safety, health, and environmental practices prior to and during testing.
- Section 1.7, part of the *Scope,* adds: ''This international standard was developed in accordance with internationally recognized principles on standardization established in the Decision on Principles for the Development of International Standards, Guides and Recommendations issued by the World Trade Organization Technical Barriers to Trade (TBT) Committee.''
- Section 7.3.2.1, part of the *Tipping Resistance Against an Immovable Object* test, replaces ''manufacturers'' with ''manufacturer's.''
- Section 7.6.4.1, part of the *Sideward Facing Step Test,* replaces ''most sideward wheel(s)'' with ''wheel(s) closest,'' for the *Prevention of Falls Down Steps* test, clarifying that the distance from the edge of the test platform to the center of the wheels should be measured to the wheels closest to the edge of the test platform. This is not a substantive change, but it

[1] CPSC staff's briefing package regarding ASTM F977–22e1 is available at: *https://www.cpsc.gov/s3fs-public/BPDraftDirectFinalRuletoRevise16CFRPart1216SafetyStandardforInfantWalkers.pdf?VersionId=rG8Qmw4TKkgazk37BVYgcJrFs8aLYy.B.*

[2] The Commission voted 4–0 to approve publication of this direct final rule.

[3] ASTM F977–22 contained editorial errors that ASTM addressed in ASTM F977–22e1 prior to notification to CPSC.

improves the rigor of testing to the extent it prevents misapplication.

• Section X1.9, *Rationale,* was added to document the basis for the *Occupant Leaning Outward Over Edge of Walker* test and the mathematical calculations underlying it.

There was no change to testing, nor to performance requirements.

b. Revisions in ASTM F977–22

Substantive Changes in ASTM F977–22

ASTM F977–22 made the following substantive changes to ASTM F977–18.

Section 7.6.1.8, part of *Test Platform Specifications,* and Section 7.6.3.2, part of the *Forward Facing Step Test,* were revised to require the CAMI Infant Dummy Mark II to be secured to the front of the occupant seating area (tray) during the Forward-Facing Step Test. Prior to this change, the dummy could be unsecured. The original wording of Section 7.6.1.8 stated ''may be secured,'' and was changed to ''shall be secured.'' Section 7.6.3.2 was modified to include ''Secure the dummy so that the front of the dummy's torso remains in contact with the front of the occupant seating area during the test.''

The *Forward-Facing Step Test* is conducted to determine whether the infant walker can prevent a child from falling downstairs by stopping itself. The Commission concludes that this change improves the safety of infant walkers because the weight of the CAMI dummy is placed further forward, moving the center of gravity of the dummy closer to the edge of the test platform, creating a more hazardous scenario for the test. This results in a more stringent test, and the change from ''may'' to ''shall'' also ensures consistency during testing, by specifying the dummy location for testing.

Section 7.6.4.2, part of the *Sideward Facing Step Test,* was changed to require the CAMI Infant Dummy Mark II to be secured to the side of the occupant seating area during the Sideward Facing Step Test. Prior to this change, securing the dummy was optional. Similar to the Forward-Facing Step Test, the Sideward-Facing Step Test is conducted to determine whether the infant walker can prevent a child from falling downstairs by stopping itself by various methods employed by manufacturers, such as friction pads, but in the sideward direction. The Commission concludes that this change improves the safety of infant walkers because the weight of the CAMI dummy is placed further sideward, moving the center of gravity of the dummy closer to the edge of the test platform, making the walker more likely to tip over when the walker leans over the edge of the test platform. This new test is a worst case scenario than if the CAMI was not secured to the side of the occupant seating area. This results in a more stringent test, and the change from ''may'' to ''shall'' also ensures consistency during testing, by specifying the dummy location for testing.

Section 7.6.5.2, part of the *Rearward-Facing Step Test,* now requires the CAMI Infant Dummy Mark II to be secured to the back of the occupant seating area during the Rearward-Facing Step Test. Prior to this change, securing the dummy was optional. Similar to the *Forward-Facing Step Test,* the *Rearward-Facing Step Test* is conducted to determine whether the infant walker can prevent a child from falling downstairs by stopping itself by various methods employed by manufacturers, such as friction pads, but in the rearward direction. The Commission concludes that this change improves the safety of infant walkers because the weight of the CAMI dummy is placed more rearward, moving the center of gravity of the dummy closer to the edge of the test platform, making it more likely that the walker tips over when the walker leans over the edge of the test platform. This results in a more stringent test, and the change from ''may'' to ''shall'' also ensures consistency during testing, by specifying the dummy location for testing.

Non-Substantive Changes in ASTM F977–22

Numerous non-substantive changes were made to ASTM F977–22, such as edits for clarity and consistency. These changes do not substantively affect the testing or performance requirements. Examples include:

• Sections 4.4, 4.6.1, 4.6.2, 7.1.1.2, 7.1.1.3, 7.1.2.2, 7.1.2.4, 7.3.4.2, 7.6.5.3, and 7.7.1 all add units of measurement in the proper grammatical form. For instance, 73 ± 9 °F, was rewritten to 73 °F ± 9 °F.

• Section 7.3.2.1, part of the *Forward Tip-Resistance test,* uncapitalizes ''Dummy's,'' replacing it with ''dummy's.''

• Sections 7.3.2.3–7.3.3.5 replace wording in the *Forward- and Rearward Tip-Resistance* test with language from ASTM F404–21, *Standard Consumer Specification for High Chairs.* This new language defines ''F_1'' as the pretensioned force of 3 lb and adds ''While maintaining the force, establish the initial location of a reference point some distance away from the force gauge.'' This pretensioned force helps the tester identify the reference point at which to start measuring the distance traveled when the horizontal force is applied to tip the walker.

• In Table 1, *Summary of Step(s) Tests,* the significant figures for the specified weight of the CAMI dummy are corrected to specify the actual weight of 17.4 lbs instead of 17 lbs.

• Section 7.6.3.1, part of the *Forward-Facing Step Test,* adds a non-mandatory note: ''To position the swivel wheels in the direction of movement, the walker should be positioned approximately 3 in. from the calculated release distance then moved parallel to Plane A until reaching the release point.'' This guidance allows for better test consistency and better ensures the wheels are aligned to the direction of travel for the most onerous configuration, as opposed to manually rotating the wheels.

Section 7.6.3.2, part of the *Forward-Facing Step Test,* adds the following notes: ''When positioning the dummy in the seat, a length of military rope, as specified in Fig. 10, should be used to pull the front of the dummy's torso in contact with the front of the occupant seating area. The military rope must not restrain movement of the dummy's head per 7.6.1.2.'' and ''To hold the walker stationary, a mechanical device such as an archery bow release may be used to anchor the walker until it is released per 7.6.3.4.'' Specifying the rope used for this test results in consistent test results. No instructions for securing the dummy existed prior to the ASTM F977–22 revision because securing the dummy was not required. The second change provides a means to secure the walker while it is being positioned for the test, although other methods could be used.

c. Revisions in ASTM F977–22e1

Substantive Changes in ASTM F977–22e1

No substantive changes were made in ASTM F977–22e1.

Non-Substantive Changes in ASTM F977–22e1

The following changes to ASTM F977–22e1 are editorial and do not affect testing or performance requirements.

• Section 7.6.3.2 Note 8 changes the incorrectly referenced section of 7.6.1.2 to section 7.6.1.8.

• Section 7.6.4.2 Note 12 changes the incorrectly referenced section of 7.6.1.2 to section 7.6.1.8.

• Section 7.6.5.2 Note 16 changes the incorrectly referenced section 7.6.1.2 to section 7.6.1.8.

• Section 7.6.5.3 Note 17 changes the incorrectly referenced sections 7.6.3.4 and 7.6.4.4 to section 7.6.5.4.

3. Commission's Assessment of the Revised Standard

The Commission concludes that the revisions to ASTM F977–12 that were made by ASTM F977–18, ASTM F977–22, and ASTM F977–22e1 improve the safety of infant walkers. Pursuant to the statute, the Commission will allow the revised voluntary standard, ASTM F977–22e1, to become the mandatory consumer product safety standard for infant walkers. This rule will update the incorporation by reference in 16 CFR part 1216 to reference ASTM F977–22e1 as the mandatory standard for infant walkers.

C. Incorporation by Reference

Section 1216.2 of the direct final rule incorporates by reference ASTM F977–22e1. The Office of the Federal Register (OFR) has regulations regarding incorporation by reference. 1 CFR part 51. Under these regulations, agencies must discuss, in the preamble to a final rule, ways in which the material the agency incorporates by reference is reasonably available to interested parties, and how interested parties can obtain the material. In addition, the preamble to the final rule must summarize the material. 1 CFR 51.5(b).

In accordance with the OFR regulations, section B. Revisions to ASTM F977 of this preamble summarizes the major provisions of ASTM F977–22e1 that the Commission incorporates by reference into 16 CFR part 1216. The standard is reasonably available to interested parties. Until the direct final rule takes effect, a read-only copy of ASTM F977–22e1 is available for viewing, at no cost, on ASTM's website at: *www.astm.org/CPSC.htm.* Once the rule takes effect, a read-only copy of the standard will be available for viewing, at no cost, on the ASTM website at: *www.astm.org/READINGLIBRARY/.* Interested parties can also schedule an appointment to inspect a copy of the standard at CPSC's Office of the Secretary, U.S. Consumer Product Safety Commission, Room 820, 4330 East West Highway, Bethesda, MD 20814, telephone: (301) 504–7479; email: *cpsc-os@cpsc.gov.* Interested parties can purchase a copy of ASTM F977–22e1 from ASTM International, 100 Barr Harbor Drive, P.O. Box C700, West Conshohocken, PA 19428–2959 USA; telephone: (610) 832–9585; *www.astm.org.*

D. Certification

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

Because infant walkers are children's products, a CPSC-accepted third party conformity assessment body must test samples of the products. Products subject to part 1216 also must comply with all other applicable CPSC requirements, such as the lead content requirements in section 101 of the CPSIA,[4] the tracking label requirements in section 14(a)(5) of the CPSA,[5] and the consumer registration form requirements in section 104(d) of the CPSIA.[6] ASTM F977–22e1 makes no changes to ASTM F977–12 that would impact any of these existing requirements.

E. Notice of Requirements

In accordance with section 14(a)(3)(B)(vi) of the CPSA, the Commission previously published a notice of requirements (NOR) for accreditation of third party conformity assessment bodies for testing infant walkers. 75 FR 35282 (Jun. 21, 2010). The NOR provided the criteria and process for CPSC to accept accreditation of third party conformity assessment bodies for testing infant walkers to 16 CFR part 1216. The NORs for all mandatory standards for durable infant or toddler products are listed in the Commission's rule, ''Requirements Pertaining to Third Party Conformity Assessment Bodies,'' codified in 16 CFR part 1112. *Id.*

CPSC-accepted testing laboratories that have ASTM F977–12 in their scope of accreditation are competent to conduct testing to ASTM F977–22e1. None of the changes to the standard would affect a CPSC-accepted laboratory's ability to conduct testing to the revised standard.

The Commission therefore considers the existing CPSC-accepted laboratories for testing to ASTM F977–12 to be capable of testing to ASTM F977–22e1 as well. Accordingly, the existing NOR for this standard will remain in place, and CPSC-accepted third party conformity assessment bodies are expected to update the scope of the testing laboratories' accreditations to reflect the revised standard in the normal course of renewing their accreditations. Thus, laboratories will begin testing to the new standard when ASTM F977–22e1 goes into effect as the mandatory standard, and the existing accreditations that the Commission has accepted for testing to this standard will cover testing to the revised standard.

F. Direct Final Rule Process

The Commission is issuing this rule as a direct final rule. Although the Administrative Procedure Act (APA; 5 U.S.C. 551–559) generally requires agencies to provide notice of a rule and an opportunity for interested parties to comment on it, section 553 of the APA provides an exception when the agency ''for good cause finds'' that notice and comment are ''impracticable, unnecessary, or contrary to the public interest.'' *Id.* 553(b)(B). The Commission concludes that when it updates a reference to an ASTM standard that the Commission incorporated by reference under section 104(b) of the CPSIA, notice and comment are not necessary.

Specifically, under the process set out in section 104(b)(4)(B) of the CPSIA, when ASTM revises a standard that the Commission has previously incorporated by reference under section 104(b)(1)(B) of the CPSIA, that revision will become the new CPSC standard, unless the Commission determines that ASTM's revision does not improve the safety of the product. Thus, unless the Commission makes such a determination, the ASTM revision becomes CPSC's standard by operation of law. The Commission is allowing ASTM F977–22e1 to become CPSC's new standard because its provisions improve product safety. The purpose of this direct final rule is to update the Code of Federal Regulations (CFR) so that it reflects the version of the standard that takes effect by statute. This rule updates the reference in the CFR, but under the terms of the CPSIA, ASTM F977–22e1 takes effect as the new CPSC standard for infant walkers even if the Commission does not issue this rule. Thus, public comments would not alter substantive changes to the

[4] 15 U.S.C. 1278a.

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

[6] 15 U.S.C. 2056a(d).

standard or the effect of the revised standard as a consumer product safety standard under section 104(b) of the CPSIA. Under these circumstances, notice and comment are unnecessary.

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

Unless CPSC receives a significant adverse comment within 30 days of this notification, the rule will become effective on February 25, 2023. In accordance with ACUS's recommendation, the Commission considers a significant adverse comment to be ''one where the commenter explains why the rule would be inappropriate,'' including an assertion challenging ''the rule's underlying premise or approach,'' or a claim that the rule ''would be ineffective or unacceptable without a change.'' 60 FR 43108, 43111 (Aug. 18, 1995). As noted, this rule merely updates a reference in the CFR to reflect a change that occurs by statute, and public comments should address this specific action.

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

G. Regulatory Flexibility Act

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

H. Paperwork Reduction Act

The current mandatory standard for infant walkers includes requirements for marking, labeling, and instructional literature that constitute a ''collection of information,'' as defined in the Paperwork Reduction Act (PRA; 44 U.S.C. 3501–3521). The Commission took the steps required by the PRA for information collections when it promulgated 16 CFR part 1216, and the marking, labeling, and instructional literature for infant walkers are currently approved under Office of Management and Budget (OMB) Control Number 3041–0159. The revisions to the voluntary standard made no changes to that section of the standard. Because the information collection burden is unchanged, the revision does not affect the information collection requirements or approval related to the standard.

I. Effective Date

Under the procedure set forth in section 104(b)(4)(B) of the CPSIA, when a voluntary standards organization revises a standard that the Commission adopted as a mandatory standard, the revision becomes the CPSC standard 180 days after notification to the Commission, unless the Commission timely notifies the standards organization that it has determined that the revision does not improve the safety of the product, or the Commission sets a later date in the **Federal Register**. 15 U.S.C. 2056a(b)(4)(B). The Commission is taking neither of those actions with respect to the standard for infant walkers. Therefore, ASTM F977–22e1 will take effect as the new mandatory standard for infant walkers on February 25, 2023, 180 days after August 29, 2022, when the Commission received notice of the revision. All infant walkers manufactured after February 25, 2023, must comply with this revised standard.

J. Preemption

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

K. Environmental Considerations

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

L. Congressional Review Act

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

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

List of Subjects in 16 CFR Part 1216

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

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

PART 1216—SAFETY STANDARD FOR INFANT WALKERS

■ 1. Revise the authority citation for part 1216 to read as follows:

Authority: 15 U.S.C. 2056a.

■ 2. Revise § 1216.2 to read as follows:

§ 1216.2 Requirements for infant walkers.

Each infant walker must comply with all applicable provisions of ASTM F977–22e1, *Standard Consumer Safety Specification for Infant Walkers.* ASTM F977–22e1, *Standard Consumer Safety*

Specification for Infant Walkers, approved June 15, 2022 is incorporated by reference into this section with the approval of the Director of the Federal Register under 5 U.S.C. 552(a) and 1 CFR part 51. This material is available for inspection at the Office of the Secretary, U.S. Consumer Product Safety Commission at: Room 820, 4330 East West Highway, Bethesda, MD 20814, telephone (301) 504–7479, email *cpsc-os@cpsc.gov,* or at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, email *fr.inspection@nara.gov,* or go to: *www.archives.gov/federal-register/cfr/ibr-locations.html.* A read-only copy of the standard is available for viewing on the ASTM website at *www.astm.org/READINGLIBRARY/.* You may obtain a copy from ASTM International, 100 Barr Harbor Drive, P.O. Box C700, West Conshohocken, PA 19428–2959; telephone (610) 832–9585; *www.astm.org.*

Alberta E. Mills,

Secretary, Consumer Product Safety Commission.

[FR Doc. 2022–25812 Filed 11–28–22; 8:45 am]

BILLING CODE 6355–01–P

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

21 CFR Parts 1301, 1309, and 1316

[Docket No. DEA–438]

RIN 1117–AB36

Default Provisions for Hearing Proceedings Relating to the Revocation, Suspension, or Denial of a Registration; Correction

AGENCY: Drug Enforcement Administration, Department of Justice.

ACTION: Final rule.; correction.

SUMMARY: The Drug Enforcement Agency is correcting a rule that published November 14, 2022, in the **Federal Register**, to clarify the effective date is 30 days from the date the rule published.

DATES: Effective December 14, 2022.

FOR FURTHER INFORMATION CONTACT: Scott A. Brinks, Diversion Control Division, Drug Enforcement Administration; Mailing Address: 8701 Morrissette Drive, Springfield, VA 22152, Telephone: (571) 776–3882.

SUPPLEMENTARY INFORMATION: In FR doc. 2022–24425, which published Monday, November 14, 2022, at 87 FR 68036, make the following correction:

1. On page 68036 in the third column, correct the **DATES** section to read:

DATES: This rule is effective December 14, 2022.

Signing Authority

This document of the Drug Enforcement Administration was signed on [date of paper signature], by Administrator Anne Milgram. That document with the original signature and date is maintained by DEA. For administrative purposes only, and in compliance with requirements of the Office of the Federal Register, the undersigned DEA Federal Register Liaison Officer has been authorized to sign and submit the document in electronic format for publication, as an official document of DEA. This administrative process in no way alters the legal effect of this document upon publication in the **Federal Register**.

Scott Brinks

Federal Register Liaison Officer, Drug Enforcement Administration.

[FR Doc. 2022–25823 Filed 11–28–22; 8:45 am]

BILLING CODE P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 100

[Docket No. USCG–2022–0896]

Special Local Regulation: Marine Events Within the Captain of the Port Miami, Seminole Hard Rock Winterfest Holiday Boat Parade

AGENCY: Coast Guard, DHS.

ACTION: Notification of enforcement of regulation.

SUMMARY: The Coast Guard will enforce a special local regulation to provide for the safety and security of certain navigable waterways during the Seminole Hard Rock Winterfest Holiday Boat Parade. Our regulation for marine events within the Captain of the Port Miami identifies the regulated area for this event in Fort Lauderdale, FL. All non-participant persons and vessels are prohibited from entering, transiting, anchoring, or remaining within the regulated area during the enforcement period unless authorized by the Captain of the Port Miami or a designated representative. The operator of any vessel in the regulated area must comply with instructions from the Coast Guard or designated representative.

DATES: The regulation in 33 CFR 100.702 will be enforced for the location identified in Item 11 of Table 1 to § 100.702, on December 10, 2022 from 1:30 p.m. through 11:30 p.m.

FOR FURTHER INFORMATION CONTACT: If you have questions about this notice of enforcement, call or email MST1 Robert M. Olivas, Sector Miami Waterways Management Division, U.S. Coast Guard: Telephone: 305–535–4317, Email: *Robert.M.Olivas@uscg.mil.*

SUPPLEMENTARY INFORMATION: The Coast Guard will enforce a special local regulation for the Seminole Hard Rock Winterfest Holiday Boat Parade published in 33 CFR 100.702, Table 1 to § 100.702, Item 11 on December 11, 2021 from 1:30 p.m. through 11:30 p.m. This action is being taken to provide for the safety and security of certain navigable waters of the New River and Atlantic Intracoastal Waterway during this one-day event. Our regulation for marine events within the Seventh Coast Guard District, § 100.702, specifies the location of the special local regulation for the Seminole Hard Rock Winterfest Holiday Boat Parade, which includes a moving buffer zone of 50 yards around the parade as it travels along the New River and Intracoastal Waterway in Ft. Lauderdale, FL. Only event sponsor designated participants and official patrol vessels may enter the regulated area. Spectator vessels may contact the Coast Guard Patrol Commander to request permission to pass through the regulated area. If granted permission, vessels must pass directly through the regulated area at a safe speed without loitering.

In addition to this notice of enforcement in the **Federal Register**, the Coast Guard will inform the public through Local Notice to Mariners and marine information broadcasts at least 24 hours in advance of the enforcement of the special local regulation.

Dated: November 21, 2022.

C.R. Cederholm,

Captain, U.S. Coast Guard, Captain of the Port Miami.

[FR Doc. 2022–25887 Filed 11–28–22; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 100

[Docket No. USCG–2022–0785]

Special Local Regulation; Marine Events Within the Eleventh Coast Guard District—Mission Bay Parade of Lights.

AGENCY: Coast Guard, DHS.

ACTION: Notification of enforcement of regulation.

SUMMARY: The Coast Guard will enforce the special local regulation on the waters of Mission Bay, CA, during the Mission Bay Parade of Lights on December 10, 2022. This special local regulation is necessary to provide for the safety of the participants, crew, sponsor vessels of the event, and general users of the waterway. During the enforcement period, persons and vessels are prohibited from entering into, transiting through, or anchoring within this regulated area unless authorized by the Captain of the Port Sector San Diego or their designated representative.

DATES: The regulations in 33 CFR 100.1101 for the location described in Item 6 in Table 1 to § 100.1101, will be enforced from 5:30 p.m. through 8 p.m. on December 10, 2022.

FOR FURTHER INFORMATION CONTACT: If you have questions about this notification of enforcement, call or email Lieutenant Junior Grade Shera Kim, Waterways Management, U.S. Coast Guard Sector San Diego, CA; telephone (619) 278–7656, email *MarineEventsSD@uscg.mil.*

SUPPLEMENTARY INFORMATION: The Coast Guard will enforce the special local regulations in 33 CFR 100.1101 for the location identified in Item No. 6 in Table 1 to § 100.1101, from 5:30 p.m. until 8 p.m. on December 10, 2022, for the Mission Bay Parade of Lights in Mission Bay, CA. This action is being taken to provide for the safety of life on the navigable waterways during the event. Our regulation for recurring marine events in the San Diego Captain of the Port Zone, § 100.1101, Item No. 6 in table 1 to § 100.1101, specifies the location of the regulated area for the Mission Bay Parade of Lights, which encompasses portions of Mission Bay. Under the provisions of § 100.1101, persons and vessels are prohibited from entering into, transiting through, or anchoring within this regulated area unless authorized by the Captain of the Port, or his designated representative. The Coast Guard may be assisted by other Federal, State, or local law enforcement agencies in enforcing this regulation.

In addition to this document in the **Federal Register**, the Coast Guard will provide the maritime community with advance notification of this enforcement period via the Local Notice to Mariners and marine information broadcasts.

Dated: November 22, 2022.

J.W. Spitler,

Captain, U.S. Coast Guard, Captain of the Port Sector San Diego.

[FR Doc. 2022–25930 Filed 11–28–22; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket No. USCG–2022–0955]

Safety Zone; South Padre Island, SPI New Year's Eve Fireworks

AGENCY: Coast Guard, DHS.

ACTION: Notification of enforcement of regulation.

SUMMARY: The Coast Guard will enforce the safety zone for SPI New Year's Eve fireworks Display Show on December 31, 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 South Padre Island, 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 12, will be enforced from 9 p.m. through 10 p.m. on December 31, 2022, unless the event is postponed because of adverse weather, in which case this rule will be enforced from 9 p.m. through 10 p.m. on January 1st, 2023.

FOR FURTHER INFORMATION CONTACT: If you have questions about this notice 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 12, for the SPI New Year's Eve fireworks display show from 9 p.m. through 10 p.m. on December 31, 2022, with an adverse weather date set for January 1st, 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 SPI New Year's Eve fireworks, which encompasses portions of the Laguna Madre in South Padre Island, 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 notice 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 22, 2022.

J.B. Gunning,

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

[FR Doc. 2022–26007 Filed 11–28–22; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket Number USCG–2022–0470]

RIN 1625–AA00

Safety Zone; Neuse River, Pamlico Sound, NC

AGENCY: Coast Guard, DHS.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing a temporary safety zone on the navigable waters of the Neuse River and Pamlico Sound near Hobucken, North Carolina. This action is necessary to provide for the safety of life on the

navigable waters near Hobucken, NC, during a military exercise on December 7, 2022. This rule will prohibit all persons and vessels from being in the safety zone unless authorized by the Captain of the Port Sector North Carolina or a designated representative.

DATES: This rule is effective December 7, 2022, from 10 a.m. through 1 p.m.

ADDRESSES: To view documents mentioned in this preamble as being available in the docket, go to *https://www.regulations.gov,* type USCG–2022–0470 in the search box and click ''Search.'' Next, in the Document Type column, select ''Supporting & Related Material.''

FOR FURTHER INFORMATION CONTACT: If you have questions on this rule, call or email Petty Officer Ken Farah, Waterways Management Division, U.S. Coast Guard; telephone 910–772–2221, email *NCMarineevents@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. Immediate action is needed to ensure we establish this safety zone by December 7, 2022, in order to protect persons and vessels from the hazards associated with a military exercise. Hazards include all plausible risks associated with a live military exercise. Moreover, this rule is issued in response to a military function. Therefore, under 5 U.S.C. 553(a), no requirements in 5 U.S.C. 553 apply to it.

Under 5 U.S.C. 553(d)(3), the Coast Guard finds that good cause exists for making this rule effective less than 30 days after publication in the **Federal Register**. Delaying the effective date of this rule would be impracticable and contrary to the public interest because immediate action is needed to protect persons and vessels from the hazards associated with this event on December 7, 2022

III. Legal Authority and Need for Rule

The Coast Guard is issuing this rule under authority in 46 U.S.C. 70034 (previously 33 U.S.C. 1231). The Captain of the Port Sector North Carolina (COTP) has determined that potential hazards associated with this event, scheduled for 10 a.m. through 1 p.m. on December 7, 2022, is a safety concern for mariners during the time that military maneuvers occur on Pamlico Sound and portions of the Neuse River. This rule is necessary to protect personnel, vessels, and the marine environment from the hazards associated with the exercise.

IV. Discussion of the Rule

This rule establishes a temporary safety zone on a portion of Pamlico Sound and the Neuse River on December 7, 2022, from 10 a.m. to 1 p.m. The rule will be enforced during this time period which is when the military exercise is scheduled. The dates and times of enforcement will be broadcast locally over VHF–FM marine radio. The safety zone will include all navigable waters of Pamlico Sound and the Neuse River near Hobucken, North Carolina inside an area starting from approximate positions: latitude 35°15′17″ N, longitude 076°29′40″ W, then east to latitude 35°15′01″ N, longitude 076°21′42″ W, then south to latitude 35°00′25″ N, longitude 076°24′29″ W, then west to latitude 35°00′31″ N, longitude 076°29′51″ W, then north to the point of origin. The duration of this safety zone is intended to protect any members of the public transiting that area of Pamlico Sound and the Neuse River. No vessel or person will be permitted to enter the safety zone without obtaining permission from the COTP or a designated representative.

V. Regulatory Analyses

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

A. Regulatory Planning and Review

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

This regulatory action determination is based on the size, location, and duration of the safety zone. Vessel traffic will not be allowed to enter or transit a portion of Pamlico Sound and the Neuse River during the exercise from 10 a.m. through 1 p.m. December 7, 2022. The Coast Guard will transmit a Broadcast Notice to Mariners via VHF–FM marine channel 16 regarding the enforcement area. This rule allows vessels to request permission to pass through the regulated area with approval of the COTP.

B. Impact on Small Entities

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

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

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

Small businesses may send comments on the actions of Federal employees who enforce, or otherwise determine compliance with, Federal regulations to the Small Business and Agriculture Regulatory Enforcement Ombudsman and the Regional Small Business Regulatory Fairness Boards. The Ombudsman evaluates these actions annually and rates each agency's responsiveness to small business. If you

wish to comment on actions by employees of the Coast Guard, call 1–888–REG–FAIR (1–888–734–3247). The Coast Guard will not retaliate against small entities that question or complain about this rule or any policy or action of the Coast Guard.

C. Collection of Information

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

D. Federalism and Indian Tribal Governments

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

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

E. Unfunded Mandates Reform Act

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

F. Environment

We have analyzed this rule under Department of Homeland Security Directive 023–01, Rev. 1, associated implementing instructions, and Environmental Planning COMDTINST 5090.1 (series), which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (42 U.S.C. 4321–4370f), and have determined that this action is one of a category of actions that do not individually or cumulatively have a significant effect on the human environment. This rule involves a safety zone lasting 3 hours that will prohibit entry within an area of Pamlico Sound and the Neuse River on December 7, 2022, from 10 a.m. to 1 p.m. It is categorically excluded from further review under paragraph L60(a) of Appendix A, Table 1 of DHS Instruction Manual 023–01–001–01, Rev. 1. A Record of Environmental Consideration supporting this determination is available in the docket. For instructions on locating the docket, see the **ADDRESSES** section of this preamble.

G. Protest Activities

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

List of Subjects in 33 CFR Part 165

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

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

PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

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

Authority: 46 U.S.C. 70034, 70051, 70124; 33 CFR 1.05–1, 6.04–1, 6.04–6, and 160.5; Department of Homeland Security Delegation No. 00170.1, Revision No. 01.3.

■ 2. Add § 165.T05–0470 to read as follows:

§ 165.T05–0470 Safety Zone; Neuse River, Pamlico Sound, NC.

(a) *Location.* The following area is a safety zone: all waters of Pamlico Sound and the Neuse River near Hobucken, North Carolina inside an area starting from approximate positions: latitude 35°15′17″ N, longitude 076°29′40″ W, then east to latitude 35°15′01″ N, longitude 076°21′42″ W, then south to latitude 35°00′25″ N, longitude 076°24′29″ W, then west to latitude 35°00′31″ N, longitude 076°29′51″ W, then north to the point of origin.

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

Captain of the Port or COTP means Captain of the Port Sector North Carolina.

Designated representative means a Coast Guard Patrol Commander, including a Coast Guard commissioned, warrant, or petty officer designated by the COTP for the enforcement of the safety zone.

(c) *Regulations.* (1) The general regulations governing safety zones in § 165.23 apply to the area described in paragraph (a) of this section.

(2) Entry into or remaining in this safety zone is prohibited unless authorized by the COTP or the COTP's designated representative. Unless permission to remain in the zone has been granted by the COTP or the COTP's designated representative, a vessel within this safety zone must immediately depart the zone when this section becomes effective.

(3) The COTP can be reached through the Coast Guard Sector North Carolina Command Duty Officer, Wilmington, North Carolina, at telephone number 910–343–3882.

(4) The Coast Guard and designated security vessels enforcing the safety zone can be contacted on VHF–FM marine band radio channel 13 (165.65 MHz) and channel 16 (156.8 MHz).

(d) *Enforcement.* The U.S. Coast Guard may be assisted in the patrol and enforcement of the safety zone by Federal, State, and local agencies.

(e) *Enforcement period.* This section will be enforced from 10 a.m. through 1 p.m. on December 7, 2022.

Dated: November 21, 2022.

Matthew J. Baer,

Captain, U.S. Coast Guard, Captain of the Port Sector North Carolina.

[FR Doc. 2022–25944 Filed 11–28–22; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket Number USCG–2022–0941]

RIN 1625–AA11

Safety Zone; Missouri River, Mile Marker 377.5–378, Missouri River, MO

AGENCY: Coast Guard, DHS.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing a temporary safety zone for navigable waters within a 300-foot radius of the fireworks launch site between mile markers 377.5 to 378 in the main channel, of the Missouri River. The safety zone is to protect personnel, vessels, and the marine environment from potential hazards created by the fireworks display. Entry of vessels or

persons into the zone is prohibited unless specifically authorized by the Captain of the Port Sector Upper Mississippi River or a designated representative.

DATES: This rule is effective on December 2, 2022 from 8:15 p.m. through 10:15 p.m.

ADDRESSES: To view documents mentioned in this preamble as being available in the docket, go to *https://www.regulations.gov,* type USCG–2022–0941 in the search box and click ''Search.'' Next, in the Document Type column, select ''Supporting & Related Material.''

FOR FURTHER INFORMATION CONTACT: If you have questions about this proposed rulemaking, call or email MSTC Nathaniel Dibley, Waterways Management Division U.S. Coast Guard; telephone (314) 269–2550, email *Nathaniel.D.Dibley@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, Purpose, and Legal Basis

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 we must establish this safety zone by December 2, 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 the fireworks display on the Missouri River.

III. Legal Authority and Need for Rule

The Coast Guard is issuing this rule under authority in 46 U.S.C. 70034 (previously 33 U.S.C. 1231). The Captain of the Port Sector Upper Mississippi River (COTP) has determined that potential hazards associated with the fireworks display on December 2, 2022 will be a safety concern for anyone on the Missouri River at the designated launch location. This rule resulted from a marine event notification stating that there will be a fireworks display on the Missouri River. This rule is needed to protect personnel, vessels, and the marine environment in the navigable waters within the safety zone before, during, and after the fireworks display.

IV. Discussion of the Rule

This rule establishes a safety zone from 8:15 p.m. through 10:15 p.m. on December 2, 2022. The safety zone will cover all navigable waters within a 300-foot radius of the fireworks launch site between mile markers 377.5 to 378 in the main channel, of the Missouri River. The duration of this zone is intended to protect personnel, vessels, and the marine environment in these navigable waters before, during, and after the fireworks display. No vessel or person will be permitted to enter the safety zone without obtaining permission from the COTP or a designated representative. A designated representative is a commissioned, warrant, or petty officer of the U.S. Coast Guard assigned to units under the operational control of USCG Sector Upper Mississippi River. The COTP or a designated representative will inform the public of the enforcement date and times for these safety zones, as well as any emergent safety concerns that may delay the enforcement of the zones.

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 size, location, and duration of the temporary safety zones. This action involves a fireworks display between mile markers 377.5 to 378 over the main channel, of the Missouri River on December 2, 2022. Moreover, the Coast Guard will publish a Local Notice to Mariners and mariners may seek permission to enter the zones.

B. Impact on Small Entities

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

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

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

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

C. Collection of Information

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

D. Federalism and Indian Tribal Governments

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

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

E. Unfunded Mandates Reform Act

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

F. Environment

We have analyzed this rule under Department of Homeland Security Directive 023–01, Rev. 1, associated implementing instructions, and Environmental Planning COMDTINST 5090.1 (series), which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (42 U.S.C. 4321–4370f), and have determined that this action is one of a category of actions that do not individually or cumulatively have a significant effect on the human environment. This rule involves a safety zone lasting only 2 hours that will prohibit entry within a 300 foot radius of the fireworks launch site. It is categorically excluded from further review under paragraph L60(a) of Appendix A, Table 1 of DHS Instruction Manual 023–01–001–01, Rev. 1. A Record of Environmental Consideration supporting this determination is available in the docket. For instructions on locating the docket, see the **ADDRESSES** section of this preamble.

G. Protest Activities

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

List of Subjects in 33 CFR Part 165

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

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

PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

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

Authority: 46 U.S.C. 70034, 70051, 70124; 33 CFR 1.05–1, 6.04–1, 6.04–6, and 160.5; Department of Homeland Security Delegation No. 00170.1, Revision No. 01.3.

■ 2. Add § 165.T08–0941 to read as follows:

§ 165.T08–0941 Safety Zone; Missouri River, Mile Marker 377.5–378.

(a) *Location.* All navigable waters extending 300 feet in all directions around the fireworks launch site between mile markers 377.5 to 378 in the main channel, of the Missouri River.

(b) *Regulations.* (1) In accordance with the general regulations in § 165.23 of this part, persons and vessels are prohibited from entering the safety zone described in paragraph (a) of this section unless authorized by the Captain of the Port Sector Upper Mississippi River (COTP) or a designated representative. A designated representative is a commissioned, warrant, or petty officer of the U.S. Coast Guard assigned to units under the operational control of USCG Sector Upper Mississippi River.

(2) Persons or vessels desiring to enter into or pass through the zone must request permission from the COTP or a designated representative. They may be contacted on VHF radio Channel 16 or by telephone at 314–269–2332.

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

(c) *Informational broadcasts.* The COTP or a designated representative will inform the public of the enforcement date and times for this safety zone, as well as any emergent safety concerns that may delay the enforcement of the zone through either a Safety Marine Information Broadcast (SMIB), Broadcast Notice to Mariners (BNM) and or the Local Notices to Mariners (LNMs).

(d) *Enforcement period.* This section will be subject to enforcement on December 2, 2022, from 8:15 p.m. through 10:15 p.m.

Dated: November 21, 2022.

A.R. Bender,

Captain, U.S. Coast Guard, Captain of the Port Sector Upper Mississippi River.

[FR Doc. 2022–25914 Filed 11–28–22; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket Number USCG–2022–0908]

RIN 1625–AA00

Safety Zone; 25th Annual Key West Paddle Classic, Atlantic Ocean, Key West, FL

AGENCY: Coast Guard, DHS.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing a temporary safety zone on certain navigable waters of the Atlantic Ocean and adjoining waterways, surrounding Key West, Florida, during the 25th Annual Key West Paddle Classic event. The safety zone is necessary to ensure the safety of event participants and spectators. Persons and non-participant vessels are prohibited from entering, transiting through, anchoring in, or remaining within the safety zone unless authorized by the Captain of the Port (COTP) Key West or a designated representative.

DATES: This rule is effective from 8 a.m. until 3 p.m. on December 3, 2022.

ADDRESSES: To view documents mentioned in this preamble as being available in the docket, go to *http://www.regulations.gov,* type USCG–2022–0908 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 Junior Grade Hailye Reynolds, Waterways Management Division Chief, Sector Key West, FL, U.S. Coast Guard; telephone (305) 292–8768; email *Hailye.M.Reynolds@uscg.mil.*

SUPPLEMENTARY INFORMATION:

I. Table of Abbreviations

COTP Captain of the Port
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 final 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 and contrary to the public interest. The primary justification for this action is that the Coast Guard did not receive final details from the event sponsor for this year's event within the reporting threshold requirements. The Coast Guard has an existing safety zone for this event in 33 CFR 165.786, Table to § 165.786, Item No. 4.1; however, the existing regulation only covers the event when it is scheduled on the last weekend of April. Therefore, the Coast Guard lacks sufficient time to provide a reasonable comment period and then consider those comments before issuing the rule. It would be impracticable and contrary to the public interest to delay promulgating this rule, as it is necessary to protect the safety of participants, spectators, the public, and vessels transiting the waters adjacent to Key West, FL.

Under 5 U.S.C. 553(d)(3), the Coast Guard finds that good cause exists for making this rule effective less than 30 days after publication in the **Federal Register**. Delaying the effective date of this rule would be impracticable because the event is taking place on December 3, 2022, and immediate action is needed to respond to the potential safety hazards associated with this event.

III. Legal Authority and Need for Rule

The Coast Guard is issuing this rule under the authority in 46 U.S.C. 70034. The Captain of the Port Key West (COTP) has determined that potential hazards associated with open water swim events will be a safety concern for persons and vessels in the regulated area. This rule is needed to ensure the safety of the event participants, the general public, vessels and the marine environment in the navigable waters within the safety zone during the 25th Annual Key West Paddle Classic paddle board event.

IV. Discussion of the Rule

This rule establishes a moving safety zone on December 3, 2022 for a period of 7 hours, from 8 a.m. until 3 p.m. The moving safety zone will cover all waters within 50 yards in front of the lead safety vessel preceding the first event participants, 50 yards behind the safety vessel trailing the last event participants, and at all times extend 100 yards on either side of safety vessels. The event course begins at Higgs Beach in Key West, Florida, moves west to the area offshore of Fort Zachary Taylor Historic State Park, north through Key West Harbor, east through Fleming Key Cut, south through Cow Key Channel, and west returning back to Higgs Beach. The event is scheduled to take place from 8 a.m. until 3 p.m. Approximately 150 paddle boarders and five safety vessels are anticipated to participate in the event. The safety zone is intended to protect personnel, vessels, and the marine environment in these navigable waters during the event. Persons and non-participant vessels are prohibited from entering, transiting through, anchoring in, or remaining within the safety zone without obtaining permission from the COTP Key West or a designated representative. If authorization to enter, transit through, anchor in, or remain within the safety zone is granted by the COTP Key West or a designated representative, all persons and vessels receiving such authorization must comply with the instructions of the COTP Key West or a designated representative. The Coast Guard will provide notice of the safety zone by Local Notice to Mariners, Broadcast Notice to Mariners, or by on-scene designated representatives.

V. Regulatory Analyses

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

A. Regulatory Planning and Review

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

This regulatory action determination is based on the following reasons: (1) the temporary safety zone will only be enforced for a total of 7 hours; (2) although persons and vessels may not enter, transit through, anchor in, or remain within the safety zone without authorization from the COTP or a designated representative, they may operate in the surrounding area during the enforcement period; (3) persons and vessels may still enter, transit through, anchor in, or remain within the areas during the enforcement period if authorized by the COTP or a designated representative.

B. Impact on Small Entities

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

While some owners or operators of vessels intending to transit the safety zone may be small entities, for the reasons stated in section V.A above, this 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.

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 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. The regulated area will impact small designated areas of the Atlantic Ocean and Gulf of Mexico around Key West, Florida, for only 7 hours and thus is limited in time and scope. It is categorically excluded from further review under paragraph L60(a) of Appendix A, Table 1 of DHS Instruction Manual 023–01–001–01, Rev. 1. A 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; 46 U.S.C. 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.T07–0908 to read as follows:

§ 165.T07–0908 Safety Zone; 25th Annual Key West Paddle Classic, Key West, FL.

(a) Location. The following regulated area is a moving safety zone: All waters extending 100 yards to either side of the race participants and safety vessels; extending 50 yards in front of the lead safety vessel preceding the first race participants; and extending 50 yards behind the safety vessel trailing the last race participants. The event course begins at Higgs Beach in Key West, Florida, moves west to the area offshore of Fort Zachary Taylor Historic State Park, north through Key West Harbor, east through Fleming Key Cut, south through Cow Key Channel, and west returning back to Higgs Beach.

(b) Definition. As used in this section, the term ''designated representative'' means a Coast Guard Patrol Commander, including a Coast Guard coxswain, petty officer, or other officer operating a Coast Guard vessel and a Federal, State, and local officer designated by or assisting the Captain of the Port Key West (COTP) in the enforcement of the safety zone.

(c) Regulations. (1) All persons and vessels are prohibited from entering, transiting through, anchoring in, or remaining within the regulated area unless authorized by the COTP Key West or a designated representative.

(2) Persons and vessels desiring to enter, transit through, anchor in, or remain within the regulated area may contact the COTP Key West by telephone at (305) 292–8772, or a designated representative via VHF–FM radio on channel 16 to request authorization. If authorization is granted, all persons and vessels receiving such authorization must comply with the instructions of the COTP Key West or a designated representative.

(3) The Coast Guard will provide notice of the regulated area by Local Notice to Mariners, Broadcast Notice to Mariners via VHF–FM channel 16, or the COTP's designated representative.

(d) Enforcement period. This section will be enforced from 8 a.m. until 3 p.m. on December 3, 2022.

Dated: November 23, 2022.

J.D. Ingram,

Captain, U.S. Coast Guard, Captain of the Port Key West.

[FR Doc. 2022–26006 Filed 11–28–22; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket No. USCG–2022–0704]

Navigation and Navigable Waters; Technical and Conforming Amendment to Authority Citation

AGENCY: Coast Guard, DHS.

ACTION: Final rule.

SUMMARY: This final rule makes a non-substantive conforming amendment to our authority citations for Coast Guard regulations that establish safety zones, security zones, and regulated navigation areas. This rule would conform our authority citation to reflect an amendment introduced by The William M. (Mac) Thornberry National Defense Authorization Act for Fiscal Year 2021. This rule will have no substantive effect on the regulated public.

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

ADDRESSES: Documents mentioned in this preamble as being available in the docket are part of docket number USCG–2022–0704, which is available at *https://www.regulations.gov.*

FOR FURTHER INFORMATION CONTACT: For information about this document call or email Kate Sergent, Coast Guard; telephone 202–372–3860, email *kate.e.sergent@uscg.mil.*

SUPPLEMENTARY INFORMATION:

Table of Contents for Preamble

I. Abbreviations

CFR Code of Federal Regulations
DHS Department of Homeland Security
OMB Office of Management and Budget
U.S.C. United States Code

II. Discussion of the Rule

This technical amendment final rule updates the authority citations for part 165 within Title 33 of the CFR. This rule adds the statutory authority 46 U.S.C. 70124 as a regulatory authority for 33 CFR part 165. Specifically, 46 U.S.C. 70124 gives the Secretary authority to issue regulations necessary to implement 46 U.S.C. Chapter 701. Within Chapter 701, the delegated authority in 46 U.S.C. 70116 authorizes the Commandant to establish safety and security zones to prevent or respond to an act to terrorism, cyber incidents, transitional organized crime, or foreign state threats. The Secretary has delegated this regulatory authority to the Commandant in Department of Homeland Security Delegation No. 00170.1(II)(71), Revision No. 01.3.

The Frank LoBiondo Coast Guard Authorization Act of 2018 (Pub. L. 115–282, (2018)) redesignated several provisions of the Ports and Waterways Safety Act into 46 U.S.C. chapters 700 and 701. That Act moved 33 U.S.C. 1226 into section 46 U.S.C. 70016. Section 70116 is a potential statutory authority we may use to establish safety and security zones under 33 CFR part 165.

We are adding the general regulatory authority in 46 U.S.C. 70124 to the authority citation for part 165 because 46 U.S.C. 70116(c) was amended in 2021 under section 8341 of The William M. (Mac) Thornberry National Defense Authorization Act for Fiscal Year 2021 (Pub. L. 116–283, Jan. 1, 2021). This amendment removed the statement about section 70116 being treated as part of 46 U.S.C. chapter 700 for purposes of rulemaking authority in 46 U.S.C. 70034. With that statement removed, we instead rely on the regulatory authority in 46 U.S.C. 70124 for the authorities laid out in 46 U.S.C. 70116.

The Coast Guard periodically issues technical, organizational, and conforming amendments to existing regulations in Title 33 of the CFR. These technical amendments provide the public with more accurate and current regulatory information, but do not change Title 33 of the CFR's effect on the public.

III. Regulatory History

We did not publish a notice of proposed rulemaking for this rule. Under Title 5 of the United States Code (U.S.C.), Section 553(b)(A), the Coast Guard finds that this final rule is exempt from notice and public comment rulemaking requirements because these changes involve rules of agency organization, procedure, or practice. This rule only updates the authority citation where the agency lists the relevant authorities to issue regulations in part 165 of the CFR.

In addition, the Coast Guard finds that notice and comment procedures are unnecessary for this final rule under 5 U.S.C. 553(b)(B), as this rule consists of only technical and editorial corrections and these changes will have no substantive effect on the public. Under 5 U.S.C. 553(d)(3), the Coast Guard finds that, for the same reasons, good cause exists for making this final rule effective upon publication in the **Federal Register**. Delaying the effective date of this conforming amendment is unnecessary because the change to our statutory regulatory authorities is an agency procedural update and it will have no impact on the public.

IV. Basis and Purpose

This final rule makes technical and editorial corrections in 33 CFR part 165. These changes are necessary to update the authority citations we rely on for issuing regulations in 33 CFR part 165. This rule does not create or change any substantive requirements for the public.

This final rule is issued under the authority of 5 U.S.C. 552(a) and 553; 14 U.S.C. 102 and 503; and Department of Homeland Security Delegation No. 00170.1(II)(71), Revision No. 01.3.

V. Regulatory Analyses

We developed this rule after considering numerous statutes and Executive orders related to rulemaking. Below we summarize our analyses based on these statutes or Executive Orders.

A. Regulatory Planning and Review

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

This rule has not been designated a ''significant regulatory action'' under Executive Order 12866. Accordingly, this rule has not been reviewed by OMB. This rule involves non-substantive changes and internal agency practices and procedures; it will not impose any additional costs on the public or the government. The qualitative benefit of the non-substantive changes is increased clarity of regulations and their authority. By

the adding statutory citations for all of the relevant authorities we rely on to issue the regulated navigation area regulations, we increase the clarity of the authorities in the CFR.

B. Small Entities

Under the Regulatory Flexibility Act, 5 U.S.C. 601–612, we have considered whether this rule would have a significant economic impact on a substantial number of small entities. The term ''small entities'' is comprised of 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.

A notice of proposed rulemaking does not precede this rule. Therefore, it is exempt from the requirements of the Regulatory Flexibility Act (5 U.S.C. 601–612). The Regulatory Flexibility Act does not apply when notice and comment rulemaking is not required.

C. Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996, Public Law 104–121, we offer to assist small entities in understanding this rule so that they can better evaluate its effects on them and participate in the rulemaking. 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.

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).

D. Collection of Information

This rule calls for no new collection of information under the Paperwork Reduction Act of 1995, 44 U.S.C. 3501–3520. This final rule will not change any of the burdens in the collections currently approved by OMB.

E. Federalism

A rule has implications for federalism under Executive Order 13132 (Federalism) if it has a substantial direct effect on 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 Executive Order 13132 and have determined that it is consistent with the fundamental federalism principles and preemption requirements described in Executive Order 13132.

F. 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. Although this rule will not result in such expenditure, we do discuss the effects of this rule elsewhere in this preamble.

G. Taking of Private Property

This rule will not cause a taking of private property or otherwise have taking implications under Executive Order 12630 (Governmental Actions and Interference with Constitutionally Protected Property Rights).

H. Civil Justice Reform

This rule meets applicable standards in sections 3(a) and 3(b)(2) of Executive Order 12988 (Civil Justice Reform) to minimize litigation, eliminate ambiguity, and reduce burden.

I. Protection of Children

We have analyzed this rule under Executive Order 13045 (Protection of Children from Environmental Health Risks and Safety Risks). This rule is not an economically significant rule and will not create an environmental risk to health or risk to safety that might disproportionately affect children.

J. Indian Tribal Governments

This rule does not have tribal implications under Executive Order 13175 (Consultation and Coordination with Indian Tribal Governments), because it will 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.

K. Energy Effects

We have analyzed this rule under Executive Order 13211 (Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use). We have determined that it is not a ''significant energy action'' under that order because it is not a ''significant regulatory action'' under Executive Order 12866 and is not likely to have a significant adverse effect on the supply, distribution, or use of energy.

L. Technical Standards

The National Technology Transfer and Advancement Act, codified as a note to 15 U.S.C. 272, directs agencies to use voluntary consensus standards in their regulatory activities unless the agency provides Congress, through OMB, with an explanation of why using these standards would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (*e.g.,* specifications of materials, performance, design, or operation; test methods; sampling procedures; and related management systems practices) that are developed or adopted by voluntary consensus standards bodies.

This rule does not use technical standards. Therefore, we did not consider the use of voluntary consensus standards.

M. Environment

We have analyzed this rule under Department of Homeland Security Management Directive 023–01 and Commandant Instruction M16475.lD, which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (42 U.S.C. 4321–4370f), and have concluded that this action is one of a category of actions that do not individually or cumulatively have a significant effect on the human environment. A final Record of Environmental Consideration supporting this determination is available in the docket where indicated in the **ADDRESSES** section of this preamble. This final rule involves non-substantive technical, organizational, and conforming amendments to existing Coast Guard regulations. Therefore, this rule is categorically excluded under paragraph L54 of Appendix A, Table 1 of DHS Instruction Manual 023–01–001–01, Rev. 01. Paragraph L54 pertains to regulations which are editorial or procedural.

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:

Title 33—Navigation and Navigable Waters

PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

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

Authority: 46 U.S.C. 70034, 70051, 70124; 33 CFR 1.05–1, 6.04–1, 6.04–6, and 160.5; Department of Homeland Security Delegation No. 00170.1, Revision No. 01.3.

Michael Cunningham,

Chief, Office of Regulations and Administrative Law.

[FR Doc. 2022–25827 Filed 11–28–22; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket Number USCG–2017–0914]

RIN 1625–AA00

Safety Zone; Taylor Bayou Turning Basin, Port Arthur, TX

AGENCY: Coast Guard, DHS.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is extending the period of a temporary safety zone on the upper reaches of Taylor Bayou Turning Basin in Port Arthur, TX. This action is necessary to provide protection to the levee protection wall located at the north end of the turning basin until permanent repairs can be effected. This rule prohibits persons and vessels from entering the safety zone unless authorized by the Captain of the Port Marine Safety Unit Port Arthur or a designated representative.

DATES: This rule is effective from February 1, 2023 through January 31, 2025.

ADDRESSES: To view documents mentioned in this preamble as being available in the docket, go to *https://www.regulations.gov,* type USCG–2017–0914 in the search box and click ''Search.'' Next, in the Document Type column, select ''Supporting & Related Material.''

FOR FURTHER INFORMATION CONTACT: If you have questions on this rule, call or email Mr. Scott Whalen, Marine Safety Unit Port Arthur, TX, U.S. Coast Guard; telephone 409–719–5086, email *scott.k.whalen@uscg.mil.*

SUPPLEMENTARY INFORMATION:

I. Table of Abbreviations

CFR Code of Federal Regulations
COTP Captain of the Port, Marine Safety Unit Port Arthur
DHS Department of Homeland Security
FR Federal Register
NPRM Notice of proposed rulemaking
§ Section
USACE U.S. Army Corps of Engineers
U.S.C. United States Code

II. Background Information and Regulatory History

On August 14, 2017, the Coast Guard established a temporary safety zone for the upper reaches of Taylor Bayou Basin in Port Arthur, TX.[1] That emergency action was necessary to protect the damaged flood protection levee and bulkhead during stabilization efforts.

On April 16, 2018, the Coast Guard published a notice of proposed rulemaking (NPRM) titled Safety Zone; Taylor Bayou Turning Basin, Port Arthur, TX (83 FR 16267). There we stated why we issued the NPRM, and invited comments on our proposed regulatory action related to this temporary safety zone. During the comment period that ended on June 15, 2018, we received one comment.

On July 18, 2018, the Coast Guard published the temporary final rule establishing the safety zone until January 31, 2023 (83 FR 33842).

In August 2022, the U.S. Army Corps of Engineers (USACE) informed the Coast Guard that permanent repairs to the flood protection wall would not be completed for another two years. Therefore, the Coast Guard proposed to extend the effective period of the temporary safety zone through January 31, 2025.

On October 5, 2022, the Coast Guard published a notice of proposed rulemaking (NPRM) titled Safety Zone; Taylor Bayou Turning Basin, Port Arthur, TX (87 FR 60363). There we stated why we issued the NPRM, and invited comments on our proposed regulatory action to extend this temporary safety zone. During the comment period that ended on November 4, 2022, we received one comment.

III. Legal Authority and Need for Rule

The Coast Guard is issuing this rule under authority in 46 U.S.C. 70034 (previously 33 U.S.C. 1231). The Captain of the Port (COTP) has determined that potential damage to temporary repairs would make the surrounding community susceptible to flooding during storm surge or extreme tide events that may endanger persons and property in the surrounding community. The USACE has requested, and the Coast Guard concurs, that protection measures must be instituted until permanent repairs are completed.

IV. Discussion of Comments, Changes, and the Rule

As noted above, we received one comment on our NPRM published October 5, 2022. The comment supported the need for the safety but also commented on the inconvenience to the public due to a temporary closure of Texas 124 bridge. This rulemaking does not require nor discuss the closure of any bridges in the area, it simply excludes vessel traffic from the affected waterway to protect a damaged floodwall. Therefore, no changes in the regulatory text were necessary.

V. Regulatory Analyses

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

A. Regulatory Planning and Review

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

This regulatory action determination is based on the size, location, duration and entities impacted by the safety zone. This safety zone affects approximately 350-yards of Taylor Bayou Turning Basin north of latitude 29°50′57.45 N. A facility receives vessels within this zone and that facility would be permitted to receive vessels based on previously agreed to maneuvering calculations and plans.

B. Impact on Small Entities

The Regulatory Flexibility Act of 1980, 5 U.S.C. 601–612, as amended, requires Federal agencies to consider the potential impact of regulations on small entities during rulemaking. The term ''small entities'' comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000. The Coast Guard received no comments from the Small Business Administration

[1] See the temporary final rule titled Safety Zone; Taylor Bayou Turning Basin, Port Arthur, TX, Docket No. USCG–2017–0797 (83 FR 4843).

on this rulemaking. The Coast Guard certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small entities.

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

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

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

C. Collection of Information

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

D. Federalism and Indian Tribal Governments

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

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

E. Unfunded Mandates Reform Act

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

F. Environment

We have analyzed this rule under Department of Homeland Security Directive 023–01, Rev. 1, associated implementing instructions, and Environmental Planning COMDTINST 5090.1 (series), which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (42 U.S.C. 4321–4370f), and have determined that this action is one of a category of actions that do not individually or cumulatively have a significant effect on the human environment. This rule involves extending the effective period of the temporary safety zone on the upper reaches of Taylor Bayou Turning Basin in Port Arthur, TX. It is categorically excluded from further review under paragraph L60(a) of Appendix A, Table 1 of DHS Instruction Manual 023–01–001–01, Rev. 1. A Record of Environmental Consideration supporting this determination is available in the docket. For instructions on locating the docket, see the **ADDRESSES** section of this preamble.

G. Protest Activities

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

List of Subjects in 33 CFR Part 165

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

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

PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

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

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

■ 2. Revise § 165.T08–0914(d) to read as follows:

§ 165.T08–0914 Safety Zone; Taylor Bayou Turning Basin, Port Arthur, TX.

* * * * *

(d) *Enforcement date.* This safety zone is in effect from February 1, 2023 through January 31, 2025. It will be subject to enforcement this entire period unless the COTP determines it is no longer needed, in which case the Coast Guard will inform mariners via Notice to Mariners.

Dated: November 22, 2022.

James B. Suffern,

Captain, U.S. Coast Guard, Acting Captain of the Port, Marine Safety Unit Port Arthur.

[FR Doc. 2022–26003 Filed 11–28–22; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 679

[Docket No. 220223–0054]

RTID 0648–XC583

Fisheries of the Exclusive Economic Zone Off Alaska; Pacific Ocean Perch in the Bering Sea Subarea of the Bering Sea and Aleutian Islands Management Area

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Temporary rule; closure.

SUMMARY: NMFS is prohibiting directed fishing for Pacific ocean perch in the Bering Sea subarea of the Bering Sea and Aleutian Islands management area (BSAI). This action is necessary to prevent exceeding the 2022 Pacific ocean perch total allowable catch (TAC) in the Bering Sea subarea of the BSAI.

DATES: Effective 1200 hours, Alaska local time (A.l.t.), November 23, 2022, through 2400 hours, A.l.t., December 31, 2022.

FOR FURTHER INFORMATION CONTACT: Steve Whitney, 907–586–7228.

SUPPLEMENTARY INFORMATION: NMFS manages the groundfish fishery in the BSAI according to the Fishery Management Plan for Groundfish of the Bering Sea and Aleutian Islands Management Area (FMP) prepared by the North Pacific Fishery Management Council under authority of the Magnuson-Stevens Fishery Conservation and Management Act. Regulations governing fishing by U.S. vessels in accordance with the FMP appear at subpart H of 50 CFR part 600 and 50 CFR part 679.

The 2022 Pacific ocean perch TAC in the Bering Sea subarea of the BSAI is 10,352 metric tons (mt) as established by the final 2022 and 2023 harvest specifications for groundfish in the BSAI and groundfish reserve apportionment (87 FR 11626, March 2, 2022, and 87 FR 66611, November 4, 2022).

The Regional Administrator has determined that the 2022 initial total allowable catch (ITAC) for Pacific ocean perch in the Bering Sea subarea of the BSAI will soon be reached. Therefore, the Regional Administrator is establishing a directed fishing allowance of 10,282 mt, and is setting aside the remaining 70 mt as bycatch to support other anticipated groundfish fisheries. Consequently, in accordance with § 679.20(d)(1)(iii), NMFS is prohibiting directed fishing for Pacific ocean perch in the Bering Sea subarea of the BSAI. While this closure remains in effect, the maximum retainable amounts at § 679.20(e) and (f) apply at any time during a trip.

Classification

NMFS issues this action pursuant to section 305(d) of the Magnuson-Stevens Act. This action is required by 50 CFR part 679, which was issued pursuant to section 304(b), and is exempt from review under Executive Order 12866.

Pursuant to 5 U.S.C. 553(b)(B), there is good cause to waive prior notice and an opportunity for public comment on this action, as notice and comment would be impracticable and contrary to the public interest, as it would prevent NMFS from responding to the most recent fisheries data in a timely fashion, and would delay the closure of Pacific ocean perch Bering Sea subarea in the BSAI. NMFS was unable to publish a notice providing time for public comment because the most recent, relevant data only became available as of November 21, 2022.

The Assistant Administrator for Fisheries, NOAA also finds good cause to waive the 30-day delay in the effective date of this action under 5 U.S.C. 553(d)(3). This finding is based upon the reasons provided above for waiver of prior notice and opportunity for public comment.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: November 23, 2022.

Sasha Ann Pryborowski,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 2022–26029 Filed 11–23–22; 4:15 pm]

BILLING CODE 3510–22–P

Proposed Rules

Federal Register
Vol. 87, No. 228
Tuesday, November 29, 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 ENERGY

10 CFR Part 430

[EERE–2021–BT–STD–0031]

RIN 1904–AF19

Energy Conservation Program: Energy Conservation Standards for Oil, Electric, and Weatherized Gas Consumer Furnaces

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

ACTION: Notification of availability of preliminary technical support document and request for comment.

SUMMARY: The U.S. Department of Energy (''DOE'') announces the availability of the preliminary analysis it has conducted for purposes of evaluating the need for amended energy conservation standards for non-weatherized oil-fired furnaces (''NWOFs''), mobile home oil-fired furnaces (''MHOFs''), weatherized gas furnaces (''WGFs''), weatherized oil-fired furnaces (''WOFs''), and electric furnaces (''EFs''). The analysis is set forth in the Department's accompanying preliminary technical support document (''TSD'') for this rulemaking. DOE will hold a public meeting via webinar to discuss and receive comment on the preliminary analysis. The meeting will cover the analytical framework, models, and tools used to evaluate potential standards; the results of preliminary analyses performed by DOE; the potential energy conservation standard levels derived from these analyses (if DOE determines that proposed amendments are necessary); and other relevant issues. In addition, DOE encourages written comments on these subjects.

DATES:

Comments: Written comments and information will be accepted on or before, January 30, 2023.

Meeting: DOE will hold a webinar on Monday, December 19, 2022, from 1:00 p.m. to 4:00 p.m. See section IV, ''Public Participation,'' for webinar registration information, participant instructions and information about the capabilities available to webinar participants.

ADDRESSES: Interested persons are encouraged to submit comments using the Federal eRulemaking Portal at *www.regulations.gov,* under docket number EERE–2021–BT–STD–0031. Follow the instructions for submitting comments. Alternatively, interested persons may submit comments, identified by docket number EERE–2021–BT–STD–0031, by any of the following methods:

Email: OEWGFurnaces2021STD0031@ee.doe.gov. Include the docket number EERE–2021–BT–STD–0031 in the subject line of the message.

Postal Mail: Appliance and Equipment Standards Program, U.S. Department of Energy, Building Technologies Office, Mailstop EE–5B, 1000 Independence Avenue SW, Washington, DC 20585–0121. Telephone: (202) 287–1445. If possible, please submit all items on a compact disc (''CD''), in which case it is not necessary to include printed copies.

Hand Delivery/Courier: Appliance and Equipment Standards Program, U.S. Department of Energy, Building Technologies Office, 950 L'Enfant Plaza SW, 6th Floor, Washington, DC 20024. Telephone: (202) 287–1445. If possible, please submit all items on a CD, in which case it is not necessary to include printed copies.

No telefacsimiles (''faxes'') will be accepted. For detailed instructions on submitting comments and additional information on this process, see section IV of this document.

To inform interested parties and to facilitate this rulemaking process, DOE has prepared an agenda, a preliminary TSD, and briefing materials, which are available on the DOE website at: *https://www.regulations.gov/document/EERE-2021-BT-STD-0031-0011.*

Docket: The docket for this activity, which includes **Federal Register** notices, comments, webinar transcripts, and other supporting documents/materials, is available for review at *www.regulations.gov.* All documents in the docket are listed in the *www.regulations.gov* index. However, some documents listed in the index, such as those containing information that is exempt from public disclosure, may not be publicly available.

The docket web page can be found at *www.regulations.gov/docket/EERE-2021-BT-STD-0031.* The docket web page contains instructions on how to access all documents, including public comments in the docket. See section IV.D of this document for information on how to submit comments through *www.regulations.gov.*

FOR FURTHER INFORMATION CONTACT:

Ms. Julia Hegarty, U.S. Department of Energy, Office of Energy Efficiency and Renewable Energy, Building Technologies, EE–5B, 1000 Independence Avenue SW, Washington, DC 20585–0121. Telephone: (202) 597–6737. Email: *ApplianceStandardsQuestions@ee.doe.gov.*

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SUPPLEMENTARY INFORMATION:

Table of Contents

I. Introduction

A. Authority

The Energy Policy and Conservation Act, as amended (''EPCA''),[1] authorizes DOE to regulate the energy efficiency of a number of consumer products and certain industrial equipment. (42 U.S.C. 6291–6317) Title III, Part B [2] of EPCA established the Energy Conservation Program for Consumer Products Other Than Automobiles. These products include NWOFs, MHOFs, WGFs, WOFs, and EFs (collectively, oil, electric, and weatherized gas consumer furnaces), the subject of this document. (42 U.S.C. 6292(a)(5)) EPCA prescribed initial energy conservation standards for these products (42 U.S.C. 6295(f)(1)–(2)), and directed DOE to conduct two cycles of rulemakings to determine whether to amend these standards. (42 U.S.C. 6295(f)(4)) EPCA further provides that, not later than 6 years after the issuance of any final rule establishing or amending a standard, DOE must publish either a notification of determination that standards for the product do not need to be amended, or a notice of proposed rulemaking (''NOPR'') including new proposed energy conservation standards (proceeding to a final rule, as appropriate). (42 U.S.C. 6295(m)(1)) Not later than three years after issuance of a final determination not to amend standards, DOE must publish either a notice of determination that standards for the product do not need to be amended, or a NOPR including new proposed energy conservation standards (proceeding to a final rule, as appropriate). (42 U.S.C. 6295(m)(3)(B)) DOE must make the analysis on which a determination is based publicly available and provide an opportunity for written comment. (42 U.S.C. 6295(m)(2)).

Under EPCA, any new or amended energy conservation standard must be designed to achieve the maximum improvement in energy efficiency that DOE determines is technologically feasible and economically justified. (42 U.S.C. 6295(o)(2)(A)) Furthermore, the new or amended standard must result in a significant conservation of energy. (42 U.S.C. 6295(o)(3)(B))

DOE is publishing this Preliminary Analysis to collect data and information to inform its decision consistent with its obligations under EPCA.

B. Rulemaking Process

DOE must follow specific statutory criteria for prescribing new or amended standards for covered products, including oil, electric, and weatherized gas consumer furnaces. As noted, EPCA requires that any new or amended energy conservation standard prescribed by the Secretary of Energy (''Secretary'') be designed to achieve the maximum improvement in energy efficiency (or water efficiency for certain products specified by EPCA) that is technologically feasible and economically justified. (42 U.S.C. 6295(o)(2)(A)) Furthermore, DOE may not adopt any standard that would not result in the significant conservation of energy. (42 U.S.C. 6295(o)(3))

The significance of energy savings offered by a new or amended energy conservation standard cannot be determined without knowledge of the specific circumstances surrounding a given rulemaking.[3] For example, some covered products and equipment have most of their energy consumption occur during periods of peak energy demand. The impacts of these products on the energy infrastructure can be more pronounced than products with relatively constant demand. Accordingly, DOE evaluates the significance of energy savings on a case-by-case basis, taking into account the significance of cumulative FFC national energy savings, the cumulative FFC emissions reductions, and the need to confront the global climate crisis, among other factors.

DOE has initially determined the energy savings for the candidate standard levels evaluated in this preliminary analysis rulemaking are ''significant'' within the meaning of 42 U.S.C. 6295(o)(3)(B).

To determine whether a standard is economically justified, EPCA requires that DOE determine whether the benefits of the standard exceed its burdens by considering, to the greatest extent practicable, the following seven factors:

(1) The economic impact of the standard on the manufacturers and consumers of the products subject to the standard;

(2) The savings in operating costs throughout the estimated average life of the covered products in the type (or class) compared to any increase in the price, initial charges, or maintenance expenses for the covered products that are likely to result from the standard;

(3) The total projected amount of energy (or as applicable, water) savings likely to result directly from the standard;

(4) Any lessening of the utility or the performance of the products likely to result from the standard;

(5) The impact of any lessening of competition, as determined in writing by the Attorney General, that is likely to result from the standard;

(6) The need for national energy and water conservation; and

(7) Other factors the Secretary of Energy (Secretary) considers relevant. (42 U.S.C. 6295(o)(2)(B)(i)(I)–(VII))

DOE fulfills these and other applicable requirements by conducting a series of analyses throughout the rulemaking process. Table I.1 shows the individual analyses that are performed to satisfy each of the requirements within EPCA.

TABLE I.1—EPCA REQUIREMENTS AND CORRESPONDING DOE ANALYSIS

EPCA requirement	Corresponding DOE analysis
Significant Energy Savings	• Shipments Analysis. • National Impact Analysis. • Energy Use Analysis.
Technological Feasibility	• Market and Technology Assessment. • Screening Analysis. • Engineering Analysis.
Economic Justification:	

[1] All references to EPCA in this document refer to the statute as amended through the Energy Act of 2020, Pub. L. 116–260 (Dec. 27, 2020), which reflect the last statutory amendments that impact Parts A and A–1 of EPCA.

[2] For editorial reasons, upon codification in the U.S. Code, Part B was redesignated Part A.

[3] Procedures, Interpretations, and Policies for Consideration in New or Revised Energy Conservation Standards and Test Procedures for Consumer Products and Commercial/Industrial Equipment, 86 FR 70892, 70901 (Dec. 13, 2021).

TABLE I.1—EPCA REQUIREMENTS AND CORRESPONDING DOE ANALYSIS—Continued

EPCA requirement	Corresponding DOE analysis
1. Economic impact on manufacturers and consumers	• Manufacturer Impact Analysis. • Life-Cycle Cost and Payback Period Analysis. • Life-Cycle Cost Subgroup Analysis. • Shipments Analysis.
2. Lifetime operating cost savings compared to increased cost for the product.	• Markups for Product Price Analysis. • Energy Use Analysis. • Life-Cycle Cost and Payback Period Analysis.
3. Total projected energy savings	• Shipments Analysis. • National Impact Analysis.
4. Impact on utility or performance	• Screening Analysis. • Engineering Analysis.
5. Impact of any lessening of competition	• Manufacturer Impact Analysis.
6. Need for national energy and water conservation	• Shipments Analysis. • National Impact Analysis.
7. Other factors the Secretary considers relevant	• Employment Impact Analysis. • Utility Impact Analysis. • Emissions Analysis. • Monetization of Emission Reductions Benefits.[4] • Regulatory Impact Analysis.

Further, EPCA establishes a rebuttable presumption that a standard is economically justified if the Secretary finds that the additional cost to the consumer of purchasing a product complying with an energy conservation standard level will be less than three times the value of the energy savings during the first year that the consumer will receive as a result of the standard, as calculated under the applicable test procedure. (42 U.S.C. 6295(o)(2)(B)(iii))

EPCA also contains what is known as an ''anti-backsliding'' provision, which prevents the Secretary from prescribing any amended standard that either increases the maximum allowable energy use or decreases the minimum required energy efficiency of a covered product. (42 U.S.C. 6295(o)(1)) Also, the Secretary may not prescribe an amended or new standard if interested persons have established by a preponderance of the evidence that the standard is likely to result in the unavailability in the United States in any covered product type (or class) of performance characteristics (including reliability), features, sizes, capacities, and volumes that are substantially the same as those generally available in the United States. (42 U.S.C. 6295(o)(4))

Additionally, EPCA specifies requirements when promulgating an energy conservation standard for a covered product that has two or more subcategories. DOE must specify a different standard level for a type or class of product that has the same function or intended use, if DOE determines that products within such group: (A) consume a different kind of energy from that consumed by other covered products within such type (or class); or (B) have a capacity or other performance-related feature which other products within such type (or class) do not have and such feature justifies a higher or lower standard. (42 U.S.C. 6295(q)(1)) In determining whether a performance-related feature justifies a different standard for a group of products, DOE must consider such factors as the utility to the consumer of the feature and other factors DOE deems appropriate. *Id.* Any rule prescribing such a standard must include an explanation of the basis on which such higher or lower level was established. (42 U.S.C. 6295(q)(2))

Finally, pursuant to the amendments contained in the Energy Independence and Security Act of 2007 (''EISA 2007''), Public Law 110–140, any final rule for new or amended energy conservation standards promulgated after July 1, 2010, is required to address standby mode and off mode energy use. (42 U.S.C. 6295(gg)(3)) Specifically, when DOE adopts a standard for a covered product after that date, it must, if justified by the criteria for adoption of standards under EPCA (42 U.S.C. 6295(o)), incorporate standby mode and off mode energy use into a single standard, or, if that is not feasible, adopt a separate standard for such energy use for that product. (42 U.S.C. 6295(gg)(3)(A)–(B)) DOE's current test procedures for consumer furnaces address standby mode and off mode energy use.[5] In this rulemaking, DOE intends to consider such energy use when analyzing any amended energy conservation standards it adopts in the final rule.

Before proposing a standard, DOE typically seeks public input on the analytical framework, models, and tools that DOE intends to use to evaluate standards for the product at issue and the results of preliminary analyses DOE performed for the product.

DOE is examining whether to amend the current standards pursuant to its obligations under EPCA. This notification announces the availability of the preliminary TSD, which details the preliminary analyses and summarizes the preliminary results of DOE's analyses. In addition, DOE is announcing a webinar to solicit feedback from interested parties on its analytical framework, models, and preliminary results.

C. Deviation From Appendix A

In accordance with section 3(a) of 10 CFR part 430, subpart C, appendix A (''appendix A''), DOE notes that it is deviating from the provision in appendix A regarding the pre-NOPR stages for an energy conservation standards rulemaking. Section 6(a)(2) of

[4] On March 16, 2022, the Fifth Circuit Court of Appeals (No. 22–30087) granted the federal government's emergency motion for stay pending appeal of the February 11, 2022, preliminary injunction issued in *Louisiana* v. *Biden,* No. 21–cv–1074–JDC–KK (W.D. La.). As a result of the Fifth Circuit's order, the preliminary injunction is no longer in effect, pending resolution of the federal government's appeal of that injunction or a further court order. Among other things, the preliminary injunction enjoined the defendants in that case from ''adopting, employing, treating as binding, or relying upon'' the interim estimates of the social cost of greenhouse gases—which were issued by the Interagency Working Group on the Social Cost of Greenhouse Gases on February 26, 2021—to monetize the benefits of reducing greenhouse gas emissions. In the absence of further intervening court orders, DOE will revert to its approach prior to the injunction and present monetized benefits where appropriate and permissible by law.

[5] The DOE test procedures for consumer furnaces appear at title 10 of the Code of Federal Regulations (''CFR'') part 430, subpart B, appendix N.

appendix A specifies that if the Department determines it is appropriate to proceed with a rulemaking, the preliminary stages of a rulemaking to issue or amend an energy conservation standard that DOE will undertake will be a framework document and preliminary analysis, or an advance notice of proposed rulemaking.

As discussed further in section II.B of this document, prior to this notification of the preliminary analysis, DOE published a request for information (''RFI'') in the **Federal Register** in which DOE identified and sought comment on the analyses conducted in support of the most recent energy conservation standards rulemakings for oil, electric, and weatherized gas consumer furnaces. 87 FR 4513 (January 28, 2022; ''January 2022 RFI''). In the January 2022 RFI, DOE sought data and information as to whether any new or amended rule would be cost-effective, economically justified, technologically feasible, or would result in a significant savings of energy. *Id.* DOE sought such data and information to assist in its consideration of whether (and if so, how) to amend the standards for oil, electric, and weatherized gas consumer furnaces. *Id.* Further, DOE provided an overview of the analysis it would use to evaluate new or amended energy conservation standards, including references to and requests for comment on the analyses conducted as part of the most recent energy conservation standards rulemakings. *Id.* As DOE is intending to rely on substantively the same analytical methods as in the most recent rulemaking, publication of a framework document would be largely redundant with the published January 2022 RFI. As such, DOE is not publishing a framework document.

DOE notes that it is also deviating from section 6(d)(2) of appendix A, which specifies that the length of the public comment period for pre-NOPR rulemaking documents will vary depending upon the circumstances of the particular rulemaking, but will not be less than 75 calendar days. For this preliminary analysis, DOE has opted to instead provide a 60-day comment period. As discussed, DOE previously published the January 2022 RFI to determine whether any new or amended standards may be warranted for oil, electric, and weatherized gas consumer furnaces. 87 FR 4513. DOE requested comment in the January 2022 RFI on a variety of issues to aid in the development of its technical and economic analyses and included a 31-day comment period. Additionally, for this preliminary analysis, DOE has relied on many of the same analytical assumptions and approaches as used in the previous rulemaking and the recently published notice of proposed rulemaking for energy conservation standards for non-weatherized gas furnaces and mobile home gas furnaces, which included a separate 60-day comment period.[6] Therefore, for this preliminary analysis, DOE has determined that a 60-day comment period in conjunction with the January 2022 RFI's prior 31-day comment period provides sufficient time for interested parties to review the preliminary analysis and develop comments.

II. Background

A. Current Standards

EPCA established the energy conservation standards that apply to most consumer furnaces currently being manufactured, in terms of minimum annual fuel utilization efficiency (''AFUE''). The original standards established a minimum AFUE of 75 percent for mobile home furnaces. For all other furnaces, the original standards generally established a minimum AFUE of 78 percent. However, Congress recognized the potential need for a separate standard based on the capacity of a furnace and directed DOE to undertake a rulemaking to establish a standard for ''small'' gas furnaces (*i.e.,* those having an input of less than 45,000 Btu per hour). (42 U.S.C. 6295(f)(1)–(2)) Through a final rule published in the **Federal Register** on November 17, 1989, DOE initially established standards for small furnaces at the same level as furnaces generally (*i.e.,* a minimum AFUE of 78 percent). 54 FR 47916, 47944.

EPCA also required DOE to conduct two rounds of rulemaking to consider amended standards for consumer furnaces. (42 U.S.C. 6295(f)(4)(B)–(C)). In addition, EPCA requires a six-year-lookback review of energy conservation standards for all covered products. (42 U.S.C. 6295(m)(1)) In a final rule published in the **Federal Register** on November 19, 2007 (November 2007 final rule), DOE prescribed amended energy conservation standards for consumer furnaces manufactured on or after November 19, 2015. 72 FR 65136. The November 2007 final rule revised the energy conservation standards to 80-percent AFUE for non-weatherized gas-fired furnaces (''NWGFs''), to 81-percent AFUE for weatherized gas furnaces (''WGFs''), to 80-percent AFUE for mobile home gas-fired furnaces (''MHGFs''), and to 82-percent AFUE for non-weatherized oil-fired furnaces (''NWOFs'').[7] 72 FR 65136, 65169. Based on market assessment and the standard levels at issue, the November 2007 final rule established standards without regard to the certified input capacity of a furnace. *Id.* Compliance with the amended standards established in the November 2007 final rule was to be required beginning November 19, 2015. *Id.*

Following DOE's adoption of the November 2007 final rule, several parties jointly sued DOE in the United States Court of Appeals for the Second Circuit (''Second Circuit'') to invalidate the rule. Petition for Review, *State of New York, et al.* v. *Department of Energy, et al.,* Nos. 08–0311–ag(L); 08–0312–ag(con) (2d Cir. filed Jan. 17, 2008). The petitioners asserted that the standards for furnaces promulgated in the November 2007 final rule did not reflect the ''maximum improvement in energy efficiency'' that ''is technologically feasible and economically justified'' under 42 U.S.C. 6295(o)(2)(A). On April 16, 2009, DOE filed with the Court a motion for voluntary remand that the petitioners did not oppose. The motion did not state that the November 2007 final rule would be vacated, but indicated that DOE would revisit its initial conclusions outlined in the November 2007 final rule in a subsequent rulemaking action. DOE also agreed that the final rule in that subsequent rulemaking action would address both regional standards for furnaces, as well as the effects of alternate standards on natural gas prices. The Second Circuit granted DOE's motion on April 21, 2009. DOE notes that the Second Circuit's order did not vacate the energy conservation standards set forth in the November 2007 final rule, and during the remand, they went into effect as originally scheduled.

On June 27, 2011, DOE published a direct final rule (''DFR'') in the **Federal Register** (''June 2011 DFR'') amending the energy conservation standards for residential central air conditioners and consumer furnaces. 76 FR 37408. Subsequently, on October 31, 2011, DOE

[6] DOE recently published a notice of proposed rulemaking and request for comment for non-weatherized gas furnaces and mobile home gas furnaces. 87 FR 40590 (July 7, 2022). *See* docket number EERE–2014–BT–STD–0031, available at: *www.regulations.gov/docket/EERE-2014-BT-STD-0031.*

[7] Although the November 2007 final rule did not explicitly state the standards for oil-fired furnaces were applicable only to non-weatherized oil-fired furnaces, the NOPR that preceded the final rule made clear that DOE did not perform analysis of and was not proposing standards for weatherized oil-fired furnaces or mobile home oil-fired furnaces. 71 FR 59203, 52914 (October 6, 2006). Thus, the proposed standards that were ultimately adopted in the November 2007 final rule only applied to non-weatherized oil-fired furnaces.

published a notice of effective date and compliance dates in the **Federal Register** (''October 2011 notice'') to confirm amended energy conservation standards and compliance dates contained in the June 2011 DFR. 76 FR 67037. The November 2007 final rule and the June 2011 DFR represented the first and the second rounds, respectively, of the two rulemakings required under 42 U.S.C. 6295(f)(4)(B)–(C) to consider amending the energy conservation standards for consumer furnaces.

The June 2011 DFR and October 2011 notice of effective date and compliance dates amended, in relevant part, the energy conservation standards and compliance dates for three product classes of consumer furnaces (*i.e.,* NWGFs, MHGFs, and NWOFs).[8] The existing standards were left in place for three classes of consumer furnaces (*i.e.,* weatherized oil-fired furnaces, mobile home oil-fired furnaces, and electric furnaces). For one class of consumer furnaces (WGFs), the existing standard was left in place, but the compliance date was amended. Electrical standby mode and off mode energy consumption standards were established for non-weatherized gas and oil-fired furnaces (including mobile home furnaces) and electric furnaces. Compliance with the energy conservation standards promulgated in the June 2011 DFR was to be required on May 1, 2013 for non-weatherized furnaces and on January 1, 2015 for weatherized furnaces. 76 FR 37408, 37547–37548 (June 27, 2011); 76 FR 67037, 67051 (Oct. 31, 2011). The amended energy conservation standards and compliance dates in the June 2011 DFR superseded those standards and compliance dates promulgated by the November 2007 final rule for NWGFs, MHGFs, and NWOFs. Similarly, the amended compliance date for WGFs in the June 2011 DFR superseded the compliance date in the November 2007 final rule.

After publication of the October 2011 notice, the American Public Gas Association (''APGA'') sued DOE[9] in the United States Court of Appeals for the District of Columbia Circuit to invalidate that rule as it pertained to NWGFs. Petition for Review, *American Public Gas Association, et al.* v. *Department of Energy, et al.,* No. 11–1485 (D.C. Cir. filed Dec. 23, 2011). The parties to the litigation engaged in settlement negotiations which ultimately led to filing of an unopposed motion on March 11, 2014, seeking to vacate DOE's rule in part and to remand to the agency for further rulemaking. On April 24, 2014, the Court granted the motion and ordered that the standards established for NWGFs and MHGFs be vacated and remanded to DOE for further rulemaking. As a result, the standards established by the June 2011 DFR for NWGFs and MHGFs did not go into effect, and thus, required compliance with the standards established in the November 2007 final rule for these products began on November 19, 2015. As stated previously, the AFUE standards for WOFs, MHOFs, and EFs were unchanged, and as such, the original standards for those product classes remain in effect. Further, the amended standard for NWOFs were not subject to the Court order, and went into effect as specified in the June 2011 DFR. The AFUE standards currently applicable to all residential furnaces,[10] including the five product classes for which DOE is analyzing amended standards in this preliminary analysis, are set forth in DOE's regulations at 10 CFR 430.32(e)(1)(ii) and (iii). Tables II.1 and II.2 present the currently applicable standards for NWOFs, MHOFs, WGFs, WOFs, and EFs, the subject of this preliminary analysis.

TABLE II.1—FEDERAL ENERGY CONSERVATION STANDARDS FOR NWOFS, MHOFS, WGFS, WOFS, AND EFS

[AFUE]

Product class	AFUE (percent)
Non-weatherized oil-fired furnaces (not including mobile home furnaces)	83
Mobile Home oil-fired furnaces	75
Weatherized gas furnaces	81
Weatherized oil-fired furnaces	78
Electric furnaces	78

TABLE II.2—FEDERAL ENERGY CONSERVATION STANDARDS FOR NWOFS AND EFS

[Standby and off mode electrical power consumption]

Product class	Maximum standby mode electrical power consumption $P_{W,SB}$ (watts)	Maximum off mode electrical power consumption, $P_{W,OFF}$ (watts)
Non-weatherized oil-fired furnaces (including mobile home furnaces)	11	11
Electric furnaces	10	10

B. Current Process

On January 28, 2022, DOE published the January 2022 RFI to initiate a review to determine whether any new or amended standards would satisfy the relevant requirements of EPCA for a new or amended energy conservation standard for oil, electric, and weatherized gas consumer furnaces. 87 FR 4513. Specifically, through the published notice and request for information, DOE sought data and

[8] For NWGFs and MHGFs, the standards were amended to a level of 80-percent AFUE nationally with a more-stringent 90-percent AFUE requirement in the Northern Region. For non-weatherized oil-fired furnaces, the standard was amended to 83-percent AFUE nationally. 76 FR 37408, 37410 (June 27, 2011).

[9] After APGA filed its petition for review on December 23, 2011, various entities subsequently intervened.

[10] DOE divides consumer furnaces into seven classes for the purpose of setting energy conservation standards: (1) NWGFs, (2) MHGFs, (3) WGFs, (4) NWOFs, (5) MHOFs, (6) WOFs, and (7) electric furnaces. 10 CFR 430.32(e)(1)(ii). As noted previously, DOE has been analyzing amended standards for NWGFs and MHGFs as part of a separate, ongoing rulemaking.

information that could enable the agency to determine whether amended energy conservation standards would: (1) result in a significant savings of energy; (2) be technologically feasible; and (3) be economically justified. *Id.* As noted in section III.C of this document, based on its preliminary findings, DOE did not analyze potential AFUE standards for WOFs and EFs, and did not analyze new standby mode or off mode standards for WGFs or WOFs because DOE tentatively determined that there would be no energy savings from doing so.

Comments received to date as part of the current process have helped DOE identify and resolve issues related to the preliminary analyses. Chapter 2 of the preliminary TSD summarizes and addresses the comments received.

III. Summary of the Analyses Performed by DOE

For the products covered in this preliminary analysis, DOE conducted in-depth technical analyses in the following areas: (1) engineering; (2) markups to determine product price; (3) energy use; (4) life cycle cost (''LCC'') and payback period (''PBP''); and (5) national impacts. The preliminary TSD that presents the methodology and results of each of these analyses is available at *www1.eere.energy.gov/buildings/appliance_standards/standards.aspx?productid=59.*

DOE also conducted, and has included in the preliminary TSD, several other analyses that support the major analyses or are preliminary analyses that will be expanded if DOE determines that a NOPR is warranted to propose amended energy conservation standards. These analyses include: (1) the market and technology assessment; (2) the screening analysis, which contributes to the engineering analysis; and (3) the shipments analysis, which contributes to the LCC and PBP analysis and the national impact analysis (''NIA''). In addition to these analyses, DOE has begun preliminary work on the manufacturer impact analysis and has identified the methods to be used for the consumer subgroup analysis, the emissions analysis, the employment impact analysis, the regulatory impact analysis, and the utility impact analysis. DOE will expand on these analyses in the NOPR should one be issued.

A. Market and Technology Assessment

DOE develops information in the market and technology assessment that provides an overall picture of the market for the products concerned, including general characteristics of the products, the industry structure, manufacturers, market characteristics, and technologies used in the products. This activity includes both quantitative and qualitative assessments, based primarily on publicly available information. The subjects addressed in the market and technology assessment include: (1) a determination of the scope of the rulemaking and product classes, (2) manufacturers and industry structure, (3) existing efficiency programs, (4) shipments information, (5) market and industry trends, and (6) technologies or design options that could improve the energy efficiency of the product.

See chapter 3 of the preliminary TSD for further discussion of the market and technology assessment.

B. Screening Analysis

DOE uses the following five screening criteria to determine which technology options are suitable for further consideration in an energy conservation standards rulemaking:

(1) *Technological feasibility.* Technologies that are not incorporated in commercial products or in commercially viable, existing prototypes will not be considered further.

(2) *Practicability to manufacture, install, and service.* If it is determined that mass production of a technology in commercial products and reliable installation and servicing of the technology could not be achieved on the scale necessary to serve the relevant market at the time of the projected compliance date of the standard, then that technology will not be considered further.

(3) *Impacts on product utility.* If a technology is determined to have a significant adverse impact on the utility of the product to subgroups of consumers, or result in the unavailability of any covered product type with performance characteristics (including reliability), features, sizes, capacities, and volumes that are substantially the same as products generally available in the United States at the time, it will not be considered further.

(4) *Safety of technologies.* If it is determined that a technology would have significant adverse impacts on health or safety, it will not be considered further.

(5) *Unique-pathway proprietary technologies.* If a technology has proprietary protection and represents a unique pathway to achieving a given efficiency level, it will not be considered further, due to the potential for monopolistic concerns.

10 CFR part 430, subpart C, appendix A, sections 6(b)(3) and 7(b).

If DOE determines that a technology, or a combination of technologies, fails to meet one or more of the listed five criteria, it will be excluded from further consideration in the engineering analysis.

See chapter 4 of the preliminary TSD for further discussion of the screening analysis.

C. Engineering Analysis

The purpose of the engineering analysis is to establish the relationship between the efficiency and cost of oil, electric, and weatherized gas consumer furnaces. There are two elements to consider in the engineering analysis; the selection of efficiency levels to analyze (*i.e.,* the ''efficiency analysis'') and the determination of product cost at each efficiency level (*i.e.,* the ''cost analysis''). In determining the performance of higher-efficiency products, DOE considers technologies and design option combinations not eliminated by the screening analysis. For each product class analyzed, DOE estimates the manufacturer production cost (''MPC'') for the baseline as well as higher efficiency levels.[11] The output of the engineering analysis is a set of cost-efficiency ''curves'' that are used in downstream analyses (*i.e.,* the LCC and PBP analyses and the NIA).

DOE converts the MPC to the manufacturer selling price (''MSP'') by applying a manufacturer markup. The MSP is the price the manufacturer charges its first customer, when selling into the product distribution channels. The manufacturer markup accounts for manufacturer non-production costs and profit. DOE developed the manufacturer markup by examining publicly available financial information for manufacturers of the covered product.

See chapter 5 of the preliminary TSD for additional detail on the engineering analysis. See chapter 12 of the preliminary TSD for additional detail on the manufacturer markup.

[11] DOE did not consider amended AFUE standards for WOFs and EFs as part of this preliminary analysis because DOE tentatively determined that there would be no energy savings from doing so. For WOFs, DOE is not aware of any models on the market, and thus, there would be no potential energy savings from amending the AFUE standard for WOFs. For EFs, the AFUE of models on the market is already nearly 100 percent and DOE is not aware of technologies that would further improve the AFUE. Further, DOE did not consider new standby mode and off mode standards for WGFs or WOFs. For these classes, DOE has previously concluded in the June 2011 DFR that these products are packaged with either an air conditioner or heat pump, and that the standards for these products, specified in terms of power consumption in watts ($P_{W,OFF}$) and Seasonal Energy Efficiency Rating (''SEER''), already account for the standby mode and off mode energy consumption for these classes. 76 FR 37408, 37433.

D. Markups Analysis

The markups analysis develops appropriate markups (*e.g.,* retailer markups, distributor markups, contractor markups) in the distribution chain and sales taxes to convert MSP estimates derived in the engineering analysis to consumer prices, which are then used in the LCC and PBP analysis. At each step in the distribution channel, companies mark up the price of the product to cover business costs and profit margin.

DOE developed baseline and incremental markups for each actor in the distribution chain for consumer furnaces. Baseline markups are applied to the price of products with baseline efficiency, while incremental markups are applied to the difference in price between baseline and higher-efficiency models (the incremental cost increase). The incremental markup is typically less than the baseline markup and is designed to maintain similar per-unit operating profit before and after new or amended standards.[12]

Chapter 6 of the preliminary TSD provides details on DOE's development of markups for oil, electric, and weatherized gas consumer furnaces.

E. Energy Use Analysis

The purpose of the energy use analysis is to determine the annual energy consumption of oil, electric, and weatherized gas consumer furnaces at different efficiencies in representative U.S. single-family homes, multi-family residences, and commercial buildings, and to assess the energy savings potential of increased efficiency. The energy use analysis estimates the range of energy use of oil, electric, and weatherized gas consumer furnaces in the field (*i.e.,* as they are actually used by consumers). In addition, the energy use analysis provides the basis for other analyses DOE performed, particularly assessments of the energy savings and the savings in consumer operating costs that could result from adoption of amended or new energy conservation standards.

Chapter 7 of the preliminary TSD addresses the energy use analysis.

[12] Because the projected price of standards-compliant products is typically higher than the price of baseline products, using the same markup for the incremental cost and the baseline cost would result in higher per-unit operating profit. While such an outcome is possible, DOE maintains that in markets that are reasonably competitive it is unlikely that standards would lead to a sustainable increase in profitability in the long run.

F. Life-Cycle Cost and Payback Period Analyses

The effect of new or amended energy conservation standards on individual consumers usually involves a reduction in operating cost and an increase in purchase cost. DOE used the following two metrics to measure consumer impacts:

- The LCC is the total consumer expense of an appliance or product over the life of that product, consisting of total installed cost (manufacturer selling price, distribution chain markups, sales tax, and installation costs) plus operating costs (expenses for energy use, maintenance, and repair). To compute the operating costs, DOE discounts future operating costs to the time of purchase and sums them over the lifetime of the product.
- The PBP is the estimated amount of time (in years) it takes consumers to recover the increased purchase cost (including installation) of a more-efficient product through lower operating costs. DOE calculates the PBP by dividing the change in purchase cost at higher efficiency levels by the change in annual operating cost for the year that amended or new standards are assumed to take effect.

Chapter 8 of the preliminary TSD addresses the LCC and PBP analyses.

G. National Impact Analysis

The NIA estimates the national energy savings (''NES'') and the net present value (''NPV'') of total consumer costs and savings expected to result from amended standards at specific efficiency levels (referred to as candidate standard levels).[13] DOE calculates the NES and NPV for the potential standard levels considered based on projections of annual product shipments, along with the annual energy consumption and total installed cost data from the energy use and LCC analyses. For the present analysis, DOE projected the energy savings, operating cost savings, product costs, and NPV of consumer benefits over the lifetime of oil, electric, and weatherized gas consumer furnaces sold from 2030 through 2059.

DOE evaluates the impacts of new or amended standards by comparing a case without such standards (''no-new-standards case'') with standards-case projections. The no-new-standards case characterizes energy use and consumer costs for each product class in the absence of new or amended energy conservation standards. For this projection, DOE considers historical trends in efficiency and various forces that are likely to affect the mix of efficiencies over time. DOE compares the no-new-standards case with projections characterizing the market for each product class if DOE adopted new or amended standards at specific energy efficiency levels for that class. For each efficiency level, DOE considers how a given standard would likely affect the market shares of products with efficiencies greater than the standard.

For the NIA, DOE uses a spreadsheet model to calculate the energy savings and the national consumer costs and savings from each efficiency level. Interested parties can review DOE's analyses by changing various input quantities within the spreadsheet. The NIA spreadsheet model uses typical values (as opposed to probability distributions) as inputs. Critical inputs to this analysis include shipments projections, estimated product lifetimes, product installed costs and operating costs, product annual energy consumption, the base case efficiency projection, and discount rates.

DOE estimates a combined total of 1.15 quads of potential full-fuel-cycle (FFC) energy savings at the max- tech efficiency levels for consumer oil, electric, and weatherized gas furnaces. Combined potential FFC energy savings at Efficiency Level 1 for all product classes considered in this preliminary analysis are estimated to be 0.96 quads. Chapter 10 of the preliminary TSD addresses the NIA.

[13] The NIA accounts for impacts in the 50 states and U.S. territories.

IV. Public Participation

DOE invites public engagement in this process through participation in the webinar and submission of written comments, data, and information. After the webinar and the closing of the comment period, DOE will consider all timely-submitted comments and additional information obtained from interested parties, as well as information obtained through further analyses. Following such consideration, the Department will publish either a determination that the energy conservation standards for CRE need not be amended or a NOPR proposing to amend those standards. The NOPR, should one be issued, would include proposed energy conservation standards for the products covered by this rulemaking, and members of the public would be given an opportunity to submit written and oral comments on the proposed standards.

A. Participation in the Webinar

The time and date of the webinar meeting are listed in the **DATES** section at the beginning of this document. Webinar registration information,

participant instructions, and information about the capabilities available to webinar participants will be published on DOE's website: *www1.eere.energy.gov/buildings/appliance_standards/standards.aspx?productid=59.* Participants are responsible for ensuring their systems are compatible with the webinar software.

B. Procedure for Submitting Prepared General Statements for Distribution

Any person who has an interest in the topics addressed in this document, or who is representative of a group or class of persons that has an interest in these issues, may request an opportunity to make an oral presentation at the webinar. Such persons may submit to *ApplianceStandardsQuestions@ee.doe.gov.* Persons who wish to speak should include with their request a computer file in WordPerfect, Microsoft Word, PDF, or text (ASCII) file format that briefly describes the nature of their interest in this rulemaking and the topics they wish to discuss. Such persons should also provide a daytime telephone number where they can be reached.

C. Conduct of the Webinar

DOE will designate a DOE official to preside at the webinar and may also use a professional facilitator to aid discussion. The meeting will not be a judicial or evidentiary-type public hearing, but DOE will conduct it in accordance with section 336 of EPCA (42 U.S.C. 6306). A court reporter will be present to record the proceedings and prepare a transcript. DOE reserves the right to schedule the order of presentations and to establish the procedures governing the conduct of the webinar. There shall not be discussion of proprietary information, costs or prices, market share, or other commercial matters regulated by U.S. anti-trust laws. After the webinar and until the end of the comment period, interested parties may submit further comments on the proceedings and any aspect of the rulemaking.

The webinar will be conducted in an informal, conference style. DOE will a general overview of the topics addressed in this rulemaking, allow time for prepared general statements by participants, and encourage all interested parties to share their views on issues affecting this rulemaking. Each participant will be allowed to make a general statement (within time limits determined by DOE), before the discussion of specific topics. DOE will allow, as time permits, other participants to comment briefly on any general statements.

At the end of all prepared statements on a topic, DOE will permit participants to clarify their statements briefly and comment on statements made by others. Participants should be prepared to answer questions by DOE and by other participants concerning these issues. DOE representatives may also ask questions of participants concerning other matters relevant to this rulemaking. The official conducting the webinar will accept additional comments or questions from those attending, as time permits. The presiding official will announce any further procedural rules or modification of the above procedures that may be needed for the proper conduct of the webinar.

A transcript of the webinar will be included in the docket, which can be viewed as described in the *Docket* section at the beginning of this document. In addition, any person may buy a copy of the transcript from the transcribing reporter.

D. Submission of Comments

DOE will accept comments, data, and information regarding this notification of availability of preliminary technical support document before or after the webinar, but no later than the date provided in the **DATES** section at the beginning of this document. Interested parties may submit comments, data, and other information using any of the methods described in the **ADDRESSES** section at the beginning of this document.

Submitting comments via *www.regulations.gov.* The *www.regulations.gov* web page will require you to provide your name and contact information. Your contact information will be viewable to DOE Building Technologies staff only. Your contact information will not be publicly viewable except for your first and last names, organization name (if any), and submitter representative name (if any). If your comment is not processed properly because of technical difficulties, DOE will use this information to contact you. If DOE cannot read your comment due to technical difficulties and cannot contact you for clarification, DOE may not be able to consider your comment.

However, your contact information will be publicly viewable if you include it in the comment itself or in any documents attached to your comment. Any information that you do not want to be publicly viewable should not be included in your comment, nor in any document attached to your comment. Otherwise, persons viewing comments will see only first and last names, organization names, correspondence containing comments, and any documents submitted with the comments.

Do not submit to *www.regulations.gov* information for which disclosure is restricted by statute, such as trade secrets and commercial or financial information (hereinafter referred to as Confidential Business Information (''CBI'')). Comments submitted through *www.regulations.gov* cannot be claimed as CBI. Comments received through the website will waive any CBI claims for the information submitted. For information on submitting CBI, see the Confidential Business Information section.

DOE processes submissions made through *www.regulations.gov* before posting. Normally, comments will be posted within a few days of being submitted. However, if large volumes of comments are being processed simultaneously, your comment may not be viewable for up to several weeks. Please keep the comment tracking number that *www.regulations.gov* provides after you have successfully uploaded your comment.

Submitting comments via email, hand delivery/courier, or postal mail. Comments and documents submitted via email, hand delivery/courier, or postal mail also will be posted to *www.regulations.gov.* If you do not want your personal contact information to be publicly viewable, do not include it in your comment or any accompanying documents. Instead, provide your contact information in a cover letter. Include your first and last names, email address, telephone number, and optional mailing address. The cover letter will not be publicly viewable as long as it does not include any comments.

Include contact information each time you submit comments, data, documents, and other information to DOE. If you submit via postal mail or hand delivery/courier, please provide all items on a CD, if feasible, in which case it is not necessary to submit printed copies. No telefacsimiles (''faxes'') will be accepted.

Comments, data, and other information submitted to DOE electronically should be provided in PDF (preferred), Microsoft Word or Excel, WordPerfect, or text (ASCII) file format. Provide documents that are not secured, that are written in English, and that are free of any defects or viruses. Documents should not contain special characters or any form of encryption

and, if possible, they should carry the electronic signature of the author.

Campaign form letters. Please submit campaign form letters by the originating organization in batches of between 50 to 500 form letters per PDF or as one form letter with a list of supporters' names compiled into one or more PDFs. This reduces comment processing and posting time.

Confidential Business Information. Pursuant to 10 CFR 1004.11, any person submitting information that he or she believes to be confidential and exempt by law from public disclosure should submit via email two well-marked copies: one copy of the document marked ''confidential'' including all the information believed to be confidential, and one copy of the document marked ''non-confidential'' with the information believed to be confidential deleted. DOE will make its own determination about the confidential status of the information and treat it according to its determination.

It is DOE's policy that all comments may be included in the public docket, without change and as received, including any personal information provided in the comments (except information deemed to be exempt from public disclosure).

V. Approval of the Office of the Secretary

The Secretary of Energy has approved publication of this notification of the availability of the preliminary technical support document and request for comment.

Signing Authority

This document of the Department of Energy was signed on November 21, 2022, by Francisco Alejandro Moreno, Acting Assistant Secretary for Energy Efficiency and Renewable Energy, pursuant to delegated authority from the Secretary of Energy. That document with the original signature and date is maintained by DOE. For administrative purposes only, and in compliance with requirements of the Office of the Federal Register, the undersigned DOE **Federal Register** Liaison Officer has been authorized to sign and submit the document in electronic format for publication, as an official document of the Department of Energy. This administrative process in no way alters the legal effect of this document upon publication in the **Federal Register**.

Signed in Washington, DC, on November 22, 2022.

Treena V. Garrett,

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

[FR Doc. 2022–25952 Filed 11–28–22; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 101

[Docket No. FDA–2016–D–2335]

RIN 0910–AI13

Food Labeling: Nutrient Content Claims; Definition of Term ''Healthy;'' Extension of Comment Period

AGENCY: Food and Drug Administration, HHS.

ACTION: Proposed rule; extension of comment period.

SUMMARY: The Food and Drug Administration (FDA or we) is extending the comment period for the proposed rule entitled ''Food Labeling: Nutrient Content Claims; Definition of Term 'Healthy' '' that appeared in the **Federal Register** of September 29, 2022. We are taking this action in response to a request from stakeholders to extend the comment period to allow interested persons additional time to submit comments.

DATES: FDA is extending the comment period on the proposed rule published September 29, 2022 (87 FR 59168). Either electronic or written comments must be submitted on the proposed rule by February 16, 2023.

ADDRESSES: You may submit comments as follows. Please note that late, untimely filed comments will not be considered. The *https://www.regulations.gov* electronic filing system will accept comments until 11:59 p.m. Eastern Time at the end of February 16, 2023. Comments received by mail/hand delivery/courier (for written/paper submissions) will be considered timely if they are received on or before that date.

Electronic Submissions

Submit electronic comments in the following way:

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

Written/Paper Submissions

Submit written/paper submissions as follows:

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

Instructions: All submissions received must include the Docket No. FDA–2016–D–2335 for ''Food Labeling: Nutrient Content Claims; Definition of Term 'Healthy'.'' Received comments, those filed in a timely manner (see **ADDRESSES**), will be placed in the docket and, except for those submitted as ''Confidential Submissions,'' publicly viewable at *https://www.regulations.gov* or at the Dockets Management Staff between 9 a.m. and 4 p.m., Monday through Friday, 240–402–7500.

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

copies to the Dockets Management Staff. If you do not wish your name and contact information to be made publicly available, you can provide this information on the cover sheet and not in the body of your comments and you must identify this information as ''confidential.'' Any information marked as ''confidential'' will not be disclosed except in accordance with 21 CFR 10.20 and other applicable disclosure law. For more information about FDA's posting of comments to public dockets, see 80 FR 56469, September 18, 2015, or access the information at: *https://www.govinfo.gov/content/pkg/FR-2015-09-18/pdf/2015-23389.pdf.*

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

FOR FURTHER INFORMATION CONTACT: Vincent de Jesus, Office of Nutrition and Food Labeling, Center for Food Safety and Applied Nutrition, Food and Drug Administration, 5001 Campus Dr., College Park, MD 20740, 240–402–1450, *vincent.dejesus@fda.hhs.gov.*

SUPPLEMENTARY INFORMATION: In the **Federal Register** of September 29, 2022 (87 FR 59168), we published a proposed rule entitled ''Food Labeling: Nutrient Content Claims; Definition of Term 'Healthy'.'' This action opened a docket with a 90-day comment period to receive information and comments related to the definition for the implied nutrient content claim ''healthy.''

FDA has received a request for a 90-day extension for this comment period in order to allow additional time for interested persons to develop and submit comments. The request conveyed concern that the current 90-day comment period does not allow sufficient time to develop meaningful comments to the proposed rule. In the interest of balancing the public health importance of the nutrient content claim and definition of the term ''healthy'' and granting additional time to submit comments before we finalize the proposed rule, we have concluded that it is reasonable to extend the comment period for 50 days, until February 16, 2023. We believe that this extension allows adequate time for interested persons to submit comments.

Dated: November 22, 2022.

Lauren K. Roth,

Associate Commissioner for Policy.

[FR Doc. 2022–26002 Filed 11–28–22; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF VETERANS AFFAIRS

38 CFR Part 17

RIN 2900–AQ58

Collection or Recovery by VA for Humanitarian Care or Services and for Certain Other Care and Services

AGENCY: Department of Veterans Affairs.

ACTION: Proposed rule.

SUMMARY: The Department of Veterans Affairs (VA) proposes to revise its regulations concerning reimbursement rates for health care that VA provides to individuals who are not otherwise eligible for such care as veterans or other VA beneficiaries. Specifically, this rulemaking would revise provisions of VA regulations and make them consistent with applicable law along with removing obsolete provisions. These revisions would clarify VA regulations related to the provision of VA health care to individuals who are not otherwise eligible for such care as veterans or other VA beneficiaries, and it would not substantively affect the provision of health care to eligible veterans or other VA beneficiaries.

DATES: Comments must be received by VA on or before January 30, 2023.

ADDRESSES: Comments may be submitted through *www.regulations.gov*. Except as provided below, comments received before the close of the comment period will be available at *www.regulations.gov* for public viewing, inspection, or copying, including any personally identifiable or confidential business information that is included in a comment. Comments received before the close of the comment period on *www.regulations.gov* will be posted as soon as possible after they have been received. VA will not post public comments that make threats to individuals or institutions or suggest that the individual will take actions to harm the individual. VA encourages individuals not to submit duplicative comments. We will post acceptable comments from multiple unique commenters even if the content is identical or nearly identical to other comments.

FOR FURTHER INFORMATION CONTACT: Debra Vatthauer, Office of Finance, Revenue Operations, Payer Relations and Services, Rates and Charges (104RO1), Veterans Health Administration, Department of Veterans Affairs, 128 Bingham Road, Suite 1000, Asheville, NC 28806; telephone: 608–821–7346 (this is not a toll-free number).

SUPPLEMENTARY INFORMATION: The primary purpose of this rulemaking is to clear up internal confusion related to ineligible Civilian Health and Medical Program of VA (CHAMPVA) beneficiaries not being billed for services and this rulemaking will also clarify the applicable regulations organization, authority and any cross references. There are several statutory authorities that allow for VA to provide care to individuals who would not generally be eligible to receive VA health care. While these authorities allow VA to provide the care, these authorities also require VA to charge for the vital services it provides Section 205 of the appropriations act does not allow appropriations for hospitalization or examination of ineligible individuals, unless reimbursement of the costs of their care is made at a rate determined by VA. Several VA authorities, as codified in title 38 also require VA to charge for care at rates prescribed by the Secretary. Notably, under section 1784 of title 38, United States Code (U.S.C.), VA provides medical care or services as a humanitarian service in emergency cases to individuals not generally eligible to receive such care or services from VA, but is also required to charge for those care and services at rates prescribed by the Secretary. Under 38 U.S.C. 1785, during and in the immediate aftermath of an emergency or natural disaster, VA may furnish hospital care and medical services to individuals responding to, involved in, or otherwise affected by that disaster or emergency, but is required to charge the recipient. Under 38 U.S.C. 8111, VA is authorized to enter into sharing agreements with the Department of Defense (DoD) for the use or exchange of use of health care resources, and VA may bill DoD for certain medical services obtained from VA. VA may also provide medical care to certain discharged members of allied forces consistent with 38 U.S.C. 109 and must enter into agreements for cash reimbursement of incurred expenses at such rates and under such regulations as the Secretary may prescribe. Section 17.102 of title 38, Code of Federal Regulations (CFR) addresses when and how it determines the rate VA will charge for medical care and services provided to individuals under all four authorities described above.

During the COVID–19 pandemic VA has provided significant amounts of care to individuals under the Stafford Act via Mission Assignments from the Federal Emergency Management Agency (FEMA) within the Department of Homeland Security which is distinct from care VA provides under our authority in 38 U.S.C. 1785 described above. The care provided under the Stafford Act via Mission Assignments would not be impacted by the changes made to 38 CFR 17.102 in this rulemaking.

VA is generally required by law, however, to charge for care provided to otherwise ineligible individuals generally at rates determined by the Secretary. VA has been charging for this care in accordance with 38 CFR 17.102 for many years. This rulemaking updates and clarifies when individuals will be charged for this care.

This proposed rule would primarily reorganize for clarity 38 CFR 17.102, which lists instances when VA provides health care based on various changes in the determination of veteran eligibility and based on VA's authorities to provide certain health care to individuals who are not otherwise eligible to receive such care from VA. Section 17.102 also establishes rates VA charges for the care. However, § 17.102, did not reference the specific authorities for VA to provide health care in each circumstance, and this section does not include all circumstances when VA provides care, to individuals who are otherwise ineligible to receive care from VA. This proposed rule would revise § 17.102 to add citations to and harmonize these authorities. Also, the proposed rule would remove unnecessary provisions in § 17.102, and it would establish a new data source to calculate the rates charged for the care provided pursuant to this regulation. This proposed rule would similarly revise regulations that relate to or reference § 17.102, or otherwise relate to certain health care VA provides to individuals who are not eligible to receive the care as veterans or other VA health care beneficiaries. We first discuss proposed changes to § 17.102.

Section 17.102 Charges for Care or Services

This proposed rule would revise 38 CFR 17.102 to include additional categories of normally ineligible individuals who may receive health care services from VA, remove provisions that have become obsolete, and update the authorities for VA to provide the health care services. The proposed rule would also clarify the difference between the two types of rates charged under this section: the Cost-Based Rates and the Inter-Agency Rates. In so doing, we propose to reorganize the structure of § 17.102 for clarity.

The table below reflects proposed changes to the structure of § 17.102. The current section and paragraph are noted in the left column, with the proposed new location in column three. Paragraphs that we propose to remove are listed in column two. We will discuss the rationale for removing specific paragraphs, as well as any proposed revisions and additions to current regulatory language.

Current 17.102	Proposed to be removed	Proposed 17.102
17.102(a)		17.102(b)(1)
17.102(b)(1)		17.102(a)(1)
17.102(b)(2)	X	
17.102(c)		17.102(a)(5)
17.102(d)		17.102(b)(2)
17.102(e)		17.102(b)(3)
17.102(f)		17.102(a)(6)
17.102(g)	X	
17.102(h)		17.102(c)

The introductory language of 38 CFR 17.102 currently states that ''[e]xcept as provided in § 17.101, charges at the indicated rates shall be made for Department of Veterans Affairs hospital care or medical services (including, but not limited to, dental services, supplies, medicines, orthopedic and prosthetic appliances, and domiciliary or nursing home care) as follows.'' First, we would amend the introductory language to reference proposed § 17.102(c) which would establish the reimbursement rates. Current reimbursement rates are established in § 17.102(h). We explain the proposed changes to the data source used to develop the rates and re-designating from paragraph (h) to paragraph (c) later in this rulemaking.

Next, we would amend the introductory language to indicate that the rates established in § 17.102 would apply ''notwithstanding'' the rates established in § 17.101. This would clarify that the rate structures in §§ 17.101 and 17.102 are mutually exclusive. While the rates under § 17.102 are used to recover costs of VA care provided to individuals who are otherwise ineligible for the care, the rates in § 17.101 implement VA's authority in 38 U.S.C. 1729 to recover reasonable charges from a third party for non-service connected VA care provided to an eligible veteran who is also a beneficiary under a health-plan contract, workers compensation law, or automobile accident reparations insurance.

We would also amend the introductory language in § 17.102 to replace the current list of examples of medical services (*i.e.,* ''. . . dental services, supplies, medicines, orthopedic and prosthetic appliances, and domiciliary or nursing home care . . . '') and would state instead that VA will charge for ''care and services.'' VA is making this change to avoid the potential misinterpretation of this list as exhaustive. Substituting the list of examples for ''care and services'' allows for change in the future and is in line with current Veterans Health Administration (VHA) regulation drafting tenets. Other proposed revisions to § 17.102 would further distinguish whether ''hospital care and medical services'' could be provided and charged to certain individuals, versus the broader scope of ''hospital care, medical services, domiciliary care, or nursing home care.'' This change would make the introductory language to § 17.102 more consistent with VA authorities to provide and charge for only certain health care to individuals not otherwise eligible to receive such care as VA beneficiaries.

Lastly, we would amend the introductory language in § 17.102 to indicate clearly that this section relates to care and services provided in the circumstances listed in paragraphs (a) and (b).

Current paragraphs (a) through (g) list instances when care and services are furnished to non-veterans and non-VA

beneficiaries. We would modify the organization of paragraphs (a) through (g) for clarity and would remove obsolete or unnecessary paragraphs as explained.

Generally, proposed paragraph (a) would describe charges that arise from the provision of ''hospital care or medical services,'' and proposed paragraph (b) would describe charges that arise from the provision of the broader scope of ''hospital care, medical services, domiciliary care, or nursing home care.'' We believe this would be consistent with how distinct these four terms are from one another as defined in 38 U.S.C. 101 and 1701, and it also would be consistent with current VA authorities. For example, VA only has the authority to provide ''hospital care and medical services'' as a humanitarian service in emergency cases and not domiciliary or nursing home care. 38 U.S.C. 1784. The instances when VA provides each type of care would be listed following paragraphs (a) and (b), respectively.

Proposed paragraph (a)(1) would state that VA would charge for hospital care and medical services that could be provided to individuals as a humanitarian service. This proposed revision would re-designate current paragraph (b) as paragraph (a)(1). We would remove references to § 17.41(b)(1) or § 17.95 and would instead reference the underlying statutory authority 38 U.S.C. 1784 and 1784A. Section 1784 provides the statutory authority for VA to provide care as a humanitarian service. Section 1784A provides the statutory authority for VA to provide care for examination and treatment for emergency medical conditions and women in labor. We note that section 1784A was not previously referenced in this regulation because it had not been enacted at the time of the most recent previous revision of § 17.102. However, we believe that this care broadly falls under the category of humanitarian care. Therefore, it is appropriate to list it together with the care provided under section 1784.

Proposed paragraph (a)(1) would not retain the language from current paragraph (b)(2) related to emergency medical care provided separately to VA employees or their family members. We would not retain this language since there is no general distinction in the statute between individuals or VA employees and their families. The inclusion of a separate category for VA employees and their families has been included in the CFR since 1967 and the **Federal Register** notice creating it, 32 FR 11382, offers no explanation for why it was originally included. VA employees and their families are subsumed in the class of individuals for whom VA may provide humanitarian care under section 1784. VA believes it is unnecessary to distinguish between the two groups of individuals under this section. VA charges for the provision of care as humanitarian care under 38 U.S.C. 1784 and 1784A, so we would not reference any other authority in proposed paragraph (a)(1). We note that the charges for care under this paragraph would be VA's Cost-Based Rates as described in paragraph (c), discussed in detail below.

Proposed paragraph (a)(2) would state that VA would charge for hospital care and medical services that would be provided to individuals during and immediately following a disaster or emergency. This is in accordance with 38 U.S.C. 1785 and the corresponding implementing regulation at 38 CFR 17.86. Proposed paragraph (a)(2) would add a new type of VA care to § 17.102 for which VA seeks reimbursement, but VA does not view this as a substantive change. Section 17.86 already requires reimbursement for this care and references § 17.102 to determine the rate for reimbursement. We are also proposing to amend § 17.86(e), as discussed in further detail below, to clarify the rates of reimbursement pursuant to section 1785 and to update the reference to § 17.102 considering its proposed reorganization. We note that the rates VA would charge for this care are based on either the Cost-Based or the Inter-Agency Rate depending on whether the beneficiary of the care was authorized by a Federal agency to receive care. Proposed § 17.86(e) would provide a detailed description of all the charges. Proposed paragraph (a)(2) would reference 38 U.S.C. 1785 and 38 CFR 17.86.

Proposed paragraph (a)(3) would state that VA would charge for emergency medical treatment provided to an individual attending a national conference in accordance with 38 U.S.C. 1711. VA would charge, either the individual or the organization, pursuant to a contract. The organization must be recognized under 38 U.S.C. 5902. VA's authority to provide this care to individuals at such a national conference, under 38 U.S.C. 1711, was first promulgated in regulation in 1982, then designated as 38 CFR 17.62(i) [47 FR 58249 (December 30, 1982)]. This provision remained in annual print editions of the CFR from 1982 through 1999, at which time § 17.62 was redesignated as § 17.101 (see 61 FR 21964, where § 17.62(i) became § 17.101(i)). Later § 17.101 was redesignated as § 17.102 (see 64 FR 22676, where § 17.101(i) became § 17.102(i)). VA did not remove this provision since we first promulgated it in 1982. However, the provision regarding hospital care and medical services provided to an individual attending a national conference of an organization recognized under 38 U.S.C. 5902 failed to appear in the annual print editions of the CFR after 1999, although VA never instituted any type of rulemaking to remove it. Proposed paragraph (a)(3) would correct the inadvertent removal of this provision, as the underlying statutory authority at 38 U.S.C. 1711(c)(1) is still in effect. We note that 38 U.S.C. 1711 mandates that VA be reimbursed for such care as prescribed by the Secretary. The care provided under this section would be charged for at VA's Cost-Based Rates.

Proposed paragraph (a)(4) would state that VA will charge for hospital care and medical services provided to an individual, in error, on the basis of eligibility as a non-veteran recipient of VA health care and services under title 38 of the United States Code. This would permit VA to collect charges for care provided in VA facilities to individuals who were thought to have been eligible to receive health care and services as non-veterans under particular VA authorities, such as care of allied beneficiaries as permitted by 38 U.S.C. 109, caregiver services as permitted by 38 U.S.C. 1720G, the CHAMPVA services as permitted by 38 U.S.C. 1781, mental health services as permitted by 38 U.S.C. 1782, and newborn care as permitted by 38 U.S.C. 1786. The authority for this substantive change is 31 U.S.C. 3711, which allows the head of an executive agency to collect a claim of the United States Government for money or property arising out of the activities of the agency. Additionally, section 205 of the Military Construction, Veterans Affairs, and Related Agencies Appropriations Act of 2022 states that, ''No appropriations in this title shall be available for hospitalization or examination of any persons (except beneficiaries entitled to such hospitalization or examination under the laws providing such benefits to veterans, and persons receiving such treatment under sections 7901 through 7904 of title 5, United States Code, or the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5121 *et seq.*)), unless reimbursement of the cost of such hospitalization or examination is made to the ''Medical Services'' account at such rates as may be fixed by the Secretary of Veterans Affairs.''

Proposed paragraph (a)(5) would state that VA would charge for medical care or services authorized for a beneficiary of the Department of Defense, or other Federal agency. This proposed revision would re-designate current 38 CFR 17.102(c) as paragraph (a)(5). Current § 17.102(c) provides that the rates for certain care in this paragraph would be prescribed by the Office of Management and Budget (OMB). We propose to remove this reference because VA began prescribing the rates in January 2004 [69 FR 1059 (January 7, 2004)]. We also propose removing the references to the specific rates that we would charge for care provided to an active service member or beneficiary of a Federal agency and former members of a uniformed service who are entitled to retired, retainer, or equivalent pay. We would make this change because all identified individuals are authorized beneficiaries, and all such care would be charged at the Inter-Agency Rate determined in proposed paragraph (c). We note that the rates as described in this section would only be used if the care is not covered under the active duty member's or veteran's TRICARE or under a valid sharing agreement. Finally, we would remove the reference in current § 17.102(c) to paragraph (f) related to care furnished for military retirees with chronic disabilities. We would make this change because, as explained below, care furnished for military retirees with chronic disabilities would be charged at the same rates as the care furnished in proposed paragraph (a)(5). Therefore, it is not necessary to make the distinction.

Proposed paragraph (a)(6) would state that VA would charge for hospital care for certain retirees of the uniformed services with a chronic disability, as described in Executive Orders 10122, 10400, and 11733, and 38 CFR 17.44. This proposed revision would re-designate current paragraph (f) as paragraph (a)(6) and would make the paragraph more consistent with its authorities. Current paragraph (f) states that charges under this section are for subsistence at rates prescribed by the Under Secretary for Health under § 17.47(b)(2) and (c)(2) for hospital care and in effect during the time VA renders the care. We propose to change the rate that would be charged from the subsistence rate to a rate prescribed by the Secretary (*i.e.,* the Inter-Agency rate). VA does not currently have a subsistence rate and believes that charging the Inter-Agency Rate is more consistent with the way VA generally charges for health care services. Furthermore, we propose to remove the reference to § 17.47. Instead, we would reference the more relevant authorities of Executive Orders 10122, 10400, 11733, and 38 CFR 17.44. Executive orders and § 17.44 directly authorize the care provided. Comparatively, § 17.47(b)(2) merely defines the phrase ''no adequate means of support'' for the purpose of determining eligibility for domiciliary care and there is no § 17.47(c)(2) (the information in § 17.47(c)(2) has already been consolidated into § 17.47(c)). 51 FR 25064 (July 10, 1986).

As previously stated, proposed paragraph (b) would list instances when hospital care, medical services, domiciliary care, or nursing home care are provided. Proposed paragraph (b)(1) would state that VA would charge for hospital care, medical services, domiciliary care, or nursing home care provided to an individual, in error, on the basis of veteran eligibility for such care and services under 38 CFR 17.34, 17.36, or 17.37, and such an individual was subsequently determined not to have been eligible for such care or services. This proposed revision would re-designate paragraph (a) as paragraph (b)(1), and it would revise the references to veteran eligibility for health care. Care provided under these circumstances would be charged at the Cost-Based Rates.

Proposed paragraph (b)(2) would state that VA would charge for hospital care, medical services, domiciliary care, or nursing home care provided to a discharged member of the armed forces of a nation allied with the United States in World War I or World War II in accordance with 38 U.S.C. 109. This proposed revision would re-designate paragraph (d) as paragraph (b)(2). It would add a reference to 38 U.S.C. 109, which is VA's statutory authority to provide and receive reimbursement for hospital care, medical services, and domiciliary care for allied beneficiaries. We note that section 109 does not expressly authorize the provision of nursing home services to allied beneficiaries, so the language ''in accordance with 38 U.S.C. 109'' in proposed paragraph (b)(2) should be sufficiently limiting without having to propose a separate paragraph in § 17.102 to address provision of hospital care, medical services, and domiciliary care but not nursing home care. Proposed paragraph (b)(2) would apply to care that is authorized to be provided under section 109, while proposed paragraph (a)(4) would apply if care was provided in error based on a finding of eligibility under section 109, but the individual was subsequently found not to be eligible. We note that the rates for this care would be the Cost-Based Rates.

Proposed paragraph (b)(3) would state that VA would charge for hospital care, medical services, domiciliary care, or nursing home care provided under a sharing agreement in accordance with 38 U.S.C. 8111 or 8153 and 38 CFR 17.240. This proposed revision would re-designate current paragraph (e) as proposed paragraph (b)(3), and it would more succinctly restate the language in paragraph (e) by referring if only to the authorities related to VA sharing agreements and VA sharing of medical resources under 38 U.S.C. 8111 and 8153, respectively, as well as implementing VA regulation at 38 CFR 17.240. This paragraph would likely be used when VA enters into a sharing agreement with another federal entity, such as the Department of Defense, or participates in the sharing of medical resources between entities.

Proposed paragraph (b)(4) would state that VA would charge the rates established in paragraph (c), the Cost-Based or the Inter-Agency Rates, for any other care that VA is authorized to provide, at a cost, to an individual who is otherwise ineligible for VA care. This new paragraph would instruct how VA would charge for care when VA has authority to provide such care at a cost but does not have guidance on how to charge for the care. This paragraph would likely be used when Congress authorizes VA to provide care under new circumstances.

Current paragraph (g) in § 17.102 would be removed because VA examined the regulatory history and found that the requirement was obsolete and unnecessary. Specifically, current paragraph (g) establishes that VA must reimburse its medical care appropriation fund out of its research appropriation fund when VA provides treatment to research study participants who are otherwise ineligible for that care as veterans. The management of VA's appropriations, such as reimbursement of one fund from another, is an internal fiscal procedure and does not require authorization in regulation unless otherwise specified in law. To date, there is no law that specifies that VA must regulate the transfer of these funds. We, therefore, propose to remove paragraph (g).

Current paragraph (h) establishes the rates that VA charges for care provided under § 17.102, unless the rates are otherwise established under a sharing agreement or contract. Current § 17.102(h) would be redesignated as proposed paragraph (c), and we would revise it to refer to a different VA data source and data report that we use to

establish the rates under § 17.102. These slight revisions would state that rates charged for care provided under § 17.102 would be based on ''VHA Office of Finance Managerial Cost Accounting (MCA) Cost Reports,'' as opposed to being based on the ''Monthly Program Cost Report'' as stated in current paragraph (h). Proposed paragraph (c) would also remove the stated rate methodology in current paragraph (h), as this information is published with the rate tables. VA publishes the rate table for § 17.101 on its website and for consistency, and ease of access, VA would publish the § 17.102 rates on a website where the public could access the rates, OMB has not been involved in publishing these rates since 2014 and we would remove reference to the option of OMB publishing the rates. Therefore, we believe this would be a non-substantive change because the public understands these annually published rates.

Proposed paragraph (c) would also include the methodology to determine the rates for prescription drugs that VA furnishes which are not administered during treatment. The costs would be based on the actual cost of the drug plus a national average of VA administrative costs as described in 38 CFR 17.101(m).

Section 17.43 Persons Entitled to Hospital or Domiciliary Care

This section lists persons entitled to hospital or domiciliary care. Specifically, § 17.43(b) lists the three categories of persons entitled to emergency hospital care. Paragraph (b)(1) includes persons having no eligibility, as a humanitarian service. Paragraph (b)(2) includes persons admitted because of presumed discharge or retirement from the Armed Forces, but subsequently found to be ineligible as such. Paragraph (b)(3) includes employees (not potentially eligible as ex-members of the Armed Forces) and members of their families, when residing on reservations of VA field facilities, and when they cannot feasibly obtain emergency treatment from private facilities. We propose to remove paragraph (b)(3) because it places an unnecessary restriction on VA employees and their families' ability to receive hospital care at a VA facility during an emergency.

VA has authority to provide hospital care in an emergency to all VA employees and their families. Section 1784 of title 38 of the United States Code provides that VA may furnish hospital care or medical services as a humanitarian service in emergency cases so long as the Secretary charges for such care and services. In addition, 38 U.S.C. 1784A provides that if any individual comes to the hospital or the campus of the hospital and a request is made on behalf of the individual for examination or treatment for a medical condition, then the hospital must provide for an appropriate medical screening examination within the capability of the emergency department. This medical screening examination would include ancillary services routinely available to the emergency department to determine whether an emergency medical condition exists. Further, the implementing regulation at 38 CFR 17.43(b)(1) provides that emergency hospital care may be provided for persons having no eligibility as a humanitarian service. Therefore, we believe that 38 U.S.C. 1784, as implemented by 38 CFR 17.43(b)(1), provides VA authority to provide hospital care to all individuals in an emergency, including VA employees and their families, regardless of whether they are residing on a field reservation or can feasibly obtain emergency treatment from private facilities.

We note that 38 CFR 17.95, whose authority also stems from 38 U.S.C. 1784, provides that outpatient medical services (as opposed to hospital care) may be authorized for VA employees, their families, and the general public in emergencies. There are no restrictions placed on VA employees and their families when seeking VA outpatient care in an emergency.

Therefore, we propose to remove paragraph (b)(3) as the individuals covered under this paragraph are subsumed within paragraph (b)(1), and VA believes it is inequitable and unjustified that VA employees and their families who are not covered under paragraph (b)(3) should be prohibited from receiving VA hospital services in emergencies when VA has clear authority under 38 U.S.C. 1784 to provide such care.

Section 17.44 Hospital Care for Certain Retirees With Chronic Disability (Executive Orders 10122, 10400 and 11733)

This section provides that hospital care may be furnished, when beds are available, to members or former members of the uniformed services who are temporarily or permanently retired for physical disability or receiving disability retirement pay who require hospital care for chronic diseases and who have no eligibility for hospital care under laws governing the Department of Veterans Affairs, or who having eligibility do not elect hospitalization as Department of Veterans Affairs beneficiaries. Care under this section is subject to three conditions. The first condition described in paragraph (a), which is most pertinent here, requires persons who are members or former members of the United States Armed Forces to agree to pay the subsistence rate set by VA, except that no subsistence charge would be made for those persons who are members or former members of the Public Health Service, Coast Guard, Coast and Geodetic Survey (now the National Oceanic and Atmospheric Administration). This also applies to enlisted personnel of the Army, Navy, Marine Corps, Air Force, and Space Force.

This regulation was originally enacted in 1969 (34 FR 9340 June 13, 1969), and it has not been substantively revised since that time. This subsistence rate language seems to be a hold over from earlier practice of charging a subsistence rate for daily food/incidentals for certain members during a hospitalization if that member is receiving Basic Allowance for Subsistence (BAS). BAS is a Department of Defense (DOD) program meant to offset costs for a member's meals. This allowance is based in the historic origins of the military in which the military provided room and board (or rations) as part of a member's pay. VA does not currently use, nor does the Secretary of Veterans Affairs set subsistence rates. Therefore, the regulation is inconsistent with current practice. Due to this, we propose to remove the word ''subsistence'' from paragraph (a), and we would require persons defined in this section to agree to pay a rate set by VA, as prescribed in § 17.102(c). VA believes that using the rates established in § 17.102(c) (the VHA Office of Finance MCA Cost Report) is consistent with the authority to provide care as described in Executive Orders 10122, 10400, and 11733. In the Executive Orders, the President authorized VA to provide the care and charge for the care, but the Executive Orders do not specify the rate VA should charge. VA believes that it has the authority to determine the most appropriate rates to charge for this care, and we find that charging the rate that is used for other otherwise ineligible veterans and non-veteran beneficiaries is appropriate.

Section 17.86 Provision of Hospital Care and Medical Services During Certain Disasters and Emergencies Under 38 U.S.C. 1785

We propose to revise paragraph (e) for clarity and to update the reference to § 17.102 to conform to the proposed

revisions of § 17.102 previously described. As the authorizing statute, 38 U.S.C. 1785, describes how VA should be reimbursed in various instances, we propose to revise paragraph (e) by listing each category of person identified in section 1785 and state how VA would charge for their care. The proposed changes are technical in nature, and we are not proposing any substantive revisions to this section.

Proposed paragraph (e) would state that the cost of medical care and services provided under this section would be determined by the situations described below. Proposed paragraph (e)(1) would state that if care is provided to an officer or employee of a non-VA department or agency of the United States, VA will charge the rate agreed upon by the Secretary and the head of such department or agency or the Secretary concerned. If no such rate has been agreed to, VA would charge the Inter-Agency Rates as prescribed in § 17.102(c). VA believes that the Inter-Agency Rate is the most appropriate rate in this context and complies with 38 U.S.C. 1785. In § 1785(d), Congress directs that the cost of care or services furnished under this section to an officer or employee of a department or agency of the United States shall be reimbursed at such rates as may be agreed upon by the Secretary and the head of such department or agency of the Secretary concerned. The Inter-Agency Rates are the generally agreed upon rates between VA and other Federal agencies.

Although current § 17.86 includes member of the Armed Forces in the same sentence as an officer or employee of a non-VA department or agency of the United States, to more closely follow the authority in 38 U.S.C. 1785(d), we propose to have separate paragraphs to describe the rates for care provided to an officer or employee of a department or agency of the United States and the rates for care for members of the Armed Forces, as these individuals are referred to separately in the statute. Therefore, even though the Inter-Agency Rate would be charged in both circumstances, the regulation would more closely follow the statute to have separate paragraphs for each group identified by statute.

Proposed paragraph (e)(2) would state that if care is provided to a member of the Armed Forces, then VA would charge the rate agreed upon by the Secretary and the head of the branch of the Armed Forces or the Secretary concerned. If no rate has been agreed to, VA would be reimbursed at the Inter-Agency Rates as prescribed in § 17.102(c). VA believes that the Inter-Agency Rates are the most appropriate rates to charge for these individuals. Per 38 U.S.C. 1785(d) VA may be reimbursed based on the cost of the care or service furnished to members of the Armed Forces. The Inter-Agency Rate is based on VA cost that is specifically used to determine reimbursable charges from other Federal agencies, such as the Department of Defense.

Proposed paragraph (e)(3) would state that if the care is authorized under a sharing agreement as described in 38 U.S.C. 8111 or 8153 and 38 CFR 17.240, VA would be reimbursed at the rate determined in accordance with the terms of the sharing agreement.

Proposed paragraph (e)(4) would state that if the care is provided to an individual who is responsible for the cost of the care, VA would charge the Cost-Based Rate as prescribed in § 17.102(c). We would note that individuals would be responsible for the cost of care or services if mandated by Federal law (including applicable appropriations acts) or when the cost of care or services is not reimbursed by other-than-VA Federal departments or agencies. We believe that the Cost-Based Rates are the most appropriate for these individuals because the Cost-Based Rates are generally charged for care provided to individuals who are not beneficiaries of other Federal agencies or otherwise eligible for care from VA, as is required by the intent of appropriations act 205. The Cost Based Rate reflects the cost to VA to provide care to this non eligible individual and is explained in the yearly rate update.

Paperwork Reduction Act

This proposed rule contains no collections of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3521).

Regulatory Flexibility Act

The Secretary hereby certifies that this proposed rule would not have a significant economic impact on a substantial number of small entities as they are defined in the Regulatory Flexibility Act, 5 U.S.C. 601–612. This proposed rule would affect only individuals and other Federal agencies. Therefore, pursuant to 5 U.S.C. 605(b), the initial and final regulatory flexibility analysis requirements of 5 U.S.C. 603 and 604 do not apply.

Executive Orders 12866 and 13563

Executive Orders 12866 and 13563 direct agencies to assess the costs and benefits of available regulatory alternatives and, when regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, and other advantages; distributive impacts; and equity). Executive Order 13563 (Improving Regulation and Regulatory Review) emphasizes the importance of quantifying both costs and benefits, reducing costs, harmonizing rules, and promoting flexibility. The Office of Information and Regulatory Affairs determined that this proposed rule is a significant regulatory action under Executive Order 12866. The Regulatory Impact Analysis associated with this rulemaking can be found as a supporting document at *www.regulations.gov.*

Unfunded Mandates

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

Assistance Listing

The Assistance Listing program numbers and titles for the programs affected by this document are Veterans Domiciliary Care; 64.011—Veterans Dental Care; 64.012—Veterans Prescription Service; 64.013—Veterans Prosthetic Appliances; 64.014—Veterans State Domiciliary Care; 64.015—Veterans State Nursing Home Care; 64.026—Veterans State Adult Day Health Care; 64.029—Purchase Care Program; 64.033—VA Supportive Services for Veteran Families Program; 64.039—CHAMPVA; 64.040—VHA Inpatient Medicine; 64.041—VHA Outpatient Specialty Care; 64.042—VHA Inpatient Surgery; 64.043—VHA Mental Health Residential; 64.044—VHA Home Care; 64.045—VHA Outpatient Ancillary Services; 64.046—VHA Inpatient Psychiatry; 64.047—VHA Primary Care; 64.048—VHA Mental Health clinics; 64.049—VHA Community Living Center; 64.050—VHA Diagnostic Care; 64.053.

List of Subjects in 38 CFR Part 17

Administrative practice and procedure, Alcohol abuse, Alcoholism, Claims, Day care, Dental health, Drug abuse, Foreign relations, Government contracts, Grant programs-health, Grant programs-veterans, Health care, Health facilities, Health professions, Health

records, Homeless, Medical and dental schools, Medical devices, Medical research, Mental health programs, Nursing homes, Philippines, Reporting and recordkeeping requirements, Scholarships and fellowships, Travel and transportation expenses, Veterans.

Signing Authority

Denis McDonough, Secretary of Veterans Affairs, approved this document on February 27, 2022, and authorized the undersigned to sign and submit the document to the Office of the Federal Register for publication electronically as an official document of the Department of Veterans Affairs.

Consuela Benjamin,

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

For the reasons discussed in the preamble, the Department of Veterans Affairs proposes to amend 38 CFR part 17 as follows:

PART 17—MEDICAL

■ 1. The authority citation for part 17 is amended by adding entries for §§ 17.43, 17.44, 17.86, and 17.102 in numerical order to read in part as follows:

Authority: 38 U.S.C. 501, and as noted in specific sections.

* * * * *

Section 17.43 also issued under 38 U.S.C. 109, 1784, 8111, and 8153.

Section 17.44 also issued under E.O. 10122, 15 FR 2173, 3 CFR, 1949–1953 Comp., p. 313, E.O. 10400, 17 FR 8648, 3 CFR, 1949–1953 Comp., p. 900, and E.O. 11733, 38 FR 20431, 3 CFR, 1971–1975 Comp., p. 792.

* * * * *

Section 17.86 also issued under 38 U.S.C. 1785.

* * * * *

Section 17.102 also issued under 38 U.S.C. 109, 1711, 1729, 1784, 1784A, 1785, 8111, 8153.

* * * * *

§ 17.43 [Amended]

■ 2. Amend § 17.43 by removing paragraph (b)(3).

■ 3. Amend § 17.44 by revising paragraph (a) to read as follows:

§ 17.44 Hospital care for certain retirees with chronic disability (Executive Orders 10122, 10400 and 11733).

* * * * *

(a) Persons defined in this section who are members or former members of the active United States Armed Forces must agree to pay the rate set by the Secretary of Veterans Affairs as prescribed in § 17.102(c), except that no charge will be made for those persons who are members of the Public Health Service, Coast Guard, Coast and Geodetic Survey now NOAA, and enlisted personnel of the Army, Navy, Marine Corps, Air Force, and Space Force.

* * * * *

■ 4. Amend § 17.86 by:

■ a. Revising paragraph (e); and

■ b. Removing the parenthetical authority citation at the end of the section.

The revision reads as follows:

§ 17.86 Provision of hospital care and medical services during certain disasters and emergencies under 38 U.S.C. 1785.

* * * * *

(e) The cost of care for medical care and services provided under this section will be determined in accordance with the following:

(1) If the care is provided to an officer or employee of a non-VA Federal agency VA will charge the rate agreed upon by the Secretary and the head of such department or agency or the Secretary concerned. If no such rate has been agreed to, VA will charge the Inter-Agency Rate as prescribed in § 17.102(c).

(2) If the care is provided to a member of the Armed Forces VA will charge the rate agreed upon by the Secretary and the head of such branch or the Secretary concerned. If no such rate has been agreed to, VA will charge the Inter-Agency Rate as prescribed in § 17.102(c).

(3) If the care is authorized under a sharing agreement as described in 38 U.S.C. 8111 or 8153 or § 17.240, VA will charge the rate determined in accordance with the sharing agreement.

(4) If the care is provided to an individual who is responsible for the cost of the care, VA will charge the Cost-Based Rate as prescribed in § 17.102(c). Individuals will be responsible for the cost of care or services if mandated by Federal law (including applicable Appropriations Acts) or when the cost of care or services is not reimbursed by other-than-VA Federal departments or agencies.

* * * * *

■ 5. Revise § 17.102 to read as follows:

§ 17.102 Charges for care or services.

Subject to the methodology set forth in paragraph (c) of this section, and notwithstanding the provisions of § 17.101, VA shall charge for VA care and services provided in the circumstances described in this section.

(a) For hospital care or medical services provided:

(1) As a humanitarian service in a medical emergency in accordance with 38 U.S.C. 1784 or 38 U.S.C. 1784A;

(2) During and immediately following a disaster or emergency in accordance with 38 U.S.C. 1785 and § 17.86;

(3) While attending a national convention of an organization recognized under 38 U.S.C. 5902, for emergency medical treatment, in accordance with 38 U.S.C. 1711;

(4) In error, on the basis of eligibility as a non-veteran recipient of VA hospital care and medical services under title 38 U.S.C., and such an individual subsequently is determined not to have been eligible for such care or services;

(5) To a beneficiary of the Department of Defense or other Federal agency, to include for inpatient or outpatient care or services authorized for a member of the Armed Forces on active duty, a beneficiary or designee of any other Federal agency, and members or former members of a uniformed service who are entitled to retired or retainer pay, or equivalent pay; or

(6) To a retiree of the uniformed services with a chronic disability for hospital care identified in Executive Orders 10122, 10400, and 11733 as well as § 17.44.

(b) For hospital care, medical services, domiciliary care, or nursing home care provided:

(1) In error, on the basis of eligibility for such care and services as a veteran under § 17.34, § 17.36, or § 17.37, and such an individual was subsequently determined not to have been eligible for such care or services.

(2) To a discharged member of the armed forces of a nation allied with the United States in World War I or World War II in accordance with 38 U.S.C. 109.

(3) Under a sharing agreement in accordance with 38 U.S.C. 8111 or 8153 and § 17.240.

(4) Under any other provision of law that authorizes VA to provide care.

(c) Unless rates or charges are otherwise established in contract, in a sharing agreement, or under Federal law, VA will charge under this section at rates based on the Veterans Health Administration (VHA) Office of Finance Managerial Cost Accounting (MCA) Cost Reports, which sets forth the actual basic costs and per diem rates by type of inpatient care, and actual basic costs and rates for outpatient care visits. Factors for depreciation of buildings and equipment and Central Office overhead are added, based on accounting manual instructions. Additional factors are added for interest on capital investment and for standard fringe benefit costs covering government

employee retirement and disability costs. The VHA Office of Finance MCA Cost Reports are used to determine two separate rates: one rate is the general Cost-Based Rate and the other rate is the Inter-Agency Rate. These rates are published annually by VA on the internet site of the Veterans Health Administration Office of Community Care's website at *https://www.va.gov/communitycare/revenue_ops/payer_rates.asp.*

(d) The rates for prescription drugs that VA furnishes not administered during treatment are based on the actual cost of the drug plus a national average of VA administrative costs as described in § 17.101(m).

[FR Doc. 2022–25701 Filed 11–28–22; 8:45 am]

BILLING CODE 8320–01–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

43 CFR Part 8360

[LLCAC09000 L12200000 NU0000 21X]

Notice of Proposed Supplementary Rule for Public Lands in the Cotoni-Coast Dairies Unit of the California Coastal National Monument in Santa Cruz County, CA

AGENCY: Bureau of Land Management, Interior.

ACTION: Proposed supplementary rule.

SUMMARY: The Bureau of Land Management (BLM) is proposing a supplementary rule for all public lands within the Cotoni-Coast Dairies unit of the California Coastal National Monument in Santa Cruz County, California. The proposed supplementary rule would allow the BLM to manage recreation, address public safety, and provide resource protection on BLM-administered public lands within the Cotoni-Coast Dairies unit of the California Coastal National Monument.

DATES: Comments on the proposed supplementary rule must be received or postmarked by January 30, 2023 to be assured of consideration.

ADDRESSES: Written comments on the proposed supplementary rule can be delivered to the Bureau of Land Management, BLM Central Coast Field Office, 940 2nd Ave., Marina, CA 93933, or emailed to: *blm_ca_cotoni_coast_dairies@blm.gov.*

A link to this notice and a map depicting the area that would be affected by the proposed supplementary rule will be available to the public for review on the BLM website at *https://www.blm.gov/cotoni-coast-dairies,* and in the Central Coast Field Office.

FOR FURTHER INFORMATION CONTACT: Sky Murphy, Planning and Environmental Coordinator, BLM Central Coast Field Office; telephone: (831) 582–2200, email: *smurphy@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 for contacting Sky Murphy. 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 supplementary rule should be specific, confined to issues pertinent to the proposed supplementary rule, and should explain the reason for any recommended change. Where possible, comments should reference the specific section or paragraph of the rule that the comment is addressing. The BLM need not consider comments that the BLM receives after the close of the comment period (see **DATES**), unless they are postmarked or electronically dated before the deadline, or comments delivered to an address other than those listed earlier (see **ADDRESSES**).

Before including your address, telephone number, email address, or other personal identifying information in your comment, be advised 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 from public review your personal identifying information, we cannot guarantee that we will be able to do so. All submissions from organizations and businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses, will be available for public inspection in their entirety.

Upon its completion, the final supplementary rule will be available for inspection in the Central Coast Field Office (see **ADDRESSES**). The BLM will announce the publication of the final rule broadly through the news media and direct mail to the constituents included on the BLM mail list. The BLM will also provide information to interested agencies and organizations.

II. Background

The BLM establishes supplementary rules under the authority of 43 CFR 8365.1–6, which allows BLM State Directors to establish such rules for the protection of persons, property, and public lands and resources. This regulatory provision allows the BLM to issue rules of less than national effect without codifying the rules in the Code of Federal Regulations.

III. Discussion of Proposed Supplementary Rule

The BLM completed the Cotoni-Coast Dairies Resource Management Plan (RMP) Amendment on June 23, 2021, to establish land use decisions that protect the objects and values of the Cotoni-Coast Dairies unit of the California Coastal National Monument and support responsible recreation opportunities. Public participation during planning for use and enjoyment of the Cotoni-Coast Dairies unit indicates that it will be a popular area and a supplementary rule is needed to allow for law enforcement to enforce decisions to manage recreation and protect cultural and natural resources.

Thus, the proposed supplementary rule would apply to all the BLM-administered lands in the Cotoni-Coast Dairies unit. Persons performing essential operations central to the BLM's mission would be exempt. Such persons would include, for example, members of any organized law enforcement, rescue, or fire-fighting force.

The proposed supplementary rule is needed to provide consistency and uniformity for visitors to BLM-administered lands, prevent resource damage and user conflicts, and provide greater safety to the visiting public. Therefore, a supplementary rule is necessary to address the following issues and concerns:

Resource Damage: Presidential Proclamation 9563 added the Cotoni-Coast Dairies unit to the California Coastal National Monument and identified resource objects and values to be protected. A supplementary rule is needed to ensure protection of these resources, particularly biological and cultural resources.

Public Safety: As visitation increases among all types of recreational users, so do the conflicts between user groups. In crowded areas, conflicts among users increase risk to visitor safety. Other recreationists and nearby landowners also have concerns for their personal safety, as well as damage to property. A supplementary rule is needed to avoid or minimize such conflicts.

At present, no supplementary rules are in effect for BLM-administered lands

in the Cotoni-Coast Dairies unit. Therefore, this supplementary rule is needed to address management issues and concerns with respect to public use of this area.

IV. Procedural Matters

Executive Order 12866, Regulatory Planning and Review and Executive Order 13563—Improving Regulation and Regulatory Review

This proposed supplementary 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 supplementary rule would not have an annual effect of $100 million or more on the economy. It is not intended to affect commercial activity, but rather impose rules of conduct on recreational visitors for public safety and resource protection reasons in a limited area of public lands. This proposed supplementary 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. This proposed supplementary rule would not create a serious inconsistency or otherwise interfere with an action taken or planned by another agency. This proposed supplementary rule would not materially alter the budgetary effects of entitlements, grants, user fees, or loan programs, or the right or obligations of their recipients, nor does it raise novel legal or policy issues. It merely strives to protect public safety and the environment.

Regulatory Flexibility Act

Congress enacted the Regulatory Flexibility Act (RFA), 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 supplementary rule does not pertain specifically to commercial or governmental entities of any size, but to public recreational use of specific public lands. Therefore, the BLM has determined that under the RFA the proposed supplementary rule would not have a significant economic impact on a substantial number of small entities.

Small Business Regulatory Enforcement Fairness Act

This proposed supplementary rule would not constitute a ''major rule'' as defined at 5 U.S.C. 804(2). This proposed supplementary rule merely contains rules of conduct for recreational use of public lands. This proposed supplementary rule would not affect business, commercial, or industrial use of the public lands.

Unfunded Mandates Reform Act

This proposed supplementary 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. This proposed supplementary rule does not require anything of state, local, or Tribal governments. 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)

This proposed supplementary rule would not affect a taking of private property or otherwise have taking implications under Executive Order 12630. This proposed supplementary rule would not address property rights in any form and would not impair any property rights. Therefore, the BLM has determined that this proposed supplementary rule would not cause a taking of private property or require further discussion of takings implications under this Executive Order.

Executive Order 13132, Federalism

This proposed supplementary rule would not have a substantial direct effect on the states, on the relationship between the Federal government and the states, or on the distribution of power and responsibilities among the various levels of government. This proposed supplementary rule would apply to a limited area of land in only one state, California. This proposed supplementary rule contains rules of conduct for recreational use of BLM-administered public lands to protect public safety and the environment. Therefore, the BLM has determined that this proposed supplementary rule would not have sufficient federalism implications to warrant preparation of a federalism assessment.

Executive Order 12988, Civil Justice Reform

Under Executive Order 12988, the BLM has determined that this proposed supplementary rule would not unduly burden the judicial system and that the requirements of sections 3(a) and 3(b)(2) of the Order are met. More specifically, this proposed rule meets the criteria of section 3(a), which requires agencies to review all regulations to eliminate errors and ambiguity and to write all regulations to minimize litigation. This proposed rule also meets the criteria of section 3(b)(2), which requires agencies to write all regulations in clear language with clear legal standards.

Executive Order 13175, Consultation and Coordination With Indian Tribal Governments

The Department strives to strengthen its government-to-government relationship with Indian Tribes through a commitment to consultation with Indian Tribes and recognition of their right to self-governance and Tribal sovereignty. The BLM evaluated this proposed rule under the Department's consultation policy and under the criteria in Executive Order 13175 to identify possible effects of the rule on federally recognized Indian Tribes. The BLM has found that this proposed supplementary rule would have no substantial direct effects on federally recognized Indian Tribes and that consultation under the Department's Tribal consultation policy is not required. This proposed supplementary rule would not affect lands held in trust for the benefit of Native American Tribes, individual Indians, Aleuts, or others.

Paperwork Reduction Act

This proposed supplementary rule does not contain information collection requirements that the Office of Management and Budget must approve under the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.*

National Environmental Policy Act

The BLM's Cotoni-Coast Dairies RMP Amendment and Environmental Assessment, dated September 25, 2020, states that the BLM will incorporate rules and regulations to address the potential impacts of visitor use at Cotoni-Coast Dairies (p. 59). The proposed supplementary rule directly addresses conduct related to the allowable uses identified in the Cotoni-Coast Dairies Decision Record for the Approved Resource Management Plan Amendment dated June 23, 2021, to protect the environment and public safety. As documented in Environmental Assessment DOI–BLM–CA–C090–2019–0035–EA, and the associated Finding of No Significant Impact, the proposed supplementary rule does not constitute a major Federal

action significantly affecting the quality of the human environment under Section 102(2)(C) of the National Environmental Policy Act of 1969 (NEPA), 42 U.S.C. 4332(2)(C). Therefore, a detailed statement under NEPA is not required.

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

This proposed supplementary rule would not comprise a significant energy action. This supplementary rule would not have an adverse effect on energy supplies, production, or consumption. It only addresses rules of conduct for recreational use of BLM-administered public lands to protect public safety and the environment and has no connection with energy policy.

Clarity of the Proposed Supplementary Rule

Executive Order 12866 and Executive Order 13563 require each agency to write regulations that are simple and easy to understand. The BLM invites your comments on how to make this proposed supplementary rule easier to understand, including answers to questions such as the following:

(1) Are the requirements in the proposed supplementary rule clearly stated?

(2) Does the proposed supplementary rule contain technical language or jargon that interferes with its clarity?

(3) Does the format of the proposed supplementary rule (grouping and order of sections, use of headings, paragraphing, etc.) aid or reduce its clarity?

(4) Would the proposed supplementary rule be easier to understand if it were divided into more (but shorter) sections?

(5) Is the description of the proposed supplementary rule in Section III: Discussion of the Proposed Supplementary Rule, helpful in understanding the proposed supplementary rule? How could this description be more helpful in making the proposed supplementary rule easier to understand?

Please send any comments you may have on the clarity of the proposed supplementary rule to one of the addresses specified in the **ADDRESSES** section before the close of the comment period specified in the **DATES** section.

Author

The principal author of the proposed supplementary rule is Nicholas Lasher, BLM Law Enforcement Officer for the Central Coast Field Office, California.

V. Proposed Rule

For the reasons stated in the Section III: Discussion of the Proposed Supplementary Rule, and under the authority for supplementary rules at 43 U.S.C. 1740 and 43 CFR 8365.1–6, the California State Director, Bureau of Land Management, proposes to issue this supplementary rule that would apply to all public lands included in the Cotoni-Coast Dairies unit (Cotoni-Coast Dairies) of the California Coastal National Monument to read as follows:

Definitions

Designated roads and trails means any road or trail that the BLM has posted as open for public use.

Pet means any domestic animal that is not classified as a ''service animal''.

Public lands means any lands or interest in lands managed by the BLM.

Public road means any road, dirt or otherwise, on which public motorized vehicular traffic is permitted.

Recreational target shooting means shooting a weapon for recreational purposes when game is not being pursued. Weapon means any firearm, cross bow, bow and arrow, paint gun, fireworks, or explosive device capable of propelling a projectile either by means of an explosion or by string or spring.

Service animal means a dog, or other animal, that is individually trained to do work or perform tasks for people with disabilities as covered under the Americans with Disabilities Act.

Traffic control devices means markers, signs, and signal devices used to inform, guide, and control traffic, including pedestrians, motorists, cyclists, or electronic mobility products.

Unattended pet means any pet that is unaccompanied by an owner or handler, even if on a tether, within a crate, or within an unoccupied motor vehicle.

Unmanned aerial vehicle means any aircraft without a human pilot on board.

Restrictions on Public Lands in the Cotoni Coast Dairies Unit of the California Coastal National Monument

1. All public use is restricted to designated roads and trails.

2. Bicycles and bicycle riding are prohibited except on designated roads and trails that are posted as open for bicycle and bicycle riding use.

3. Class I and Class II electric bicycles, as defined in 43 CFR 8340.0–5(j), and riding electric bikes are prohibited except on designated roads and trails that are posted as open for their use. All other electric bicycles and other electric mobility products are prohibited except within established parking areas and public roads.

4. Horseback riding is prohibited except on designated roads and trails that are posted as open for horseback riding use.

5. Violation of any posted sign, rule, or notification, including any traffic control devices, is prohibited.

6. Established parking areas are for the use of visitors to Cotoni-Coast Dairies unit of the California Coastal National Monument only.

7. Use and occupancy of all lands within the Cotoni-Coast Dairies are prohibited from ½ hour after sunset to ½ hour before sunrise.

8. Pets are prohibited except on designated roads and trails that are posted as open for their use. Service animals are exempt from this rule.

9. All pets must be physically restrained, or on a leash or cord not to exceed 6 feet in length, at all times.

10. Visitors are prohibited from leaving a pet unattended.

11. It is unlawful for the owner or person having custody of any pet to allow pet feces to remain on Cotoni-Coast Dairies, either willfully or through failure to exercise due care or control, other than within trash receptacles provided for such purposes.

12. Fires of any kind are prohibited, including open fire, wood, charcoal, and gas.

13. Abandoning property or leaving property unattended for more than 24 hours is prohibited. The BLM may remove and appropriately dispose of unattended property.

14. Construction or building of any structure is prohibited.

15. Placing flagging, markings, or signs of any kind is prohibited.

16. Possession or use of a mineral or metal detector, magnetometer, side scan sonar, other metal detecting device, or sub-bottom profiler is prohibited.

17. The taking of wildlife, except for authorized hunting activities in accordance with California Department of Fish and Wildlife regulations, and possessing unlawfully taken wildlife or portions thereof, is prohibited.

18. Disturbing wildlife with audio devices, including speakers, air horns, and musical instruments, is prohibited.

19. Taking off or landing of aircraft, including unmanned aerial vehicles, is prohibited.

20. Paragliding, hang-gliding, and similar recreational uses are prohibited from taking off or landing within the Cotoni-Coast unit of the California Coastal National Monument.

21. Recreational target shooting is prohibited.

22. The following persons are exempt from these final supplementary rules: Any Federal, State, or local officer or

employee in the scope of their duties; members of any organized law enforcement, rescue, or fire-fighting force in performance of an official duty; and any person whose activities are authorized in writing by the BLM.

Enforcement

Any person who violates any of these supplementary rules may be tried before a United States Magistrate and fined in accordance with 18 U.S.C. 3571, imprisoned no more than 12 months under 43 U.S.C. 1733(a) and 43 CFR 8360.0–7, or both. In accordance with 43 CFR 8365.1–7, State or local officials may also impose penalties for violations of California law.

(Authority: 43 CFR 8365.1–6)

Karen Mouritsen,

BLM California State Director.

[FR Doc. 2022–25810 Filed 11–28–22; 8:45 am]

BILLING CODE 4310–40–P

FEDERAL MARITIME COMMISSION

46 CFR Part 541

[Docket No. FMC–2022–0066]

RIN 3072–AC90

Demurrage and Detention Billing Requirements

AGENCY: Federal Maritime Commission.

ACTION: Proposed rule; finding of no significant impact.

SUMMARY: This document announces the availability of the Federal Maritime Commission's (Commission) draft Finding of No Significant Impact (FONSI) related to the proposed regulations on Demurrage and Detention Billing Requirements.

DATES: Petitions for review of the Commission's FONSI under NEPA must be submitted on or before December 9, 2022

ADDRESSES: You may submit petitions for review by using the Federal eRulemaking Portal at *www.regulations.gov,* under Docket No. FMC–2022–0066, Demurrage and Detention Billing Requirements.

FURTHER INFORMATION CONTACT: William Cody, Secretary; Phone: (202) 523–5908; Email: *secretary@fmc.gov.*

SUPPLEMENTARY INFORMATION: On October 14, 2022, the Commission issued a notice of proposed rulemaking (NPRM) for new regulations on demurrage and detention billing requirements.[1] In the NPRM, the Commission determined that the proposed rule did not constitute a major Federal action significantly affecting the quality of the human environment within the meaning of the National Environmental Policy Act of 1969, 42 U.S.C. 4321 *et seq.,* and that preparation of an environmental impact statement is not required.[2] The Commission also noted that the FONSI and environmental assessment would be available for inspection on the docket at *https://www.regulations.gov.*

On November 15, 2022, the Commission issued a notice that the FONSI was available on the docket. There was a delay, however, in posting the FONSI, and it was posted on November 22, 2022. Therefore, the Commission is issuing another notice that the FONSI is now available on the docket. This Finding of No Significant Impact will become final within 10 days of publication of this document in the **Federal Register** unless a petition for review is filed by using the Federal eRulemaking Portal at *www.regulations.gov.*

By the Commission.

William Cody,

Secretary.

[FR Doc. 2022–26025 Filed 11–25–22; 8:45 am]

BILLING CODE 6730–02–P

[1] 87 FR 62341 (Oct. 14, 2022).

[2] 87 FR at 62356.

Notices

Federal Register
Vol. 87, No. 228
Tuesday, November 29, 2022

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

[Doc. No. AMS–FGIS–22–0075]

Grain Inspection Advisory Committee Meeting

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Notice of Federal Advisory Committee meeting.

SUMMARY: Pursuant to the Federal Advisory Committee Act, this constitutes notice of the upcoming meeting of the Grain Inspection Advisory Committee (Advisory Committee). The Advisory Committee meets no less than once annually to advise the Secretary on the programs and services delivered by the Agricultural Marketing Service (AMS) under the U.S. Grain Standards Act. Recommendations by the Advisory Committee help AMS meet the needs of its customers, who operate in a dynamic and changing marketplace.

DATES: December 14, 2022, 8:30 a.m. to 5 p.m. Central & December 15, 2022, 8:30 a.m. to 12 p.m. Central.

Written Comments: Written public comments will be accepted on or before 11:59 p.m. ET on December 9, 2022, via email to *Kendra.C.Kline@usda.gov.* Comments submitted after this date will be provided to AMS, but the Committee may not have adequate time to consider those comments prior to the meeting.

Oral Comments: The Committee is providing the public an opportunity to provide oral comments and will accommodate as many individuals and organizations as time permits. Persons or organizations wishing to make oral comments must pre-register by 11:59 p.m. ET, December 9, 2022, and may register for only one speaking slot. Instructions for registering and participating in the meeting can be obtained by contacting the person listed in the **FOR FURTHER INFORMATION CONTACT** section by or before the deadline.

ADDRESSES: *Meeting Location:* The Advisory Committee meeting will take place at the AMS National Grain Center, 10383 N Ambassador Drive, Kansas City, Missouri 64153. The meeting will also be virtually accessible. Meeting information can be found at: *https://www.ams.usda.gov/about-ams/facas-advisory-councils/giac.*

FOR FURTHER INFORMATION CONTACT: Kendra Kline by phone at (202) 690–2410 or by email at *Kendra.C.Kline@usda.gov.*

SUPPLEMENTARY INFORMATION: The purpose of the Advisory Committee is to provide advice to AMS with respect to the implementation of the U.S. Grain Standards Act (7 U.S.C. 71–87k). Information about the Advisory Committee is available on the AMS website at *https://www.ams.usda.gov/about-ams/facas-advisory-councils/giac.* The agenda for the upcoming meeting will include updates on previous Advisory Committee recommendations, general program updates, and discussions about Destination and Origin Grades and Technology Prioritization.

Public participation will be limited to written statements and interested parties who have registered to present comments orally to the Advisory Committee.

Written Comments: Written public comments will be accepted on or before 11:59 p.m. ET on December 9, 2022, via email to *Kendra.C.Kline@usda.gov.* Comments submitted after this date will be provided to AMS, but the Committee may not have adequate time to consider those comments prior to the meeting. **FOR FURTHER INFORMATION CONTACT** section by or before the deadline.

Oral Comments: The Committee is providing the public an opportunity to provide oral comments and will accommodate as many individuals and organizations as time permits. Persons or organizations wishing to make oral comments must pre-register by 11:59 p.m. ET, December 9, 2022, and may register for only one speaking slot. Instructions for registering and participating in the meeting can be obtained by contacting the person listed in the **FOR FURTHER INFORMATION CONTACT** section by or before the deadline.

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

Persons with disabilities who require alternative means of communication of program information or related accommodations should contact Kendra Kline at the telephone number or email listed above.

Dated: November 22, 2022.

Cikena Reid,

USDA Committee Management Officer.

[FR Doc. 2022–25975 Filed 11–28–22; 8:45 am]

BILLING CODE P

DEPARTMENT OF AGRICULTURE

Submission for OMB Review; Comment Request

The Department of Agriculture has submitted the following information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104–13. Comments are required regarding; whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; the accuracy of the agency's estimate of burden including the validity of the methodology and assumptions used; ways to enhance the quality, utility and clarity of the information to be collected; and ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

Comments regarding this information collection received by December 29, 2022 will be considered. Written comments and recommendations for the proposed information collection should be submitted within 30 days of the

publication of this notice on the following website *www.reginfo.gov/public/do/PRAMain.* Find this particular information collection by selecting ''Currently under 30-day Review—Open for Public Comments'' or by using the search function.

An agency may not conduct or sponsor a collection of information unless the collection of information displays a currently valid OMB control number and the agency informs potential persons who are to respond to the collection of information that such persons are not required to respond to the collection of information unless it displays a currently valid OMB control number.

Farm Service Agency

Title Servicing Minor Program Loans.

OMB Control Number: 0560–0230.

Summary of Collection: The Farm Service Agency (FSA) is conducting this revision due to Executive Order 14058 issued by the White House, that tasked the Secretary of Agriculture with simplifying the direct loan application process; so this collection was affected. FSA Farm Loan Program staff provides supervised credit in the form of loans to family farmers and ranchers to purchase land and finance agricultural production. Regulations are promulgated to implement selected provisions of sections 331 and 335 of the Consolidated Farm and Rural Development Act (CONACT). FSA is authorized under the Section 331 to grant releases from personal liability where security property is transferred to approve applicants who, under agreement, assume the outstanding secured indebtedness and to provide servicing authority covered in the Section 335 for real estate security; operation or lease of realty, disposition of surplus property; conveyance of complete interest of the United States; easements; and condemnations. The information is also collected from FSA Minor Program borrowers who may be individual farmers or farming partnerships, associations, or corporations.

Need and Use of the Information: FSA will collect information related to a program benefit recipient or loan borrower requesting action on security they own, which was purchased with FSA loan funds, improved with FSA loan funds or has otherwise been mortgaged to FSA to secure a government loan. The information collected is primarily financial data, such as borrower's asset values, current financial information and public use and employment data. The information collection will be used solely by the Farm Loan Programs in FSA. Failure to obtain this information at the time of the request for servicing will result in rejection of the borrower's request.

Description of Respondents: Farms; Individuals or households; Business or other-for-profit; Not-for-profit institutions; State. Local and Tribal Government.

Number of Respondents: 58.

Frequency of Responses: Reporting: On occasion; Annually.

Total Burden Hours: 37.

Farm Service Agency

Title: 7 CFR 765, Direct Loan Servicing—Regular.

OMB Control Number: 0560–0236.

Summary of Collection: FSA is conducting this revision due to Executive Order 14058 issued by the White House, that tasked the Secretary of Agriculture with simplifying the direct loan application process; this collection was affected. Authority to establish the regulatory requirements contained in 7 CFR 765 is provided under 5 U.S.C. 301, which provides that ''The Head of an Executive department or military department may prescribe regulations for the government of his department, the distribution and performance of its business. . .'' The Secretary delegated authority to administer the provisions of the applicable to the Farm Loan Program (FLP) to the Under Secretary for Farm and Foreign Agricultural Service in section 2.16 of 7 CFR part 2. FLP provides loans to family farmers to purchase real estate equipment and finance agricultural production. The regulations covered by this information collection request describes, the policies and procedures FLP uses to service most FLP loans to ensure borrowers are meeting the requirements of their loan agreements.

Need and Use of the Information: Information requested under this collection is submitted by borrowers to the local agency office serving the county in which their business is headquartered. The information is used by FLP to manage application of proceeds from the sale of agency security, consider whether a borrower is in compliance with their loan covenants, assist the borrower in achieving their business goals, conduct day-to-day management of the agency's loan portfolio, and ensure that the agency's interests are protected. Failure to collect the information or collecting it less frequently could result in the failure of the farm operation or loss of agency security property or position.

Description of Respondents: Business or other for-profit; farms.

Number of Respondents: 94,591.

Frequency of Responses: Reporting: On occasion; annually.

Total Burden Hours: 30,550.

Ruth Brown,

Departmental Information Collection Clearance Officer.

[FR Doc. 2022–26034 Filed 11–28–22; 8:45 am]

BILLING CODE 3410–05–P

DEPARTMENT OF AGRICULTURE

Forest Service

Southern Montana Resource Advisory Committee

AGENCY: Forest Service, Agriculture (USDA).

ACTION: Notice of meeting.

SUMMARY: The Southern Montana 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 Custer Gallatin 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/custergallatin/workingtogether/advisorycommittees/?cid=stelprd3841767*.

DATES: The meeting will be held on December 14, 2022, 6 p.m. to 8:30 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 virtually via telephone and/or video conference on the Microsoft Teams platform. 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: Kathy Minor, Designated Federal Officer (DFO), by phone at 406–587–6776 or email at *kathleen.minor@usda.gov* or Kat Barker, RAC Coordinator, at 406–522–2536 or email at *kathryn.barker@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. Hear from Title II project proponents and discuss Title II project proposals;

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 Kat Barker, RAC Coordinator, 3710 Fallon Street Suite C, Bozeman, MT 59718; or by email to *kathryn.barker@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. 2022–25972 Filed 11–28–22; 8:45 am]

BILLING CODE 3411–15–P

COMMISSION ON CIVIL RIGHTS

Notice of Public Meeting of the Colorado Advisory Committee

AGENCY: U.S. Commission on Civil Rights.

ACTION: Announcement of meeting.

SUMMARY: Notice is hereby given, pursuant to the provisions of the rules and regulations of the U.S. Commission on Civil Rights (Commission) and the Federal Advisory Committee Act that the Colorado Advisory Committee (Committee) to the U.S. Commission on Civil Rights will hold a meeting on Wednesday, December 14, 2022, from 3–4 p.m. Mountain Time. The purpose of the meeting is to plan for upcoming briefings on school attendance zones.

DATES: Wednesday, December 14, 2022; 3–4 p.m. (MT).

Join by Web Conference (Zoom Link for both dates): https://tinyurl.com/279fjudv.

Join by Phone Only: 1–551–285–1373 (USA Toll Free); Meeting ID: 160 614 2807#

FOR FURTHER INFORMATION CONTACT: Ana Victoria Fortes, DFO, at *afortes@usccr.gov* or 202–681–0857.

SUPPLEMENTARY INFORMATION: Members of the public can listen to these discussions. Committee meetings are available to the public through the above call in number. Any interested member of the public may call this number and listen to the meeting. An open comment period will be provided to allow members of the public to make a statement as time allows. Callers can expect to incur regular charges for calls they initiate over wireless lines, according to their wireless plan. The Commission will not refund any incurred charges. Callers will incur no charge for calls they initiate over land-line connections to the toll-free telephone number. Individuals who are deaf, deafblind and hard of hearing may also follow the proceedings by first calling the Federal Relay Service at 1–800–877–8339 and providing the Service with the conference call number and conference ID number.

Members of the public are also entitled to submit written comments; the comments must be received in the regional office within 30 days following the meeting. Written comments may be emailed to Evelyn Bohor at *ebohor@usccr.gov*. Persons who desire additional information may contact the Regional Programs Unit at (312) 353–8311.

Records generated from this meeting may be inspected and reproduced at the Regional Programs Unit Office, as they become available, both before and after the meeting. Records of the meeting will be available via *www.facadatabase.gov* under the Commission on Civil Rights, Colorado Advisory Committee link. Persons interested in the work of this Committee are directed to the Commission's website, *http://www.usccr.gov,* or may contact the Regional Programs Unit at the above email or street address.

Agenda

Wednesdays, December 14, 2022; 3–4 p.m. (MT)

I. Welcome and Roll Call
II. Briefing Planning
III. Public Comment
IV. Discuss Next Steps
V. Adjournment

Dated: November 22, 2022.

David Mussatt,

Supervisory Chief, Regional Programs Unit.

[FR Doc. 2022–25935 Filed 11–28–22; 8:45 am]

BILLING CODE P

COMMISSION ON CIVIL RIGHTS

Notice of Public Meeting of the New York Advisory Committee to the U.S. Commission on Civil Rights

AGENCY: U.S. Commission on Civil Rights.

ACTION: Notice of Virtual Business Meeting.

SUMMARY: Notice is hereby given, pursuant to the provisions of the rules and regulations of the U.S. Commission on Civil Rights (Commission) and the Federal Advisory Committee Act, that the New York Advisory Committee (Committee) will hold a virtual business meeting via Zoom on Friday, December 16, 2022, at 1 p.m. Eastern Time, for the

purpose of debriefing testimony heard on the child welfare system in New York.

DATES: The meeting will take place on Friday, December 16, 2022, from 1 p.m.–2:30 p.m. ET.

Registration Link: https://tinyurl.com/44zu7u9f.

Telephone (Audio Only): Dial (833) 435–1820 USA Toll-Free; Meeting ID: 160 437 4668.

FOR FURTHER INFORMATION CONTACT: Mallory Trachtenberg, DFO, at *mtrachtenberg@usccr.gov* or (202) 809–9618.

SUPPLEMENTARY INFORMATION: Committee meetings are available to the public through the conference link above. Any interested member of the public may listen to the meeting. An open comment period will be provided to allow members of the public to make a statement as time allows. If joining via phone, callers can expect to incur regular charges for calls they initiate over wireless lines, according to their wireless plan. The Commission will not refund any incurred charges. Individuals who are deaf, deafblind, and hard of hearing may also follow the proceedings by first calling the Federal Relay Service at (800) 877–8339 and providing the Service with the conference details found through registering at the web link above. To request additional accommodations, please email Sarah Villanueva at *svillanueva@usccr.gov* at least ten (10) days prior to the meeting.

Members of the public are also entitled to submit written comments; the comments must be received within 30 days following the meeting. Written comments may be emailed to *svillanueva@usccr.gov.* Persons who desire additional information may contact the Regional Programs Coordination Unit at (312) 353–8311.

Records generated from this meeting may be inspected and reproduced at the Regional Programs Coordination Unit as they become available, both before and after the meeting. Records of the meeting will be available via *www.facadatabase.gov* under the Commission on Civil Rights, New York Advisory Committee link. Persons interested in the work of this Committee are directed to the Commission's website, *http://www.usccr.gov,* or may contact the Regional Programs Coordination Unit at the above phone number.

Agenda

I. Welcome and Roll Call
II. Approval of Minutes
III. Briefing Planning
IV. Public Comment
V. Next Steps
VI. Adjournment

Dated: November 22, 2022.

David Mussatt,

Supervisory Chief, Regional Programs Unit.

[FR Doc. 2022–25934 Filed 11–28–22; 8:45 am]

BILLING CODE 6335–01–P

COMMISSION ON CIVIL RIGHTS

Notice of Public Meeting of the Arizona Advisory Committee

AGENCY: U.S. Commission on Civil Rights.

ACTION: Announcement of a virtual business meeting.

SUMMARY: Notice is hereby given, pursuant to the provisions of the rules and regulations of the U.S. Commission on Civil Rights (Commission) and the Federal Advisory Committee Act (FACA) that the Arizona Advisory Committee (Committee) to the Commission will hold a virtual business meeting via ZoomGov on Friday, December 2, 2022, from 11 a.m. to 12:30 p.m. Arizona Time, for the purpose of discussing and potentially voting on the project proposal.

DATES: The meeting will take place on:

- Friday, December 2, 2022, from 11 a.m.–12:30 p.m. Arizona Time

Access Information

Link to Join (Audio/Visual): https://tinyurl.com/mr2cycdf.

Telephone (Audio Only) Dial: 1–833–568–8864 (US Toll-free); Meeting ID: 161 809 7593#

FOR FURTHER INFORMATION CONTACT: Kayla Fajota, DFO, at *kfajota@usccr.gov* or (434) 515–2395.

SUPPLEMENTARY INFORMATION: Persons with hearing impairments may also follow the proceedings by first calling the Federal Relay Service at 1–800–877–8339 and providing the Service with the conference call number and conference ID number.

Members of the public are entitled to make comments during the open period at the end of the meeting. Members of the public may also submit written comments; the comments must be received in the Regional Programs Unit within 30 days following the meeting. Written comments may be mailed to the Western Regional Office, U.S. Commission on Civil Rights, 300 North Los Angeles Street, Suite 2010, Los Angeles, CA 90012 or email Kayla Fajota (DFO) at *kfajota@usccr.gov.*

Records and documents discussed during the meeting will be available for public viewing prior to and after the meetings at *https://www.facadatabase.gov/FACA/FACAPublicViewCommitteeDetails?id=a10t0000001gzl2AAA.*

Please click on the ''Committee Meetings'' tab. Records generated from these meetings may also be inspected and reproduced at the Regional Programs Unit, as they become available, both before and after the meetings. Persons interested in the work of this Committee are directed to the Commission's website, *https://www.usccr.gov,* or may contact the Regional Programs Unit at the above email or street address.

Agenda

I. Welcome and Roll Call
II. Announcements and Updates
III. Approval of November 4, 2022, Meeting Minutes
IV. Discussion and Potential Vote: Project Proposal Draft
V. Next Steps
VI. Public Comment
VII. Adjournment

Exceptional Circumstance: Pursuant to 41 CFR 102–3.150, the notice for this meeting is given fewer than 15 calendar days prior to the meeting because of the exceptional circumstances of staffing shortage.

Dated: November 22, 2022.

David Mussatt,

Supervisory Chief, Regional Programs Unit.

[FR Doc. 2022–25954 Filed 11–28–22; 8:45 am]

BILLING CODE P

COMMISSION ON CIVIL RIGHTS

Notice of Public Meetings of the Arkansas Advisory Committee

AGENCY: U.S. Commission on Civil Rights.

ACTION: Announcement of meeting.

SUMMARY: Notice is hereby given, pursuant to the provisions of the rules and regulations of the U.S. Commission on Civil Rights (Commission) and the Federal Advisory Committee Act that the Arkansas Advisory Committee (Committee) will hold a virtual (online) meeting Monday, January 9, 2023 at 12 p.m. central time. The purpose of the meeting is for the Committee to conduct its final review of its report on IDEA compliance and implementation in AR schools and to vote on its approval for publication.

DATES: The meeting will be held on Monday, January 9, 2023 at 12 p.m. central time.

ADDRESSES:

Web Access (audio/visual): Register at: bit.ly/3UH0nQl.

Phone Access (audio only): 833–435–1820, Meeting ID 161 748 6817.

FOR FURTHER INFORMATION CONTACT: Melissa Wojnaroski, Designated Federal Officer, at *mwojnaroski@usccr.gov* or (202) 618–4158.

SUPPLEMENTARY INFORMATION: Members of the public may join online or listen to this discussion through the above registration link or call-in number. An open comment period will be provided to allow members of the public to make a statement as time allows. Callers can expect to incur regular charges for calls they initiate over wireless lines, according to their wireless plan. The Commission will not refund any incurred charges. Closed captions will be provided. Individuals who are deaf, deafblind and hard of hearing may also follow the proceedings by first calling the Federal Relay Service at 1–800–877–8339 and providing the Service with the conference call number and conference ID number.

Members of the public are entitled to submit written comments; the comments must be received in the regional office within 30 days following the meeting. Written comments may be emailed to Melissa Wojnaroski at *mwojnaroski@usccr.gov*.

Records generated from this meeting may be inspected and reproduced at the Regional Programs Unit Office, as they become available, both before and after the meeting. Records of the meeting will be available via *www.facadatabase.gov* under the Commission on Civil Rights, Arkansas Advisory Committee link. Persons interested in the work of this Committee are directed to the Commission's website, *http://www.usccr.gov,* or may contact the Regional Programs Unit at the above email or street address.

Agenda

I. Welcome & Roll Call
II. Committee Discussion: IDEA Compliance and Implementation in Arkansas Schools
III. Next Steps
IV. Public Comment
V. Adjournment

Dated: November 22, 2022.

David Mussatt,

Supervisory Chief, Regional Programs Unit.

[FR Doc. 2022–25942 Filed 11–28–22; 8:45 am]

BILLING CODE P

COMMISSION ON CIVIL RIGHTS

Notice of Public Meeting of the Nevada Advisory Committee; Cancellation

AGENCY: Commission on Civil Rights.

ACTION: Notice; cancellation of meeting date.

SUMMARY: The Commission on Civil Rights published a notice in the **Federal Register** concerning a meeting of the Nevada Advisory Committee. The meeting scheduled for Monday, December 12, 2022, at 3 p.m. (PT) is cancelled. The notice is in the **Federal Register** of Friday, October 14, 2022, in FR Doc. 2022–22374, in the second column of page 62360 and in the first column of page 62361.

FOR FURTHER INFORMATION CONTACT: Ana Victoria Fortes, (202) 681–0857, *afortes@usccr.gov.*

Dated: November 22, 2022.

David Mussatt,

Supervisory Chief, Regional Programs Unit.

[FR Doc. 2022–25937 Filed 11–28–22; 8:45 am]

BILLING CODE P

COMMISSION ON CIVIL RIGHTS

Notice of Public Meetings of the Pennsylvania Advisory Committee to the U.S. Commission on Civil Rights

AGENCY: U.S. Commission on Civil Rights.

ACTION: Announcement of meetings.

SUMMARY: Notice is hereby given, pursuant to the provisions of the rules and regulations of the U.S. Commission on Civil Rights (Commission) and the Federal Advisory Committee Act that the Pennsylvania Advisory Committee (Committee) to the U.S. Commission on Civil Rights will hold a Zoom meeting on Tuesday December 13, 2022 from 2 p.m.–3 p.m. eastern time. The purpose of the meeting is to discuss/debrief of themes that have emerged from the Committee testimony on zoning practices and fair housing in the commonwealth.

DATES: Tuesday December 13, 2022 from 2 p.m.–3 p.m. eastern time.

ADDRESSES:

Registration (Audio/Visual): http://bit.ly/3tP9pi9.

Telephone (Audio Only): (833) 435–1820 Toll Free; Meeting ID: 161 750 6864.

FOR FURTHER INFORMATION CONTACT: Melissa Wojnaroski, DFO, at *mwojnaroski@usccr.gov* or (202) 618–4158.

SUPPLEMENTARY INFORMATION: Members of the public may listen to these discussions. Committee meetings are available to the public through the above listed online registration link. An open comment period will be provided to allow members of the public to make a statement as time allows. Callers can expect to incur regular charges for calls they initiate over wireless lines, according to their wireless plan. The Commission will not refund any incurred charges. Closed captions will be provided. Individuals with disabilities requiring other accommodations may contact Corrine Sanders at *csanders@usccr.gov* 10 days prior to the meeting to make their request.

Members of the public are also entitled to submit written comments; the comments must be received in the regional office within 30 days following the meeting. Written comments may be emailed to *csanders@usccr.gov.* Persons who desire additional information may contact the Regional Programs Unit at (202) 618–4158.

Records generated from this meeting may be inspected and reproduced as they become available, both before and after the meeting. Records of the meeting will be available via *www.facadatabase.gov* under the Commission on Civil Rights, Pennsylvania Advisory Committee link. Persons interested in the work of this Committee are directed to the Commission's website, *http://www.usccr.gov,* or may contact the Regional Programs Unit at the above email address.

Agenda

Welcome and Roll Call
Discussion: Civil Rights and Fair Housing in Pennsylvania
Public Comment
Adjournment

Dated: November 22, 2022.

David Mussatt,

Supervisory Chief, Regional Programs Unit.

[FR Doc. 2022–25940 Filed 11–28–22; 8:45 am]

BILLING CODE 6335–01–P

COMMISSION ON CIVIL RIGHTS

Notice of Public Meetings of the Ohio Advisory Committee to the U.S. Commission on Civil Rights

AGENCY: U.S. Commission on Civil Rights.

ACTION: Announcement of meeting.

SUMMARY: Notice is hereby given, pursuant to the provisions of the rules and regulations of the U.S. Commission on Civil Rights (Commission) and the Federal Advisory Committee Act, that the Ohio Advisory Committee (Committee) will hold a virtual meeting on Monday, December 12, 2022, at 12:00 p.m. Eastern Time. The purpose of the meeting is to discuss the draft proposal

on source of income discrimination in housing in Ohio.

DATES: The meeting will take place on Monday, December 12, 2022, at 12 p.m. ET.

Registration Link: https://tinyurl.com/y88sdm4b.

Join by Phone: (833) 435–1820 USA Toll Free; Meeting ID: 161 842 4042.

FOR FURTHER INFORMATION CONTACT: Melissa Wojnaroski, DFO, at *mwojnaroski@usccr.gov* or (202) 618–4158.

SUPPLEMENTARY INFORMATION: Committee meetings are available to the public through the conference registration link or telephone number listed above. Any interested member of the public may listen to the meeting. An open comment period will be provided to allow members of the public to make a statement as time allows. If joining via phone, callers can expect to incur regular charges for calls they initiate over wireless lines, according to their wireless plan. The Commission will not refund any incurred charges. Individuals who are deaf, deafblind, and hard of hearing may also follow the proceedings by first calling the Federal Relay Service at 1 (800) 877–8339 and providing the Service with the conference details found through registering at the web link above. To request additional accommodations, please email *mwojnaroski@usccr.gov* at least ten (10) days prior to the meeting.

Members of the public are also entitled to submit written comments; the comments must be received within 30 days following the meeting. Written comments may be emailed to *mwojnaroski@usccr.gov*. Persons who desire additional information may contact the Regional Programs Coordination Unit at (312) 353–8311.

Records generated from this meeting may be inspected and reproduced at the Regional Programs Coordination Unit Office, as they become available, both before and after the meeting. Records of the meeting will be available via *www.facadatabase.gov* under the Commission on Civil Rights, Ohio Advisory Committee link. Persons interested in the work of this Committee are directed to the Commission's website, *http://www.usccr.gov,* or may contact the Regional Programs Coordination Unit at the above phone number.

Agenda

I. Welcome & Roll Call
II. Administration
III. Discussion: Draft Proposal on source of income discrimination in housing in Ohio
IV. Next Steps
V. Public Comments
VI. Adjournment

Dated: November 22, 2022.

David Mussatt,

Supervisory Chief, Regional Programs Unit.

[FR Doc. 2022–25938 Filed 11–28–22; 8:45 am]

BILLING CODE P

COMMISSION ON CIVIL RIGHTS

Notice of Public Meetings of the Mississippi Advisory Committee to the U.S. Commission on Civil Rights

AGENCY: U.S. Commission on Civil Rights.

ACTION: Announcement of meeting.

SUMMARY: Notice is hereby given, pursuant to the provisions of the rules and regulations of the U.S. Commission on Civil Rights (Commission) and the Federal Advisory Committee Act that the Mississippi Advisory Committee (Committee) will hold a meeting on Monday, December 12, 2022 at 11 a.m.–12 p.m. Central time. The Committee will continue identifying potential civil rights topics for their first study of the 2021–2025 term.

DATES: The meeting will take place on Monday, December 12, 2022 at 11 a.m. Central Time.

Public Call Information: Dial: 833–435–1820, Confirmation Code: 160 767 0173.

Join from the meeting link *https://www.zoomgov.com/j/1607670173*.

FOR FURTHER INFORMATION CONTACT: David Barreras, DFO, at *dbarreras@usccr.gov* or (312) 353–8311.

SUPPLEMENTARY INFORMATION: Members of the public may listen to this discussion through the above call in number. An open comment period will be provided to allow members of the public to make a statement as time allows. The conference call operator will ask callers to identify themselves, the organization they are affiliated with (if any), and an email address prior to placing callers into the conference room. Callers can expect to incur regular charges for calls they initiate over wireless lines, according to their wireless plan. The Commission will not refund any incurred charges. Callers will incur no charge for calls they initiate over land-line connections to the toll-free telephone number. Individual who is deaf, deafblind and hard of hear hearing may also follow the proceedings by first calling the Federal Relay Service at 1–800–877–8339 and providing the Service with the conference call number and confirmation code.

Members of the public are entitled to submit written comments; the comments must be received in the regional office within 30 days following the meeting. Written comments may be mailed to the Regional Programs Unit, U.S. Commission on Civil Rights, 230 S Dearborn, Suite 2120, Chicago, IL 60604. They may also be faxed to the Commission at (312) 353–8324, or emailed to Corrine Sanders at *csanders@usccr.gov*. Persons who desire additional information may contact the Regional Programs Unit at (312) 353–8311.

Records generated from this meeting may be inspected and reproduced at the Regional Programs Unit Office, as they become available, both before and after the meeting. Records of the meeting will be available via *www.facadatabase.gov* under the Commission on Civil Rights, Mississippi Advisory Committee link. Persons interested in the work of this Committee are directed to the Commission's website, *http://www.usccr.gov,* or may contact the Regional Programs Unit at the above email or street address.

Agenda

I. Welcome and roll call
II. Discuss Civil Rights Topics
III. Public comment
IV. Next steps
V. Adjournment

Dated: November 22, 2022.

David Mussatt,

Supervisory Chief, Regional Programs Unit.

[FR Doc. 2022–25939 Filed 11–28–22; 8:45 am]

BILLING CODE P

DEPARTMENT OF COMMERCE

Agency Information Collection Activities; Submission to the Office of Management and Budget (OMB) for Review and Approval; Comment Request; Identifying Actionable Opportunities To Advance Equity and Remove Barriers To Support Underserved Communities

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 November 2, 2021, during a 60-day comment period. This notice allows for an additional 30 days for public comments.

Agency: Department of Commerce.

Title: Identifying Actionable Opportunities to Advance Equity and Remove Barriers to Support Underserved Communities.

OMB Control Number: 0690–NEW.

Form Number(s): New.

Type of Request: Regular submission, new collection.

Number of Respondents: 150,000.

Average Hours per Response: Varied, dependent upon the data collection method used. The possible response time to complete a questionnaire or survey may be 3 minutes or up to 2 hours to participate in an interview or focus group.

Total Annual Burden Hours: 32,875.

Needs and Uses: In January 2021, President Biden issued Executive Order 13985, '*Advancing Racial Equity and Support for Underserved Communities',* which established policy instructing the Federal Government to pursue a comprehensive approach to advancing equity for all, including people of color and others who have been historically underserved, marginalized, and adversely affected by persistent poverty and inequality, and tasks agencies with developing proactive policies, regulations, and guidance that affirmatively promote equity and speak to the needs of underserved communities. This will require agencies to review existing policies, rules, regulatory actions, and guidance. It will also require that agencies identify drivers of systemic inequities that are not currently being addressed and develop potential policies to address those inequities.

This new information collection will enable the Department of Commerce to act in accordance with this Executive Order to improve both efficiency and mission delivery, and to remove systemic barriers to opportunities and benefits for underserved communities. To accomplish this mission effectively, Commerce needs ongoing feedback on its programs and services. This information collection item allows Commerce to solicit clients' opinions about the use of products, services, and events.

Commerce will collect, analyze, and interpret information gathered through this information collection to identify gaps in equity and make improvements in accessibility, navigation, use, and service delivery based on insights gathered through developing an understanding of the user experience in underserved communities. Commerce will develop a question bank for all Bureaus to use to solicit information from both federal and non-federal individuals and organizations to develop policies and programs that deliver resources and benefits equitably to all.

These data collection efforts may be either qualitative or quantitative in nature or may consist of mixed methods. Additionally, data may be collected via a variety of means, including but not limited to electronic or social media, direct or indirect observation (*i.e.,* in person, video and audio collections), interviews, questionnaires, surveys, and focus groups. Steps will be taken to ensure anonymity of respondents in each activity covered by this request.

As a general matter, these information collections will not result in any new system of records containing privacy information and will not ask questions of a sensitive nature and matters that are commonly considered private. Personally identifiable information (PII) is collected only to the extent necessary and is not retained.

Affected Public: Collections will be targeted to the solicitation of opinions from respondents who have experience with the Commerce programs, services, or events or may have experience with the programs, services, or events in the future. For the purposes of this request, ''customers'' are individuals, businesses, and organizations that interact with a Federal Government agency or program, either directly or via a federal contractor. This could include individuals or households; businesses or other for-profit organizations; not-for-profit institutions; State, local or tribal governments; Federal government; and universities.

Frequency: On occasion; Annually.

Respondent's Obligation: Voluntary.

Legal Authority: Executive Order (E.O.) 13985.

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''.

Sheleen Dumas,

Department PRA Clearance Officer, Office of the Chief Information Officer, Commerce Department.

[FR Doc. 2022–25936 Filed 11–28–22; 8:45 am]

BILLING CODE 3510–17–P

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[B–56–2022]

Foreign-Trade Zone (FTZ) 219—Yuma, Arizona, Notification of Proposed Production Activity Barco Stamping Co. Inc. (Stamped Metal Products), Yuma, Arizona

The Greater Yuma Economic Development Corporation, grantee of FTZ 219, submitted a notification of proposed production activity to the FTZ Board (the Board) on behalf of Barco Stamping Co. Inc., located in Yuma, Arizona. The notification conforming to the requirements of the Board's regulations (15 CFR 400.22) was received on November 22, 2022.

Pursuant to 15 CFR 400.14(b), FTZ production activity would be limited to the specific foreign-status material(s)/component(s) and specific finished product(s) described in the submitted notification (summarized below) and subsequently authorized by the Board. The benefits that may stem from conducting production activity under FTZ procedures are explained in the background section of the Board's website—accessible via *www.trade.gov/ftz.* The proposed finished product(s) and material(s)/component(s) would be added to the production authority that the Board previously approved for the operation, as reflected on the Board's website.

The proposed finished products include: electrical switch enclosure doors; electrical enclosures; A/C disconnect enclosure doors; various bracketry (steering columns; engine mounts; seating); ballast chassis; and, various lighting products (can blanks; plaster frames; U-sections; hanger bars; socket plates; junction boxes; junction box covers; can tops; heat sinks; wall mounts) (duty rate ranges from duty-free to 6%).

The proposed foreign-status materials and components include various coil (aluminum; galvanized; stainless steel; prepainted galvanized steel; prepainted aluminum) (duty rate ranges from duty-free to 3%). The request indicates that certain materials/components are

subject to duties under section 232 of the Trade Expansion Act of 1962 (section 232) or section 301 of the Trade Act of 1974 (section 301), depending on the country of origin. The applicable section 232 and section 301 decisions require subject merchandise to be admitted to FTZs in privileged foreign status (19 CFR 146.41).

Public comment is invited from interested parties. Submissions shall be addressed to the Board's Executive Secretary and sent to: *ftz@trade.gov.* The closing period for their receipt is January 9, 2023.

A copy of the notification will be available for public inspection in the ''Online FTZ Information System'' section of the Board's website.

For further information, contact Juanita Chen at *juanita.chen@trade.gov.*

Dated: November 23, 2022.

Andrew McGilvray,

Executive Secretary.

[FR Doc. 2022–26023 Filed 11–28–22; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–351–849; A–580–890; A–201–848; A–455–805]

Emulsion Styrene-Butadiene Rubber From Brazil, the Republic of Korea, Mexico, and Poland: Final Results of the Expedited First Sunset Reviews of the Antidumping Duty Orders

AGENCY: Enforcement and Compliance, International Trade Administration, Department of Commerce.

SUMMARY: As a result of these expedited sunset reviews, the U.S. Department of Commerce (Commerce) finds that revocation of the antidumping duty (AD) orders on emulsion styrene-butadiene rubber (ESB rubber) from Brazil, the Republic of Korea (Korea), Mexico, and Poland would be likely to lead to the continuation or recurrence of dumping at the levels indicated in the ''Final Results of Sunset Review'' section of this notice.

DATES: Applicable November 29, 2022.

FOR FURTHER INFORMATION CONTACT: Caroline Carroll or Thomas Martin, AD/CVD Operations, Office IV, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230; telephone: (202) 482–4948 and (202) 482–3936, respectively.

SUPPLEMENTARY INFORMATION:

Background

On August 1, 2022, Commerce published the notice of initiation of the first sunset reviews of the Orders,[1] pursuant to section 751(c) of the Tariff Act of 1930, as amended (the Act).[2] Commerce received a notice of intent to participate from a domestic interested party [3] within the deadline specified in 19 CFR 351.218(d)(1)(i).[4] The domestic interested party claimed interested party status under section 771(9)(C) of the Act, as a producer of a domestic like product in the United States.

Commerce received adequate substantive responses from the domestic interested party within the 30-day deadline specified in 19 CFR 351.218(d)(3)(i).[5] We did not receive a substantive response from any other interested party in these proceedings.

On September 30, 2022, Commerce notified the U.S. International Trade Commission that it did not receive an adequate substantive response from respondent interested parties.[6] As a result, pursuant to section 751(c)(3)(B) of the Act and 19 CFR 351.218(e)(1)(ii)(C)(2), Commerce conducted expedited (120-day) sunset reviews of the Orders.

Scope of the Orders

The products covered by the *Orders* are cold-polymerized emulsion styrene-butadiene rubber. For a complete description of the scope of these Orders, see the Issues and Decision Memorandum.[7]

Analysis of Comments Received

All issues raised in these sunset reviews are addressed in the Issues and Decision Memorandum, including the likelihood of continuation or recurrence of dumping and the magnitude of the margins of dumping likely to prevail if the Orders were revoked.[8] 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 Services 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.*

Final Results of Sunset Reviews

Pursuant to sections 751(c)(1) and 752(c) of the Act, Commerce determines that revocation of the Orders would be likely to lead to the continuation or recurrence of dumping, and that the magnitude of the margins of dumping likely to prevail would be weighted-average margins up to the following percentages:

Country	Weighted-average dumping margin (percent)
Brazil	19.61
Korea	44.30
Mexico	19.52
Poland	25.43

Administrative Protective Order (APO)

This notice serves as the only reminder to parties subject to an APO of their responsibility concerning the disposition of proprietary information disclosed under APO in accordance with 19 CFR 351.305(a). Timely written notification of the destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and terms of an APO is a violation which is subject to sanction.

Notification to Interested Parties

We are issuing and publishing this notice in accordance with sections 751(c), 752(c), and 777(i)(1) of the Act, and 19 CFR 351.221(c)(5)(ii).

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[1] *See Emulsion Styrene-Butadiene Rubber from Brazil, the Republic of Korea, Mexico, and Poland: Antidumping Duty Orders,* 82 FR 42790 (September 12, 2017) (*Orders*).

[2] *See Initiation of Five-Year (Sunset) Reviews,* 87 FR 46943 (August 1, 2022).

[3] The domestic interested party is Lion Elastomers LLC (Lion).

[4] *See* Domestic Interested Party's Letter, ''Emulsion Styrene-Butadiene Rubber from Brazil, Korea, Mexico, and Poland: Notice of Intent to Participate in Sunset Reviews,'' dated August 8, 2022.

[5] *See* Domestic Interested Party's Letters, ''Emulsion Styrene-Butadiene Rubber from Korea: Substantive Response to the Notice of Initiation of Sunset Reviews,'' dated August 16, 2022; ''Emulsion Styrene-Butadiene Rubber from Poland: Substantive Response to the Notice of Initiation of Sunset Reviews,'' dated August 16, 2022; Emulsion Styrene-Butadiene Rubber from Mexico: Substantive Response to the Notice of Initiation of Sunset Reviews,'' dated August 16, 2022; ''Emulsion Styrene-Butadiene Rubber from Brazil: Substantive Response to the Notice of Initiation of Sunset Reviews,'' dated August 16, 2022; (collectively, Substantive Responses).

[6] *See* Commerce's Letter, ''Sunset Reviews Initiated on August 1, 2022,'' dated September 30, 2022.

[7] *See* Memorandum, ''Issues and Decision Memorandum for the Expedited Sunset Review of the Antidumping Duty Orders on Emulsion Styrene-Butadiene Rubber from Brazil, Mexico, the Republic of Korea, and Poland,'' dated concurrently with, and hereby adopted by, this notice (Issues and Decision Memorandum).

[8] *Id.*

Dated: November 22, 2022.

Abdelali Elouaradia,

Deputy Assistant Secretary for Enforcement and Compliance.

Appendix

List of Topics Discussed in the Issues and Decision Memorandum

[FR Doc. 2022–26021 Filed 11–28–22; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–580–886]

Ferrovanadium From the Republic of Korea: Continuation of Antidumping Duty Order

AGENCY: Enforcement and Compliance, International Trade Administration, Department of Commerce.

SUMMARY: As a result of the respective determinations by the U.S. Department of Commerce (Commerce) and the U.S. International Trade Commission (ITC) that revocation of the antidumping duty (AD) order on ferrovanadium from the Republic of Korea (Korea) would likely lead to continuation or recurrence of dumping and material injury to an industry in the United States, Commerce is publishing this notice of continuation of the AD order.

DATES: Applicable November 29, 2022.

FOR FURTHER INFORMATION CONTACT: Krisha Hill, AD/CVD Operations, Office IV, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230; telephone: (202) 482–4037.

SUPPLEMENTARY INFORMATION:

Background

On May 15, 2017, Commerce published the AD order on ferrovanadium from Korea.[1] On April 1, 2022, Commerce initiated,[2] and the ITC instituted,[3] this sunset review of the *Order,* pursuant to section 751(c) of the Tariff Act of 1930, as amended (the Act).

As a result of its review, Commerce determined, pursuant to sections 751(c)(1) and 752(c) of the Act, that revocation of the Order would likely lead to continuation or recurrence of dumping. Commerce, therefore, notified the ITC of the magnitude of the margins of dumping likely to prevail should the Order be revoked.[4] On November 21, 2022, the ITC published its determination that revocation of the Order would likely lead to continuation or recurrence of material injury to an industry in the United States within a reasonably foreseeable time, pursuant to sections 751(c) and 752(a) of the Act.[5]

Scope of the Order

The product covered by the Order is all ferrovanadium regardless of grade (*i.e.,* percentage of contained vanadium), chemistry, form, shape, or size. Ferrovanadium is an alloy of iron and vanadium. Ferrovanadium is classified under Harmonized Tariff Schedule of the United States (HTSUS) item number 7202.92.0000. Although this HTSUS item number is provided for convenience and customs purposes, the written description of the scope of the Order is dispositive.

Continuation of the Order

As a result of the respective determinations by Commerce and the ITC that revocation of the Order would likely lead to continuation or recurrence of dumping and material injury to an industry in the United States within a reasonably foreseeable time, pursuant to section 751(d)(2) of the Act and 19 CFR 351.218(a), Commerce hereby orders the continuation of the Order. U.S. Customs and Border Protection will continue to collect AD cash deposits at the rate in effect at the time of entry for all imports of subject merchandise.

The effective date of the continuation of the Order will be the date of publication in the **Federal Register** of this notice of continuation. Pursuant to section 751(c)(2) of the Act and 19 CFR 351.218(c)(2), Commerce intends to initiate the next five-year (sunset) review of this Order not later than 30 days prior to the fifth anniversary of the effective date of continuation.

Administrative Protective Order (APO)

This notice serves as the only reminder to parties subject to an APO of their responsibility concerning the return, destruction, or conversion to judicial protective order of proprietary information disclosed under APO in accordance with 19 CFR 351.305(a)(3). Failure to comply is a violation of the APO which may be subject to sanctions.

Notification to Interested Parties

This five-year sunset review and notice are in accordance with section 751(c) of the Act and the notice is published pursuant to section 777(i)(1) of the Act and 19 CFR 351.218(f)(4).

Dated: November 22, 2022.

Abdelali Elouaradia,

Deputy Assistant Secretary for Enforcement and Compliance.

[FR Doc. 2022–26020 Filed 11–28–22; 8:45 am]

BILLING CODE 3510–DS–P

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; Baldrige Performance Excellence Program Team Leader Consensus and Site Visit Information Collections

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 September 22, 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), Commerce.

Title: Baldrige Performance Excellent Program (BPEP) Team Leader Consensus and Team Leader Site Visit Information Collections.

OMB Control Number: 0693–0079.

Form Number(s): None.

Type of Request: Extension of a current information collection.

[1] *See Ferrovanadium from the Republic of Korea: Antidumping Duty Order,* 82 FR 22309 (May 15, 2017) (*Order*).

[2] *See Initiation of Five-Year (Sunset) Reviews,* 87 FR 19069 (April 1, 2022).

[3] *See Ferrovanadium from South Korea; Institution of a Five-Year Review,* 87 FR 19129 (April 1, 2022).

[4] *See Ferrovanadium from the Republic of Korea: Final Results of the Expedited Sunset Review of the Antidumping Duty Order,* 87 FR 48151 (August 8, 2022), and accompanying Issues and Decision Memorandum.

[5] *See Ferrovanadium From South Korea,* 87 FR 70866 (November 21, 2022).

Number of Respondents: Examiner Performance Assessment—30 per year; Team Leader Performance Assessment—300 per year.

Average Hours per Response: Examiner Performance Assessment—20 minutes; Team Leader Performance Assessment—5 minutes.

Burden Hours: Examiner Performance Assessment—10 hours; Team Leader Performance Assessment—25 hours.

Needs and Uses: The purpose of the information is to help staff collect data on the skills of the examiners, including alumni examiners, in order to best manage training and selection. Because the examiner selection is so competitive, examiners need to demonstrate competencies such as understanding the Baldrige Criteria, team skills, and writing skills. The program also needs to collect peer-based information to understand an examiner's skill level in order to make decisions on whether the examiner should be elevated to ''senior examiner'' and therefore team leader. The blinded data will be shared with the team leader for improvement purposes, and for future assignments.

Affected Public: Individual or Households.

Frequency: Annually.

Respondent's Obligation: Voluntary.

This information collection request may be viewed at reginfo.gov. Follow the instructions to view 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 the title of the collection.

Sheleen Dumas,

Department PRA Clearance Officer, Office of the Chief Information Officer, Commerce Department.

[FR Doc. 2022–26032 Filed 11–28–22; 8:45 am]

BILLING CODE 3510–13–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[RTID 0648–XC400]

Permits; Foreign Fishing

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of application for transshipment permit; request for comments.

SUMMARY: NMFS publishes for public review and comment information regarding a permit application for transshipment of farmed salmon from aquaculture operations in Maine waters to processing plants in Canada by Canadian flagged vessels. The application for a transshipment permit is submitted under provisions of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act). This action is necessary for NMFS to make a determination that the permit application can be approved.

DATES: Written comments must be received by December 13, 2022.

ADDRESSES: Written comments on this action, identified by RTID 0648–XC400 should be sent to Kent Laborde and Jasmine Prat in the NMFS Office of International Affairs, Trade, and Commerce by email at *kent.laborde@noaa.gov* and *jasmine.prat@noaa.gov*.

FOR FURTHER INFORMATION CONTACT: Kent Laborde and Jasmine Prat by email at *kent.laborde@noaa.gov* and *jasmine.prat@noaa.gov,* or by phone at 301–427–8364.

SUPPLEMENTARY INFORMATION:

Background

Section 204(d) of the Magnuson-Stevens Act (16 U.S.C. 1824(d)) authorizes the Secretary of Commerce (Secretary) to issue a transshipment permit for a vessel other than a vessel of the United States to engage in fishing consisting solely of transporting fish or fish products at sea from a point within the United States Exclusive Economic Zone (EEZ) or, with the concurrence of a state, within the boundaries of that state, to a point outside the United States.

Section 204(d)(3)(D) of the Magnuson-Stevens Act provides that an application to transship from U.S. waters to another country using non-U.S. vessels may not be approved until the Secretary determines that ''no owner or operator of a vessel of the United States which has adequate capacity to perform the transportation for which the application is submitted has indicated . . . an interest in performing the transportation at fair and reasonable rates.'' NMFS is publishing this notice as part of its effort to make such a determination with respect to the application described below.

Summary of Application

NMFS received an application from True North Salmon Limited Partnership, Kelly Cove Salmon Limited, and 697002 NB, Inc., requesting authorization to transfer salmon from U.S. farm pens in Maine waters to five Canadian vessels for the purpose of transporting the salmon to Black's Harbour, Canada for processing. The transshipment operations will occur within the boundaries of the State of Maine, and within 12 nautical miles from Maine's seaward boundary. NMFS issued permits for the same vessels for use in calendar year 2022. Those permits will expire December 31, 2022.

Dated: November 21, 2022.

Michael T. Brakke,

Acting Director, Office of International Affairs, Trade, and Commerce, National Marine Fisheries Service.

[FR Doc. 2022–25955 Filed 11–28–22; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[RTID 0648–XC568]

Endangered and Threatened Species; Take of Anadromous Fish

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of receipt of one permit application for enhancement and monitoring purposes, including an associated Hatchery and Genetic Management Plan (HGMP), and notice of availability of a draft environmental assessment (EA).

SUMMARY: We, NMFS, announce receipt of a permit application (26277) to enhance the propagation and survival of species listed under the Endangered Species Act (ESA) of 1973, as amended, from the United States Corps of Engineers (USACE) and California Department of Fish and Wildlife (CDFW). The USACE and CDFW are requesting for the next 10 years, hatchery and monitoring activities associated with the Russian River Steelhead Program (RRSP). As part of this permit application, the USACE and CDFW have submitted an HGMP as an attachment to the application. This notice advises the public that the permit application and associated HGMP are available for review and comment, prior to a determination by NMFS on the issuance of the permit. This document

serves to notify the public of the availability of the HGMP and associated draft EA that analyzes two alternatives for comment, prior to a decision by NMFS whether to approve the proposed hatchery program. The permit application, and attached HGMP, may be viewed online at: *https://apps.nmfs.noaa.gov/preview/preview_open_for_comment.cfm.*

DATES: Comments or requests for a public hearing on the application and associated draft EA must be received at the appropriate address or fax number (see **ADDRESSES**) no later than 5 p.m. Pacific standard time on December 29, 2022.

ADDRESSES: Written comments on the application and associated draft EA should be submitted to the California Coastal Office, NMFS, 777 Sonoma Avenue, Room 325, Santa Rosa, California 95404. Comments may also be submitted via fax to 707–578–3435, or by email to *bob.coey@noaa.gov* (include the permit number in the subject line of the fax or email).

FOR FURTHER INFORMATION CONTACT: Bob Coey, Santa Rosa, California (phone: 707–575–6090; Fax: 707–578–3435; *bob.coey@noaa.gov*). Permit application instructions are available from the address above, or online at *https://apps.nmfs.noaa.gov.*

SUPPLEMENTARY INFORMATION:

Species Covered in This Notice

The following listed species are covered in this notice:

- Steelhead (*Oncorhynchus mykiss*): threatened Central California Coast (CCC) Distinct Population Segment (DPS);
- Coho salmon (*Oncorhynchus kisutch*): endangered CCC Evolutionary Significant Unit (ESU);
- Chinook salmon (*Oncorhynchus tshawytscha*): threatened California Coastal (CC) ESU.

NMFS issues permits based on findings that such permits: (1) are applied for in good faith; (2) if granted and exercised, would not operate to the disadvantage of the listed species that are the subject of the permit; (3) are consistent with the purposes and policies of Section 2 of the ESA; (4) whether the permit would further a bona fide and necessary or desirable scientific purpose or enhance the propagation or survival of the endangered species, taking into account the benefits anticipated to be derived on behalf of the endangered species; and additional issuance criteria (as listed at 50 CFR § 222.308(c)(5–12)). The authority to take listed species is subject to conditions set forth in the permit.

Anyone requesting a hearing on an application listed in this notice should set out the specific reasons why a hearing on that application would be appropriate (see **ADDRESSES**). Such hearings are held at the discretion of the Assistant Administrator for NMFS.

Permit 26277

The USACE and CDFW have applied for an enhancement permit under Section 10(a)(1)(A) of the ESA for a period of 10 years that would allow take, associated with activities conducted through the Russian River Steelhead Program (RRSP), of multiple life stages of CCC steelhead. The permit would authorize these activities described in the permit application, which is accompanied by an HGMP. The HGMP describes hatchery and monitoring activities conducted through the RRSP. Hatchery activities included in this permit application would result in take of only CCC steelhead. Hatchery activities would be permitted pursuant to the final HGMP. Monitoring, broodstock collection, and in-river research activities, also included in the application, could result in take of CCC steelhead, CCC coho salmon, and CC Chinook salmon.

Under permit application 26277, the USACE and CDFW propose to rear hatchery steelhead to produce fish for harvest in sport fisheries in the Russian River as part of requirements to ''mitigate'' for the loss of natural steelhead production due to the construction of Warm Springs and Coyote Valley dams by the USACE. Proposed take activities for CCC steelhead include collecting broodstock; conducting routine hatchery activities including artificial propagation, rearing, tissue sampling, and marking; and transporting and releasing of steelhead smolts (1-year-old fish) into the Russian River and Dry Creek. In addition, Permit 26277 includes collection of natural origin juveniles, monitoring and in-river research activities, which could involve take of CCC coho salmon, CC Chinook salmon, and CCC steelhead.

Until HGMP performance objectives are met, the RRSP will release a total of 400,000 smolts. Warm Springs Hatchery (WSH) and Coyote Valley Fish Facility (CVFF) will each release 200,000 juveniles per year. The percent of natural origin broodstock target for WSH is 0.50 requiring a total of 90 natural origin returns and 315 hatchery origin returns. The percent of natural origin broodstock target for CVFF is 0.30 requiring 54 natural origin returns and 351 hatchery origin returns. After performance targets are met, and production is increased to 300,000 at Coyote Valley (totaling 500,000 between the two facilities), then an additional 45 natural origin returns may need to be collected and used as broodstock.

The hatchery program releases up to 500,000 yearling steelhead smolts at the Warm Springs and Coyote Valley facilities. Of the 500,000 smolts released, a maximum of 200,000 may be released at WSH and up to 300,000 at CVFF as long as HGMP performance metrics are achieved.

A maximum of 711 adult steelhead are required to achieve the juvenile production target of 500,000 yearling smolts.[1] Hatchery operations include spawning of adult fish that enter the facilities and natural origin spawners that are collected at traps or other methods. Operations will also include egg incubation, and rearing of juvenile fish and release of smolts per the HGMP.

Monitoring activities would be focused on achieving program performance metrics in the hatchery and in the natural environment, and for management of Russian River recreational sport fisheries. Hatchery and environmental monitoring will include annual survey estimates of the percent of hatchery fish in natural spawning areas within large sub-watershed populations in the Russian River, as well as genetic sampling of juveniles. Associated sport angling harvest monitoring will be developed to improve estimates of catch, retention, and stray rates from each facility. Based on the results of these monitoring activities, the hatchery program will be modified accordingly to reduce and/or minimize impacts to natural populations via recommendations of the technical advisory committee, which includes CDFW, USACE, and NMFS. For a more detailed discussion of the proposed activities, please see the permit application package.

Public Comments Solicited

NMFS invites the public to comment on the permit application, the associated HGMP, and the draft EA (including the submitted alternatives, information, analyses and summaries) during a 30-day public comment period beginning on the date of this notice. The draft EA is available online at: *https://www.fisheries.noaa.gov/west-coast/laws-and-policies/west-coast-region-national-environmental-policy-act-documents.* This notice is provided pursuant to Section 10(c) of the ESA (16

[1] The actual number of adults used each year will be dependent on juvenile release number, female fecundity, the ability to capture natural origin return adults for broodstock, and pre-spawn mortality.

U.S.C. 1529(c)). All comments and materials received, including names and addresses, will become part of the administrative record and may be released to the public. We provide this notice in order to allow the public, agencies, or other organizations to review and comment on these documents.

Next Steps

NMFS will evaluate the applications, associated documents, and comments submitted to determine whether the applications meet the requirements of Section 10(a)(1)(A) of the ESA and Federal regulations. The final permit decisions will not be made until after the end of the 30-day public comment period and after NMFS has fully considered all relevant comments received. NMFS will publish notice of its final action in the **Federal Register**.

Authority: Enhancement permits are issued in accordance with Section 10(a)(1)(A) of the ESA (16 U.S.C. 1531 *et. seq.*) and regulations governing listed fish and wildlife permits (50 CFR 222).

Dated: November 23, 2022.

Celeste Stout,

Acting Chief, Endangered Species Division, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 2022–26028 Filed 11–28–22; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[RTID 0648–XC578]

Research Track Assessment for Spiny Dogfish and Bluefish

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of public meeting.

SUMMARY: NMFS will convene the Research Track Assessment Peer Review Meeting for the purpose of reviewing Spiny Dogfish and Bluefish stocks. The Research Track Assessment Peer Review is a formal scientific peer-review process for evaluating and presenting stock assessment results to managers for fish stocks in the offshore U.S. waters of the northwest Atlantic. Assessments are prepared by the research track working group and reviewed by an independent panel of stock assessment experts from the Center of Independent Experts (CIE). The public is invited to attend the presentations and discussions between the review panel and the scientists who have participated in the stock assessment process.

DATES: The public portion of the Research Track Assessment Peer Review Meeting will be held from December 5, 2022—December 9, 2022. The meeting will conclude on December 9, 2022 at 5 p.m. Eastern Standard Time. Please see **SUPPLEMENTARY INFORMATION** for the daily meeting agenda.

ADDRESSES: The meeting will be held via WebEx at the following link: *https://noaanmfs-meets.webex.com/noaanmfs-meets/j.php?MTID=m537714866febfc8ede459d55b0482239.* Meeting number (access code): 2764 137 9769; Meeting password: AhFMe8W3DS5; Phone: +1–415–527–5035 US Toll.

FOR FURTHER INFORMATION CONTACT: Michele Traver, phone: 508–257–1642; email: *michele.traver@noaa.gov.*

SUPPLEMENTARY INFORMATION: For further information, please visit the Northeast Fisheries Science Center (NEFSC) website at *https://www.fisheries.noaa.gov/new-england-mid-atlantic/population-assessments/fishery-stock-assessments-new-england-and-mid-atlantic.* For additional information about research track stock assessments, please visit the NEFSC web page at *https://www.fisheries.noaa.gov/new-england-mid-atlantic/population-assessments/research-track-stock-assessments.*

Daily Meeting Agenda—Research Track Peer Review Meeting

The agenda is subject to change; all times are approximate and may be changed at the discretion of the Peer Review Chair.

MONDAY, DECEMBER 5, 2022

Time	Topic	Presenter(s)	Notes
9 a.m.–9:15 a.m	Welcome/Logistics, Introductions/ Agenda/Conduct of Meeting.	Michele Traver, Assessment Process Lead, Russ Brown, PopDy Branch Chief, Yan Jiao, Panel Chair.	
9:15 a.m.–9:30 a.m	Introduction/Executive Summary ..	Conor McManus (WG co-chair), (Spiny Dogfish).	
9:30 a.m.–10 a.m	Term of Reference (TOR) #1	Conor McManus	Ecosystem Data.
10 a.m.–10:30 a.m	TOR #3	Cami McCandless (WG co-chair)	Survey Data.
10:30 a.m.–10:45 a.m	Break.		
10:45 a.m.–11:45 a.m	TOR #2	Kathy Sosebee	Catch Data.
11:45 a.m.–12:15 p.m	Discussion/Summary	Review Panel.	
12:15 p.m.–12:30 p.m	Public Comment	Public.	
12:30 p.m.–1:30 p.m	Lunch.		
1:30 p.m.–2:30 p.m	TOR #4	Dvora Hart, Jui-Han Chang	Models.
2:30 p.m.–3 p.m	End of Day Wrap-up/Discussion/ Summary.	Review Panel.	
3 p.m.–3:15 p.m	Public Comment	Public.	
3:15 p.m	Adjourn.		

TUESDAY, DECEMBER 6, 2022

Time	Topic	Presenter(s)	Notes
9 a.m.–9:05 a.m	Welcome/Logistics, Introductions/ Agenda.	Michele Traver, Assessment Process Lead, Yan Jiao, Panel Chair..	
9:05 a.m.–10:30 a.m	TOR #4 cont.	Dvora Hart, Jui-Han Chang	Models.
10:30 a.m.–10:45 a.m	Break.		

TUESDAY, DECEMBER 6, 2022—Continued

Time	Topic	Presenter(s)	Notes
10:45 a.m.–12 p.m	TORs #5 and #6	Dvora Hart, Jui-Han Chang	Reference Points, Projections.
12 p.m.–12:30 p.m	Discussion/Summary	Review Panel.	
12:30 p.m.–12:45 p.m	Public Comment	Public.	
12:45 p.m.–1:45 p.m	Lunch.		
1:45 p.m.–2:30 p.m	TOR #8	Dvora Hart	Alternative Assessment Approach.
2:30 p.m.–2:45 p.m	TOR #7	Conor McManus	Research Recommendations.
2:45 p.m.–3:15 p.m	End of Day Wrap-up/Discussion/ Summary.	Review Panel.	
3:15 p.m.–3:30 p.m	Public Comment	Public.	
3:30 p.m	Adjourn.		

WEDNESDAY, DECEMBER 7, 2022

Time	Topic	Presenter(s)	Notes
9 a.m.–9:05 a.m	Welcome/Logistics, Introductions/ Agenda.	Michele Traver, Assessment Process Lead, Yan Jiao, Panel Chair.	
9:05 a.m.–9:30 a.m	Introduction/Executive Summary	Mike Celestino (WG chair), (Bluefish).	
9:30 a.m.–10:30 a.m	TOR #2	Mike Celestino, Katie Drew	Catch Data.
10:30 a.m.–10:45 a.m	Break.		
10:45 a.m.–11:45 a.m	TOR #3	Mike Celestino, Katie Drew	Survey Data.
11:45 a.m.–12:15 p.m	Discussion/Summary	Review Panel.	
12:15 p.m.–12:30 p.m	Public Comment	Public.	
12:30 p.m.–1:30 p.m	Lunch.		
1:30 p.m.–3 p.m	TOR #1	Abby Tyrell, Sarah Gaichas	Ecosystem Data.
3 p.m.–3:30 p.m	End of Day Wrap-up/Discussion/ Summary.	Review Panel.	
3:30 p.m.–3:45 p.m	Public Comment	Public.	
3:45 p.m	Adjourn.		

THURSDAY, DECEMBER 8, 2022

Time	Topic	Presenter(s)	Notes
9 a.m.–9:05 a.m	Welcome/Logistics, Introductions/ Agenda.	Michele Traver, Assessment Process Lead, Russ Brown, PopDy Branch Chief, Yan Jiao, Panel Chair.	
9:05 a.m.–10:30 a.m	TOR #4	Tony Wood, Tim Miller	Models.
10:30 a.m.–10:45 a.m	Break.		
10:45 a.m.–11:15 a.m	TOR #4 cont	Tony Wood, Tim Miller	Models.
11:15 a.m.–11:45 a.m	Discussion/Summary	Review Panel.	
11:45 a.m.–12 p.m.	Public Comment	Public.	
12 p.m.–1 p.m	Lunch.		
1 p.m.–2:30 p.m	TORs #5, #6, #8, and #7	Tony Wood, Sam Truesdell, Mike Celestino.	Reference Points, Projections, Alternative Assessment Approach, Research Recommendations.
2:30 p.m.–3 p.m	Meeting Wrap-up/Discussion/ Summary.	Review Panel.	
3 p.m.–3:15 p.m	Public Comment	Public.	
3:15 p.m	Adjourn.		

FRIDAY, DECEMBER 9, 2022

Time	Topic	Presenter(s)	Notes
9 a.m.–5 p.m	Report Writing	Review Panel.	

The meeting is open to the public; however, during the 'Report Writing' session on Friday, December 9th, the public should not engage in discussion with the Peer Review Panel.

Special Accommodations

This meeting is physically accessible to people with disabilities. Special requests should be directed to Michele Traver, via email.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: November 22, 2022.

Kelly Denit,

Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 2022–25932 Filed 11–28–22; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF DEFENSE

Department of the Navy

Meeting of the U.S. Naval Academy Board of Visitors

AGENCY: Department of the Navy, Department of Defense (DoD).

ACTION: Notice of partially closed meeting.

SUMMARY: The DoD is publishing this notice to announce that the following Federal Advisory Committee meeting of the U.S. Naval Academy Board of Visitors, hereafter ''Board,'' will take place.

DATES: Open to the public, December 5, 2022, from 9 a.m. to 11 a.m. Closed to the public, December 5, 2022, from 11 a.m. to noon (12 p.m.).

ADDRESSES: This meeting will be held at the U.S. Naval Academy in Annapolis, Maryland (MD). Pending prevailing health directives, the meeting will be handicap accessible. Escort is required.

FOR FURTHER INFORMATION CONTACT: Major Alexandra Fitzgerald, USMC, Executive Secretary to the Board of Visitors, Office of the Superintendent, U.S. Naval Academy, Annapolis, MD 21402–5000, 410–293–1503, *afitzger@usna.edu,* or visit *https://www.usna.edu/PAO/Superintendent/bov.php.*

SUPPLEMENTARY INFORMATION: This meeting is being held under the provisions of the Federal Advisory Committee Act (FACA) of 1972 (5 United States Code (U.S.C.), Appendix, as amended), the Government in the Sunshine Act of 1976 (5 U.S.C. 552b, as amended), the General Services Administration's (GSA) Federal Advisory Committee Management Final Rule (41 Code of Federal Regulations (CFR) Part 102–3).

Purpose of Meeting: The U.S. Naval Academy Board of Visitors will meet to make such inquiry, as the Board deems necessary, into the state of morale and discipline, the curriculum, instruction, physical equipment, fiscal affairs, and academic methods of the Naval Academy.

Agenda: Proposed meeting agenda for December 5, 2022.

0900 Call to Order (Open to Public)
0900–1055 Business Session (Open to Public)
1055–1100 Break (Open to Public)
1100–1200 Executive Session (Closed to Public)

Current details on the board of visitors may be found at *https://www.usna.edu/PAO/Superintendent/bov.php*

The executive session of the meeting from 11:00 a.m. to 12:00 p.m. on December 5, 2022, will consist of discussions of new and pending administrative or minor disciplinary infractions and non-judicial punishments involving midshipmen attending the Naval Academy to include but not limited to, individual honor or conduct violations within the Brigade, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy. For this reason, the executive session of this meeting will be closed to the public, as the discussion of such information cannot be adequately segregated from other topics, which precludes opening the executive session of this meeting to the public. Accordingly, the Secretary of the Navy, in consultation with the Department of the Navy General Counsel, has determined in writing that the meeting shall be partially closed to the public because the discussions during the executive session from 11 a.m. to noon (12 p.m.) will be concerned with matters protected under sections 552b(c) (5), (6), and (7) of title 5, U.S.C.

Authority: 5 U.S.C. 552b.

Meeting Accessibility: Pursuant to FACA and 41 CFR 102–3.140, this meeting is open to the public. Any public attendance at the meeting will be governed by prevailing health directives at the United States Naval Academy. Please contact the Executive Secretary five business days prior the meeting to coordinate access to the meeting.

Written Statements: Per Section 10(a)(3) of the FACA and 41 CFR 102–3.105(j) and 102–3.140, interested persons may submit a written statement for consideration at any time, but should be received by the Designated Federal Officer at least 5 business days prior to the meeting date so that the comments may be made available to the Board for their consideration prior to the meeting. Written statements should be submitted via mail to 121 Blake Rd, Annapolis, MD 21402. Please note that since the Board operates under the provisions of the FACA, as amended, all submitted comments and public presentations may be treated as public documents and may be made available for public inspection, including, but not limited to, being posted on the board website.

Dated: November 22, 2022.

A.R. Holt,

Lieutenant Commander, Judge Advocate General's Corps, U.S. Navy, Federal Register Liaison Officer.

[FR Doc. 2022–25964 Filed 11–28–22; 8:45 am]

BILLING CODE 3810–FF–P

DEPARTMENT OF EDUCATION

Notice of Ratification

AGENCY: Office of the Secretary, Department of Education.

ACTION: Notice.

SUMMARY: The Department publishes a notice ratifying the actions of the Deputy Assistant Secretary for Policy and Programs for the Office of Elementary and Secondary Education (OESE) and the action of the Deputy Assistant Secretary for Administration for OESE, in publishing certain documents in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: Anna Hinton, Ph.D., U.S. Department of Education, Office of Elementary and Secondary Education, 400 Maryland Avenue SW, Washington, DC 20202. Telephone: (202) 260–1816. Email: *Anna.Hinton@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: The Department publishes in the Appendix of this notice a Ratification, dated November 29, 2022, affirming and ratifying the actions of the Deputy Assistant Secretary for Policy and Programs for OESE and the action of the Deputy Assistant Secretary for Administration for OESE, in publishing certain documents in the **Federal Register**.

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 another 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.

Miguel A. Cardona,

Secretary.

Appendix—Ratification

RATIFICATION

The U.S. Department of Education (Department) previously published in the **Federal Register** the following documents:

(1) A document entitled, ''Proposed Priorities, Requirements, Definitions, and Selection Criteria—Expanding Opportunity through Quality Charter Schools Program (CSP)—Grants to State Entities (SE Grants); Grants to Charter Management Organizations for the Replication and Expansion of High-Quality Charter Schools (CMO Grants); and Grants to Charter School Developers for the Opening of New Charter Schools and for the Replication and Expansion of High-Quality Charter Schools (Developer Grants),'' 87 FR 14197, 14210 (March 14, 2022) (''Proposed Priorities'') (available at: *2022-05463.pdf* (*govinfo.gov*));

(2) A document entitled, ''Extension of the Comment Period; Proposed Priorities, Requirements, Definitions, and Selection Criteria-Expanding Opportunity Through Quality Charter Schools Program (CSP)—Grants to State Entities (SE Grants); Grants to Charter Management Organizations for the Replication and Expansion of High-Quality Charter Schools (CMO Grants); and Grants to Charter School Developers for the Opening of New Charter Schools and for the Replication and Expansion of High-Quality Charter Schools (Developer Grants),'' 87 FR 21644 (April 12, 2022) (''Extension Notice'') (available at: *2022-07911.pdf* (*govinfo.gov*));

(3) A document entitled, ''Final Priorities, Requirements, Definitions, and Selection Criteria—Expanding Opportunity Through Quality Charter Schools Program (CSP)—Grants to State Entities (State Entity Grants); Grants to Charter Management Organizations for the Replication and Expansion of High-Quality Charter Schools (CMO Grants); and Grants to Charter School Developers for the Opening of New Charter Schools and for the Replication and Expansion of High-Quality Charter Schools (Developer Grants),'' 87 FR 40406, 40428 (July 6, 2022) (''Final Priorities'') (available at: *2022-14445.pdf* (*govinfo.gov*));

(4) A document entitled, ''Application for New Awards; Expanding Opportunity Through Quality Charter Schools Program (CSP)—Grants to State Entities (State Entity),'' 87 FR 40204, 40217 (July 6, 2022) (''State Entity NIA'') (available at: *2022-14442.pdf* (*govinfo.gov*)); and

(5) A document entitled, ''Applications for New Awards; Expanding Opportunity Through Quality Charter Schools Program (CSP)—Grants to Charter School Developers for the Opening of New Charter Schools and for the Replication and Expansion of High-Quality Charter Schools (Developer Grants),'' 87 FR 40218, 40229 (July 6, 2022) (''Developer NIA'') (available at: *2022-14448.pdf* (*govinfo.gov*)).

Ruth E. Ryder, in her official capacity as the Deputy Assistant Secretary for Policy and Programs, Office of Elementary and Secondary Education (OESE), signed the Proposed Priorities, Final Priorities, State Entity NIA, and Developer NIA. Mark Washington, in his official capacity as the Deputy Assistant Secretary for Administration, OESE, signed the Extension Notice.

By virtue of the authority vested in the Secretary of Education by law, including under section 410 of the General Education Provisions Act (GEPA) (20 U.S.C. 1221e–3) and sections 411, 412, and 414 of the Department of Education Organization Act (DEOA) (20 U.S.C. 3471, 3472, and 3474), and being familiar with and having evaluated the foregoing Proposed Priorities, Extension Notice, Final Priorities, State Entity NIA, Developer NIA, and factual and evidentiary background, and without deference to the foregoing actions that were taken, I have independently determined that it is appropriate to affirm and ratify the foregoing actions taken by Ms. Ryder as the Deputy Assistant Secretary for Policy and Programs, OESE, and Mr. Washington, as the Deputy Assistant Secretary for Administration, OESE. I undertake this action based on my careful review and knowledge of the foregoing Proposed Priorities, Extension Notice, Final Priorities, State Entity NIA, Developer NIA, and factual and evidentiary background. Pursuant to my authority as the Secretary of Education, including under section 410 of GEPA and sections 411, 412, and 414 of the DEOA, I hereby affirm and ratify the actions of the Deputy Assistant Secretary for Policy and Programs, OESE, and the action of the Deputy Assistant Secretary for Administration, OESE, in publishing the five aforementioned documents in the **Federal Register**.

Miguel A. Cardona,

Secretary.

[FR Doc. 2022–26010 Filed 11–28–22; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RM98–1–000]

Records Governing Off-the-Record Communications

This constitutes notice, in accordance with 18 CFR 385.2201(b), of the receipt of prohibited and exempt off-the-record communications.

Order No. 607 (64 FR 51222, September 22, 1999) requires Commission decisional employees, who make or receive a prohibited or exempt off-the-record communication relevant to the merits of a contested proceeding, to deliver to the Secretary of the Commission, a copy of the communication, if written, or a summary of the substance of any oral communication.

Prohibited communications are included in a public, non-decisional file associated with, but not a part of, the decisional record of the proceeding. Unless the Commission determines that the prohibited communication and any responses thereto should become a part of the decisional record, the prohibited off-the-record communication will not be considered by the Commission in reaching its decision. Parties to a proceeding may seek the opportunity to respond to any facts or contentions made in a prohibited off-the-record communication and may request that the Commission place the prohibited communication and responses thereto in the decisional record. The Commission will grant such a request only when it determines that fairness so requires. Any person identified below as having made a prohibited off-the-record communication shall serve the document on all parties listed on the official service list for the applicable proceeding in accordance with Rule 2010, 18 CFR 385.2010.

Exempt off-the-record communications are included in the decisional record of the proceeding, unless the communication was with a cooperating agency as described by 40 CFR 1501.6, made under 18 CFR 385.2201(e)(1)(v).

The following is a list of off-the-record communications recently received by the Secretary of the Commission. The communications listed are grouped by docket numbers in ascending order. These filings are available for electronic review at the Commission in the Public Reference Room or 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. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll free at (866) 208–3676, or for TTY, contact (202)502–8659.

Docket Nos.	File date	Presenter or requester
Prohibited:		
1. CP03–75–000, CP03–75–002, CP03–75–003, CP03–75–004, CP05–361–000, CP05–361–001, CP12–509–000, CP12–29–000.	11–08–2022	FERC Staff.[1]
2. CP22–2–000	11–15–2022	FERC Staff.[2]
3. CP22–2–000	11–17–2022	FERC Staff.[3]
4. CP22–2–000	11–17–2022	FERC Staff.[4]
5. CP22–2–000	11–17–2022	FERC Staff.[5]
6. CP22–2–000	11–17–2022	FERC Staff.[6]
7. CP22–2–000	11–17–2022	FERC Staff.[7]
8. CP22–2–000	11–17–2022	FERC Staff.[8]
9. CP22–2–000	11–17–2022	FERC Staff.[9]
Exempt:		
1. CP19–502–000, CP19–502–001	11/10/2022	FERC Staff.[10]

[1] Emailed comments dated 11/01/22 from Kelsey Crane.
[2] Emailed comments dated 11/14/22 from Ann Dorsey.
[3] Emailed comments dated 11/17/22 from Ahmir Huggins.
[4] Emailed comments dated 11/17/22 from Freddie Slade.
[5] Emailed comments dated 11/17/22 from Selden Prentice.
[6] Emailed comments dated 11/17/22 from Sheryl Feldman.
[7] Emailed comments dated 11/17/22 from Kay Reibold.
[8] Emailed comments dated 11/17/22 from Emily Johnston.
[9] Emailed comments dated 11/17/22 from Rosemary Moore.
[10] Email communication dated 11/10/22 regarding correspondence with the National Marine Fisheries Service.

Dated: November 22, 2022.

Kimberly D. Bose,

Secretary.

[FR Doc. 2022–25989 Filed 11–28–22; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings #1

Take notice that the Commission received the following electric corporate filings:

Docket Numbers: EC23–2–000.

Applicants: Starwood Energy Group Global, L.L.C.

Description: Supplement to October 4, 2022 Application for Authorization Under Section 203 of the Federal Power Act of Starwood Energy Group Global, L.L.C.

Filed Date: 11/22/22.

Accession Number: 20221122–5081.

Comment Date: 5 p.m. ET 12/2/22.

Docket Numbers: EC23–30–000.

Applicants: Madison BTM LLC, Madison ESS, LLC, Rumford ESS, LLC, South Portland ESS, LLC, Sanford ESS, LLC, Ocean State BTM, LLC, AE–ESS NWS 1, LLC.

Description: Joint Application for Authorization Under Section 203 of the Federal Power Act of Madison BTM LLC, et al.

Filed Date: 11/21/22.

Accession Number: 20221121–5211.

Comment Date: 5 p.m. ET 12/12/22.

Docket Numbers: EC23–31–000.

Applicants: GRP Franklin, LLC, GRP Madison, LLC, GRP TE Lessee, LLC.

Description: Joint Application for Authorization Under Section 203 of the Federal Power Act of GRP Franklin, LLC, et al.

Filed Date: 11/21/22.

Accession Number: 20221121–5216.

Comment Date: 5 p.m. ET 12/12/22.

Take notice that the Commission received the following exempt wholesale generator filings:

Docket Numbers: EG23–25–000.

Applicants: Chaves County Solar II, LLC.

Description: Chaves County Solar II, LLC submits Notice of Self-Certification of Exempt Wholesale Generator Status.

Filed Date: 11/21/22.

Accession Number: 20221121–5195.

Comment Date: 5 p.m. ET 12/8/22.

Take notice that the Commission received the following Complaints and Compliance filings in EL Dockets:

Docket Numbers: EL22–15–001; ER22–1014–002.

Applicants: New York Power Authority.

Description: Supplement to September 8, 2022 Filing in Compliance with March 11 and July 5, 2022 Orders of New York Power Authority.

Filed Date: 11/21/22.

Accession Number: 20221121–5152.

Comment Date: 5 p.m. ET 12/1/22.

Take notice that the Commission received the following electric rate filings:

Docket Numbers: ER10–1119–007; ER10–1123–009.

Applicants: Ameren Illinois Company, Union Electric Company.

Description: Notice of Non-Material Change in Status of Ameren Illinois Company, et al.

Filed Date: 11/21/22.

Accession Number: 20221121–5213.

Comment Date: 5 p.m. ET 12/12/22.

Docket Numbers: ER19–1428–006.

Applicants: ISO New England Inc.

Description: ISO–NE; Docket ER19–1428–005; Comp. Filing (Rev. to Inventoried Energy Program) to be effective 1/23/2023.

Filed Date: 11/22/22.

Accession Number: 20221122–5085.

Comment Date: 5 p.m. ET 12/13/22.

Docket Numbers: ER21–779–001.

Applicants: NorthWestern Corporation.

Description: Compliance filing: Order No. 864 2nd Compliance Filing (Montana OATT) to be effective 1/27/2020.

Filed Date: 11/22/22.

Accession Number: 20221122–5171.

Comment Date: 5 p.m. ET 12/13/22.

Docket Numbers: ER22–2452–001.

Applicants: Kentucky Utilities Company.

Description: Refund Report: APCo Borderline Service Refund Report to be effective N/A.

Filed Date: 11/21/22.

Accession Number: 20221121–5163.

Comment Date: 5 p.m. ET 12/8/22.

Docket Numbers: ER22–2970–001.

Applicants: AEP Generation Resources Inc.

Description: Tariff Amendment: MBR Tariff FERC Electric Tariff For Market-Based Sales to be effective 11/28/2022.

Filed Date: 11/22/22.

Accession Number: 20221122–5117.

Comment Date: 5 p.m. ET 12/13/22.

Docket Numbers: ER22–2971–001.

Applicants: Ohio Valley Electric Corporation.

Description: Tariff Amendment: Amendment to MBR Tariff to be effective 11/28/2022.

Filed Date: 11/22/22.

Accession Number: 20221122–5158.

Comment Date: 5 p.m. ET 12/13/22.

Docket Numbers: ER22–2983–001.

Applicants: Ohio Power Company.

Description: Tariff Amendment: Ohio Power MBR Revision to be effective 11/28/2022.

Filed Date: 11/22/22.

Accession Number: 20221122–5141.

Comment Date: 5 p.m. ET 12/13/22.

Docket Numbers: ER23–474–000.

Applicants: California Independent System Operator Corporation.

Description: § 205(d) Rate Filing: 2022–11–21 Washington WEIM Greenhouse Gas Amendment to be effective 12/31/9998.

Filed Date: 11/21/22.

Accession Number: 20221121–5148.

Comment Date: 5 p.m. ET 12/8/22.

Docket Numbers: ER23–475–000.

Applicants: Northern States Power Company, a Minnesota corporation.

Description: § 205(d) Rate Filing: 2022–11–21 OTP SISA 715–NSP to be effective 11/22/2022.

Filed Date: 11/21/22.

Accession Number: 20221121–5153.

Comment Date: 5 p.m. ET 12/8/22.

Docket Numbers: ER23–476–000.

Applicants: Great Pathfinder Wind, LLC.

Description: Baseline eTariff Filing: Reactive Power Tariff Application to be effective 2/1/2023.

Filed Date: 11/21/22.

Accession Number: 20221121–5178.

Comment Date: 5 p.m. ET 12/8/22.

Docket Numbers: ER23–477–000.

Applicants: Midcontinent Independent System Operator, Inc.

Description: § 205(d) Rate Filing: 2022–11–22_SA 3175 Delta's Edge Solar-Entergy Mississippi 3rd Rev GIA (J679) to be effective 11/14/2022.

Filed Date: 11/22/22.

Accession Number: 20221122–5029.

Comment Date: 5 p.m. ET 12/8/22.

Docket Numbers: ER23–478–000.

Applicants: Midcontinent Independent System Operator, Inc., Union Electric Company.

Description: § 205(d) Rate Filing: Midcontinent Independent System Operator, Inc. submits tariff filing per 35.13(a)(2)(iii: 2022–11–22_SA 2011 Ameren-Centralia 1st Rev WDS to be effective 2/1/2023.

Filed Date: 11/22/22.

Accession Number: 20221122–5072.

Comment Date: 5 p.m. ET 12/13/22.

Docket Numbers: ER23–479–000; TS23–1–000.

Applicants: Bellflower Solar 1, LLC, Bellflower Solar 1, LLC.

Description: Request for Temporary Waivers of Bellflower Solar 1, LLC.

Filed Date: 11/22/22.

Accession Number: 20221122–5079.

Comment Date: 5 p.m. ET 12/13/22.

Docket Numbers: ER23–481–000.

Applicants: TotalEnergies Gas & Power North America, Inc.

Description: § 205(d) Rate Filing: Updated Market Based Rate Tariff to be effective 11/23/2022.

Filed Date: 11/22/22.

Accession Number: 20221122–5168.

Comment Date: 5 p.m. ET 12/13/22.

Docket Numbers: ER23–482–000.

Applicants: Nevada Power Company.

Description: § 205(d) Rate Filing: Nevada Power Co. Service Agreements with Star Peak Geothermal, LLC to be effective 12/1/2022.

Filed Date: 11/22/22.

Accession Number: 20221122–5173.

Comment Date: 5 p.m. ET 12/13/22.

Take notice that the Commission received the following public utility holding company filings:

Docket Numbers: PH23–1–000.

Applicants: Axium Infrastructure Inc.

Description: Axium Infrastructure, Inc. submits FERC–65B Notice of Change in Fact to Waiver Notification.

Filed Date: 11/21/22.

Accession Number: 20221121–5218.

Comment Date: 5 p.m. ET 12/12/22.

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 22, 2022.

Kimberly D. Bose,

Secretary.

[FR Doc. 2022–25987 Filed 11–28–22; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 2322–069]

Brookfield White Pine Hydro LLC; Notice of Denial of Water Quality Certification

On January 31, 2020, Brookfield White Pine Hydro LLC (Brookfield) filed an application for a new license for the Shawmut Hydroelectric Project (project) in the above captioned docket. Brookfield filed with the Maine Department of Environmental Protection (Maine DEP) a request for water quality certification for the project under section 401(a)(1) of the Clean Water Act on October 18, 2021. On October 12, 2022, the Maine DEP denied certification for the project. Pursuant to 40 CFR 121.8, we are providing notice that Maine DEP's denial satisfies the requirements of 40 CFR 121.7(e).

Dated: November 22, 2022.

Kimberly D. Bose,

Secretary.

[FR Doc. 2022–25986 Filed 11–28–22; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. AD22–10–000]

Reliability Technical Conference; Notice Inviting Post-Technical Conference Comments

On Thursday, November 10, 2022, the Federal Energy Regulatory Commission (Commission) convened its annual Commissioner-led Reliability Technical Conference to discuss policy issues related to the reliability of the Bulk-Power System.

All interested persons are invited to file post-technical conference comments to address issues raised during the technical conference identified in the Supplemental Notice of Technical Conference issued on November 3, 2022. For reference, the questions included in the Supplemental Notice are included below. Commenters need not answer all of the questions, but are encouraged to organize responses using the numbering and order in the below questions. Commenters are also invited to reference material previously filed in this docket but are encouraged to avoid repetition or replication of their previous comments. Comments must be submitted on or before 60 days from the date of this Notice.

Comments, identified by docket number, may be filed electronically or paper-filed. Electronic filing through *https://www.ferc.gov* is preferred. Documents must be filed in acceptable native applications and print-to -PDF, but not in scanned or picture format. Instructions are available on the Commission's website: *http://www.ferc.gov/docs-filing/efiling.asp.*

Although the Commission strongly encourages electronic filing, documents may also be paper-filed. To paper-file, submissions sent via the U.S. Postal Service must be addressed to: Federal Energy Regulatory Commission, Office of the Secretary, 888 First Street NE, Washington, DC 20426. Submissions sent via any other carrier must be addressed to: Federal Energy Regulatory Commission, Office of the Secretary, 12225 Wilkins Avenue, Rockville, Maryland 20852.

For more information about this Notice, please contact:

Lodie White (Technical Information), Office of Energy Reliability, (202) 502–8453, *Lodie.White@ferc.gov*

Leigh Anne Faugust (Legal Information), Office of General Counsel, (202) 502–6396, *Leigh.Faugust@ferc.gov*

Dated: November 22, 2022.

Kimberly D. Bose,

Secretary.

[FR Doc. 2022–25988 Filed 11–28–22; 8:45 am]

BILLING CODE 6717–01–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–10408–01–ORD]

Human Studies Review Board (HSRB) Meetings—2023

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of public meeting.

SUMMARY: The Environmental Protection Agency (EPA), Office of Research and Development (ORD), gives notice of 2023 public meetings of the Human Studies Review Board (HSRB). The HSRB provides advice, information, and recommendations on issues related to scientific and ethical aspects of third-party human subjects' research that are submitted to the Office of Pesticide Programs (OPP) to be used for regulatory purposes.

DATES: Four three-day virtual public meetings will be held on:

1. February 15–17, 2023; and
2. April 18–20, 2023; and
3. July 25–27, 2023; and
4. October 11–13, 2023.

Meetings will be held each day from 1 p.m. to 4 p.m. Eastern Time. For each meeting, separate subsequent follow-up meetings are planned for the HSRB to finalize reports from the three-day meetings. These meetings will be held from 1 p.m. to 4 p.m. Eastern Time on the following dates: March 23, 2023; May 18, 2023; August 23, 2023; and November 16, 2023.

ADDRESSES: These meetings are open to the public and will be conducted entirely virtually and by telephone. For detailed access information and meeting materials please visit the HSRB website: *https://www.epa.gov/osa/human-studies-review-board.*

FOR FURTHER INFORMATION CONTACT: Any member of the public who wishes to receive further information should contact the HSRB Designated Federal Official (DFO), Tom Tracy, via phone/voicemail at: 919–541–4334; or via email at: *tracy.tom@epa.gov.*

SUPPLEMENTARY INFORMATION:

Background

The HSRB is a Federal advisory committee operating in accordance with the Federal Advisory Committee Act 5 U.S.C. App. 2 section 9. The HSRB provides advice, information, and recommendations on issues related to scientific and ethical aspects of third-party human subjects research that are submitted to the Office of Pesticide Programs (OPP) to be used for regulatory purposes.

Meeting access: These meetings will be open to the public. The full agenda with access information and meeting materials will be available seven calendar days prior to the start of each meeting at the HSRB website: *https://www.epa.gov/osa/human-studies-review-board.* For questions on document availability, or if you do not have access to the internet, consult with the DFO, Tom Tracy listed under **FOR FURTHER INFORMATION CONTACT**.

Special accommodations. For information on access or services for individuals with disabilities, or to request accommodation of a disability, please contact the DFO listed under **FOR FURTHER INFORMATION CONTACT** at least 10 days prior to each meeting to give EPA as much time as possible to process your request.

How may I participate in this meeting?

The HSRB encourages the public's input. You may participate in these meetings by following the instructions in this section.

1. *Oral comments.* To pre-register to make oral comments, please contact the DFO, Tom Tracy, listed under **FOR FURTHER INFORMATION CONTACT**. Requests to present oral comments during the meetings will be accepted up to Noon Eastern Time, seven calendar days prior to each meeting date. To the extent that time permits, interested persons who have not pre-registered may be permitted by the HSRB Chair to present oral comments during the meetings at the designated time on the agenda. Oral comments before the HSRB are generally limited to five minutes per individual or organization. If additional time is available, further public comments may be possible.

2. *Written comments.* For the Board to have the best opportunity to review and consider your comments as it deliberates, you should submit your comments prior to the meetings via email by Noon Eastern Time, seven calendar days prior to each meeting date. If you submit comments after these dates, those comments will be provided to the HSRB members, but you should recognize that the HSRB members may not have adequate time to consider your comments prior to their discussion. You should submit your comments to the DFO, Tom Tracy listed under **FOR FURTHER INFORMATION CONTACT**. There is no limit on the length of written comments for consideration by the HSRB.

Topics for discussion. The agenda and meeting materials will be available seven calendar days in advance of each meeting at *https://www.epa.gov/osa/human-studies-review-board.*

Meeting minutes and final reports. Minutes of these meetings, summarizing the topics discussed and recommendations made by the HSRB, will be released within 90 calendar days of each meeting. These minutes will be available at *https://www.epa.gov/osa/human-studies-review-board.* In addition, information regarding the HSRB's Final Reports, will be found at *https://www.epa.gov/osa/human-studies-review-board* or can be requested from Tom Tracy listed under **FOR FURTHER INFORMATION CONTACT**.

Mary Ross,

Director, Office of Science Advisor, Policy and Engagement.

[FR Doc. 2022–26008 Filed 11–28–22; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OPP–2017–0750; FRL–10219–01–OCSPP]

Pesticide Registration Review; Proposed Interim Decisions for the Rodenticides; Notice of Availability

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces the availability of EPA's proposed interim registration review decisions and opens a 75-day public comment period on the proposed interim decisions for the following rodenticides: Brodifacoum, bromadiolone, bromethalin, chlorophacinone, cholecalciferol, difenacoum, difethialone, diphacinone (and its sodium salt), strychnine, warfarin (and its sodium salt), and zinc phosphide.

DATES: Comments must be received on or before February 13, 2023.

ADDRESSES: Submit your comments, identified by docket identification (ID) number EPA–HQ–OPP–2017–0750, and the specific case number for the chemical substance related to your comment, through the Federal eRulemaking Portal at *https://www.regulations.gov.* Follow the online instructions for submitting comments. Do not submit electronically any information you consider to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Additional instructions on commenting or visiting the docket, along with more information about dockets generally, is available at *https://www.epa.gov/dockets.*

FOR FURTHER INFORMATION CONTACT:

For pesticide specific information, please contact the Chemical Review Manager for the pesticide of interest identified in Table 1 in Unit IV.

For general information on the registration review program, contact: Melanie Biscoe, Pesticide Re-Evaluation Division (7508P), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave. NW, Washington, DC 20460–0001; email address: *biscoe.melanie@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this action apply to me?

This action is directed to the public in general and may be of interest to a wide range of stakeholders including environmental, human health, farm worker, and agricultural advocates; the chemical industry; pesticide users; and members of the public interested in the sale, distribution, or use of pesticides. Since others also may be interested, the Agency has not attempted to describe all the specific entities that may be affected by this action. If you have any questions regarding the applicability of this action to a particular entity, consult the Chemical Review Manager for the pesticide of interest identified in Table 1 in Unit IV.

B. What should I consider as I prepare my comments for EPA?

1. *Submitting CBI.* Do not submit this information to EPA through regulations.gov or email. Clearly mark the part or all of the information that you claim to be CBI. For CBI information on a disk or CD–ROM that you mail to EPA, mark the outside of the disk or CD–ROM as CBI and then identify electronically within the disk or CD–ROM the specific information that is claimed as CBI. In addition to one complete version of the comment that includes information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public docket. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2.

2. *Tips for preparing your comments.* When preparing and submitting your comments, see the commenting tips at: *https://www.epa.gov/dockets/commenting-epa-dockets.*

3. *Environmental justice.* EPA seeks to achieve environmental justice, the fair treatment and meaningful involvement of any group, including minority and/or low-income populations, in the development, implementation, and enforcement of environmental laws, regulations, and policies. To help address potential environmental justice issues, the Agency seeks information on any groups or segments of the population who, as a result of their location, cultural practices, or other factors, may have atypical or disproportionately high and adverse human health impacts or environmental effects from exposure to the pesticides discussed in this document, compared to the general population.

II. Background

Registration review is EPA's periodic review of pesticide registrations to ensure that each pesticide continues to satisfy the statutory standard for registration, that is, the pesticide can perform its intended function without unreasonable adverse effects on human health or the environment. As part of the registration review process, the Agency has completed proposed interim decisions for all pesticides listed in Table 1 in Unit IV. Through this program, EPA is ensuring that each pesticide's registration is based on current scientific and other knowledge, including its effects on human health and the environment.

III. Authority

EPA is conducting its registration review of the chemicals listed in the Table 1 in Unit IV pursuant to section 3(g) of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) and the Procedural Regulations for Registration Review at 40 CFR part 155, subpart C. Section 3(g) of FIFRA provides, among other things, that the registrations of pesticides are to be reviewed every 15 years. Under FIFRA, a pesticide product may be registered or remain registered only if it meets the statutory standard for registration given in FIFRA section 3(c)(5) (7 U.S.C. 136a(c)(5)). When used in accordance with widespread and commonly recognized practice, the pesticide product must perform its intended function without unreasonable adverse effects on the environment; that is, without any unreasonable risk to man or the environment, or a human dietary risk from residues that result from the use of a pesticide in or on food.

IV. What action is the Agency taking?

Pursuant to 40 CFR 155.58, this notice announces the availability of EPA's proposed interim registration review decisions for the rodenticides shown in Table 1 and opens a 75-day public comment period on the proposed interim registration review decisions.

TABLE 1—RODENTICIDES WITH PROPOSED INTERIM DECISIONS

Registration review case name and number	Docket ID No.	Chemical review manager and contact information
Brodifacoum, Case Number 2755	EPA–HQ–OPP–2015–0767	Steven R. Peterson, *OPPRodenticidesInquiries@epa.gov*, (202) 566–2218.

TABLE 1—RODENTICIDES WITH PROPOSED INTERIM DECISIONS—Continued

Registration review case name and number	Docket ID No.	Chemical review manager and contact information
Bromadiolone, Case Number 2760	EPA–HQ–OPP–2015–0768	Steven R. Peterson, *OPPRodenticidesInquiries@epa.gov*, (202) 566–2218.
Bromethalin, Case Number 2765	EPA–HQ–OPP–2016–0077	Kent Fothergill, *OPPRodenticidesInquiries@epa.gov*, (202) 566–1943.
Chlorophacinone, Case Number 2100	EPA–HQ–OPP–2015–0778	Steven R. Peterson, *OPPRodenticidesInquiries@epa.gov*, (202) 566–2218.
Cholecalciferol, Case Number 7600	EPA–HQ–OPP–2016–0139	Kent Fothergill, *OPPRodenticidesInquiries@epa.gov*, (202) 566–1943.
Difenacoum, Case Number 7630	EPA–HQ–OPP–2015–0769	Steven R. Peterson, *OPPRodenticidesInquiries@epa.gov*, (202) 566–2218.
Difethialone, Case Number 7603	EPA–HQ–OPP–2015–0770	Steven R. Peterson, *OPPRodenticidesInquiries@epa.gov*, (202) 566–2218.
Diphacinone (and its sodium salt), Case Number 2205	EPA–HQ–OPP–2015–0777	Steven R. Peterson, *OPPRodenticidesInquiries@epa.gov*, (202) 566–2218.
Strychnine, Case Number 3133	EPA–HQ–OPP–2015–0754	Shrestha, Srijana, *OPPRodenticidesInquiries@epa.gov*, (202) 566–2329.
Warfarin (and its sodium salt), Case Number 0011	EPA–HQ–OPP–2015–0481	Steven R. Peterson, *OPPRodenticidesInquiries@epa.gov*, (202) 566–2218.
Zinc Phosphide, Case Number 0026	EPA–HQ–OPP–2016–0140	Anna Senninger, *OPPRodenticidesInquiries@epa.gov*, (202) 566–2216.

The registration review docket for a pesticide includes earlier documents related to the registration review case. For example, the review opened with a Preliminary Work Plan, for public comment. A Final Work Plan was placed in the docket following public comment on the Preliminary Work Plan.

The documents in the dockets describe EPA's rationales for conducting additional risk assessments for the registration review of the rodenticides included in Table 1 in Unit IV, as well as the Agency's subsequent risk findings and consideration of possible risk mitigation measures. These proposed interim registration review decisions are supported by the rationales included in those documents. Following public comment, the Agency will issue interim or final registration review decisions for the rodenticides listed in Table 1 in Unit IV.

The registration review final rule at 40 CFR 155.58(a) provides for a minimum 60-day public comment period on all proposed interim registration review decisions. This comment period is intended to provide an opportunity for public input and a mechanism for initiating any necessary amendments to the proposed interim decision. All comments should be submitted using the methods in **ADDRESSES** and must be received by EPA on or before the closing date. These comments will become part of the docket for the pesticides included in Table 1 in Unit IV. Comments received after the close of the comment period will be marked ''late.'' EPA is not required to consider these late comments. The Agency will carefully consider all comments received by the closing date and may provide a ''Response to Comments Memorandum'' in the docket.

Background on the registration review program is provided at: *https://www.epa.gov/pesticide-reevaluation.*

Authority: 7 U.S.C. 136 *et seq.*

Dated: November 22, 2022.

Mary Reaves,

Director, Pesticide Re-Evaluation Division, Office of Pesticide Programs.

[FR Doc. 2022–25978 Filed 11–28–22; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OAR–2004–0016; FRL–10442–01–OMS]

Information Collection Request Submitted to OMB for Review and Approval; Comment Request; Part 71 Federal Operating Permit Program (Renewal)

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: The Environmental Protection Agency (EPA) has submitted an information collection request (ICR), part 71 Federal Operating Permit Program (Renewal) (EPA ICR Number 1713.13, OMB Control Number 2060–0336) to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act (PRA). 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 January 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: Comments must be submitted on or before December 29, 2022.

ADDRESSES: Submit your comments, referencing Docket ID No. EPA–HQ–OAR–2004–0016, online using *https://www.regulations.gov* (our preferred method), by email to *a-and-r-docket@epa.gov,* or by mail to: EPA Docket Center, Environmental Protection Agency, Mail Code 28221T, 1200 Pennsylvania Avenue 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: Mayesha Choudhury, Air Quality Policy Division, Office of Air Quality Planning

and Standards, Environmental Protection Agency, Research Triangle Park, NC; telephone number: (919) 541–5297; fax number: (919) 541–5509; email address: *choudhury.mayesha@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, Room 3334, 1301 Constitution Avenue NW, Washington, DC. The telephone number for the Docket Center is (202) 566–1744. The 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 or other information whose disclosure is restricted by statute. For additional information about EPA's public docket, visit *http://www.epa.gov/dockets.*

Abstract: Title V of the Clean Air Act (Act) requires the EPA to operate a federal operating permits program in areas not subject to an approved state program. The EPA regulations setting forth the requirements for the federal (EPA) operating permit program are at 40 CFR part 71. The part 71 program is designed to be implemented primarily by the EPA in all areas where state and local agencies do not have jurisdiction, such as Indian country and offshore, beyond states' seaward boundaries. The EPA may also delegate authority to implement the part 71 program on its behalf to a state, local or tribal agency, if the agency requests delegation and makes certain showings regarding its authority and ability to implement the program. One such delegate agency for the part 71 program exists at present.

In order to receive an operating permit for a major or other source subject to the permitting program, the applicant must conduct the necessary research, perform the appropriate analyses, and prepare the permit application with documentation to demonstrate that its facility meets all applicable statutory and regulatory requirements. Specific activities and requirements are listed and described in the Supporting Statement for the part 71 ICR.

Under part 71, the permitting authority (the EPA or a delegate agency) reviews permit applications, provides for public review of proposed permits, issues permits based on consideration of all technical factors and public input, and reviews information submittals required of sources during the term of the permit. Under part 71, the EPA reviews certain actions and performs oversight of any delegate agency, consistent with the terms of a delegation agreement. Consequently, information prepared and submitted by sources is essential for sources to receive permits, and for federal and tribal permitting agencies to adequately review the permit applications and issue the permits, oversee implementation of the permits, and properly administer and manage the program.

Information that is collected is handled according to EPA's policies set forth in title 40, chapter 1, part 2, subpart B—Confidentiality of Business Information (*see* 40 CFR part 2). *See* also section 114(c) of the Act.

Form Numbers: The forms are 5900–01, 5900–02, 5900–03, 5900–04, 5900–05, 5900–06, 5900–79, 5900–80, 5900–81, 5900–82, 5900–83, 5900–84, 5900–85, and 5900–86.

Respondents/affected entities: Industrial plants (sources) and tribal permitting authorities.

Respondent's obligation to respond: mandatory (*see* 40 CFR part 71).

Estimated number of respondents: 89 (total); 88 industry sources and one tribal delegate permitting authority (the EPA serves as a permitting authority but is not a respondent).

Frequency of response: On occasion.

Total estimated burden: 23,845 hours (per year). Burden is defined at 5 CFR 1320.03(b).

Total estimated cost: $1,858,914 (per year). There are no annualized capital or operation & maintenance costs.

Changes in estimates: There is an increase of 138 hours per year for the estimated respondent burden compared with the ICR currently approved by OMB. This increase is due to updated estimates of the number of sources and permits subject to the part 71 program, rather than any change in federal mandates.

Courtney Kerwin,

Director, Regulatory Support Division.

[FR Doc. 2022–26027 Filed 11–28–22; 8:45 am]

BILLING CODE 6560–50–P

NATIONAL SPACE COUNCIL

Notice of In-Space Authorization and Supervision Policy, Additional Listening Session

AGENCY: Executive Office of the President (EOP), National Space Council.

SUMMARY: On 9 September 2022, Vice President Kamala Harris, Chair of the National Space Council, requested Council Members to provide ''a proposal for the authorization and supervision of commercial novel space activities within 180 days[.]''

The White House National Space Council in the Executive Office of the President has held two virtual 2 hour listening sessions to engage with members of the public and learn about novel space capabilities and innovative missions, experiences with United States regulatory bodies, and approaches to mission authorization and supervision that can evolve over time. See **Federal Register** Notice ID NSPC–2022–0001–0001.

The National Space Council is now scheduling a third virtual listening session to accommodate additional speaker requests.

Perspectives gathered during the virtual listening sessions will inform the National Space Council as it develops a whole-of-government framework that provides a clear, predictable, and flexible process in furtherance of the *United States Space Priorities Framework (December 2021)* which states that ''U.S regulations must provide clarity and certainty for the authorization and supervision of non-governmental space activities, including for novel activities such as on-orbit services, orbital debris removal, space-based manufacturing, commercial human spaceflight, and recovery and use of space resources.''

Dates

1. Approaches for Authorization & Supervision continued:
Thursday, 15 December 2022 1 p.m.–2 p.m. ET
Registration deadlines:
1. Approaches for Authorization & Supervision continued:
Thursday, 15 December 2022 1 p.m.

ADDRESSES: Register for a virtual listening session using the link below:
Approaches to Authorization & Supervision: https://pitc.zoomgov.com/meeting/register/vJItc-6sqD8oHJZ0i2ezS2epxdLPUzub8eI.
Please upload written comments to *Regulations.gov.*

FOR FURTHER INFORMATION CONTACT: Diane Howard at *MBX.NSpC.IASP@ovp.eop.gov* or by calling 202.456.7831.

SUPPLEMENTARY INFORMATION: Novel activities relate to those missions/activities that are not directly reviewed under existing regulatory regimes, including assembly and manufacturing, mining, and fueling stations. Participants are invited to share information about their missions—the different phases from cradle to grave as

well the multiple aspects of these phases. *i.e.* the communications aspect, role of imagery in operations, in-space safety protocols such as conjunction assessment and collision avoidance, and any others participants believe are appropriate to be considered.

Pursuant to Executive Order 14056 and Title V of Public Law 100–685, National Space Council is soliciting public input through these virtual listening sessions to obtain information and recommendations from a wide array of stakeholders, including representatives from diverse industries, academia, other relevant organizations and institutions, and the general public. Virtual listening sessions will inform National Space Council Members as they develop applicable national space policy as described herein.

The virtual listening session focuses on the theme of the previously held second session, as described below:

1. Session on Approaches for Authorization & Supervision

Article VI of the Outer Space Treaty obligates the United States to authorize and provide continuous supervision for the space activities of its non-governmental entities. Authorization refers to governmental permission to perform a mission or activity and supervision means ongoing governmental oversight of some sort or degree sufficient to ensure consistency with the Outer Space Treaty. The goal is a clear, predictable, and flexible regulatory and policy environment for private sector space activities that will grow and evolve in response to technological advancement and enable continued sustainability of the space environment. This requires understanding of the operational phase of these missions.

Participants are invited to share information about their experiences and opinions about obtaining authorization to perform their current and planned activities and if/how these activities are being supervised, if current, and ideas for supervision of planned missions, to include incentives, monitoring, reporting, and others.

Speakers will have 3 minutes each to present comments and participants will be allowed to provide further details and perspectives in written format within 45 days of this publication.

Dated: 22 November 2022.

Diane Howard,

Director of Commercial Space Policy, National Space Council.

[FR Doc. 2022–25951 Filed 11–28–22; 8:45 am]

BILLING CODE 3395–F2–P

FEDERAL COMMUNICATIONS COMMISSION

[FR ID: 115399]

Privacy Act of 1974; Matching Program

AGENCY: Federal Communications Commission.

ACTION: Notice of establishment of a matching program.

SUMMARY: In accordance with the Privacy Act of 1974, as amended (''Privacy Act''), this document announces the establishment of a computer matching program the Federal Communications Commission (''FCC'' or ''Commission'' or ''Agency'') and the Universal Service Administrative Company (USAC) will conduct with the Wisconsin Department of Health Services and Wisconsin Department of Revenue (''DHSDOR''). The purpose of this matching program is to verify the eligibility of applicants to and subscribers of the Universal Service Fund (USF) Lifeline program, which is administered by USAC under the direction of the FCC. More information about this program is provided in the **SUPPLEMENTARY INFORMATION** section below.

DATES: Written comments are due on or before December 29, 2022. This computer matching program will commence on December 29, 2022, and will conclude 18 months later.

ADDRESSES: Send comments to Elliot Tarloff, FCC, 45 L Street NE, Washington, DC 20554, or *Privacy@fcc.gov.*

FOR FURTHER INFORMATION CONTACT: Elliot Tarloff at 202–418–0886 or *Privacy@fcc.gov.*

SUPPLEMENTARY INFORMATION: The Lifeline program provides support for discounted broadband and voice services to low-income consumers. Lifeline is administered by the Universal Service Administrative Company (USAC) under FCC direction. Consumers qualify for Lifeline through proof of income or participation in a qualifying program, such as Medicaid, the Supplemental Nutritional Assistance Program (SNAP), Federal Public Housing Assistance, Supplemental Security Income (SSI), Veterans and Survivors Pension Benefit, and/or various Tribal-specific federal assistance programs. In a Report and Order adopted on March 31, 2016, the Commission ordered USAC to create a National Lifeline Eligibility Verifier (''National Verifier''), including the National Lifeline Eligibility Database (LED), that would match data about Lifeline applicants and subscribers with other data sources to verify the eligibility of an applicant or subscriber. The Commission found that the National Verifier would reduce compliance costs for Lifeline service providers, improve service for Lifeline subscribers, and reduce waste, fraud, and abuse in the program. The purpose of this particular matching program is to verify Lifeline eligibility by establishing that applicants or subscribers in Wisconsin are enrolled in the SNAP, Medicaid, SSI, or Income Verification programs.

Participating Non-Federal Agency

- Wisconsin Department of Health Services and Wisconsin Department of Revenue.

Authority for Conducting the Matching Program

47 U.S.C. 254; 47 CFR 54.400 *et seq.;* Lifeline and Link Up Reform and Modernization, et al., Third Report and Order, Further Report and Order, and Order on Reconsideration, 31 FCC Rcd 3962, 4006–21, paras. 126–66 (2016) (2016 Lifeline Modernization Order).

Purpose(s)

In the 2016 Lifeline Modernization Order, the FCC required USAC to develop and operate the National Verifier to improve efficiency and reduce waste, fraud, and abuse in the Lifeline program. The stated purpose of the National Verifier is ''to increase the integrity and improve the performance of the Lifeline program for the benefit of a variety of Lifeline participants, including Lifeline providers, subscribers, states, community-based organizations, USAC, and the Commission.'' 31 FCC Rcd 3962, 4006, para. 126. To help determine whether Lifeline applicants and subscribers are eligible for Lifeline benefits, the Order contemplates that the USAC-operated LED will communicate with information systems and databases operated by other Federal and State agencies. Id. at 4011–2, paras. 135–7.

Categories of Individuals

The categories of individuals whose information is involved in the matching program include, but are not limited to, those individuals (residing in a single household) who have applied for Lifeline benefits; are currently receiving Lifeline benefits; are individuals who enable another individual in their household to qualify for Lifeline benefits; are minors whose status qualifies a parent or guardian for Lifeline benefits; are individuals who have received Lifeline benefits; or are

individuals acting on behalf of an eligible telecommunications carrier (ETC) who have enrolled individuals in the Lifeline program.

Categories of Records

The categories of records involved in the matching program include, but are not limited to, the last four digits of the Lifeline applicant's Social Security Number, and first and last name. The National Verifier will transfer these data elements to the Wisconsin Department of Health Services and Wisconsin Department of Revenue which will respond either ''yes'' or ''no'' that the individual is enrolled in a Lifeline-qualifying assistance program: SNAP, Medicaid, SSI, or Income Verification.

System(s) of Records

The USAC records shared as part of this matching program reside in the Lifeline system of records, FCC/WCB–1, Lifeline Program, a notice of which the FCC published at 86 FR 11526 (Feb. 25, 2021).

Federal Communications Commission.

Marlene Dortch,

Secretary.

[FR Doc. 2022–25920 Filed 11–28–22; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL MARITIME COMMISSION

[Docket No. 22–32]

Notice of Filing of Complaint and Assignment; DOKA U.S.A. LTD., Complainant v. MSC MEDITERRANEAN SHIPPING COMPANY (USA) INC., Respondent;

Served: November 22, 2022.

Notice is given that a complaint has been filed with the Federal Maritime Commission (Commission) by Doka U.S.A. Ltd., hereinafter ''Complainant,'' against MSC Mediterranean Shipping Company (USA) Inc., hereinafter ''Respondent.'' Complainant states that it is an international corporation with an office located in New Jersey. Complainant identifies the Respondent as a vessel-operating common carrier incorporated in New York with its principal place of business located in Albany, NY.

Complainant alleges that Respondent violated 46 U.S.C. 41102(c), 46 U.S.C. 41104 (a)(15) and 46 U.S.C. 41104(d), regarding its practices and the billing and assessment of charges on the shipments of the Complainant's container cargo, including demurrage, detention, and dwell charges. An answer to the complaint is due to be filed with the Commission within twenty-five (25) days after the date of service. The full text of the complaint can be found in the Commission's Electronic Reading Room at *https://www2.fmc.gov/readingroom/proceeding/22-32/.*

This proceeding has been assigned to Office of Administrative Law Judges. The initial decision of the presiding officer in this proceeding shall be issued by November 22, 2023, and the final decision of the Commission shall be issued by June 5, 2024.

William Cody,

Secretary.

[FR Doc. 2022–26009 Filed 11–28–22; 8:45 am]

BILLING CODE 6730–02–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, with revision, the Interchange Transaction Fees Survey (FR 3064; OMB No. 7100–0344).

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, 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/reportforms/review.aspx* 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, With Revision, of the Following Information Collection

Collection title: Interchange Transaction Fees Survey.

Collection identifier: FR 3064.

OMB control number: 7100–0344.

Effective date: The revisions will be implemented starting from the next iteration of the Debit Card Issuer Survey.

Frequency: Annual.

Respondents: Debit card issuers and payment card networks.

Estimated number of respondents: FR 3064a, 527; FR 3064b, 15.

Estimated average hours per response: FR 3064a, 160; FR 3064b, 75.

Estimated annual burden hours: FR 3064a, 84,320; FR 3064b, 1,125.

General description of collection: The FR 3064 consists of two parts: the Debit Card Issuer Survey (FR 3064a) and the Payment Card Network Survey (FR 3064b).

The FR 3064a collects data from issuers of debit cards (including general-use prepaid cards) that, together with their affiliates, have assets of $10 billion or more. The 3064a collects information regarding the volume and value of debit card transactions; chargebacks and returns; costs of authorization, clearance, and settlement of debit card transactions; other costs incurred in connection with particular debit card transactions; fraud prevention costs and fraud losses; and interchange fee revenue.[1]

The FR 3064b collects data from payment card networks. The survey includes the volume and value of debit card transactions; interchange fees; network fees; and payments and incentives paid by networks to acquirers, merchants, and issuers.[2]

The data from the FR 3064a and FR 3064b are used to fulfill a statutory requirement that the Board disclose certain information regarding debit card transactions on a biennial basis.[3] In addition, the Board uses data from the FR 3064b to publicly report on an annual basis the extent to which networks have established separate

[1] *See* 12 CFR 235.2(k) for the definition of ''Issuer.''

[2] *See* 12 CFR 235.2(m) for the definition of ''Payment card network.''

[3] *See* 12 U.S.C. 1693o–2(a)(3)(B). The Board's biennial reports are available at *https://www.federalreserve.gov/paymentsystems/regii-data-collections.htm.*

interchange fees for exempt and covered issuers.[4]

Legal authorization and confidentiality: The FR 3064 surveys are authorized by section 920(a) of the Electronic Fund Transfer Act, as amended by section 1075(a) of the Dodd-Frank Wall Street Reform and Consumer Protection Act. This provision requires the Board, at least once every two years, to disclose aggregate or summary information concerning the costs incurred and interchange transaction fees charged or received by issuers or payment card networks in connection with the authorization, clearance, or settlement of electronic debit transactions as the Board considers appropriate and in the public interest. It also provides the Board with authority to require issuers and payment card networks to provide information to enable the Board to carry out the provisions of the subsection. The FR 3064 surveys are mandatory.

The Board is required to release aggregate information from responses to the FR 3064 surveys. The Board additionally releases, at the network level, the percentage of total number of transactions, the percentage of total value of transactions, and the average transaction value for exempt and non-exempt issuers obtained on the FR 3064b because it can be calculated based on information the Board already releases and may be useful to issuers, merchants, and policymakers in choosing payment card networks and assessing the effects of interchange regulations. The information contained in individual responses to the FR 3064 surveys is nonpublic commercial or financial information, which is both customarily and actually treated as private by the respondent. The Board may therefore keep such information confidential pursuant to exemption 4 of the Freedom of Information Act.

Current actions: On July 13, 2022, the Board published a notice in the **Federal Register** (87 FR 41718) requesting public comment for 60 days on the extension, with revision, of the Interchange Transaction Fees Survey. The comment period for this notice expired on September 12, 2022. The Board did not receive any comments. The revisions will be implemented as proposed.

[4] See Average Debit Card Interchange Fee by Payment Card Network *https://www.federalreserve.gov/paymentsystems/regii-average-interchange-fee.htm.*

Board of Governors of the Federal Reserve System, November 22, 2022.

Michele Taylor Fennell,

Deputy Associate Secretary of the Board.

[FR Doc. 2022–25967 Filed 11–28–22; 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 14, 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. *Gerald Savoie, Jr. and Vonnie D. Savoie, both of 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.

B. Federal Reserve Bank of Dallas (Karen R. Smith, Director, Applications) 2200 N. Pearl St., Dallas, Texas 75201–2272.

1. *Scotty Dan Allen and Johnny Brad Allen, both of Stephenville, Texas;* as a group acting in concert to acquire voting shares of F&M Bancshares, Inc., and thereby indirectly acquire voting shares of Farmers and Merchants Bank, both of De Leon, Texas.

Board of Governors of the Federal Reserve System.

Michele Taylor Fennell,

Deputy Associate Secretary of the Board.

[FR Doc. 2022–26039 Filed 11–28–22; 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 Recordkeeping and Disclosure Requirements Associated with the Consumer Financial Protection Bureau's (CFPB) Regulation E (Electronic Fund Transfers) (FR E; OMB No. 7100–0200).

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, 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/reportforms/review.aspx* 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: Recordkeeping and Disclosure Requirements Associated with the Consumer Financial Protection Bureau's (CFPB) Regulation E (Electronic Fund Transfers).

Collection identifier: FR E.

OMB control number: 7100–0200.

Frequency: Event generated.

Respondents: State member banks and their subsidiaries, subsidiaries of bank holding companies, U.S. branches and agencies of foreign banks (other than federal branches, federal agencies, and insured state branches of foreign banks), commercial lending companies owned or controlled by foreign banks, and organizations operating under section 25 or 25A of the Federal Reserve Act (12 U.S.C. 601–604a; 611–631).

Estimated number of respondents: Recordkeeping, 874; Initial disclosures, 874; Change-in-terms, 874; Periodic statements, 67; Error resolution, 874; Pre-acquisition disclosures (short form disclosure), 5; internet posting and submission of prepaid account agreements, 6; Remittance transfer disclosures, 874; Error resolution for remittance transfers, 874; and Remittance transfers scheduled before the date of transfer, 874.

Estimated average hours per response: Recordkeeping, 0.97; Initial disclosures, 0.03; Change-in-terms, 0.02; Periodic statements, 7; Error resolution, 0.5; Pre-acquisition disclosures (short form disclosure), 4; internet posting and submission of prepaid account agreements, 0.08; Remittance transfer disclosures, 8; Error resolution for remittance transfers, 4.5; and Remittance transfers scheduled before the date of transfer, 8.

Estimated annual burden hours: Recordkeeping, 848; Initial disclosures, 6,555; Change-in-terms, 5,943; Periodic statements, 5,628; Error resolution, 13,110; Pre-acquisition disclosures (short form disclosure), 191; internet posting and submission of prepaid account agreements, 2; Remittance transfer disclosures, 83,904; Error resolution for remittance transfers, 47,196; and Remittance transfers scheduled before the date of transfer, 6,992.

General description of report: The Electronic Fund Transfer Act (EFTA) requires consumers be provided meaningful disclosures about the basic terms, costs, and rights relating to electronic fund transfer (EFT) services involving a consumer's account. The disclosures required by the EFTA are triggered by specific events. The disclosures inform consumers, for example, about the terms of the EFT service, activity on the account, potential liability for unauthorized transfers, and the process for resolving errors.

Legal authorization and confidentiality: The FR E is authorized pursuant to section 904 of the EFTA,[1] which requires that the CFPB prescribe regulations to carry out the purposes of the EFTA, including disclosure and recordkeeping requirements relating to consumer EFT transactions. The FR E is mandatory.

The disclosures and records required under Regulation E are not required to be submitted to the Board, so normally no confidentiality issues would be implicated. To the extent such disclosures and records are obtained by the Board through the examination process, they may be kept confidential under exemption 8 of the Freedom of Information Act, which protects information contained in or related to an examination of a financial institution.[2]

Current actions: On July 25, 2022, the Board published an initial notice in the **Federal Register** (87 FR 44116) requesting public comment for 60 days on the extension, without revision, of the FR E. The comment period for this notice expired on September 23, 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. 2022–25968 Filed 11–28–22; 8:45 am]

BILLING CODE 6210–01–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 Reporting and Disclosure Requirements of Community Reinvestment Act (CRA)-Related Agreements (Regulation G) (FR G; OMB No. 7100–0299).

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, 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/reportforms/review.aspx* 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: Reporting and Disclosure Requirements of Community Reinvestment Act (CRA)-Related Agreements.

Collection identifier: FR G.

OMB control number: 7100–0299.

Frequency: Annually and quarterly.

Respondents: State member banks and their subsidiaries; bank holding companies; savings and loan holding companies; affiliates of bank holding companies and savings and loan holding companies, other than banks, savings associations, and subsidiaries of banks and savings associations; and nongovernmental entities or persons (NGEPs) that enter into covered agreements with any of the aforementioned entities.

Estimated number of respondents: Reporting: insured depository institutions (IDIs) and affiliates—Copy of agreements to agency, 1; List of agreements to agency, 1; Annual report, 1; Filing NGEP annual report, 1; Reporting: NGEP—Copy of agreements to agency, 2, Annual report, 2; Disclosure: IDI and affiliates—Covered agreements to public, 1, Agreements

[1] 15 U.S.C. 1693b.

[2] 5 U.S.C. 552(b)(8).

relating to activities of CRA affiliates, 1; and Disclosure: NGEP Covered agreements to public, 2.

Estimated average hours per response: Reporting: IDI and affiliates—Copy of agreements to agency, 1; List of agreements to agency, 1; Annual report, 4; Filing NGEP annual report, 1; Reporting: NGEP—Copy of agreements to agency, 1, Annual report, 4; Disclosure: IDI and affiliates—Covered agreements to public, 1, Agreements relating to activities of CRA affiliates, 1; and Disclosure: NGEP Covered agreements to public, 1.

Estimated annual burden hours: Reporting: IDI and affiliates—Copy of agreements to agency, 2; List of agreements to agency, 2; Annual report, 4; Filing NGEP annual report, 1; Reporting: NGEP—Copy of agreements to agency, 2, Annual report, 8; Disclosure: IDI and affiliates—Covered agreements to public, 2, Agreements relating to activities of CRA affiliates, 2; and Disclosure: NGEP Covered agreements to public, 2.

General description of collection: Regulation G—Disclosure and Reporting of CRA-Related Agreements [1] implements section 711 of the Gramm-Leach-Bliley Act (GLBA),[2] which requires IDIs, affiliates of IDIs, and NGEPs to disclose written agreements entered into in connection with fulfillment of the CRA.[3]

Legal authorization and confidentiality: The disclosure and reporting requirements of Regulation G are authorized pursuant to the Board's authority to prescribe regulations to carry out the purposes of section 711 of GLBA.[4] The FR G disclosure and reporting requirements are mandatory.

The disclosure and reporting requirements of section 711 and Regulation G require relevant parties to disclose covered agreements to the public.[5] However, as explained in the preamble to Regulation G, an entity subject to Regulation G may submit separate public and complete versions of its covered agreements to the Board with a request for confidential treatment for the complete version.[6] As stated in the preamble, the Board would release only the public version unless it received a request under the Freedom of Information Act (FOIA) for the entirety of the CRA-related agreement.[7]

Regulation G states that in responding to a request for a covered agreement from an individual or entity under the public disclosure provisions of section 711, an NGEP, insured depository institution, or affiliate may withhold from the public information that the party believes the relevant supervisory agency could withhold from disclosure under the FOIA.[8] Information contained in covered agreements may be exempt from disclosure under exemption 4 of the FOIA, which protects nonpublic commercial or financial information, which is both customarily and actually treated as private by the respondent.[9] Information contained in covered agreements may also be exempt from disclosure under exemption 6 of the FOIA, which protects information about individuals in personnel and medical files the disclosure of which ''would constitute a clearly unwarranted invasion of personal privacy,'' [10] and under exemption 8 of the FOIA, which protects information contained in ''examination, operating, or condition reports'' obtained in the bank supervisory process.[11]

Current actions: On July 26, 2022, the Board published an initial notice in the **Federal Register** (87 FR 44392) requesting public comment for 60 days on the extension, without revision, of the FR G. The comment period for this notice expired on September 26, 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. 2022–25969 Filed 11–28–22; 8:45 am]

BILLING CODE 6210–01–P

[1] 12 CFR part 207.

[2] Codified at 12 U.S.C. 1831y.

[3] 12 U.S.C. 2901 *et seq.*

[4] 12 U.S.C. 1831y(h)(1).

[5] The Board noted in the preamble to Regulation G that section 711 would require disclosure of some types of information that an agency might normally withhold from disclosure under the FOIA and that the Board would not keep information confidential under the FOIA that a party would be required to disclose under section 711. *Disclosure and Reporting of CRA-Related Agreements,* 66 FR 2052, 2066–2067 (Jan. 10, 2001).

[6] *Id.*

[7] *Id.*

[8] 12 CFR 207.6(b)(2).

[9] 5 U.S.C. 552(b)(4).

[10] 5 U.S.C. 552(b)(6).

[11] 5 U.S.C. 552(b)(8).

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, with revision, the Structure Reporting and Recordkeeping Requirements for Domestic and Foreign Banking Organizations (FR Y–6, FR Y–7, FR Y–10, and FR Y–10E; OMB No. 7100–0297).

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, With Revision, of the Following Information Collection

Collection title: Annual Report of Holding Companies; Annual Report of Foreign Banking Organizations; Report of Changes in Organizational Structure; Supplement to the Report of Changes in Organizational Structure.

Collection identifier: FR Y–6; FR Y–7; FR Y–10; and FR Y–10E.

OMB control number: 7100–0297.

Effective Date: The effective dates are as follows:

March 31, 2023:

- Revised the FR Y–10 definition of ''control'' in the Glossary section of the instructions.

December 31, 2024:

- Revised the FR Y–6 to automate and add a standard template for reporting

item three, securities holders, and item four, insiders.

• Revised the FR Y–6 and FR Y–7 instructions for how the organizational chart and the tiered structure information are reported.

• Revised the FR Y–6 instructions for how branches of domestic depository institutions and Edge and agreement corporations are verified and reconciled.

All other changes are effective December 31, 2022. There are no changes to the FR Y–10E.

General description of collection: The FR Y–6 is filed by all top-tier holding companies (HCs) and non-qualifying foreign banking organizations (FBOs). The report collects an organizational chart and annual verification of domestic branches within the organization and includes information on the identity, percentage ownership, and business interests of principal shareholders, directors, and executive officers. The FR Y–6 can be filed via a paper or electronic (Portable Document Format) submission to the appropriate Federal Reserve Bank.

The FR Y–7 is an annual report filed by qualifying FBOs that have a U.S. banking presence. The report collects financial statements, organizational information, shares and shareholder information, and data on the eligibility to be a qualified FBO as defined by the Board's Regulation K. The FR Y–7 can be filed via a paper submission mailed to the appropriate Federal Reserve Bank.

The FR Y–10 is an event-generated information collection that captures changes in organizational structure or the regulated investments and activities of various entities. The FR Y–10 can be filed electronically or via a paper, email, or fax submission to the appropriate Federal Reserve Bank.

The FR Y–10E is a free-form supplement to the FR Y–10 that the Board uses to collect additional structural information as needed on an emergency basis. Responses for the FR Y–10E are voluntary. Submission methods vary depending on the nature and time-sensitivity of the data requests.

Frequency: FR Y–6: Annual; FR Y–7: Annual; FR Y–10: Event-generated; [1] FR Y–10E: Event-generated.[2]

Respondents: Bank holding companies (BHCs), savings and loan holding companies (SLHCs), securities holding companies, and intermediate holding companies (IHCs) (collectively, HCs), FBOs, state member banks that are not controlled by an HC, Edge and agreement corporations that are not controlled by a member bank, a domestic HC, or an FBO, and nationally chartered banks that are not controlled by a BHC or an FBO (with regard to their foreign investments only).

Total estimated number of respondents: FR Y–6: 3,803; FR Y–7: 236; FR Y–10: 3,950; FR Y–10E: 3,950.

Estimated average hours per response:

Reporting

FR Y–6: 2.5; FR Y–7: 3; FR Y–10: 2.5; FR Y–10E: 0.5.

Recordkeeping

FR Y–6: 0.5; FR Y–10: 0.5.

Total estimated change in burden: (3,210).

Total estimated annual burden hours:

Reporting

FR Y–6: 9,508; FR Y–7: 708; FR Y–10: 33,253; FR Y–10E: 1,975.

Recordkeeping

FR Y–6: 1,902; FR Y–10: 6,651.[3]

Current actions: On May 9, 2022, the Board published a notice in the **Federal Register** (87 FR 27639) requesting public comment for 60 days on the extension, with revision, of the FR Y–6, FR Y–7, FR Y–10, and FR Y–10E reports. The Board proposed to modify the FR Y–6, FR Y–7 and FR Y–10 reports by (1) revising the FR Y–6 reporting requirements for reporters who do not have any changes from their prior year's submission, (2) revising the FR Y–6 to automate and add a standard template for reporting item three, securities holders, and item four, insiders, (3) revising the FR Y–6 and FR Y–7 instructions for how the organizational chart and the tiered structure information are reported, (4) revising the FR Y–7 instructions to require the top tier FBO to file for its subsidiary FBOs, (5) revising the FR Y–6 instructions for how branches of domestic depository institutions and Edge and agreement corporations are verified and reconciled, (6) revising the FR Y–7 instructions language requirements for submission of the annual report to shareholders, (7) revising the FR Y–10 definition of control in the Glossary section of the instructions, (8) revising the FR Y–10 instructions for the legal authority codes and terminology for unitary savings and loans holding company activities that meet the requirements of section 10(c)(9)(C) of the Home Owners' Loan Act (HOLA), (9) revising the FR Y–10 instructions to update descriptions for legal authority codes 14, 68 and 999, (10) revising the FR Y–10 reporting form to add an election to become a Covered Savings Association (CSA) as a reportable event, (11) revising the FR Y–10 instructions to remove savings associations from the definition of nonbanking company, (12) clarifying the FR Y–10 instructions for the definition of a head office location, (13) clarifying the FR Y–10 instructions for the state of incorporation for federally chartered entities, (14) revising the FR Y–6 and the FR Y–10 instructions to add a requirement that respondents keep a record of the data submitted, and (15) making other minor clarifications and conforming edits to the FR Y–6, FR Y–7, and FR Y–10 forms and instructions. The comment period for this notice expired on July 8, 2022. The Board received comments from three commenters: two from trade associations and one from an individual banking organization. Board staff also conducted two follow-up calls with trade associations along with banking organizations to better understand their concerns and recommendations. The commenters generally supported the proposed revisions.

Detailed Discussion of Public Comments

A commenter remarked that the effective date of the revision to the definition of ''control'' in the FR Y–10 glossary should be delayed to September 30, 2023. Specifically, the commenter noted that a delay would allow companies additional time to implement the revision. The commenter also sought confirmation regarding the application of the revised definition to past and current structures.

The proposed revised definition of ''control'' was intended to align the FR Y–10 and other structure reports to the Board's final control rule. After this alignment, reporting companies will be required to report subsidiaries—that is companies that are controlled—for purposes of Regulations Y and LL (12 CFR parts 225 and 238) as subsidiaries under the FR Y–10 and other structure reports. This will ensure that reported structure information matches reporting companies' actual organizational structures.

Regarding the effective date of the revised definition of ''control'' on the FR Y–10, the Board will not move forward with the September 30, 2022,

[1] In 2020, there were 13,301 FR Y–10's processed for the 3,950 reporting institutions. This volume yields an approximate annual frequency of 3.37.

[2] The FR Y–10E is event-generated and the data are submitted on an ad-hoc basis as needed.

[3] 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 Y–6, FR Y–7, FR Y–10, and FR Y–10E.

effective date. Instead, the Board adopted the effective date of March 31, 2023, to allow additional time for respondents to perform any system enhancements.

As a result of the revised glossary definition of ''control,'' a reporting company generally should ensure that filings are made to reflect all current subsidiaries within 30 days of the effective date of the revised definition, consistent with the standard filing period. This revision does not require a reporting company to report a company that is not a subsidiary as of the effective date of the revised definition, even if the company would have been a subsidiary in the past under the revised definition. In addition, consistent with guidance previously provided in the final control rule, a reporting company does not need to file to reflect a subsidiary that would be controlled under the revised definition but for the fact that the subsidiary (1) was reviewed by Federal Reserve System staff prior to the effective date of the control rule and was not determined to be controlled, or (2) was reasonably determined not to be controlled by the reporting company at the time the relationship was established based on the standards and interpretations then in effect.[4] The glossary has been revised to reflect the outstanding guidance on the control rule.

A commenter requested that the Board retain the flexibility in the FR Y–7 for tiered FBOs to file separately, stating that the proposed change would create significant challenges for certain FBOs. In response to this comment, the Board will not move forward with requiring the top tier FBO to file for its subsidiary FBOs.

A commenter recommended that the proposed automated system for the FR Y–6 incorporate functionality to allow reporters to identify items as confidential, similar to the current process. Additionally, the commenter recommended revising the reporting instructions to provide clarity on how to request confidentiality with the new electronic filing process. The Board has not changed the existing process for requesting confidentiality for the FR Y–6 report. Additionally, any future system enhancements will allow for the current process for requesting confidentiality to continue.

A commenter noted that the proposed FR Y–6 report item 4 has two columns incorrectly labeled as (4)(b), and that one of the columns should be column (4)(d). The Board acknowledges this discrepancy and will adopt the proposed item with correctly labelled columns.

A commenter requested that the Federal Reserve confirm that firms will be able to submit multiple entries in the data fields for item 4 of the proposed FR Y–6 report forms. In response to this comment, the Board will ensure that the implemented technology will allow reporters to submit the necessary information for each required field.

A commenter recommended that the revised FR Y–6 form for reporting items 3 and 4, and the corresponding electronic submission process, should explicitly enable functionality to allow firms to download the standard template. The commenter further stated that adding this functionality will significantly decrease the potential burdens associated with these items. The Board agrees that a downloadable format would be useful and will take this comment into consideration during the development of the new system.

Commenters recommended that the Board permit the use of electronic signatures as part of the proposed recordkeeping requirement. Additionally, commenters recommended that firms maintain electronic copies of the FR Y–6 and FR Y–10 reports submitted to the Federal Reserve instead of hard copies. In response to these comments, the Board has not adopted the proposal to require respondents to maintain a physical copy of the entire FR Y–6 or FR Y–10 report. Instead, the Board has adopted a requirement that FR Y–6 and FR Y–10 respondents maintain manually signed cover pages for a period of three years following submission. Because the cover page signature will not be submitted to the Federal Reserve with electronic filing, this requirement is necessary for examiners to verify that the cover pages were signed. The Board will consider the use of electronic signatures in future technology enhancements.

A commenter made several observations regarding the proposed changes for Organization Chart and Domestic Branch Listing items on the FR Y–6:

- Noted a lack of clarity on changes to the reconciliation and verification requirements and data sources for the verification. The commenter noted that there is additional burden on respondents to reconcile because of the timing differences between when the FR Y–6 data becomes available and the high volume of FR Y–10 reports at year-end.
- Recommended the Federal Reserve remove the Organization Chart and Domestic Branch Listing from the FR Y–6 since the information is currently available on the FR Y–10 on an event driven basis. The commenter further stated that if the recommendation is not accepted, they suggested creating automated tools to allow ad hoc reconciliation between internal systems and Federal Reserve databases for all FR Y–10 reported data.
- Requested clarification of the filing requirements for reporters that answer ''Yes'' for the Organization Chart item.

With regard to the sourcing of data, reporters will reconcile data previously submitted to the Board through an FR Y–6 or FR Y–10 filing to confirm accuracy of the data. Therefore, the Board's system should have the most up-to-date data for firms to reconcile. If the reporter identifies a discrepancy in the reconciliation, an FR Y–10 report must be submitted to update the information on the Board's system. In response to the comment about removing items 2.a and 2.b from the FR Y–6 report, the Board will retain these items on the FR Y–6 and is adopting the changes to items 2.a and 2.b as proposed. Retaining the information in items 2.a and 2.b will ensure the accuracy and completeness of structure data on the Board's system. Reporters that use the online system to reconcile items 2.a and 2.b will no longer be required to submit an organizational chart as part of their FR Y–6 report, even if they indicated ''Yes'' for having changes from the prior year. Further, the Board will consider allowing ad hoc reconciliation between organizational structure information in the Federal Reserve's database and reporter's internal systems during the development of the new system.

A commenter recommended that the Federal Reserve update the attestation language in the FR Y–6 instructions to remove the reference to the supporting attachments as they will no longer be included in the report with the proposed electronic submission. The Board recognizes that there may be instances where a reporter must use another filing option, such as mailing the FR Y–6 report or uploading a PDF of the report to Reporting Central. Thus, this language is still relevant and will remain in the instructions.

A commenter stated that, although not directly raised by changes reflected in the proposal, the Board should revise the FR Y–7 Report Item 2 to align the perimeter of reportable non-bank companies with the FR Y–10. The commenter noted that this change would allow the Board to meaningfully

[4] These exclusions do not apply if, subsequent to the review by Federal Reserve System staff or the reporting company, the relationship between the reporting company and the other company changed materially.

reduce the reporting burden associated with the FR Y–7 without materially impairing the usefulness of the information to the Board. The Board acknowledges the variance between the FR Y–7 and the FR Y–10 in reporting certain nonbanking companies in which the reporting entity controls between five and 25 percent of outstanding shares of any class of voting securities. However, this information is relevant for supervisory purposes and is not reported elsewhere. The Board will continue to collect this information on the FR Y–7 report at this time.

Aside from the changes discussed above, the Board adopted the extension, with revision, of the FR Y–6, FR Y–7, FR Y–10, and FR Y–10E reports as originally proposed.

Board of Governors of the Federal Reserve System, November 23, 2022.

Michele Taylor Fennell,

Deputy Associate Secretary of the Board.

[FR Doc. 2022–26035 Filed 11–28–22; 8:45 am]

BILLING CODE 6210–01–P

FEDERAL RESERVE SYSTEM

Proposed Agency Information Collection Activities; Comment Request

AGENCY: Board of Governors of the Federal Reserve System.

ACTION: Notice, request for comment.

SUMMARY: The Board of Governors of the Federal Reserve System (Board) invites comment on a proposal to extend for three years, without revision, the Annual Daylight Overdraft Capital Report for U.S. Branches and Agencies of Foreign Banks (FR 2225; OMB No. 7100–0216).

DATES: Comments must be submitted on or before January 30, 2023.

ADDRESSES: You may submit comments, identified by FR 2225, by any of the following methods:

- *Agency Website: https://www.federalreserve.gov/.* Follow the instructions for submitting comments at *https://www.federalreserve.gov/apps/foia/proposedregs.aspx.*
- *Email: regs.comments@federalreserve.gov.* Include the OMB number or FR number in the subject line of the message.
- *Fax:* (202) 452–3819 or (202) 452–3102.
- *Mail:* Federal Reserve Board of Governors, Attn: Ann E. Misback, Secretary of the Board, Mailstop M–4775, 2001 C St NW, Washington, DC 20551.

All public comments are available from the Board's website at *https://www.federalreserve.gov/apps/foia/proposedregs.aspx* as submitted, unless modified for technical reasons or to remove personally identifiable information at the commenter's request. Accordingly, comments will not be edited to remove any confidential business information, identifying information, or contact information. Public comments may also be viewed electronically or in paper in Room M–4365A, 2001 C St NW, Washington, DC 20551, between 9:00 a.m. and 5:00 p.m. on weekdays. For security reasons, the Board requires that visitors make an appointment to inspect comments. You may do so by calling (202) 452–3684. Upon arrival, visitors will be required to present valid government-issued photo identification and to submit to security screening in order to inspect and photocopy comments.

Additionally, commenters may send a copy of their comments to the Office of Management and Budget (OMB) Desk Officer for the Federal Reserve Board, Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Room 10235, 725 17th Street NW, Washington, DC 20503, or by fax to (202) 395–6974.

FOR FURTHER INFORMATION CONTACT: Federal Reserve Board Clearance Officer—Nuha Elmaghrabi—Office of the Chief Data Officer, Board of Governors of the Federal Reserve System, *nuha.elmaghrabi@frb.gov,* (202) 452–3884.

SUPPLEMENTARY INFORMATION: On June 15, 1984, OMB delegated to the Board authority under the Paperwork Reduction Act (PRA) to approve and assign OMB control numbers to collections of information conducted or sponsored by the Board. In exercising this delegated authority, the Board is directed to take every reasonable step to solicit comment. In determining whether to approve a collection of information, the Board will consider all comments received from the public and other agencies.

During the comment period for this proposal, a copy of the proposed PRA OMB submission, including the draft reporting form and instructions, supporting statement, and other documentation, will be made available on the Board's public website at *https://www.federalreserve.gov/apps/reportforms/review.aspx* or may be requested from the agency clearance officer, whose name appears above. Final versions of these documents will be made available at *https://www.reginfo.gov/public/do/PRAMain,* if approved.

Request for Comment on Information Collection Proposal

The Board invites public comment on the following information collection, which is being reviewed under authority delegated by the OMB under the PRA. Comments are invited on the following:

a. Whether the proposed collection of information is necessary for the proper performance of the Board's functions, including whether the information has practical utility;

b. The accuracy of the Board's estimate of the burden of the proposed information collection, including the validity of the methodology and assumptions used;

c. Ways to enhance the quality, utility, and clarity of the information to be collected;

d. Ways to minimize the burden of information collection on respondents, including through the use of automated collection techniques or other forms of information technology; and

e. Estimates of capital or startup costs and costs of operation, maintenance, and purchase of services to provide information.

At the end of the comment period, the comments and recommendations received will be analyzed to determine the extent to which the Board should modify the proposal.

Proposal Under OMB Delegated Authority To Extend for Three Years, Without Revision, the Following Information Collection

Collection title: Annual Daylight Overdraft Capital Report for U.S. Branches and Agencies of Foreign Banks.

Collection identifier: FR 2225.

OMB control number: 7100–0216.

Frequency: Annually.

Respondents: Foreign banking organizations (FBOs) with U.S. branches or agencies.

Estimated number of respondents: 51.

Estimated average hours per response: 1.

Estimated annual burden hours: 51.

General description of collection: The FR 2225 is required for FBOs that wish to, and are eligible to, establish a non-zero net debit cap for their U.S. branches and agencies under the Federal Reserve Policy on Payment System Risk. The FR 2225 reporting form collects information needed to identify the respondent and its fiscal year end, and collects four items to determine its year-end capital and assets for purposes of daylight overdraft monitoring. Four items, converted into U.S. dollars, are collected for the capital

and assets determination: worldwide capital for the reporting FBO (item 1); an adjustment to avoid double counting of capital used by any direct or indirect subsidiary of the FBO that also has access to Fedwire and has its own net debit cap (item 2); the FBO's total daylight overdraft capital base for the U.S. branch and agency family (item 3), which is used to calculate the net debit cap; and the reporting FBO's total worldwide assets (item 4).

Legal authorization and confidentiality: This information collection is authorized pursuant to section 7(a) of the International Banking Act,[1] which establishes reserve requirements for U.S. branches and agencies of foreign banks, and pursuant to section 13(14) of the Federal Reserve Act (FRA),[2] which provides that ''each Federal Reserve bank may receive deposits from, discount paper endorsed by, and make advances to any branch or agency of a foreign bank in the same manner and to the same extent that it may exercise such powers with respect to a member bank if such branch or agency is maintaining reserves with such Reserve bank pursuant to section 7 of the International Banking Act of 1978.'' In addition, sections 11(i), 16, and 19(f) of the FRA,[3] which permit Reserve Banks to provide payment services to member banks, provide authority for the collection of the FR 2225 report in conjunction with the provisions above providing that Federal Reserve Banks may provide certain services to certain FBOs to the same extent that it may provide these services to a member bank. The FR 2225 is required to obtain a benefit, specifically a non-zero net debit cap.

The Board generally does not consider the information collected on the FR 2225 report to be confidential, and the completed version of this report generally is made available to the public upon request. However, in certain instances, specific information collected on an individual FBO's FR 2225 report may be exempt from disclosure, for example, pursuant to exemption 4 of the Freedom of Information Act (FOIA), which protects from public disclosure ''trade secrets and commercial or financial information obtained from a person [that is] privileged or confidential.'' [4] In order to obtain confidential treatment, a request for confidential treatment must be submitted by the FBO in writing concurrently with the submission of the FR 2225 report. This written request must identify the specific data for which confidential treatment is sought and must provide the legal justification for the confidentiality request, as provided in the Board's Rules Regarding Availability of Information (12 CFR part 261). The Federal Reserve will review each request for confidential treatment on a case-by-case basis to determine if confidential treatment is appropriate.

Board of Governors of the Federal Reserve System, November 22, 2022.

Michele Taylor Fennell,

Deputy Associate Secretary of the Board.

[FR Doc. 2022–25966 Filed 11–28–22; 8:45 am]

BILLING CODE 6210–01–P

[1] 12 U.S.C. 3105(a).

[2] 12 U.S.C. 347d.

[3] 12 U.S.C. 248(i), 248–1, and 464.

[4] 5 U.S.C. 552(b)(4).

FEDERAL RESERVE SYSTEM

Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied to the Board for approval, pursuant to the Bank Holding Company Act of 1956 (12 U.S.C. 1841 *et seq.*) (BHC Act), Regulation Y (12 CFR part 225), and all other applicable statutes and regulations to become a bank holding company and/or to acquire the assets or the ownership of, control of, or the power to vote shares of a bank or bank holding company and all of the banks and nonbanking companies owned by the bank holding company, including the companies listed below.

The public portions of the applications listed below, as well as other related filings required by the Board, if any, are available for immediate inspection at the Federal Reserve Bank(s) indicated below and at the offices of the Board of Governors. This information may also be obtained on an expedited basis, upon request, by contacting the appropriate Federal Reserve Bank and from the Board's Freedom of Information Office at *https://www.federalreserve.gov/foia/request.htm.* Interested persons may express their views in writing on the standards enumerated in the BHC Act (12 U.S.C. 1842(c)).

Comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors, Ann E. Misback, Secretary of the Board, 20th Street and Constitution Avenue NW, Washington, DC 20551–0001, not later than December 29, 2022.

A. Federal Reserve Bank of Dallas (Karen Smith, Director, Applications) 2200 North Pearl Street, Dallas, Texas 75201–2272:

1. *Lamar Street Investment Partners, LLC, Addison, Texas;* to become a bank holding company by acquiring Fidelity Bancshares, Inc., and thereby acquire Fidelity Bank, both of Waco, Texas.

Board of Governors of the Federal Reserve System.

Michele Taylor Fennell,

Deputy Associate Secretary of the Board.

[FR Doc. 2022–26041 Filed 11–28–22; 8:45 am]

BILLING CODE P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Notice of Award of a Single-Source Cooperative Agreement To Fund the World Health Organization (WHO)

AGENCY: Centers for Disease Control and Prevention (CDC), Department of Health and Human Services (HHS).

ACTION: Notice.

SUMMARY: The Centers for Disease Control and Prevention (CDC), located within the Department of Health and Human Services (HHS), announces the award of approximately $80,000,000, for Year 1 funding to WHO. The award will support WHO's efforts to support national governments with polio eradication, measles and rubella mortality reduction, and other vaccine preventable disease (VPD) control efforts. Funding amounts for years 2–5 will be set at continuation.

DATES: The period for this award will be July 1, 2023, through June 30, 2028.

FOR FURTHER INFORMATION CONTACT: Karen Clackum, Center for Global Health, Global Immunization Division, Centers for Disease Control and Prevention, 1600 Clifton Rd. NE, Bldg. 21, Atlanta, GA, 30329, Telephone: 770–488–2680, E-Mail: *KClackum@cdc.gov.*

SUPPLEMENTARY INFORMATION: The single-source award will support WHO in strengthening immunization systems; maintaining and strengthening field and laboratory-based surveillance; ensuring capacities to quickly and effectively detect and respond to VPD outbreaks; foster immunization program sustainability; improve immunization program, policies, guidelines, and practices at country, regional, and global levels; and ensure sustained political, technical, and financial support for the Global Polio Eradication Initiative (GPEI), Measles and Rubella Partnership, and other disease-specific initiatives as well as for the Immunization Agenda 2030.

WHO is in a unique position to conduct this work, as it is the only

organization with a worldwide mandate for the control and prevention of vaccine preventable diseases (VPDs). WHO also has the lead responsibility among United Nations (UN) organizations for implementing the World Health Assembly (WHA) resolutions calling for the global eradication of polio, elimination of rubella, and multiple other resolutions with targeted VPD goals. Additionally, no other global partner or agency has the technical expertise and direct access to implementation of immunization activities in such a breadth of countries.

Summary of the Award

Recipient: World Health Organization (WHO).

Purpose of the Award: The purpose of this award is to support WHO's efforts to support national governments with polio eradication, measles and rubella mortality reduction, and other vaccine preventable disease (VPD) control efforts in line with CDC's Global Immunization Strategic Framework (GISF).

Amount of Award: The approximate year 1 funding amount will be $80,000,000 in Federal Fiscal Year (FYY) 2023 funds, subject to the availability of funds. Funding amounts for years 2–5 will be set at continuation.

Authority: This program is authorized under Sections 301 (c), 307, and 317 of the Public Health Service Act (42 U.S.C. 241 (c), 242l, and 247b); and section 104 of the Foreign Assistance Act of 1961 (22 U.S.C. 2151b).

Period of Performance: July 1, 2023 through June 30, 2028.

Dated: November 23, 2022.

Terrance Perry,

Chief Grants Management Officer, Centers for Disease Control and Prevention.

[FR Doc. 2022–26001 Filed 11–28–22; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[30Day–23–1317]

Agency Forms Undergoing Paperwork Reduction Act Review

In accordance with the Paperwork Reduction Act of 1995, the Centers for Disease Control and Prevention (CDC) has submitted the information collection request titled ''National Healthcare Safety Network (NHSN) Coronavirus (COVID–19) Surveillance in Healthcare Facilities'' to the Office of Management and Budget (OMB) for review and approval. CDC previously published a ''Proposed Data Collection Submitted for Public Comment and Recommendations'' notice on September 12, 2022, to obtain comments from the public and affected agencies. CDC received two comments related to the previous notice. This notice serves to allow an additional 30 days for the public and affected agency comments.

CDC will accept all comments for this proposed information collection project. The Office of Management and Budget is particularly interested in comments that:

(a) 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;

(b) Evaluate the accuracy of the agencies 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;

(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; and

(e) Assess information collection costs.

To request additional information on the proposed project or to obtain a copy of the information collection plan and instruments, call (404) 639–7570. 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. Direct written comments and/or suggestions regarding the items contained in this notice to the Attention: CDC Desk Officer, Office of Management and Budget, 725 17th Street NW, Washington, DC 20503 or by fax to (202) 395–5806. Provide written comments within 30 days of notice publication.

Proposed Project

National Healthcare Safety Network (NHSN) Coronavirus (COVID–19) Surveillance in Healthcare Facilities (OMB Control No. 0920–1317, Exp. 1/31/2024)—Revision—National Center for Emerging and Zoonotic Infectious Diseases (NCEZID), Centers for Disease Control and Prevention (CDC).

Background and Brief Description

Hospitals are key partners in the U.S. response to COVID–19. The response is locally executed, state managed, and federally supported. At the Federal level, the U.S. Department of Health & Human Services COVID–19 Response Function, the White House Coronavirus Response Team, and the Centers for Disease Control & Prevention (CDC) COVID–19 Response work together to support the effective operations of the American healthcare system. This collection initially began at the end of March 2020 through a letter from then Vice President Pence to the nation's 4,700 hospitals, asking them to submit data daily on the number of patients tested for COVID–19, as well as information on bed capacity and requirements for other supplies. (*https://www.cms.gov/files/document/32920-hospital-letter-vice-president-pence.pdf*).

CDC's National Healthcare Safety Network (NHSN) COVID–19 Module (OMB Control No. 0920–1290) was initially approved March 26, 2020 for the collection of hospital COVID–19 data. The NHSN COVID–19 Module also collects COVID–19 data from long-term care facilities and dialysis centers, and was later approved as OMB Control No. 0920–1317. Beginning July 2020, at the request of the White House Coronavirus Task Force, collection of information from hospitals was transferred to the Department of Health and Human Services/Administration for Strategic Preparedness and Response (HHS/ASPR) and was housed in the TeleTracking portal.

This Revision request is being submitted so that the National Healthcare Safety Network (NHSN) will again assume responsibility for collection of COVID–19 data from hospitals beginning in January 2023. CDC requests OMB approval for an estimated 4,477,073 annual burden hours.

ESTIMATED ANNUALIZED BURDEN HOURS

Type of respondent	Form name	Number of respondents	Number responses per respondent	Average burden per response (in hours)
LTCF personnel	NHSN and Secure Access Management Services (SAMS) enrollment.	11,500	1	60/60
LTCF personnel	COVID–19 Module, Long Term Care Facility: Resident Impact and Facility Capacity form (57.144).	11,621	52	40/60
Business and financial operations occupations.	COVID–19 Module, Long Term Care Facility: Resident Impact and Facility Capacity form (57.144).	1,870	52	40/60
State and local health department occupations.	COVID–19 Module, Long Term Care Facility: Resident Impact and Facility Capacity form (57.144).	1,870	52	40/60
LTCF personnel	COVID–19 Module, Long Term Care Facility Resident Impact and Facility Capacity form (57.144) (retrospective data entry).	5,811	1	40/60
Business and financial operations occupations.	COVID–19 Module, Long Term Care Facility Resident Impact and Facility Capacity form (57.144) (retrospective data entry).	935	1	40/60
State and local health department occupations.	COVID–19 Module, Long Term Care Facility Resident Impact and Facility Capacity form (57.144) (retrospective data entry).	935	1	40/60
LTCF personnel	COVID–19 Module, Long Term Care Facility: Staff and Personnel Impact form (57.145).	11,621	52	15/60
Business and financial operations occupations.	COVID–19 Module, Long Term Care Facility: Staff and Personnel Impact form (57.145).	1,870	52	15/60
State and local health department occupations.	COVID–19 Module, Long Term Care Facility: Staff and Personnel Impact form (57.145).	1,870	52	15/60
LTCF personnel	COVID–19 Module, Long Term Care Facility Staff and Personnel Impact form (57.145) (retrospective data entry).	5,811	1	15/60
Business and financial operations occupations.	COVID–19 Module, Long Term Care Facility Staff and Personnel Impact form (57.145) (retrospective data entry).	935	1	15/60
State and local health department occupations.	COVID–19 Module, Long Term Care Facility Staff and Personnel Impact form (57.145) (retrospective data entry).	935	1	15/60
LTCF personnel	COVID–19 Module, Long-Term Care Facility: Resident Therapeutics (57.158).	11,621	52	10/60
Business and financial operations occupations.	COVID–19 Module, Long-Term Care Facility: Resident Therapeutics (57.158).	1,870	52	10/60
State and local health department occupations.	COVID–19 Module, Long-Term Care Facility: Resident Therapeutics (57.158).	1,870	52	10/60
LTCF personnel	LTCF VA Resident COVID–19 Event Form	188	36	35/60
LTCF personnel	LTCF VA Staff and Personnel COVID–19 Event Form	188	36	20/60
Facility personnel	Weekly Healthcare Personnel COVID–19 Vaccination Cumulative Summary.	12,600	52	90/60
LTCF personnel	Weekly Resident COVID–19 Vaccination Cumulative Summary for Long-Term Care Facilities.	16,864	52	75/60
Microbiologist (IP)	Weekly Patient COVID–19 Vaccination Cumulative Summary for Dialysis Facilities.	7,700	52	75/100
LTCF personnel	Monthly Reporting Plan Form for Long-term Care Facilities	16,864	9	5/60
Microbiologist (IP)	Healthcare Personnel Safety Monthly Reporting Plan—completed by Dialysis Facilities.	7,700	9	5/60
Microbiologist (IP)	Healthcare Personnel Safety Monthly Reporting Plan—completed by Inpatient Psychiatric Facilities.	394	12	5/60
Microbiologist (IP)	COVID–19 Dialysis Component Form	4,900	104	20/60
Hospitals	NHSN COVID–19 Hospital Module	6,000	365	90/60
Infusion Centers and Outpatient Clinics reporting Inventory & use of therapeutics (MABs).	NHSN COVID–19 Hospital Module	400	52	15/60

Jeffrey M. Zirger,

Lead, Information Collection Review Office, Office of Scientific Integrity, Office of Science, Centers for Disease Control and Prevention.

[FR Doc. 2022–25995 Filed 11–28–22; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[Docket No. CDC–2022–0137]

Proposed Update to the CDC Framework for Program Evaluation in Public Health

AGENCY: Centers for Disease Control and Prevention (CDC), Department of Health and Human Services (HHS).

ACTION: Request for information.

SUMMARY: The Centers for Disease Control and Prevention (CDC) in the Department of Health and Human Services (HHS) announces the opening of a docket to obtain comments and suggestions to update the CDC Framework for Program Evaluation in Public Health (CDC Evaluation Framework) and associated resources (*e.g.,* checklists, self-study guide). Updates to the CDC Evaluation Framework are needed to continue its valuable use and service to the evaluation field and public health.

DATES: Written comments must be received on or before January 30, 2023.

ADDRESSES: You may submit comments, identified by Docket No. CDC–2022–0137 by either of the methods listed below. Do not submit comments by email. CDC does not accept comments by email.

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.
- *Mail:* Centers for Disease Control and Prevention, Program Performance and Evaluation Office, 1600 Clifton Road NE, Mailstop H21–10, Atlanta, GA 30329–4027

Instructions: All submissions received must include the agency name and Docket Number. All relevant comments received will be posted without change to *http://regulations.gov,* including any personal information provided. For access to the docket to read background documents or comments received, go to *http://www.regulations.gov.*

FOR FURTHER INFORMATION CONTACT: Daniel Kidder, CDC Chief Evaluation Officer, Centers for Disease Control and Prevention, Program Performance and Evaluation Office, 1600 Clifton Road NE, Mailstop H21–10, Atlanta, GA 30329–4027; Telephone: 404.639.6270; Email: *CDCeval@cdc.gov.*

SUPPLEMENTARY INFORMATION: The flexibility and simplicity of the CDC Evaluation Framework have led to its wide adoption and use beyond CDC and public health. The CDC Evaluation Framework has guided CDC and other evaluators over two decades, as evidenced by more than 300 citations in peer-reviewed articles and use in projects reaching more than 50 countries on six continents. However, evaluation has evolved since publication of the framework in 1999; [1] therefore, CDC seeks to update the framework to align with changes in evaluation, public health, and federal policies and practices.

The comments from this Request for Information, along with input gathered through other mechanisms (*e.g.,* townhall with CDC, interviews with key federal evaluators, surveys with federal evaluation staff and leaders), will help identify how the framework may have been adapted and used in different settings, what aspects of the framework have been useful, any challenges in using the framework across different contexts, and gaps that may need to be addressed. CDC is gathering input from a variety of audiences, such as federal evaluators, CDC staff, and CDC funded partners. Feedback from these sources will be considered in determining priority areas to update and revise in the CDC Evaluation Framework to continue its valuable use and service to the evaluation field and public health. The relevant feedback along with tools, evidence, and resources in the field and literature will also be considered in determining whether to update, revise, or create new content for the CDC Evaluation Framework and supporting resources (*e.g.,* checklists, tools).

Request for Information

Interested persons or organizations are invited to submit written views, information, and recommendations. CDC invites comments specifically on the following questions, along with suggestions for improving the CDC Evaluation Framework:

1. How has the current CDC Evaluation Framework assisted or not assisted the public health community in planning and conducting high-quality program evaluations? What specifically helped or did not help?
2. Which contexts has the current CDC Evaluation Framework worked well for and for which contexts has it not worked well? What specifically did or did not work and why?
3. How does the current CDC Evaluation Framework promote or inhibit the conduct of evaluations that are culturally responsive and address health equity? What opportunities for improvement exist?

Please be clear and specific in the comments so that CDC can consider the feedback provided in determining whether to change or keep specific aspects of the CDC Evaluation Framework. The CDC Evaluation Framework and associated resources can be found here in the Supporting Materials tab of the docket and at *https://www.cdc.gov/evaluation/framework/index.htm.*

Please note that comments received, including attachments and other supporting materials, are part of the public record and are subject to public disclosure. Comments will be posted on *https://www.regulations.gov.* Therefore, do not include any information in your comment or supporting materials that you consider confidential or inappropriate for public disclosure. If you include your name, contact information, or other information that identifies you in the body of your comments, that information will be on public display. CDC will review all submissions and may choose to redact, or withhold submissions containing private or proprietary information such as Social Security numbers, medical information, inappropriate language, or duplicate/near duplicate examples of a mass-mail campaign.

Dated: November 23, 2022.

Angela K. Oliver,

Executive Secretary, Centers for Disease Control and Prevention.

[FR Doc. 2022–25997 Filed 11–28–22; 8:45 am]

BILLING CODE 4163–18–P

[1] Centers for Disease Control and Prevention. Framework for program evaluation in public health. MMWR 1999;48(No. RR–11).

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[30-Day–23–22BC]

Agency Forms Undergoing Paperwork Reduction Act Review

In accordance with the Paperwork Reduction Act of 1995, the Centers for Disease Control and Prevention (CDC) has submitted the information collection request titled ''Enhancing Data-driven Disease Detection in Newborns (ED3N)'' to the Office of Management and Budget (OMB) for

review and approval. CDC previously published a ''Proposed Data Collection Submitted for Public Comment and Recommendations'' notice on December 6, 2021 to obtain comments from the public and affected agencies. CDC received one comment related to the previous notice. This notice serves to allow an additional 30 days for public and affected agency comments.

CDC will accept all comments for this proposed information collection project. The Office of Management and Budget is particularly interested in comments that:

(a) 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;

(b) Evaluate the accuracy of the agencies 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;

(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; and

(e) Assess information collection costs.

To request additional information on the proposed project or to obtain a copy of the information collection plan and instruments, call (404) 639–7570. 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. Direct written comments and/or suggestions regarding the items contained in this notice to the Attention: CDC Desk Officer, Office of Management and Budget, 725 17th Street NW, Washington, DC 20503 or by fax to (202) 395–5806. Provide written comments within 30 days of notice publication.

Proposed Project

Enhancing Data-driven Disease Detection in Newborns (ED3N)—New—National Center for Environmental Health (NCEH), Centers for Disease Control and Prevention (CDC).

Background and Brief Description

The Newborn Screening and Molecular Biology Branch (NSMBB), in the National Center for Environmental Health (NCEH) Division of Laboratory Science (DLS), has the only laboratory in the world devoted to ensuring the accuracy of newborn screening (NBS) tests in every state and more than 78 countries. NSMBB supports NBS programs by conducting research, developing methods, and performing analyses by using complex, state-of-the-art molecular and biochemical techniques for identifying risk factors for diseases of public health importance.

Both NSMBB and state NBS programs are experiencing increased data analytic challenges associated with continued expansion of the number of newborn screening diseases, increased complexity of disease detection, and difficulties in correlating disease markers with disease risk. Further, the addition of late-onset diseases to NBS panels necessitates a better way to routinely capture clinical information and outcomes so that NBS programs can fully appreciate the spectrum of disease they are detecting.

The NSMBB is requesting a three-year Paperwork Reduction Act (PRA) clearance for Enhancing Data-driven Disease Detection in Newborns (ED3N), a new national NBS data platform, that will address these analytic and post-analytic challenges and promote sharing of molecular, biochemical, and clinical information amongst NBS partners. The information will better equip NSMBB and newborn screening partners to assess disease risk and will help harmonize approaches for disease detection in newborns. Given the rarity of newborn screening diseases, it is imperative that data be collected and analyzed at a national level in order to glean useful insights and to analyze trends. The NSMBB is best suited to oversee this work given its role in providing technical assistance to NBS programs nationally. Numerous studies along with presentations by NBS programs suggest that gaps in programmatic resources and expertise are hampering the ability to perform more complex data analytics resulting in low positive predictive values for a number of conditions (which subsequently results in higher false positive and negative rates and downstream burden to families and the medical system). Smaller-scale work on the use of post-analytical tools such as machine learning algorithms have shown that incorporation of these elements into newborn screening can improve detection rates, while reducing false positives. These studies, however, have been limited to single sites and have not been integrated into the daily workflow of high-throughput NBS programs. Without this project, NBS programs will continue to be unable to keep up with the increasing complexity and future demands of screening, perpetuating inequities in screening across the nation.

There are 53 domestic NBS programs in the United States. A ''respondent'' refers to a single NBS program. Given that data submission will ultimately be accomplished through automatic electronic data transfer, each respondent's burden hours were split into two estimates: (1) the one-time need to set-up, test, and implement the electronic data transfer mechanism; and (2) the ongoing automatic electronic data transfer occurring after initial set-up. Initial set-up time burden was estimated based on analysis of similar data transfer projects embarked upon by NBS programs as well as brief discussions with NBS Program Laboratory Information Management System vendors. The one-time burden to set-up the data transfer interface was estimated to be 40 hours total. For purposes of annualizing this component of burden over the three-year period of this request, the 53 respondents are represented as 18 respondents in the table below (53/3 = 17.67, rounded to 18). Ongoing daily data submission burden was estimated assuming automatic transfer thereafter, 365 days per year. The estimated burden per response is one minute.

CDC requests OMB approval for an estimated 1,042 annualized 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 hr)
Newborn Screening Programs	Set-up of ED3N Data Elements	18	1	40
	Ongoing transfer of ED3N Data Elements	53	365	1/60

Jeffrey M. Zirger,

Lead, Information Collection Review Office, Office of Scientific Integrity, Office of Science, Centers for Disease Control and Prevention.

[FR Doc. 2022–25992 Filed 11–28–22; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2013–D–0811]

Enforcement Policy Regarding Investigational New Drug Requirements for Use of Fecal Microbiota for Transplantation To Treat *Clostridioides difficile* Infection Not Responsive to Standard Therapies; Guidance for Industry; Availability

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice of availability.

SUMMARY: The Food and Drug Administration (FDA, Agency, or we) is announcing the availability of a final guidance entitled ''Enforcement Policy Regarding Investigational New Drug Requirements for Use of Fecal Microbiota for Transplantation to Treat *Clostridioides difficile* Infection Not Responsive to Standard Therapies; Guidance for Industry.'' The guidance document informs members of the medical and scientific community and other interested persons notice that, at this time, we intend to exercise enforcement discretion with respect to the investigational new drug application (IND) requirements for the use of fecal microbiota for transplantation (FMT) to treat *Clostridioides difficile* (*C. difficile*) infection not responding to standard therapies under limited circumstances described in the guidance. The guidance announced in this notice finalizes the draft guidance entitled ''Enforcement Policy Regarding Investigational New Drug Requirements for Use of Fecal Microbiota for Transplantation to Treat *Clostridium difficile* Infection Not Responsive to Standard Therapies'' dated March 2016, and supersedes the guidance entitled ''Enforcement Policy Regarding Investigational New Drug Requirements for Use of Fecal Microbiota for Transplantation to Treat *Clostridium difficile* Infection Not Responsive to Standard Therapies'' dated July 2013.

DATES: The announcement of the guidance is published in the **Federal Register** on November 29, 2022.

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

Electronic Submissions

Submit electronic comments in the following way:

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

Written/Paper Submissions

Submit written/paper submissions as follows:

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

Instructions: All submissions received must include the Docket No. FDA–2013–D–0811 for ''Enforcement Policy Regarding Investigational New Drug Requirements for Use of Fecal Microbiota for Transplantation to Treat *Clostridium difficile* Infection Not Responsive to Standard Therapies; Final Guidance for Industry.'' Received comments will be placed in the docket and, except for those submitted as ''Confidential Submissions,'' publicly viewable at *https://www.regulations.gov* or at the Dockets Management Staff between 9 a.m. and 4 p.m., Monday through Friday, 240–402–7500.

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

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

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

Submit written requests for single copies of the guidance to the Office of Communication, Outreach and Development, Center for Biologics Evaluation and Research (CBER), Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 71, Rm. 3128, Silver Spring, MD 20993–0002. Send one self-addressed adhesive label to assist the office in processing your requests. The guidance may also be obtained by mail by calling CBER at 1–800–835–4709 or 240–402–8010. See the **SUPPLEMENTARY INFORMATION** section for electronic access to the guidance document.

FOR FURTHER INFORMATION CONTACT: Phillip Kurs, Center for Biologics Evaluation and Research, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 71, Rm. 7301, Silver Spring, MD 20993–0002, 240–402–7911.

SUPPLEMENTARY INFORMATION:

I. Background

FDA is announcing the availability of a document entitled ''Enforcement Policy Regarding Investigational New Drug Requirements for Use of Fecal Microbiota for Transplantation to Treat *Clostridioides difficile* Infection Not Responsive to Standard Therapies; Guidance for Industry.'' The guidance informs members of the medical and scientific community and other interested persons of our policy regarding the IND requirements for the use of FMT to treat *C. difficile* infection not responding to standard therapies. In light of the considerations described in the guidance, at this time, FDA intends to exercise enforcement discretion with respect to the applicable IND requirements when the FMT product is not obtained from a stool bank and where: (1) the licensed health care provider treating the patient obtains appropriate consent from the patient or his or her legally authorized representative for the use of FMT product. The consent should include, at a minimum, a statement that the use of FMT products to treat *C. difficile* is investigational and a discussion of the product's reasonably foreseeable risks; (2) the stool donor and stool are qualified by screening and testing performed under the direction of the licensed health care provider for the purpose of providing the FMT product for treatment of the patient; and (3) the use of the FMT product does not raise reported safety concerns or potential significant safety concerns (*e.g.,* concerns regarding inappropriate storage or handling or concerns regarding administration of product collected without appropriate screening or testing).

FDA has developed this policy to help facilitate access to FMT for patients with *C. difficile* infection not responding to standard therapies, while addressing and controlling the risks that centralized manufacturing in stool banks presents to individuals receiving such products. We have concluded this policy appropriately balances considerations regarding patient safety and facilitating access to unapproved FMT products for unmet medical needs. FDA will continue to work with sponsors who intend to submit INDs for use of FMT to treat *C. difficile* infection not responding to standard therapies.

In the **Federal Register** of March 1, 2016 (81 FR 10632), FDA announced the availability of the draft guidance entitled ''Enforcement Policy Regarding Investigational New Drug Requirements for Use of Fecal Microbiota for Transplantation to Treat *Clostridium difficile* Infection Not Responsive to Standard Therapies'' dated March 2016. FDA received several comments on the draft guidance and those comments were considered as the guidance was finalized. In the **Federal Register** on September 11, 2019 (84 FR 47911), FDA announced a part 15 hearing on the Use of Fecal Microbiota for Transplantation to Treat *Clostridium difficile* Infection Not Responsive to Standard Therapies. The hearing was held on November 4, 2019. FDA considered input from stakeholders received as part of the hearing as the guidance was finalized. A summary of changes includes changes to make clear that situations where use of an FMT product raises reported safety concerns or potential significant safety concerns are outside the scope of this enforcement policy; clarification of the products that are the subject of the guidance; and other editorial changes to improve clarity. The guidance announced in this notice finalizes the draft guidance entitled ''Enforcement Policy Regarding Investigational New Drug Requirements for Use of Fecal Microbiota for Transplantation to Treat *Clostridium difficile* Infection Not Responsive to Standard Therapies'' dated March 2016, and supersedes the guidance entitled ''Enforcement Policy Regarding Investigational New Drug Requirements for Use of Fecal Microbiota for Transplantation to Treat *Clostridium difficile* Infection Not Responsive to Standard Therapies'' dated July 2013.

This guidance is being issued consistent with FDA's good guidance practices regulation (21 CFR 10.115). The guidance represents the current thinking of FDA on ''Enforcement Policy Regarding Investigational New Drug Requirements for Use of Fecal Microbiota for Transplantation to Treat *Clostridioides difficile* Infection Not Responsive to Standard Therapies.'' It does not establish any rights for any person and is not binding on FDA or the public. You can use an alternative approach if it satisfies the requirements of the applicable statutes and regulations.

II. Paperwork Reduction Act of 1995

While this guidance contains no collection of information, it does refer to previously approved FDA collections of information. Therefore, clearance by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3501–3521) is not required for this guidance. The previously approved collections of information are subject to review by OMB under the PRA. The collections of information in 21 CFR part 312 have been approved under control number 0910–0014. The collections of information in 21 CFR part 50 have been approved under OMB control number 0910–0130.

III. Electronic Access

Persons with access to the internet may obtain the guidance at either *https://www.fda.gov/vaccines-blood-biologics/guidance-compliance-regulatory-information-biologics/biologics-guidances, https://www.fda.gov/regulatory-information/search-fda-guidance-documents,* or *https://www.regulations.gov.*

Dated: November 22, 2022.

Lauren K. Roth,

Associate Commissioner for Policy.

[FR Doc. 2022–26000 Filed 11–28–22; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2022–N–1129]

Jennings Ryan Staley: Final Debarment Order

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is issuing an order under the Federal Food, Drug, and Cosmetic Act (FD&C Act) debarring Jennings Ryan Staley for a period of 5 years from importing or offering for import any drug into the United States. FDA bases this order on a finding that Mr. Staley was convicted of one felony count under Federal law for Importation Contrary to Law. The factual basis supporting Mr. Staley's conviction, as described below, is conduct relating to the importation into the United States of a drug or controlled substance. Mr. Staley was given notice of the proposed debarment and was given an opportunity to request a hearing to show why he should not be debarred. Mr. Staley provided notice to FDA that he acquiesced to the debarment; FDA received that notice on October 6, 2022. As such, his debarment commenced on the date FDA was notified of acquiescence.

DATES: This order is applicable October 6, 2022.

ADDRESSES: Submit applications for termination of debarment to the Dockets Management Staff, Food and Drug Administration, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852, 240–402–7500, or at *www.regulations.gov.*

FOR FURTHER INFORMATION CONTACT: Jaime Espinosa, Division of Enforcement (ELEM–4144), Office of Strategic Planning and Operational Policy, Office of Regulatory Affairs, Food and Drug Administration, 12420 Parklawn Dr., Rockville, MD 20857, 240–402–8743, or at *debarments@fda.hhs.gov.*

SUPPLEMENTARY INFORMATION:

I. Background

Section 306(b)(1)(D) of the FD&C Act (21 U.S.C. 335a(b)(1)(D)) permits debarment of an individual from importing or offering for import any drug into the United States if FDA finds, as required by section 306(b)(3)(C) of the FD&C Act, that the individual has been convicted of a felony for conduct relating to the importation into the United States of any drug or controlled substance.

On May 27, 2022, Mr. Staley was convicted, as defined in section 306(l)(1) of FD&C Act, in the U.S. District Court for the Southern District of California, when the court accepted his plea of guilty and entered judgment against him for the offense Importation Contrary to Law, in violation of 18 U.S.C. 545 and 2. FDA's finding that debarment is appropriate is based on the felony conviction referenced herein. The factual basis for this conviction is as follows: As contained in the Plea Agreement in Mr. Staley's case, filed July 16, 2021, as a licensed medical doctor and the proprietor of Skinny Beach Med Spa, Mr. Staley sold ''treatment packs'' for COVID–19 to members of the public in March and April 2020 in Southern California. Mr. Staley marketed these treatment packs by making statements about the efficacy of the drugs the packs included. For example, Mr. Staley told an undercover agent from the Federal Bureau of Investigation, who posed as a prospective patient, that hydroxychloroquine and mefloquine would cure COVID–19 ''one hundred percent'' and would provide at least 6 weeks of immunity. Mr. Staley also stated that hydroxychloroquine was a ''magic bullet,'' an ''amazing weapon,'' ''almost too good to be true,'' an ''amazing cure,'' and a ''miracle cure'' for COVID–19.

To obtain hydroxychloroquine for use in his COVID–19 treatment packs, Mr. Staley contacted merchants in China who could purportedly supply bulk quantities of the drug, including one merchant who could supposedly import kilogram quantities of hydroxychloroquine powder. In Mr. Staley's correspondence with this merchant, he agreed that the merchant would deliberately mislabel the shipment of hydroxychloroquine powder as ''yam extract'' to fool U.S. Customs and Border Protection (CBP) agents and ensure that the shipment would not be rejected or delayed. In Mr. Staley's plea agreement, he admitted that by mislabeling what he believed to be 12 kilograms of hydroxychloroquine powder as yam extract in violation of 18 U.S.C. 541, he knowingly and willfully intended to deceive CBP and cause the importation of merchandise into the United States upon a false classification of its quality or value. It is immaterial under 18 U.S.C. 541 that the shipment ultimately contained baking soda rather than hydroxychloroquine.

As a result of this conviction, FDA sent Mr. Staley, by certified mail, on September 8, 2022, a notice proposing to debar him for a 5-year period from importing or offering for import any drug into the United States. The proposal was based on a finding under section 306(b)(3)(C) of the FD&C Act that Mr. Staley's felony conviction under Federal law for Importation Contrary to Law, in violation of 18 U.S.C. 545 and 2, was for conduct relating to the importation into the United States of a drug or controlled substance because, in order to defraud CBP, he knowingly and willfully intended to cause the mislabeling and importation of 12 kilograms of what Mr. Staley believed to be hydroxychloroquine powder upon a false classification of its quality or value in violation of 18 U.S.C. 541.

In proposing a debarment period, FDA weighed the considerations set forth in section 306(c)(3) of the FD&C Act that it considered applicable to Mr. Staley's offense and concluded that the offense warranted the imposition of a 5-year period of debarment.

The proposal informed Mr. Staley of the proposed debarment and offered him an opportunity to request a hearing, providing him 30 days from the date of receipt of the letter in which to file the request, and advised him that failure to request a hearing constituted a waiver of the opportunity for a hearing and of any contentions concerning this action. Mr. Staley received the proposal and notice of opportunity for a hearing. Through his attorney, Mr. Staley sent a memorandum to FDA, dated September 26, 2022, wherein he stated that he acquiesced to the proposed debarment. FDA received the memorandum on October 6, 2022. In accordance with section 306(c)(2)(B) of the FD&C Act, Mr. Staley's period of debarment shall commence on the date FDA received notice he acquiesced to the debarment, which was October 6, 2022 (21 CFR part 12).

II. Findings and Order

Therefore, the Assistant Commissioner, Office of Human and Animal Food Operations, under section 306(b)(3)(C) of the FD&C Act, under authority delegated to the Assistant Commissioner, finds that Mr. Jennings Ryan Staley has been convicted of a felony under Federal law for conduct relating to the importation into the United States of any drug or controlled substance. FDA finds that the offense should be accorded a debarment period of 5 years as provided by section 306(c)(2)(A)(iii) of the FD&C Act.

As a result of the foregoing finding, Mr. Staley is debarred for a period of 5 years from importing or offering for import any drug into the United States, effective October 6, 2022. Pursuant to section 301(cc) of the FD&C Act (21

U.S.C. 331(cc)), the importing or offering for import into the United States of any drug by, with the assistance of, or at the direction of Mr. Staley is a prohibited act.

Any application by Mr. Staley for termination of debarment under section 306(d)(1) of the FD&C Act should be identified with Docket No. FDA–2022–N–1129 and sent to the Dockets Management Staff (see **ADDRESSES**). The public availability of information in these submissions is governed by 21 CFR 10.20(j).

Publicly available submissions will be placed in the docket and will be viewable at *https://www.regulations.gov* or at the Dockets Management Staff (see **ADDRESSES**) between 9 a.m. and 4 p.m., Monday through Friday, 240–402–7500.

Dated: November 22, 2022.

Lauren K. Roth,

Associate Commissioner for Policy.

[FR Doc. 2022–26012 Filed 11–28–22; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

[Docket No. USCG–2022–0350; OMB Control Number 1625–0041]

Information Collection Request to Office of Management and Budget

AGENCY: Coast Guard, DHS.

ACTION: Sixty-day notice requesting comments.

SUMMARY: In compliance with the Paperwork Reduction Act of 1995, the U.S. Coast Guard intends to submit an Information Collection Request (ICR) to the Office of Management and Budget (OMB), Office of Information and Regulatory Affairs (OIRA), requesting an extension of its approval for the following collection of information: 1625–0041, Various International Agreement Pollution Prevention Certificates and Documents, and Equivalency Certificates; without change.

Our ICR describes the information we seek to collect from the public. Before submitting this ICR to OIRA, the Coast Guard is inviting comments as described below.

DATES: Comments must reach the Coast Guard on or before January 30, 2023.

ADDRESSES: You may submit comments identified by Coast Guard docket number [USCG–2022–0350] to the Coast Guard 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.

A copy of the ICR is available through the docket on the internet at *https://www.regulations.gov.* Additionally, copies are available from: Commandant (CG–6P), Attn: Paperwork Reduction Act Manager, U.S. Coast Guard, 2703 Martin Luther King Jr. Ave. SE, Stop 7710, Washington, DC 20593–7710.

FOR FURTHER INFORMATION CONTACT: A.L. Craig, Office of Privacy Management, telephone 202–475–3528, or fax 202–372–8405, for questions on these documents.

SUPPLEMENTARY INFORMATION:

Public Participation and Request for Comments

This notice relies on the authority of the Paperwork Reduction Act of 1995; 44 U.S.C. 3501 *et seq.,* chapter 35, as amended. An ICR is an application to OIRA seeking the approval, extension, or renewal of a Coast Guard collection of information (Collection). The ICR contains information describing the Collection's purpose, the Collection's likely burden on the affected public, an explanation of the necessity of the Collection, and other important information describing the Collection. There is one ICR for each Collection.

The Coast Guard invites comments on whether this ICR should be granted based on the Collection being necessary for the proper performance of Departmental functions. In particular, the Coast Guard would appreciate comments addressing: (1) the practical utility of the Collection; (2) the accuracy of the estimated burden of the Collection; (3) ways to enhance the quality, utility, and clarity of information subject to the Collection; and (4) ways to minimize the burden of the Collection on respondents, including the use of automated collection techniques or other forms of information technology.

In response to your comments, we may revise this ICR or decide not to seek an extension of approval for the Collection. We will consider all comments and material received during the comment period.

We encourage you to respond to this request by submitting comments and related materials. Comments must contain the OMB Control Number of the ICR and the docket number of this request, [USCG–2022–0350], and must be received by January 30, 2023.

Submitting Comments

We encourage you to submit comments through the Federal eRulemaking Portal at *https://www.regulations.gov.* If your material cannot be submitted using *https://www.regulations.gov,* contact the person in the **FOR FURTHER INFORMATION CONTACT** section of this document for alternate instructions. Documents mentioned in this notice, and all public comments, are in our online docket at *https://www.regulations.gov* and can be viewed by following that website's instructions. Additionally, if you go to the online docket and sign up for email alerts, you will be notified when comments are posted.

We accept anonymous comments. All comments received will be posted without change to *https://www.regulations.gov* and will include any personal information you have provided. For more about privacy and submissions in response to this document, see DHS's eRulemaking System of Records notice (85 FR 14226, March 11, 2020).

Information Collection Request

Title: Various International Agreement Pollution Prevention Certificates and Documents, and Equivalency Certificates.

OMB Control Number: 1625–0041.

Summary: Required by the adoption of the International Convention for the Prevention of Pollution from Ships (MARPOL 73/78) and other international treaties, these certificates and documents are evidence of compliance for U.S. vessels on international voyages. Without the proper certificates or documents, a U.S. vessel could be detained in a foreign port.

Need: Compliance with treaty requirements aids in the prevention of pollution from ships.

Forms:

- CG–5352, International Oil Pollution Prevention Certificate.
- CG–5352A, Form A Supplement to the International Oil Pollution Prevention Certificate (IOPP Certificate).
- CG–5352B, Form B Supplement to the International Oil Pollution Prevention Certificate (IOPP Certificate).
- CG–6047, International Sewage Pollution Prevention Equivalency Certificate.
- CG–6047A, Statement of Voluntary Compliance for Sewage Pollution Prevention.
- CG–6056, International Air Pollution Prevention Certificate.
- CG–6056A, Supplement to International Air Pollution Prevention Certificate.
- CG–6056B, Statement of Voluntary Compliance for Annex VI of MARPOL 73/78.

• CG–6056C, Supplement to Statement of Voluntary Compliance for Annex VI of MARPOL 73/78.
• CG–6057, Statement of Voluntary Compliance.
• CG–6059, International Anti-Fouling Systems Certificate.
• CG–6059A, Record of Anti-Fouling Systems.
• CG–6060, International Energy Efficiency (IEE) Certificate.
• CG–6060A, Supplement to the International Energy Efficiency Certificate (IEE Certificate).
• CG–9191, International Ballast Water Management Certificate (Statement of Voluntary Compliance).
• CG–16478, International Certificate on Inventory of Hazardous Materials (Statement of Voluntary Compliance).

Why is the Coast Guard proposing to add a new form: The Coast Guard is adding an optional form CG–16478 to provide U.S. vessel owners and operators a way to document equivalent compliance with the Hong Kong International Convention for the Safe and Environmentally Sound Recycling of Ships, 2009 (Hong Kong (HK) Convention). The form may aid a U.S. vessel during a foreign Port State Control boarding.

Respondents: Owners, operators, or masters of vessels.

Frequency: On occasion.

Hour Burden Estimate: The estimated burden has increased from 2,993 hours to 4,350 hours, due to an increase in the estimated number of responses. In addition, the estimated burden has increased by 19 hours, due to a new optional form—the International Certificate on Inventory of Hazardous Materials (Statement of Voluntary Compliance) (form CG–16478). The total estimated burden is 4,369 hours.

Authority: The Paperwork Reduction Act of 1995; 44 U.S.C. chapter 35, as amended, and is 33 U.S.C. 1901–1911

Dated: November 18, 2022.

Kathleen Claffie,

Chief, Office of Privacy Management, U.S. Coast Guard.

[FR Doc. 2022–25929 Filed 11–28–22; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–6289–N–04]

Tribal Intergovernmental Advisory Committee Membership

AGENCY: Office of Assistant Secretary for Public and Indian Housing, HUD.

ACTION: Notice.

SUMMARY: This notice announces the list of Committee Members of HUD's Tribal Intergovernmental Advisory Committee (TIAC). The committee will perform several advisory functions while it considers HUD policies that affect Indian Country. HUD will publish a subsequent notice with details of the first scheduled TIAC meeting.

FOR FURTHER INFORMATION CONTACT: Heidi J. Frechette, Deputy Assistant Secretary for Native American Programs, Office of Public and Indian Housing, Department of Housing and Urban Development, 451 Seventh Street SW, Room 4126, Washington, DC 20410, telephone number 202–401–7914 (this is not a toll-free number). HUD welcomes and is prepared to receive calls from individuals who are deaf or hard of hearing, as well as individuals with speech and communication disabilities. To learn more about how to make an accessible telephone call, please visit *https://www.fcc.gov/consumers/guides/telecommunications-relay-service-trs.*

SUPPLEMENTARY INFORMATION:

I. Background

On January 26, 2021, President Biden issued a Presidential Memorandum on Tribal Consultation and Strengthening Nation-to-Nation Relationships.[1] The memorandum directed all Federal agencies to take actions to strengthen their Tribal consultation policies and practices and to further the purposes of Executive Order 13175 (Consultation and Coordination With Indian Tribal Governments).

On November 15, 2021 (86 FR 63051), to enhance consultation and collaboration with Tribal governments, HUD published a notice in the **Federal Register** announcing its intention to establish its first Tribal advisory committee known as the ''Tribal Intergovernmental Advisory Committee'' (TIAC). The notice also solicited Tribal feedback on a proposed TIAC structure and its functions. HUD received 12 written comments representing many different perspectives, including Tribes, Tribal leaders, Tribal housing employees, individuals, housing authorities, and regional housing authorities in response to its November 15, 2021 notice. In general, commenters were supportive of establishing the TIAC.

These comments were reviewed and considered in revising the proposed structure. On March 31, 2022 (87 FR 18807), HUD published a notice in the **Federal Register** that announced the final structure of the TIAC and requested the submission of Tribal nominations to the TIAC. After HUD published a notice (June 28, 2022, 87 FR 38421) reopening the request for nominations to request additional nominations, HUD began to review all of the Tribal nominations for selection.

II. The Tribal Intergovernmental Advisory Committee

Today's notice announces the membership of the TIAC. The purpose of the TIAC is to further facilitate intergovernmental communication between HUD and Tribal leaders of federally recognized Tribes on all HUD programs, to make recommendations to HUD regarding current program regulations that may require revision, as well as suggest rulemaking methods to develop such changes, and to advise in the development of HUD's American Indian and Alaska Native (AI/AN) housing priorities. The function of TIAC is not to replace Tribal consultation, but rather serve as a tool to help supplement it.

In making the selections for membership on the TIAC, HUD's goal was to establish a committee whose membership reflects a balanced representation of Indian tribes. In addition to the Tribal representatives on the committee, there will be several HUD representatives, each representing various program offices, on the committee.

HUD appreciate commenters who submitted names of Alternates. HUD is only announcing Committee Members in today's Notice. However, each Committee Member should have an eligible Alternate in queue in case the Committee Member is unable to attend a particular committee meeting. As a reminder, the Alternate must meet the same eligibility criteria required of the selected Committee Member, specifically, that they must be either a duly elected Tribal official or Tribal employee. The Alternate cannot be a Tribally Designated Housing Entity employee. In the absence of a Committee Member, the Alternate will have the same rights, responsibilities, duties, and functions as a Committee Member during meetings. Each Committee Member has the discretion to decide who will best represent them in their absence. A Committee Member unable to attend any session must inform HUD in writing with an original signature as to whom they have selected to represent them and will specify the term. HUD will review all Alternates before a meeting to confirm that they

[1] Available at: *https://www.whitehouse.gov/briefing-room/presidential-actions/2021/01/26/memorandum-on-tribal-consultation-and-strengthening-nation-to-nation-relationships/.*

meet the eligibility criteria for Alternates specified by HUD.

The final list of members of the TIAC is as follows:

Tribal Members

Gary Batton, Chief, Choctaw Nation of Oklahoma, Durant, Oklahoma.

Darren Brinegar, Tribal Legislator, Ho-Chunk Nation of Wisconsin, Black River Falls, Wisconsin.

Glenn Ellis, Jr., Council Member, Makah Indian Tribe of the Makah Indian Reservation, Neah Bay, Washington.

Tina Glory-Jordan, Secretary of State, Cherokee Nation, Tahlequah, Oklahoma (at-large).

Denise Harvey, Council Member, Confederated Tribes of Grand Ronde Community of Oregon, Grand Ronde, Oregon.

Scott Herman, Chairman, Rosebud Sioux Tribe of the Rosebud Indian Reservation, Rosebud, South Dakota.

Victoria Hobbs, Legislative Council Representative, Tohono O'odham Nation of Arizona, Sells, Arizona.

Patricia MacDonald, Council President, Healy Lake Village, Fairbanks, Alaska.

Jacqueline Pata, 1st Vice President, Central Council of Tlingit and Haida Indian Tribes of Alaska, Juneau, Alaska.

Teri Nutter, Council Member, Gulkana Village Council, Gakona, Alaska (at-large).

Marshall Pierite, Chairman, Tunica-Biloxi Tribe of Louisiana, Marksville, Louisiana.

Bridgett Sorenson, Board of Director, Sault Ste. Marie Tribe of Chippewa Indians, Kincheloe, Michigan.

Lee Spoonhunter, Council Member, Northern Arapaho Tribe of the Wind River Reservation, Fort Washakie, Wyoming.

Tyler Yellow Boy, Council Member, Oglala Sioux Tribe, Pine Ridge, South Dakota (at-large).

Arch Super, Council Member, Karuk Tribe, Happy Camp, California.

HUD Representatives

Assistant Secretary, Office of Public and Indian Housing.

Assistant Secretary, Office of Policy, Development, and Research.

Assistant Secretary, Office of Fair Housing and Equal Opportunity.

Assistant Secretary, Office of Field Policy Management.

Assistant Secretary, Office of Housing.

Assistant Secretary, Government National Mortgage Association.

Assistant Secretary, Office of Community Planning and Development.

III. Next Steps

HUD will publish details of the first scheduled TIAC meeting in a subsequent notice.

Marcia L. Fudge,

Secretary.

[FR Doc. 2022–25726 Filed 11–28–22; 8:45 am]

BILLING CODE 4210–67–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

[FWS–R1–ES–2022–N068; FXES11130100000–234–FF01E00000]

Endangered Species; Receipt of Recovery Permit Applications

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of receipt of permit applications; request for comments.

SUMMARY: We, the U.S. Fish and Wildlife Service, have received applications for permits to conduct activities intended to enhance the propagation and survival of endangered species under the Endangered Species Act. We invite the public and local, State, Tribal, and Federal agencies to comment on these applications. Before issuing the requested permits, we will take into consideration any information that we receive during the public comment period.

DATES: We must receive your written comments on or before December 29, 2022.

ADDRESSES: *Document availability and comment submission:* Submit a request for a copy of the application and related documents and submit any comments by one of the following methods. All requests and comments should specify the applicant name and application number (*e.g.,* Dana Ross, ES001705):

- *Email: permitsR1ES@fws.gov.*
- *U.S. Mail:* Marilet Zablan, Regional Program Manager, Restoration and Endangered Species Classification, Ecological Services, U.S. Fish and Wildlife Service, Pacific Regional Office, 911 NE 11th Avenue, Portland, OR 97232–4181.

FOR FURTHER INFORMATION CONTACT: Colleen Henson, Regional Recovery Permit Coordinator, Ecological Services, (503) 231–6131 (telephone); *permitsR1ES@fws.gov* (email). Individuals in the United States who are deaf, deafblind, hard of hearing, or have a speech disability may dial 711 (TTY, TDD, or TeleBraille) to access telecommunications relay services. Individuals outside the United States should use the relay services offered within their country to make international calls to the point-of-contact in the United States.

SUPPLEMENTARY INFORMATION: We, the U.S. Fish and Wildlife Service, invite the public to comment on applications for permits under section 10(a)(1)(A) of the Endangered Species Act of 1973, as amended (ESA; 16 U.S.C. 1531 *et seq.*). The requested permits would allow the applicants to conduct activities intended to promote recovery of species that are listed as endangered under the ESA.

Background

With some exceptions, the ESA prohibits activities that constitute take of listed species unless a Federal permit is issued that allows such activity. The ESA's definition of ''take'' includes such activities as pursuing, harassing, trapping, capturing, or collecting, in addition to hunting, shooting, harming, wounding, or killing.

A recovery permit issued by us under section 10(a)(1)(A) of the ESA authorizes the permittee to conduct activities with endangered or threatened species for scientific purposes that promote recovery or for enhancement of propagation or survival of the species. These activities often include such prohibited actions as capture and collection. Our regulations implementing section 10(a)(1)(A) for these permits are found in the Code of Federal Regulations (CFR) at 50 CFR 17.22 for endangered wildlife species, 50 CFR 17.32 for threatened wildlife species, 50 CFR 17.62 for endangered plant species, and 50 CFR 17.72 for threatened plant species.

Permit Applications Available for Review and Comment

Proposed activities in the following permit requests are for the recovery and enhancement of propagation or survival of the species in the wild. The ESA requires that we invite public comment before issuing these permits. Accordingly, we invite local, State, Tribal, and Federal agencies and the public to submit written data, views, or arguments with respect to these applications. The comments and recommendations that will be most useful and likely to influence agency decisions are those supported by quantitative information or studies.

Application No.	Applicant, city, state	Species	Location	Take activity	Permit action
ES018078	Hawaii Volcanoes National Park, Hawaii National Park, HI.	Band-rumped storm petrel (*Oceanodroma castro*), Hawaiian petrel (*Pterodroma sandwichensis*), *Adenophorus periens* (pendant kihi fern), *Argyroxiphium kauense* (Mauna Loa silversword), *Argyroxiphium sandwicense* var. *sandwicense* ('ahinahina), *Asplenium fragile* var. *insulare* (no common name (NCN)), *Clermontia lindseyana* (201B'oha wai), *Clermontia peleana* ('oha wai), *Cyanea shipmanii* (haha), *Cyanea stictophylla* (haha), *Cyanea tritomantha* ('akū), *Cyrtandra giffardii* (ha'iwale), *Cyrtandra tintinnabula* (ha'iwale), *Exocarpos menziesii* (heau), *Haplostachys haplostachya* (NCN), *Hibiscadelphus giffardianus* (hau kuahiwi), *Hibiscadelphus hualalaiensis* (hau kuahiwi), *Ischaemum byrone* (Hilo ischaemum).	Hawaii	Birds: Harass by survey, monitor, capture, handle, band, biosample, conduct predator control, and release. Plants: Remove/reduce to possession.	Amend.
ES45531B	Hawaii Division of Forestry and Wildlife, Honolulu, HI.	Akekee (*Loxops caeruleirostris*), Akikiki (*Oreomystis bairdi*), Crested honeycreeper or akohekohe (*Palmeria dolei*), Maui parrotbill or kiwikiu (*Pseudonestor xanthophrys*), Palila or honeycreeper (*Loxioides bailleui*), Small Kauai thrush or puaiohi (*Myadestes palmeri*), Laysan duck (*Anas laysanensis*).	Hawaii and Pacific Islands.	Forest birds: Harass by survey, monitor, capture, handle, collect eggs, nestlings, subadults, and/or adults, captive propagate, band, release, and salvage. Laysan duck: Harass by survey, monitor, capture, handle, band, vaccinate, translocate, release, supplemental feed, and salvage.	Amend.

Public Availability of Comments

Written comments we receive become part of the administrative record associated with this action. 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 request in your comment that we withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so. 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.

Next Steps

If we decide to issue a permit to the applicant listed in this notice, we will publish a notice in the **Federal Register**.

Authority

We publish this notice under section 10(c) of the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*).

Marilet A. Zablan,

Regional Program Manager for Restoration and Endangered Species Classification, Pacific Region.

[FR Doc. 2022–25973 Filed 11–28–22; 8:45 am]

BILLING CODE 4333–15–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

[FWS–R6–ES–2023–N065; FXES11130600000–234–FF06E00000]

Endangered and Threatened Species; Receipt of Recovery Permit Applications

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of receipt of permit applications; request for comments.

SUMMARY: We, the U.S. Fish and Wildlife Service, have received applications for permits, permit renewals, and/or permit amendments to conduct activities intended to enhance the propagation or survival of endangered species under the Endangered Species Act. We invite the public and local, State, Tribal, and Federal agencies to comment on these applications. Before issuing any of the requested permits, we will take into consideration any information that we receive during the public comment period.

DATES: We must receive written data or comments on the applications by December 29, 2022.

ADDRESSES: *Document availability and comment submission:* Use one of the following methods to request documents or submit comments. Requests and comments should specify the applicant name(s) and application number(s) (*e.g.,* Smith, PER0123456 or ES056001):

- *Email: permitsR6ES@fws.gov.*
- *U.S. Mail:* Tom McDowell, Division Manager, Ecological Services, U.S. Fish and Wildlife Service, 134 Union Blvd., Suite 670, Lakewood, CO 80228.

FOR FURTHER INFORMATION CONTACT: Robert Krijgsman, Recovery Permits Coordinator, Ecological Services, 303–236–4347 (phone), or *permitsR6ES@fws.gov* (email). Individuals in the United States who are deaf, deafblind, hard of hearing, or have a speech disability may dial 711 (TTY, TDD, or TeleBraille) to access telecommunications relay services. Individuals outside the United States should use the relay services offered within their country to make international calls to the point-of-contact in the United States.

SUPPLEMENTARY INFORMATION: We, the U.S. Fish and Wildlife Service, invite review and comment from the public and local, State, Tribal, and Federal agencies on applications we have received for permits to conduct certain activities with endangered and threatened species under section 10(a)(1)(A) of the Endangered Species Act of 1973, as amended (ESA; 16 U.S.C. 1531 *et seq.*), and our regulations in the Code of Federal Regulations (CFR) at 50 CFR part 17. Documents and other information submitted with the applications are available for review, subject to the requirements of the Privacy Act and the Freedom of Information Act.

Background

With some exceptions, the ESA prohibits take of listed species unless a Federal permit is issued that authorizes such take. The ESA's definition of ''take'' includes hunting, shooting, harming, wounding, or killing, and also such activities as pursuing, harassing, trapping, capturing, or collecting.

A recovery permit issued by us under section 10(a)(1)(A) of the ESA authorizes the permittee to take endangered or threatened species while engaging in activities that are conducted for scientific purposes that promote recovery of species or for enhancement of propagation or survival of species. These activities often include the capture and collection of species, which would result in prohibited take if a permit were not issued. Our regulations implementing section 10(a)(1)(A) for these permits are found at 50 CFR 17.22 for endangered wildlife species, 50 CFR 17.32 for threatened wildlife species, 50 CFR 17.62 for endangered plant species, and 50 CFR 17.72 for threatened plant species.

Permit Applications Available for Review and Comment

The ESA requires that we invite public comment before issuing these permits. Accordingly, we invite local, State, Tribal, and Federal agencies and the public to submit written data, views, or arguments with respect to these applications. The comments and recommendations that will be most useful and likely to influence agency decisions are those supported by quantitative information or studies. Proposed activities in the following permit requests are for the recovery and enhancement of propagation or survival of the species in the wild.

Permit No.	Applicant	Species	Location	Take activity	Permit action
ES–047285	U.S. Geological Survey, Columbia Environmental Research Center, Fort Peck, Montana.	• Pallid sturgeon (*Scaphirhynchus albus*).	Montana and North Dakota	Survey, monitor, capture, handle, tag, propagate, transport, and stock.	Renew.
PER0011688	Bureau of Land Management, Richfield Field Office, Richfield Utah.	• Southwestern willow flycatcher (*Empidonax traillii extimus*).	Utah	Play taped vocalizations for surveys.	Amend.
PER0048042	Horrocks Engineers, Riverdale, Utah.	• Southwestern willow flycatcher (*Empidonax traillii extimus*).	Colorado, Idaho, Montana, Oregon, Utah, Washington, and Wyoming.	Play taped vocalizations for surveys.	New.
ES–040748	Cheyenne Mountain Zoo, Colorado Springs, Colorado.	• Black-footed ferret (*Mustela nigripes*). • Wyoming Toad (*Anaxyrus baxteri*).	Colorado and Wyoming	Capture, handle, transport, propagate in captivity, provide general care, collect biological samples, mark, survey, and monitor populations.	Renew.
ES–040510	ERO Resources Corp., Denver, Colorado.	• Southwestern willow flycatcher (*Empidonax traillii extimus*).	Arizona, Colorado, New Mexico, and Utah.	Play taped vocalizations for surveys.	Renew and amend.

Public Availability of Comments

Written comments we receive become part of the administrative record associated with this action. 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. 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.

Next Steps

If we decide to issue a permit to an applicant listed in this notice, we will publish a notice in the **Federal Register**.

Authority

We publish this notice under section 10(c) of the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*).

Stephen Small,

Assistant Regional Director, U.S. Fish and Wildlife Service.

[FR Doc. 2022–25965 Filed 11–28–22; 8:45 am]

BILLING CODE 4333–15–P

DEPARTMENT OF THE INTERIOR

Geological Survey

[GX23NB00TKZ5000; OMB Control Number 1028–NEW]

Agency Information Collection Activities; Submission to the Office of Management and Budget for Review and Approval; Hunter Harvest and Satisfaction Surveys on Green Bay and Lake Michigan

AGENCY: U.S. Geological Survey, Interior.

ACTION: Notice of information collection; request for comment.

SUMMARY: In accordance with the Paperwork Reduction Act (PRA) of 1995, the U.S. Geological Survey (USGS) is proposing approval of an existing collection in use without an OMB Control Number.

DATES: Interested persons are invited to submit comments on or before 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. 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 Luke Fara by email at *lfara@usgs.gov,* or by telephone at 608–781–6233. 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 March 31, 2022 (87 FR 18809). We received one comment. The comment did not address information collection, so no action was taken.

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: This collection seeks to gather information on harvest and satisfaction from waterfowl hunters on the open waters of Green Bay and Lake Michigan. From 2021 through 2025, the Wisconsin waterfowl hunting season had and will have a North, South, and Open Water Zone. The Open Water Zone will be specific to the offshore open waters of Lake Michigan and Green Bay. Specific regulations for this new zone, which starts 500 feet offshore and extends to the Wisconsin-Michigan state boundary, can be modified during the five-year period and input from hunters will provide critical information to improve hunter satisfaction. Former survey methods used to gather information on the season frameworks preferred by hunters under the 2016–2020 season structure cannot be applied to the Open Water Zone; thus, USGS plans to conduct both in-person and online surveys targeted toward open-water hunters to gather their input on season frameworks. Surveys will also be used to inform managers on what, where, and how many species of waterfowl are harvested in this open-water environment. Wisconsin waterfowl managers will use information collected from this survey to assist in developing season frameworks within this zone and provide information on harvest composition.

Title of Collection: Hunter Harvest and Satisfaction Surveys on Green Bay and Lake Michigan.

OMB Control Number: 1028–NEW.

Form Number: None.

Type of Review: New.

Respondents/Affected Public: Waterfowl hunters that hunt the open waters of Green Bay and Lake Michigan.

Total Estimated Number of Annual Respondents: 200.

Total Estimated Number of Annual Responses: 600.

Estimated Completion Time per Response: 10 minutes on average.

Total Estimated Number of Annual Burden Hours: 100.

Respondent's Obligation: Voluntary.

Frequency of Collection: Occur each time they hunt the open waters of Green Bay and/or Lake Michigan.

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.*).

Luke Fara,

Biologist, Mid-Continent Region, U.S. Geological Survey.

[FR Doc. 2022–26042 Filed 11–28–22; 8:45 am]

BILLING CODE 4338–11–P

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

[223A2100DD/AAKC001030/A0A501010.999900]

Land Acquisitions; Central Council of Tlingit and Haida Indian Tribes of Alaska, Alaska

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Notice.

SUMMARY: The Assistant Secretary—Indian Affairs made a final determination to acquire in trust 787 square feet, more or less, of land known as the Vavalis Parcel located in the City of Juneau, Alaska, (Site) for the Central Council of Tlingit and Haida Indian Tribes, (Tribe) to support tribal self-determination and for other purposes.

DATES: This final determination was made on November 17, 2022.

FOR FURTHER INFORMATION CONTACT: Trina Locke, Acting Director, Office of Trust Services, Bureau of Indian Affairs, MS–4620 MIB, 1849 C Street NW, Washington, DC 20240, *trina.locke@bia.gov,* (202) 617–0610.

SUPPLEMENTARY INFORMATION: On the date listed in the **DATES** section of this notice, the Assistant Secretary—Indian Affairs made a final agency determination to acquire the Site, consisting of 787 square feet, more or less, in trust for the Tribe under the authority of the Indian Reorganization Act of June 18, 1934, 25 U.S.C. 5108.

The Assistant Secretary—Indian Affairs, on behalf of the Secretary of the Interior, will immediately acquire title to the Site in the name of the United States of America in trust for Tribe upon fulfillment of all Departmental requirements. The 787 square feet, more or less, are described as follows:

Legal Description

Lot 15, Block 5, U.S. Survey No. 4694, Alaska, Addition to the Townsite of Juneau, Alaska, Juneau Indian Village, as accepted by the Chief, Division of Engineering, for the Director on July 22, 1964, containing 787 square feet. Said lot is further shown on the Retracement and Dependent Resurvey officially filed on Feb. 2, 2012, and on a Record of Survey, Plat No. 2018–40, Juneau Recording District, Alaska.

Authority: This notice is published in the exercise of authority delegated by the Secretary of the Interior to the Assistant Secretary—Indian Affairs by 209 Departmental Manual 8.1, and is published to comply with the requirements of 25 CFR 151.12(c)(2)(ii) that notice of the decision to acquire land in trust be promptly provided in the **Federal Register**.

Bryan Newland,

Assistant Secretary—Indian Affairs.

[FR Doc. 2022–25971 Filed 11–28–22; 8:45 am]

BILLING CODE 4337–15–P

DEPARTMENT OF THE INTERIOR

Bureau of Ocean Energy Management

[Docket No. BOEM–2020–0018]

Alaska Outer Continental Shelf, Cook Inlet Planning Area, Oil and Gas Lease Sale 258

AGENCY: Bureau of Ocean Energy Management (BOEM), Interior.

ACTION: Notice of Availability of a Record of Decision.

SUMMARY: BOEM announces the availability of the Record of Decision (ROD) for the Cook Inlet Outer Continental Shelf (OCS) Oil and Gas Lease Sale 258. This ROD identifies the selected alternative for Lease Sale 258, which is analyzed in the Alaska OCS: Cook Inlet Planning Area Oil and Gas Lease Sale 258 in the Cook Inlet, Alaska; Final Environmental Impact Statement (FEIS) (OCS/EIS EA BOEM 2022–061). The ROD and associated information are available on BOEM's website at *https://www.boem.gov/ak258.*

FOR FURTHER INFORMATION CONTACT: Sharon Randall, Bureau of Ocean Energy Management, Alaska Regional Office, 3801 Centerpoint Drive, Suite 500, Anchorage, Alaska 99503, 907–334–5235.

SUPPLEMENTARY INFORMATION: BOEM is required to hold Lease Sale 258 on or before December 31, 2022, pursuant to the Inflation Reduction Act of 2022 (IRA, Pub. L. 117–169), signed into law on August 16, 2022. The Cook Inlet Lease Sale Area is located offshore of the State of Alaska in the northern portion of the Federal waters of Cook Inlet and is comprised of 224 OCS blocks. BOEM evaluated five alternatives and several sub-alternatives in the Lease Sale 258 FEIS. While BOEM has no discretion in whether to hold Lease Sale 258, BOEM issued the Lease Sale 258 FEIS and is issuing the ROD in accordance with its normal leasing process to the fullest extent practicable.

After careful consideration, the Department of the Interior (DOI) has selected the Preferred Alternative in the Lease Sale 258 FEIS. The Preferred Alternative combines the two critical habitat exclusion alternatives and three mitigation alternatives: Alternative 3A (Beluga Whale Critical Habitat Exclusion), Alternative 3C (Beluga Whale Nearshore Feeding Areas Mitigation), Alternative 4A (Northern Sea Otter Critical Habitat Exclusion), Alternative 4B (Northern Sea Otter Critical Habitat Mitigation), and Alternative 5 (Gillnet Fishery Mitigation).

The Preferred Alternative will offer for lease 193 unleased OCS blocks (approximately 387,771 hectares (ha) or 958,202 acres). The Preferred Alternative excludes the 17 OCS blocks wholly or partially overlapping beluga whale and northern sea otter critical habitats. The Preferred Alternative also applies additional mitigation measures to reduce potential impacts to beluga whales and their critical habitat and feeding areas, sea otters and their critical habitat, and the gillnet fishery. Each of these mitigations will be implemented through lease stipulations to applicable leases. The selection of the Preferred Alternative includes the following exclusions and mitigation measures, described as alternatives in the FEIS:

Beluga Whale Critical Habitat Exclusion (Alternative 3A)

This exclusion applies to the 10 OCS blocks that overlap with the ''Area 2'' beluga whale critical habitat at the northern tip of the proposed sale area analyzed in the Lease Sale 258 FEIS. These OCS blocks will not be offered for lease and represent approximately 0.85 percent of the total area of the beluga whale critical habitat.

Beluga Whale Nearshore Feeding Areas Mitigation (Alternative 3C)

This mitigation measure creates temporal restrictions for on-lease seismic survey activities within the Lease Sale Area. On all 193 OCS blocks being offered for lease, no on-lease marine seismic surveys will be conducted between November 1 and April 1, when beluga whales are most likely to be present and distributed across the Lease Sale Area. The Protection of Beluga Whales Stipulation will be included on all leases issued as a result of Lease Sale 258.

Additionally, for blocks located within 10 miles of major anadromous streams, lessees will not conduct on-lease marine seismic surveys between July 1 and September 30, when beluga whales are migrating to and from their summer feeding areas. The Protection of Beluga Whale Nearshore Feeding Areas Stipulation will be included on any leases issued for blocks located within 10 miles of major anadromous streams.

Northern Sea Otter Critical Habitat Exclusion (Alternative 4A)

This exclusion applies to the 7 OCS blocks that overlap with the northern sea otter southwest Alaska distinct population segment (SW DPS) critical habitat within the proposed sale area analyzed in the Lease Sale 258 FEIS. These OCS blocks will not be offered for lease.

Northern Sea Otter Critical Habitat Mitigation (Alternative 4B)

This mitigation measure prohibits lessees from discharging drilling fluids and cuttings and conducting seafloor disturbing activities (including anchoring and placement of bottom-founded structures) within 1,000 meters of areas designated as northern sea otter critical habitat. The Protection of Northern Sea Otter SW DPS Critical Habitat Stipulation will be included on any leases issued on the 7 OCS blocks within 1,000 meters of northern sea otter critical habitat.

Gillnet Fishery Mitigation (Alternative 5)

This mitigation measure applies to the 97 OCS blocks (whole or partial) located north of Anchor Point within the Lease Sale Area to reduce the potential for conflicts with the drift gillnet fishery. Lessees are prohibited from conducting on-lease seismic surveys during the drift gillnetting season as designated by the Alaska Department of Fish and Game (ADF&G) (approximately mid-June to mid-August). In addition, lessees are advised that the Cook Inlet drift gillnet fishery typically operates on Mondays and Thursdays during the drift gillnetting season as designated by the ADF&G. Lessees are required to notify the United Cook Inlet Drift Association (UCIDA) of any temporary or permanent structures planned during the drift gillnetting season. Lessees are encouraged to coordinate with the UCIDA to avoid conflicts. The Protection of Gillnet Fishery Stipulation will be included on any leases issued for these blocks.

Each of these Alternatives will be implemented through exclusions or lease stipulations, which would apply to all or some of the OCS blocks offered for lease. For each of the lease stipulations described above, lessees

may request a variance at the time of filing an ancillary activities notice, an exploration plan, or a development and production plan with BOEM's Regional Supervisor for Leasing and Plans. Such requests must identify alternative methods for providing commensurate protection and analyze the effectiveness of those methods.

There are currently 14 active OCS oil and gas leases in the Cook Inlet Planning Area. The Lease Sale Area (Area ID) encompasses approximately 442,500 ha or 1.09 million acres, of which approximately 387,771 ha or 958,202 acres will be offered for lease. The unleased OCS blocks within Cook Inlet that BOEM will offer for lease are listed in the document entitled ''List of Blocks Available for Leasing,'' which is included in the Final Notice of Sale package for Lease Sale 258. The estimated resource potential of the area to be leased is 192.3 million barrels of oil and 301.9 billion cubic feet of natural gas.

BOEM's Alaska Regional Office developed the Preferred Alternative after considering public comments on the Draft EIS. BOEM also considered the oil and gas resource potential in the Cook Inlet area and the likelihood of industry to develop those resources in the context of social, economic, and environmental values, impacts, and concerns.

Authority: 42 U.S.C. 4321 *et seq.* (National Environmental Policy Act) and 40 CFR parts 1505 and 1506.

Amanda Lefton,

Director, Bureau of Ocean Energy Management.

[FR Doc. 2022–25792 Filed 11–28–22; 8:45 am]

BILLING CODE 4340–98–P

DEPARTMENT OF THE INTERIOR

Bureau of Ocean Energy Management

[Docket No. BOEM–2021–0003]

Cook Inlet Planning Area Outer Continental Shelf Oil and Gas Lease Sale 258

AGENCY: Bureau of Ocean Energy Management, Interior.

ACTION: Final notice of sale.

SUMMARY: On Friday, December 30, 2022, the Bureau of Ocean Energy Management (BOEM) will open and publicly announce bids received for blocks offered in the Cook Inlet Planning Area Outer Continental Shelf (OCS) Oil and Gas Lease Sale 258 (Cook Inlet Sale 258), in accordance with the provisions of the Outer Continental Shelf Lands Act (OCSLA), as amended, and its implementing regulations. The Inflation Reduction Act of 2022, signed into law on August 16, 2022, requires BOEM to hold Cook Inlet Sale 258 by December 31, 2022. The Cook Inlet Sale 258 Final Notice of Sale (NOS) package contains information essential to potential bidders and consists of the Final NOS, Information to Lessees, and Lease Stipulations.

DATES: BOEM will hold Cook Inlet Sale 258 at 10 a.m. on Friday, December 30, 2022. All times referred to in this document are Alaska time, unless otherwise specified.

Bid Submission Deadline: BOEM must receive all sealed bids by the bid submission deadline of 10 a.m. on Thursday, December 29, 2022, the day before the lease sale. Bids will not be accepted in person or by email for any reason. For more information on bid submission, see Section VII, ''Bidding Instructions,'' of this document.

ADDRESSES: Interested parties may download the Final NOS package from BOEM's website at *https://www.boem.gov/ak258/.* Copies of the Final NOS and the sale maps can also be obtained by contacting the BOEM Alaska Regional Office: Bureau of Ocean Energy Management, 3801 Centerpoint Drive, Suite 500, Anchorage, Alaska 99503–5823, (907) 334–5200, (800) 764–2627.

For addresses and instruction for submitting bids, see Section VII, ''Bidding Instructions,'' under **SUPPLEMENTARY INFORMATION** heading of this notice.

FOR FURTHER INFORMATION CONTACT: Joel Immaraj, Alaska Regional Supervisor, Office of Leasing and Plans, (907) 334–5238, *joel.immaraj@boem.gov,* or Benjamin Burnett, Chief, Leasing Policy and Management Division, Office of Strategic Resources, 703–787–1312, *benjamin.burnett@boem.gov.*

SUPPLEMENTARY INFORMATION:

Authority: 43 U.S.C. 1331 *et seq.* (Outer Continental Shelf Lands Act, as amended) and 30 CFR 556.308(a).

Table of Contents

I. Lease Sale Area

BOEM will offer for bid in this lease sale all unleased whole and partial blocks in the area of Cook Inlet identified on the map included as part of this notice that is entitled ''Cook Inlet Planning Area, Lease Sale 258, December 30, 2022, Final Notice of Sale.'' The BOEM Official Protraction Diagrams (OPDs) and Supplemental Official OCS Block Diagrams are available online at *https://www.boem.gov/alaska-cadastral-data.* All blocks are shown on the following OPDs:

- Iliamna (OPD NO05–01)
- Seldovia (OPD NO05–02)
- Kenai (OPD NP05–08)

The available Federal area of each whole and partial block in this lease sale is shown in the document entitled ''List of Blocks Available for Leasing,'' which is included in the Final NOS package. Some of these blocks, known as ''partial blocks,'' may be transected by administrative lines, such as the jurisdictional line between Federal and State waters. A bid on a block must include all of the available Federal area of that block.

Bidders should be aware that BOEM has deferred from leasing a total of 17 OCS blocks in the northern portion of the Cook Inlet Planning Area: 10 blocks that overlap with beluga whale designated critical habitat areas (blocks 6759, 6760, 6808, 6809, 6810, 6811, 6858, 6859, 6860, and 6861, as identified under OPD NP05–08) and 7 blocks that overlap with northern sea otter designated critical habitat (blocks 6055, 6056, 6057, 6105, 6106, 6155, as identified under OPD NO05–02, and block 6911, as identified under OPD NP05–08). As a result, BOEM will not include a stipulation entitled ''Protection of Beluga Whale Critical Habitat,'' which was included as stipulation 5 in the Proposed NOS, since the blocks to which this stipulation would have applied are not being offered for sale.

II. Statutes and Regulations

Congress directed BOEM to hold Cook Inlet Sale 258 by December 31, 2022, in the Inflation Reduction Act of 2022 (Pub. L. 117–169). Each lease is issued pursuant to OCSLA, 43 U.S.C. 1331 *et seq.,* as amended, and 30 CFR part 556. All leases are subject to OCSLA, its implementing regulations, and other applicable statutes and regulations in existence upon the effective date of the lease. Additionally, all leases are subject to applicable statutes enacted and regulations promulgated thereafter, except to the extent that the after-

enacted statutes and regulations explicitly conflict with an express provision of the lease. Each lease is also subject to amendments to statutes and regulations, including but not limited to OCSLA, that do not explicitly conflict with an express provision of the lease. The lessee expressly bears the risk that such new or amended statutes and regulations (*i.e.,* those that do not explicitly conflict with an express provision of the lease) may increase or decrease the lessee's obligations under the lease. BOEM reserves the right to reject any and all bids received, regardless of the amount offered (see 30 CFR 556.516(b)).

III. Lease Terms and Economic Conditions

Lease Terms

OCS Lease Form

BOEM will use Form BOEM–2005 (February 2017) to convey leases resulting from this sale. This lease form can be viewed on BOEM's website at *https://www.boem.gov/BOEM-2005.* The lease form will be amended to include specific terms, conditions, and stipulations applicable to the individual lease. The terms, conditions, and stipulations applicable to this sale are set forth below.

Primary Term: The primary term will be 10 years.

Minimum Bonus Bid Amounts: $25 per hectare or fraction thereof. BOEM will not accept a bonus bid unless it provides for a cash bonus in the amount equal to, or exceeding, the specified minimum bonus bid of $25 per hectare or fraction thereof for all blocks.

Rental Rates: An annual rental rate for all blocks of $16 per hectare or fraction thereof, until the start of year eight of the primary term or a discovery of oil and gas, whichever occurs first; then an annual rate of $24 per hectare or fraction thereof.

Royalty Rates: 18¾ percent.

Minimum Royalty: $24 per hectare or fraction thereof per year.

Royalty Suspensions: No royalty suspension.

IV. Lease Stipulations

One or more of the following stipulations may be applied to leases issued as a result of this lease sale. The applicable blocks for each stipulation are identified on the map ''Cook Inlet Planning Area, Lease Sale 258, December 30, 2022, Final Notice of Sale, Stipulation Blocks'' included in the Final NOS package. The detailed text of these stipulations is contained in the ''Lease Stipulations'' section of the Final NOS package.

(1) Protection of Fisheries
(2) Protection of Biological Resources
(3) Orientation Program
(4) Transportation of Hydrocarbons
(5) Protection of Beluga Whale Nearshore Feeding Areas
(6) Protection of Beluga Whales
(7) Protection of Northern Sea Otter Critical Habitat
(8) Protection of Gillnet Fishery
(9) Alaska Conflict Management Plan
(10) Royalties on All Produced Gas

V. Information to Lessees

The ''Information to Lessees'' (ITL) document provides detailed information on certain issues pertaining to specific oil and gas lease sales. The full text of the ITL for this sale is contained in the ''Information to Lessees'' section of the Final NOS package and covers the following topics:

(1) Seismic Surveys: Environmental and Regulatory Review and Coordination Requirements
(2) Archaeological and Geological Hazards Reports and Surveys
(3) Discharge Restrictions and Prohibitions
(4) Trash and Debris Awareness and Elimination
(5) Navigation Safety
(6) Notice of Arrival on the Outer Continental Shelf
(7) Bidder/Lessee Notice of Obligations Related to Criminal/Civil Charges and Offenses, Suspension, or Debarment; Disqualification Due to a Conviction under the Clean Air Act or the Clean Water Act
(8) Oil Spill Response Preparedness
(9) Bureau of Safety and Environmental Enforcement (BSEE) Inspection and Enforcement of Certain U.S. Coast Guard (USCG) Regulations
(10) Air Quality Permit/Plan Approvals
(11) Inflation Reduction Act of 2022

VI. Maps

Maps pertaining to this lease sale are available on the BOEM website at *https://www.boem.gov/ak258/.* The following maps also are included in the Final NOS package:

(1) ''Cook Inlet Planning Area, Lease Sale 258, December 30, 2022, Final Notice of Sale,'' which shows the blocks available for leasing; and

(2) ''Cook Inlet Planning Area, Lease Sale 258, December 30, 2022, Final Notice of Sale, Stipulation Blocks,'' which shows the stipulations and the blocks to which they may apply.

VII. Bidding Instructions

Bids may be submitted BY MAIL ONLY through any parcel delivery service (*e.g.,* FedEx, UPS, USPS, DHL) at the address below in the ''Mailed Bids'' section. Bidders should be aware that BOEM has eliminated in-person bidding for Cook Inlet Sale 258. Instructions on how to submit a bid, secure payment of the advance bonus bid deposit (if applicable), and the information to be included with the bid are as follows:

Bid Form

For each block bid upon, a separate bid must be submitted in a sealed envelope (as described below) and must include the following:

- Total amount of the bid in whole dollars only;
- Sale number;
- Sale date;
- Each bidder's exact name;
- Each bidder's proportionate interest, stated as a percentage, using a maximum of five decimal places (*e.g.,* 33.33333 percent);
- Typed name and title, and signature of each bidder's authorized officer. Electronic signatures are acceptable. The typed name, title, and signature must agree exactly with the name and title on file in the BOEM Alaska Regional Office, Leasing Section;
- Each bidder's qualification number;
- OPD name and number;
- Block number; and
- Statement acknowledging that the bidder(s) understands that this bid legally binds the bidder(s) to comply with all applicable regulations, including the requirement to post a deposit in the amount of one-fifth of the bonus bid amount for any tract bid upon and make payment of the balance of the bonus bid and first year's rental upon BOEM's acceptance of high bids.

The information required on each bid is specified in the document ''Bid Form'' included in the Final NOS package. A blank bid form is provided in the Final NOS package for convenience and can be copied and completed with the necessary information described above.

Bid Envelope

Each bid must be submitted in a separate sealed envelope labeled as follows:

- ''Sealed Bid for Cook Inlet Sale 258, not to be opened until 10 a.m., Friday, December 30, 2022'';
- OPD name and number;
- Block number for the block bid upon; and
- The exact name and qualification number of the submitting bidder only.

The Final NOS package includes a sample bid envelope for reference.

Mailed Bids

Please address the envelope containing the sealed bid envelope(s) as

follows: Attention: Regional Supervisor, Office of Leasing and Plans, BOEM Alaska Regional Office, 3801 Centerpoint Dr., Ste. 500, Anchorage, AK 99503–5823.

Contains Sealed Bids for Cook Inlet Sale 258

Please deliver to Mr. Joel Immaraj, 5th Floor, Immediately.

Please Note: Bidders should inform Mr. Joel Immaraj, Regional Supervisor, Office of Leasing and Plans, BOEM by email at *joel.immaraj@boem.gov* immediately after placing any bid in the mail. This provides advance notice to BOEM regarding pending bids prior to the bid submission deadline. In the email, please state the tracking number of the bid package, the number of bids being submitted, and the email address of the person who should receive the bid receipt for signature. If BOEM receives bids later than the bid submission deadline, the BOEM Alaska Regional Director (Alaska RD) will return those bids unopened to bidders. Please see ''Section XI. Delay of Sale'' regarding BOEM's discretion to extend the bid submission deadline in the case of an unexpected event (*e.g.,* flooding) and how bidders can obtain more information on such extensions.

Advance Bonus Bid Deposit Guarantee

Bidders that are not currently an OCS oil and gas lease record title holder or designated operator, or those that have ever defaulted on a one-fifth bonus bid deposit, must guarantee (secure) the payment of the one-fifth bonus bid deposit, by electronic funds transfer (EFT) or otherwise, prior to bid submission using one of the following four methods:

- Provide a third-party guarantee;
- Amend a development stage area-wide bond via bond rider;
- Provide a letter of credit; or
- Provide a lump sum payment in advance via EFT.

Please provide, at the time of bid submittal, a confirmation or tracking number for the payment, the name of the company submitting the payment as it appears on the payment, and the date the payment was submitted to the Office of Natural Resources Revenue (ONRR) so that BOEM can confirm payment. Submitting payment to the bidders' financial institution at least five business days prior to bid submittal helps ensure that the Office of Foreign Assets Control and the U.S. Department of the Treasury (U.S. Treasury) have the time needed to screen and process payments so they are posted to ONRR prior to placing the bid. ONRR cannot confirm payment until the monies have been moved into settlement status by the U.S. Treasury. Bids will not be accepted if BOEM cannot confirm payment with ONRR.

If providing a third-party guarantee, amending a development stage area-wide bond via bond rider, or providing a letter of credit to secure your one-fifth bonus bid deposit, bidders are urged to file these documents with BOEM well in advance of submitting the bid, to allow processing time and time for bidders to take any necessary curative actions prior to bid submission. For more information on EFT procedures, see section X of this document entitled ''The Lease Sale.''

Affirmative Action

Prior to bidding, each bidder should file the Equal Opportunity Affirmative Action Representation Form BOEM–2032 (February 2020, available on BOEM's website at *https://www.boem.gov/BOEM-2032/*) and the Equal Opportunity Compliance Report Certification Form BOEM–2033 (February 2020, available on BOEM's website at *https://www.boem.gov/BOEM-2033/*) with the BOEM Alaska Regional Office, Leasing Section. This certification is required by 41 CFR part 60 and Executive Order (E.O.) 11246, issued September 24, 1965, as amended by E.O. 11375, issued October 13, 1967, and by E.O. 13672, issued July 21, 2014. Both forms must be on file for each bidder in the BOEM Alaska Regional Office prior to the execution of any lease contract.

Geophysical Data and Information Statement (GDIS)

The GDIS is composed of three parts:

(1) A ''GDIS Statement'' page that includes the company representatives' information and lists of blocks bid on that used proprietary data and those blocks bid upon that did not use proprietary data;

(2) A ''Table'' listing the required data about each proprietary survey used (see below); and

(3) ''Maps,'' which contain the live trace maps for each proprietary survey that is identified in the GDIS statement and table.

Every bidder submitting a bid on a block in Cook Inlet Sale 258, or participating as a joint bidder in such a bid, must submit at the time of bid submission all three parts of the GDIS. A bidder must submit the GDIS, even if a joint bidder or bidders on a specific block also have submitted a GDIS. Any speculative data that has been reprocessed externally or ''in-house'' is considered proprietary due to the proprietary processing and is no longer considered to be speculative.

Each bidder, including joint bidders, must submit the GDIS in a separate and sealed envelope and must identify and submit all proprietary data; reprocessed speculative data, and/or any Controlled Source Electromagnetic surveys, Amplitude Versus Offset (AVO) data, gravity data, and/or magnetic data; any and all velocity volumes; any and all available acquisition, processing, or reprocessing reports; or any other information used as part of the decision to bid or participate in a bid on the block. All seismic data must be submitted in 32-bit format SEG–Y with a text file listing header information including byte positions of information in the SEG–Y header. Each bidder, including joint bidders, must also include a live trace map for each proprietary survey identified in the GDIS illustrating the actual areal extent of the proprietary geophysical data in the survey (see the ''Example of Preferred Format'' that is included in the Final NOS package for additional information). The shapefile must include only the live trace map of the survey itself, submitted in NAD83 UTM Zone 5N (indicate if transformed from an alternate datum).

The GDIS statement must include the name, phone number, and full address for a contact person and an alternate, who are both knowledgeable about the geophysical information and data listed and who are available for 30 days after the sale date. The GDIS statement must also include a list of all blocks bid upon that did not use proprietary or reprocessed pre- or post-stack geophysical data and information as part of the decision to bid or to participate as a joint bidder in the bid. *Bidders must submit the GDIS statement even if no proprietary geophysical data and information were used in bid preparation for the block.*

An example of the preferred format of the table is included in the Final NOS package, and a blank digital version of the preferred table may be accessed on the Cook Inlet Sale 258 sale web page at *https://www.boem.gov/ak258/.* The GDIS table should have columns that clearly state the following:

- The sale number;
- The bidder company's name;
- The joint bidder's company's name (if applicable);
- The company providing proprietary data to BOEM;
- The block area and block number bid upon;
- The owner of the original data set (*i.e.,* who initially acquired the data);
- The industry's original name of the survey (*e.g.,* E Octopus);

- The BOEM permit number for the survey;
- Whether the dataset is a fast-track version;
- Whether the data is speculative or proprietary;
- The data type (*e.g.,* 2–D, 3–D, or 4–D; pre-stack or post-stack; time or depth);
- The migration algorithm (*e.g.,* Kirchhoff migration, wave equation migration, reverse time migration) of the data;
- The live proprietary survey coverage (2–D line miles or 3–D mi^2);
- The computer storage size, to the nearest gigabyte, of each seismic dataset and velocity volume submitted;
- Who reprocessed the data;
- Date the final processing or reprocessing was completed (month and year);
- If data was previously sent to BOEM, list the sale number or purpose (*e.g.,* WCD) and date of the sale for which it was used; and
- If AVO/AVA analysis was conducted, provide a summary of the AVO/AVA processes, methodology, and parameters used.

BOEM will use the computer storage size information to estimate the reproduction costs for each data set, if applicable. BOEM will determine the availability of reimbursement of production costs consistent with 30 CFR 551.13.

BOEM reserves the right to inquire about alternate data sets, to perform quality checks, and to compare the listed and alternative data sets to determine which data set most closely meets the needs of the fair market value determination process. (Refer to the ''Example of Preferred Format'' included in the Final NOS package.)

Pursuant to 30 CFR 551.12 and 30 CFR 556.501, as a condition of the sale, the BOEM Alaska RD requires that all bidders and joint bidders submit the proprietary data identified on their GDIS at the time of bid submittal. No reimbursement will be provided for unsolicited data sent to BOEM. The data must be submitted to BOEM at the following address: Bureau of Ocean Energy Management, Section Chief—Resource Analysis Section, 3801 Centerpoint Drive, Ste. 500, Anchorage, AK 99503–5823.

BOEM recommends that bidders mark the GDIS submission's external envelope with the designation ''Deliver Immediately to Chief—Resource Analysis Section.'' BOEM also recommends that bidders submit the data in an internal envelope, or otherwise marked, with the following designation: ''Proprietary Geophysical Data Submitted Pursuant to Cook Inlet Sale 258 and used during <Bidder Name's> evaluation of Block <Block Number>.''

In the event a bidder supplies any type of data to BOEM, that bidder must meet the following requirements to qualify for reimbursement:

(1) The bidder must be registered with the System for Award Management (SAM), formerly known as the Central Contractor Registration (CCR). CCR usernames will not work in SAM. A new SAM user account is needed to register or update an entity's records. The website for registering is *gsa.gov/iaesystems.*

(2) The bidder must be enrolled in the U.S. Treasury's Invoice Processing Platform (IPP) for electronic invoicing. The person must enroll in the IPP at *https://www.ipp.gov/.* Access then will be granted to use the IPP for submitting requests for payment. When submitting a request for payment, the assigned Purchase Order Number must be included.

(3) The bidder must have a current On-line Representations and Certifications Application at *gsa.gov/iaesystems.*

Please Note: The ''GDIS Statement,'' ''Table,'' ''Maps,'' and other information must be provided digitally in the following formats:

- GDIS Statement and other reports—PDF files
- GDIS Information Table—Excel spreadsheet
- Maps—PDF files
- Live trace outline of each survey's areal extent—PDF and ESRI compatible shapefile or MapPackage (.mpk) in NAD83 UTM Zone 5N CRS
- Seismic data, including stacks, gathers, and velocity—SEG–Y
- Other data types as appropriate; column delimited ASCII text with headers may be deemed appropriate

Bidders should submit the digital files on an USB external drive (formatted for Windows). If bidders have any questions, please contact BOEM Regional Supervisor, Resource Evaluation at (907) 334–5200.

Bidders should refer to the discussion under the subheading ''Acceptance, Rejection, or Return of Bids'' in section X of this document, which is entitled ''The Lease Sale.'' That discussion outlines the consequences of a bidder's failure to comply with the requirements of the Final NOS, including any failure to submit information as required in the Final NOS package.

Telephone Numbers/Addresses of Bidders

BOEM requests that bidders provide this information in the suggested format prior to, or at the time of, bid submission. The suggested format is included in the Final NOS package. The form must not be enclosed inside the sealed bid envelope.

Additional Documentation

BOEM may require bidders to submit other documents in accordance with 30 CFR 556.107, 30 CFR 556.401, 30 CFR 556.501, and 30 CFR 556.513.

VIII. Bidding Rules and Restrictions

Restricted Joint Bidders

On October 28, 2022, BOEM published the most recent List of Restricted Joint Bidders in the **Federal Register** at 87 FR 65248. Potential bidders are advised to refer to the **Federal Register**, prior to bidding, for the most current List of Restricted Joint Bidders in place at the time of the lease sale. Please refer to the joint bidding provisions at 30 CFR 556.511–.515.

Authorized Signatures

The name and title of all signatories executing documents on behalf of any bidder must match the names and titles of persons authorized by the bidder to act on its behalf as reflected in BOEM's qualification records. Bidders are advised that BOEM considers the signed bid to be a legally binding obligation on the part of the bidders to comply with all applicable regulations, including payment of one-fifth of the bonus bid on all high bids. A statement to this effect is included on each bid form (see the document ''Bid Form'' that is included in the Final NOS package).

Unlawful Combination or Intimidation

BOEM warns bidders against violation of 18 U.S.C. 1860, prohibiting unlawful combination or intimidation of bidders.

Bid Withdrawal

Bids may be withdrawn only by written request delivered to BOEM prior to the bid submission deadline via any parcel delivery service. Withdrawals will not be accepted in person or via email. The withdrawal request must be on company letterhead and must contain the bidder's name, its BOEM qualification number, the map name and number, and the block number of each bid to be withdrawn. The withdrawal request must be executed by one or more of the representatives named in the BOEM qualification records. The name and title of the authorized signatory must be typed

under the signature block on the withdrawal request. The BOEM Alaska RD, or the RD's designee, will indicate approval by signing and dating the withdrawal request.

Bid Rounding

Minimum bonus bid calculations, including rounding, for all blocks are shown in the document ''List of Blocks Available for Leasing'' included in the Final NOS package. The bonus bid amount must be stated in whole dollars. If the acreage of a block contains a decimal figure, then prior to calculating the minimum bonus bid, BOEM will round up to the next whole hectare. The appropriate minimum rate per hectare will be applied to the whole (rounded up) acreage. The bonus bid amount must be greater than or equal to the minimum bonus bid, as calculated and stated in the Final NOS package.

IX. Forms

The Final NOS package includes instructions, samples, and the preferred format for the items listed below. BOEM strongly encourages bidders to use the recommended formats. If bidders use another format, they are responsible for including all the information specified for each item in the Final NOS package.

(1) Bid Form
(2) Sample Completed Bid
(3) Sample Bid Envelope
(4) Sample Bid Mailing Envelope
(5) Telephone Numbers/Addresses of Bidders Form
(6) GDIS Form
(7) GDIS Envelope Form

X. The Lease Sale

Bid Opening and Reading

Sealed bids received in response to the Final NOS will be opened at the date and hour specified under the **DATES** section of the Final NOS. The bid opening and reading will be held at 3801 Centerpoint Drive, Suite 500, Anchorage, Alaska 99503, but the venue is not open to the public, media, or industry. Instead, the bid opening and reading will be available for the public to view on BOEM's website at *https://www.boem.gov/ak258/* via live-streaming video. The results will also be posted on BOEM's website upon completion of bid opening and reading. The opening of the bids is for the sole purpose of publicly announcing and recording the bids received. No bids will be accepted or rejected at that time.

Bonus Bid Deposit for Apparent High Bids

Each bidder submitting an apparent high bid must submit a bonus bid deposit to ONRR equal to one-fifth of the bonus bid amount for each such bid. A copy of the notification of the high bidder's one-fifth bonus bid amount can be obtained on the BOEM website at *https://www.boem.gov/ak258/* under the heading ''Notification of EFT 1/5 Bonus Liability'' after 1:00 p.m. on the day of the sale. All payments must be electronically deposited into an interest-bearing account in the U.S. Treasury by 4 p.m. eastern time on January 3, 2023, which is the first business day following the bid reading (no exceptions). Account information is provided in the ''Instructions for Making Electronic Funds Transfer Bonus Payments'' found on the BOEM website identified above.

Submitting payment to your financial institution as soon as possible the day of bid reading, but no later than 7 p.m. eastern time the day of bid reading, will help ensure that deposits have time to process through the U.S. Treasury and post to ONRR. ONRR cannot confirm payment until the monies have been moved into settlement status by the U.S. Treasury. BOEM requires bidders to use EFT procedures for payment of one-fifth bonus bid deposits for Cook Inlet Sale 258 following the detailed instructions contained on the ONRR Payment Information web page at *https://www.onrr.gov/ReportPay/payments.htm.* Acceptance of a deposit does not constitute, and will not be construed as, acceptance of any bid on behalf of the United States.

Withdrawal of Blocks

The United States reserves the right to withdraw any block from this lease sale prior to issuance of a written acceptance of a bid for the block.

Acceptance, Rejection, or Return of Bids

The United States reserves the right to reject any and all bids, regardless of the amount offered. Furthermore, no bid will be accepted, and no lease for any block will be awarded to any bidder, unless:

(1) The bidder has complied with all applicable regulations and requirements of the Final NOS, including those set forth in the documents contained in the Final NOS package;

(2) The bid is the highest valid bid; and

(3) The amount of the bid has been determined to be adequate by the authorized officer.

Any bid submitted that does not conform to the requirements of the Final NOS package, OCSLA and its implementing regulations, or any other applicable statute or regulation will be rejected and returned to the bidder. The U.S. Department of Justice and the Federal Trade Commission will review the results of the lease sale for any antitrust issues prior to the acceptance of bids and issuance of leases.

Bid Adequacy Review Procedures for Cook Inlet Sale 258

To ensure that the U.S. Government receives fair market value for the conveyance of leases from this sale, BOEM will evaluate high bids in accordance with the bid adequacy procedures that are effective on the date of the sale. These procedures are available on BOEM's website at *https://www.boem.gov/Bid-Adequacy-Procedures/.*

Lease Award

BOEM requires each bidder awarded a lease to complete the following:

(1) Execute all copies of the lease (Form BOEM–2005 [February 2017], as amended);

(2) Pay by EFT the balance of the bonus bid amount and the first year's rental for each lease issued in accordance with the requirements of 30 CFR 1218.155 and 556.520(a); and

(3) Satisfy the bonding requirements of 30 CFR part 556, subpart I, as amended.

ONRR requests that only one transaction be used for payment of the balance of the bonus bid amount and the first year's rental. Once ONRR receives such payment, the bidder awarded the lease may not request a refund of the balance of the bonus bid amount or first year's rental payment.

XI. Delay of Sale

The BOEM Alaska RD has the discretion to change any date, time, and location specified in the Final NOS package in case of an event that the BOEM Alaska RD deems may interfere with the carrying out of a fair and orderly lease sale process. Such events could include, but are not limited to, natural disasters (*e.g.,* earthquakes or floods), wars, riots, acts of terrorism, fires, strikes, civil disorder, or other events of a similar nature. In case of such events, bidders should call (907) 334–5200, or access the BOEM website at *https://www.boem.gov* for information regarding any changes.

Amanda Lefton,

Director, Bureau of Ocean Energy Management.

[FR Doc. 2022–25794 Filed 11–28–22; 8:45 am]

BILLING CODE 4340–98–P

INTERNATIONAL TRADE COMMISSION

[Investigation No. 337–TA–1343]

Certain Video Processing Devices and Components Thereof; Notice of Institution of Investigation

AGENCY: International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that a complaint was filed with the U.S. International Trade Commission on October 24, 2022, under section 337 of the Tariff Act of 1930, as amended, on behalf of DivX, LLC of San Diego, California. The complaint alleges violations of section 337 based upon the importation into the United States, the sale for importation, and the sale within the United States after importation of certain video processing devices and components thereof by reason of the infringement of certain claims of U.S. Patent No. 8,832,297 (''the '297 patent''); U.S. Patent No. 7,295,673 (''the '673 patent''); U.S. Patent No. 10,225,588 (''the '588 patent''); U.S. Patent No. 11,102,553 (''the '553 patent''); and U.S. Patent No. 11,050,808 (''the '808 patent''). The complaint further alleges that an industry in the United States exists as required by the applicable Federal Statute. The complainant requests that the Commission institute an investigation and, after the investigation, issue a limited exclusion order and cease and desist orders.

ADDRESSES: The complaint, except for any confidential information contained therein, may be viewed on the Commission's electronic docket (EDIS) at *https://edis.usitc.gov.* For help accessing EDIS, please email *EDIS3Help@usitc.gov.* Hearing impaired individuals are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on (202) 205–1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at (202) 205–2000. General information concerning the Commission may also be obtained by accessing its internet server at *https://www.usitc.gov.*

FOR FURTHER INFORMATION CONTACT: Jessica Mullan, Office of Docket Services, U.S. International Trade Commission, telephone (202) 205–1802.

SUPPLEMENTARY INFORMATION:

Authority: The authority for institution of this investigation is contained in section 337 of the Tariff Act of 1930, as amended, 19 U.S.C. 1337, and in section 210.10 of the Commission's Rules of Practice and Procedure, 19 CFR 210.10 (2022).

Scope of Investigation: Having considered the complaint, the U.S. International Trade Commission, on November 22, 2022, *ordered that*—

(1) Pursuant to subsection (b) of section 337 of the Tariff Act of 1930, as amended, an investigation be instituted to determine whether there is a violation of subsection (a)(1)(B) of section 337 in the importation into the United States, the sale for importation, or the sale within the United States after importation of certain products identified in paragraph (2) by reason of infringement of one or more of claims 1, 2, and 4 of the '297 patent; claims 29–32 of the '673 patent; claims 1–11 of the '588 patent; claims 11–13 and 15–17 of the '553 patent; and claims 1–7 and 10–16 of the '808 patent; and whether an industry in the United States exists as required by subsection (a)(2) of section 337;

(2) Pursuant to section 210.10(b)(1) of the Commission's Rules of Practice and Procedure, 19 CFR 210.10(b)(1), the plain language description of the accused products or category of accused products, which defines the scope of the investigation, is ''smart televisions, digital tablets, dedicated streaming media and video processing devices and set-top boxes, and components thereof'';

(3) For the purpose of the investigation so instituted, the following are hereby named as parties upon which this notice of investigation shall be served:

(a) The complainant is:

DivX, LLC, 4350 La Jolla Village Drive, Suite 950, San Diego, CA 92122

(b) The respondents are the following entities alleged to be in violation of section 337, and are the parties upon which the complaint is to be served:

Amazon.com, Inc., 410 Terry Avenue North, Seattle, WA 98109

VIZIO, Inc., 39 Tesla, Irvine, CA 92618

(4) For the investigation so instituted, the Chief Administrative Law Judge, U.S. International Trade Commission, shall designate the presiding Administrative Law Judge.

The Office of Unfair Import Investigations is not a party to this investigation.

Responses to the complaint and the notice of investigation must be submitted by the named respondents in accordance with section 210.13 of the Commission's Rules of Practice and Procedure, 19 CFR 210.13. Pursuant to 19 CFR 201.16(e) and 210.13(a), as amended in 85 FR 15798 (March 19, 2020), such responses will be considered by the Commission if received not later than 20 days after the date of service by the complainant of the complaint and the notice of investigation. Extensions of time for submitting responses to the complaint and the notice of investigation will not be granted unless good cause therefor is shown.

Failure of a respondent to file a timely response to each allegation in the complaint and in this notice may be deemed to constitute a waiver of the right to appear and contest the allegations of the complaint and this notice, and to authorize the administrative law judge and the Commission, without further notice to the respondent, to find the facts to be as alleged in the complaint and this notice and to enter an initial determination and a final determination containing such findings, and may result in the issuance of an exclusion order or a cease and desist order or both directed against the respondent.

By order of the Commission.

Issued: November 23, 2022.

Jessica Mullan,

Acting Supervisory Attorney.

[FR Doc. 2022–26054 Filed 11–28–22; 8:45 am]

BILLING CODE 7020–02–P

INTERNATIONAL TRADE COMMISSION

[Investigation No. 337–TA–1283]

Certain Composite Baseball and Softball Bats and Components Thereof; Notice of Correction Concerning Commission Issuance of a Limited Exclusion Order and a Cease and Desist Order Against a Defaulting Respondent; Termination of Investigation

AGENCY: U.S. International Trade Commission.

ACTION: Notice.

SUMMARY: Correction is made to notice 87 FR 66746–47 which was published on Friday, November 4, 2022, to clarify that the Commission voted to approve the determination on October 31, 2022, and not November 1, 2022. The Commission vote date is hereby corrected in the notice of termination.

Issued: November 22, 2022.

Katherine Hiner,

Acting Secretary to the Commission.

[FR Doc. 2022–25931 Filed 11–28–22; 8:45 am]

BILLING CODE 7020–02–P

INTERNATIONAL TRADE COMMISSION

[Investigation No. 337–TA–1341]

Certain Video Processing Devices and Products Containing the Same; Notice of Institution of Investigation

AGENCY: U.S. International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that a complaint was filed with the U.S. International Trade Commission on October 19, 2022, under section 337 of the Tariff Act of 1930, as amended, on behalf of VideoLabs, Inc. of Palo Alto, California. The complaint alleges violations of section 337 based upon the importation into the United States, the sale for importation, and the sale within the United States after importation of certain video processing devices and products containing the same by reason of the infringement of certain claims of U.S. Patent No. 7,769,238 (''the '238 patent''); U.S. Patent No. 8,139,878 (''the '878 Patent''); and U.S. Patent No. 8,208,542 (''the '542 Patent''). The complaint further alleges that an industry in the United States exists as required by the applicable Federal Statute. The complainant requests that the Commission institute an investigation and, after the investigation, issue a limited exclusion order and a cease and desist order.

ADDRESSES: The complaint, except for any confidential information contained therein, may be viewed on the Commission's electronic docket (EDIS) at *https://edis.usitc.gov.* For help accessing EDIS, please email *EDIS3Help@usitc.gov.* Hearing impaired individuals are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on (202) 205–1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at (202) 205–2000. General information concerning the Commission may also be obtained by accessing its internet server at *https://www.usitc.gov.*

FOR FURTHER INFORMATION CONTACT: Jessica Mullan, Office of Docket Services, U.S. International Trade Commission, telephone (202) 205–1802.

SUPPLEMENTARY INFORMATION:

Authority: The authority for institution of this investigation is contained in section 337 of the Tariff Act of 1930, as amended, 19 U.S.C. 1337, and in section 210.10 of the Commission's Rules of Practice and Procedure, 19 CFR 210.10 (2022).

Scope of Investigation: Having considered the complaint, the U.S. International Trade Commission, on November 18, 2022, *ordered that*—

(1) Pursuant to subsection (b) of section 337 of the Tariff Act of 1930, as amended, an investigation be instituted to determine whether there is a violation of subsection (a)(1)(B) of section 337 in the importation into the United States, the sale for importation, or the sale within the United States after importation of certain products identified in paragraph (2) by reason of infringement of one or more of claim 1 of the '238 patent; claims 1–4 of the '878 patent; and claims 1 and 2 of the '542 patent and, whether an industry in the United States exists as required by subsection (a)(2) of section 337;

(2) Pursuant to section 210.10(b)(1) of the Commission's Rules of Practice and Procedure, 19 CFR 210.10(b)(1), the plain language description of the accused products or category of accused products, which defines the scope of the investigation, is ''desktop computers and laptop computers'';

(3) For the purpose of the investigation so instituted, the following are hereby named as parties upon which this notice of investigation shall be served:

(a) The complainant is:

VideoLabs, Inc., 2303 Saint Francis Drive, Palo Alto, California 94303

(b) The respondent is the following entity alleged to be in violation of section 337, and is the party upon which the complaint is to be served:

HP Inc., 1501 Page Mill Road, Palo Alto, California 94304

(4) For the investigation so instituted, the Chief Administrative Law Judge, U.S. International Trade Commission, shall designate the presiding Administrative Law Judge.

The Office of Unfair Import Investigations will not participate as a party in this investigation.

Responses to the complaint and the notice of investigation must be submitted by the named respondent in accordance with section 210.13 of the Commission's Rules of Practice and Procedure, 19 CFR 210.13. Pursuant to 19 CFR 201.16(e) and 210.13(a), as amended in 85 FR 15798 (March 19, 2020), such responses will be considered by the Commission if received not later than 20 days after the date of service by the complainant of the complaint and the notice of investigation. Extensions of time for submitting responses to the complaint and the notice of investigation will not be granted unless good cause therefor is shown.

Failure of the respondent to file a timely response to each allegation in the complaint and in this notice may be deemed to constitute a waiver of the right to appear and contest the allegations of the complaint and this notice, and to authorize the administrative law judge and the Commission, without further notice to the respondent, to find the facts to be as alleged in the complaint and this notice and to enter an initial determination and a final determination containing such findings, and may result in the issuance of an exclusion order or a cease and desist order or both directed against the respondent.

By order of the Commission.

Issued: November 18, 2022.

Jessica Mullan,

Acting Supervisory Attorney.

[FR Doc. 2022–25985 Filed 11–28–22; 8:45 am]

BILLING CODE 7020–02–P

INTERNATIONAL TRADE COMMISSION

[Investigation No. 337–TA–1344]

Certain Bio-Layer Interferometers and Components Thereof; Notice of Institution of Investigation

AGENCY: International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that a complaint was filed with the U.S. International Trade Commission on October 25, 2022, under section 337 of the Tariff Act of 1930, as amended, on behalf of Sartorius Bioanalytical Instruments, Inc. of Bohemia, New York. A supplement to the complaint was filed on November 14, 2022. The complaint, as supplemented, alleges violations of section 337 based upon the importation into the United States, the sale for importation, and the sale within the United States after importation of certain bio-layer interferometers and components thereof by reason of the infringement of certain claims of U.S. Patent No. 7,394,547 (''the '547 patent''); U.S. Patent No. 7,445,887 (''the '887 patent''); U.S. Patent No. 7,728,982 (''the '982 patent''); and U.S. Patent No. 8,305,585 (''the '585 patent''). The complaint further alleges that an industry in the United States exists as required by the applicable Federal Statute. The complainant requests that the Commission institute an investigation and, after the

investigation, issue a limited exclusion order and a cease and desist order.

ADDRESSES: The complaint, except for any confidential information contained therein, may be viewed on the Commission's electronic docket (EDIS) at *https://edis.usitc.gov.* For help accessing EDIS, please email *EDIS3Help@usitc.gov.* Hearing impaired individuals are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on (202) 205–1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at (202) 205–2000. General information concerning the Commission may also be obtained by accessing its internet server at *https://www.usitc.gov.*

FOR FURTHER INFORMATION CONTACT: Pathenia Proctor, Office of Unfair Import Investigations, U.S. International Trade Commission, telephone (202) 205–2560.

SUPPLEMENTARY INFORMATION:

Authority: The authority for institution of this investigation is contained in section 337 of the Tariff Act of 1930, as amended, 19 U.S.C. 1337, and in section 210.10 of the Commission's Rules of Practice and Procedure, 19 CFR 210.10 (2022).

Scope of Investigation: Having considered the complaint, the U.S. International Trade Commission, on November 22, 2022, *ordered that*—

(1) Pursuant to subsection (b) of section 337 of the Tariff Act of 1930, as amended, an investigation be instituted to determine whether there is a violation of subsection (a)(1)(B) of section 337 in the importation into the United States, the sale for importation, or the sale within the United States after importation of certain products identified in paragraph (2) by reason of infringement of one or more of claims 1, 3–6, and 11–21 of the '547 patent; claims 1–5, 7–14, and 16–18 of the '887 patent; claims 1, 3–6, and 11–35 of the '982 patent; and claims 1, 3–6, and 11–19 of the '585 patent, and whether an industry in the United States exists as required by subsection (a)(2) of section 337;

(2) Pursuant to section 210.10(b)(1) of the Commission's Rules of Practice and Procedure, 19 CFR 210.10(b)(1), the plain language description of the accused products or category of accused products, which defines the scope of the investigation, is ''biolayer interferometers, biosensors, and kits containing biosensors and reagents'';

(3) Pursuant to Commission Rule 210.50(b)(l), 19 CFR 210.50(b)(1), the presiding administrative law judge shall take evidence or other information and hear arguments from the parties or other interested persons with respect to the public interest in this investigation, as appropriate, and provide the Commission with findings of fact and a recommended determination on this issue, which shall be limited to the statutory public interest factors set forth in 19 U.S.C. l337(d)(l), (f)(1), (g)(1);

(4) For the purpose of the investigation so instituted, the following are hereby named as parties upon which this notice of investigation shall be served:

(a) The complainant is:

Sartorius Bioanalytical Instruments, Inc., 5 Johnson Avenue, Bohemia, NY 11716

(b) The respondent is the following entity alleged to be in violation of section 337, and is the party upon which the complaint is to be served:

Gator Bio, Inc., 2455 Faber Place, Palo Alto, CA 94303

(c) The Office of Unfair Import Investigations, U.S. International Trade Commission, 500 E Street SW, Suite 401, Washington, DC 20436; and

(5) For the investigation so instituted, the Chief Administrative Law Judge, U.S. International Trade Commission, shall designate the presiding Administrative Law Judge. Responses to the complaint and the notice of investigation must be submitted by the named respondent in accordance with section 210.13 of the Commission's Rules of Practice and Procedure, 19 CFR 210.13. Pursuant to 19 CFR 201.16(e) and 210.13(a), as amended in 85 FR 15798 (March 19, 2020), such responses will be considered by the Commission if received not later than 20 days after the date of service by the complainant of the complaint and the notice of investigation. Extensions of time for submitting responses to the complaint and the notice of investigation will not be granted unless good cause therefor is shown.

Failure of the respondent to file a timely response to each allegation in the complaint and in this notice may be deemed to constitute a waiver of the right to appear and contest the allegations of the complaint and this notice, and to authorize the administrative law judge and the Commission, without further notice to the respondent, to find the facts to be as alleged in the complaint and this notice and to enter an initial determination and a final determination containing such findings, and may result in the issuance of an exclusion order or a cease and desist order or both directed against the respondent.

By order of the Commission.

Issued: November 23, 2022.

Jessica Mullan,

Acting Secretary to the Commission.

[FR Doc. 2022–26053 Filed 11–28–22; 8:45 am]

BILLING CODE 7020–02–P

INTERNATIONAL TRADE COMMISSION

[Investigation No. 337–TA–1342]

Certain Semiconductor Devices Having Layered Dummy Fill, Electronic Devices, and Components Thereof; Notice of Institution of Investigation

AGENCY: International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that a complaint was filed with the U.S. International Trade Commission on October 14, 2022, under section 337 of the Tariff Act of 1930, as amended, on behalf of Bell Semiconductor, LLC of Bethlehem, Pennsylvania. Supplements to the complaint were filed on October 25, 2022; October 31, 2022; and November 4, 2022. The complaint alleges violations of section 337 based upon the importation into the United States, the sale for importation, and the sale within the United States after importation of certain semiconductor devices having layered dummy fill, electronic devices, and components thereof by reason of the infringement of certain claims of U.S. Patent No. 7,396,760 (''the '760 patent''). The complaint further alleges that an industry in the United States exists as required by the applicable Federal Statute. The complainant requests that the Commission institute an investigation and, after the investigation, issue a limited exclusion order and cease and desist orders.

ADDRESSES: The complaint, except for any confidential information contained therein, may be viewed on the Commission's electronic docket (EDIS) at *https://edis.usitc.gov.* For help accessing EDIS, please email *EDIS3Help@usitc.gov.* Hearing impaired individuals are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on (202) 205–1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at (202) 205–2000. General information concerning the Commission may also be obtained

by accessing its internet server at *https://www.usitc.gov*.

FOR FURTHER INFORMATION CONTACT: Pathenia M. Proctor, The Office of Unfair Import Investigations, (202) 205–2560.

SUPPLEMENTARY INFORMATION:

Authority: The authority for institution of this investigation is contained in section 337 of the Tariff Act of 1930, as amended, 19 U.S.C. 1337, and in section 210.10 of the Commission's Rules of Practice and Procedure, 19 CFR 210.10 (2022).

Scope of Investigation: Having considered the complaint, the U.S. International Trade Commission, on November 22, 2022, *ordered that*—

(1) Pursuant to subsection (b) of section 337 of the Tariff Act of 1930, as amended, an investigation be instituted to determine whether there is a violation of subsection (a)(1)(B) of section 337 in the importation into the United States, the sale for importation, or the sale within the United States after importation of certain products identified in paragraph (2) by reason of infringement of one or more of claims 1–6 and 11–13 of the '760 patent, and whether an industry in the United States exists as required by subsection (a)(2) of section 337;

(2) Pursuant to section 210.10(b)(1) of the Commission's Rules of Practice and Procedure, 19 CFR 210.10(b)(1), the plain language description of the accused products or category of accused products, which defines the scope of the investigation, is ''semiconductor devices, and specifically undiced wafers, diced wafers, packaged chips and chipsets both attached and unattached to printed circuit boards; and end products incorporating such articles, specifically amplifiers, LIDAR sensor systems, automotive control modules, WiFi routers, and cameras'';

(3) Pursuant to Commission Rule 210.50(b)(l), 19 CFR 210.50(b)(1), the presiding administrative law judge shall take evidence or other information and hear arguments from the parties or other interested persons with respect to the public interest in this investigation, as appropriate, and provide the Commission with findings of fact and a recommended determination on this issue, which shall be limited to the statutory public interest factors set forth in 19 U.S.C. 1337(d)(l), (f)(1), (g)(1);

(4) For the purpose of the investigation so instituted, the following are hereby named as parties upon which this notice of investigation shall be served:

(a) The complainant is:

Bell Semiconductor, LLC, One West Broad Street, Suite 901, Bethlehem, PA 18018

(b) The respondents are the following entities alleged to be in violation of section 337, and are the parties upon which the complaint is to be served:

Analog Devices Inc., 1 Technology Way, Norwood, MA 02062
Bose Corporation, 100 The Mountain Road, Framingham, MA 01701
Marvell Technology Group, Ltd., Canon's Court, 22 Victoria Street, Hamilton HM 12, Bermuda
Marvell Semiconductor, Inc., 5488 Marvell Lane, Santa Clara, CA 95054
Suteng Innovation Technology Co., Ltd., d/b/a RoboSense, RoboSense Building, Block 1, South of Zhongguan Hongjualing Industrial District, No. 1213 Liuxian Avenue, Taoyuan Street, Nanshan District, Shenzen 518023, China
Kioxia Corporation, 3–1–21, Shibaura, Minato-ku, Tokyo 108–0023, Japan
Kioxia America, Inc., 2610 Orchard Pkwy., San Jose, CA 95134
MaxLinear, Inc., 5966 La Place Court, Suite 100, Carlsbad, CA 92008
Linksys USA, Inc., 121 Theory Drive, Irvine, CA 92617
MACOM Technology Solutions, Inc., 100 Chelmsford Street, Lowell, MA 01851
Silicon Laboratories, Inc., 400 West Cesar Chavez, Austin, TX 78701
DENSO Corporation, 1 Chome-1 Showacho, Kariya, Aichi 448–0029, Japan
Skyworks Solutions, Inc., 5260 California Avenue, Irvine, CA 02617
OmniVision Technologies, Inc., 4275 Burton Drive, Santa Clara, CA 95054
Arlo Technologies, Inc., 480 N McCarthy Blvd., Suite 200, Milpitas, CA 95035

(c) The Office of Unfair Import Investigations, U.S. International Trade Commission, 500 E Street SW, Suite 401, Washington, DC 20436; and

(5) For the investigation so instituted, the Chief Administrative Law Judge, U.S. International Trade Commission, shall designate the presiding Administrative Law Judge.

Responses to the complaint and the notice of investigation must be submitted by the named respondents in accordance with section 210.13 of the Commission's Rules of Practice and Procedure, 19 CFR 210.13. Pursuant to 19 CFR 201.16(e) and 210.13(a), as amended in 85 FR 15798 (March 19, 2020), such responses will be considered by the Commission if received not later than 20 days after the date of service by the complainant of the complaint and the notice of investigation. Extensions of time for submitting responses to the complaint and the notice of investigation will not be granted unless good cause therefor is shown.

Failure of a respondent to file a timely response to each allegation in the complaint and in this notice may be deemed to constitute a waiver of the right to appear and contest the allegations of the complaint and this notice, and to authorize the administrative law judge and the Commission, without further notice to the respondent, to find the facts to be as alleged in the complaint and this notice and to enter an initial determination and a final determination containing such findings, and may result in the issuance of an exclusion order or a cease and desist order or both directed against the respondent.

By order of the Commission.

Issued: November 23, 2022.

Jessica Mullan,

Acting Supervisory Attorney.

[FR Doc. 2022–26055 Filed 11–28–22; 8:45 am]

BILLING CODE 7020–02–P

INTERNATIONAL TRADE COMMISSION

[Investigation No. 731–TA–1296 (Final)]

Hot-Rolled Steel Flat Products From Turkey; Denial of Request To Institute a Section 751(b) Review; Denial of Request To Institute a Section 751(b) Review or Reconsideration Proceeding Concerning the Commission's Affirmative Determination in Investigation No. 731–TA–1296 (Final), Hot-Rolled Steel Flat Products From Turkey

AGENCY: United States International Trade Commission.

ACTION: Notice.

SUMMARY: The Commission hereby gives notice that it has declined to institute a review pursuant to section 751(b) of the Tariff Act of 1930 (the Act) or grant reconsideration regarding the Commission's affirmative determination in investigation No. 731–TA–1296 (Final).

DATES: *Applicable:* November 22, 2022.

FOR FURTHER INFORMATION CONTACT: Douglas Corkran (202–205–3057), Office of Investigations, U.S. International Trade Commission, 500 E Street SW, Washington, DC 20436. Hearing-impaired persons can obtain information on this matter by contacting the Commission's TDD terminal on 202–205–1810. Persons with mobility impairments who will need special

assistance in gaining access to the Commission should contact the Office of the Secretary at 202–205–2000. General information concerning the Commission may also be obtained by accessing its internet server (*http://www.usitc.gov*). The public record for this matter may be viewed on the Commission's electronic docket (EDIS) at *http://edis.usitc.gov.*

SUPPLEMENTARY INFORMATION:

Background.—In September 2016, the Commission determined that a U.S. industry was materially injured by reason of imports of hot-rolled steel flat products from Turkey found by the U.S. Department of Commerce (Commerce) to be sold in the United States at less than fair value (81 FR 66996, Sept. 29, 2016). Turkish producer and exporter Eregli Demir ve Celik Fabrikalari T.A.S. (Erdemir) did not appeal the Commission's final affirmative material injury determination in the antidumping duty investigation with respect to Turkey.

On September 1, 2021, Commerce initiated, and the ITC instituted, five-year reviews of the antidumping duty order on hot-rolled steel flat products from Turkey (86 FR 48983 & 86 FR 49057, Sept. 1, 2021). On December 6, 2021, the Commission determined to conduct a full five-year review of the order (87 FR 3123, Jan. 20, 2022).

On September 10, 2021, the Commission received a request from Erdemir to review its affirmative determination in investigation No. 731–TA–1296 (Final) pursuant to section 751(b) of the Act (19 U.S.C. 1675(b)). The request alleged there have been significant changed circumstances since the issuance of the Commission's 2016 determination. Specifically, Erdemir alleged that Commerce's recalculation of Colakoglu Dis Ticaret A.S.'s (Colakoglu) antidumping duty margin to zero percent and Colakoglu's consequent exclusion from the antidumping duty order as a result of judicial review constitute significantly changed circumstances from those in existence at the time of the original investigation. According to Erdemir, the exclusion of Colakoglu from the antidumping duty order places this case *in pari materia* with the Commission's finding of negligibility in the countervailing duty investigation and provides a compelling basis to now find that imports from Turkey were negligible in the original antidumping duty investigation.

On December 2, 2021, the Commission published a **Federal Register** notice inviting comments from the public on whether changed circumstances exist sufficient to warrant the institution of a changed circumstances review (86 FR 68512, Dec. 2, 2021). In response to its **Federal Register** notice soliciting comments, the Commission received a submission opposing the institution of a changed circumstances review jointly filed on behalf of Cleveland-Cliffs Inc., Nucor Corporation, SSAB Enterprises, LLC, Steel Dynamics, Inc., and United States Steel Corporation. The Commission also received separate submissions in favor of instituting a changed circumstances review on behalf of the government of the Republic of Turkey and Erdemir.

The Commission has determined not to institute a changed circumstances review of the antidumping duty order on hot-rolled steel flat products from Turkey. At the time Erdemir filed its request for a changed circumstance review, the Commission was already conducting a five-year review of the antidumping duty order on hot-rolled steel flat products from Turkey. Conducting a changed circumstances review at the same time as a five-year review would be unwarranted because it would be duplicative of the full five-year review. *See Eveready Battery Co. Inc.* v. *United States,* 77 F. Supp.2d 1327 (CIT 1999) (finding that a request for a changed circumstances review was rendered moot by the Commission's institution of a full five-year review). Moreover, the result that Erdemir seeks—reexamination of the Commission's original negligibility finding—is not possible in a changed circumstances review because negligibility is not a factor for the Commission to consider under the statute in a changed circumstances review. A changed circumstances review involves a forward-looking inquiry that considers whether in view of changed circumstances an order is no longer needed to prevent the continuation or recurrence of material injury; it does not provide an opportunity for the Commission to reconsider and amend its original injury determination. *Compare* 19 U.S.C. 1675a(a) *with* 19 U.S.C. 1673d(b)(1) & 1677(24).

While not included in its request for a changed circumstances review, Erdemir raised in its comments regarding the changed circumstances request that the Commission consider the alternative of conducting a reconsideration proceeding. After considering this alternative request, the Commission has determined not to exercise its authority to undertake a reconsideration of its negligibility analysis in its original material injury determination with respect to the antidumping duty investigation of imports of hot-rolled steel flat products from Turkey.

In view of the presumption of finality and correctness that underlies past action by the Commission, the Commission has chosen to exercise its authority to reconsider only when ''extraordinary circumstances'' are present. For example, the Commission reconsidered its determination in *Ferrosilicion* ''when a fraud has been perpetrated on the tribunal in its initial proceeding.'' *Ferrosilicon from Brazil, China, Kazakhstan, Russia, Ukraine, and Venezuela,* Inv. Nos. 731–TA–566–570, 641 and 303–TA–23 (Reconsideration), USITC Pub. 3218 (Aug. 1999) (''*Ferrosilicon Reconsideration*''), *aff'd Elkem Metals Co.* v. *United States,* 193 F.Supp.2d 1314 (CIT 2002). In *Ferrosilicon Reconsideration,* the Commission concluded that the ''type of extraordinary circumstances that . . . would warrant reconsideration of a Commission determination—matters that strike at the heart of the integrity of the administrative process'' were present because ''[d]omestic producers were criminally convicted of an offense concerning an issue—the establishment of prices for ferrosilicon—that was a focal point of the original Commission investigations.'' *Ferrosilicon Reconsideration* at 8.

Recognizing that the facts presented are unique to each case, and in this case where there is no evidence of fraud or other facts that suggest extraordinary circumstances, we do not find that the recalculation of the dumping margin by Commerce with respect to hot-rolled steel flat products from Turkey warrants reconsideration of our determination. We note that our finding is consistent with the Statement of Administrative Action to the Uruguay Round Agreements Act (SAA) and statutory provisions, in which Congress specifically contemplated subsequent changes to the antidumping duty margins and instructed that such changes would not be a basis to reconsider the Commission's impact analysis.[1] *See* 19 U.S.C. 1677(35)(C) and

[1] Commissioners Kearns and Karpel do not join this sentence. They note that 19 U.S.C. 1677(35)(C) defines the ''magnitude of margins of dumping'' that the Commission is to consider in its impact analysis in accordance with 19 U.S.C. 1677(7)(C)(iii)(v), and that the section of the SAA referenced above pertains to these provisions. Erdemir, on the other hand, is not asking the Commission to reconsider the ''magnitude of margins of dumping'' for purposes of its impact analysis pursuant to 19 U.S.C. 1677(7)(C)(iii)(v) and 1677(35)(C), but rather is asking for the Commission to reconsider its negligibility analysis for purposes of 19 U.S.C. 1673d(b)(1) and 19 U.S.C. 1677(24) because the scope of imports subject to Commerce's final affirmative antidumping duty determination

SAA at 851. There was a path for Erdemir to avail itself to preserve its rights to obtain a reexamination of the Commission's original determination in light of the subsequent successful appeal of Commerce's final original determination that resulted in a de minimis dumping margin for Colakoglu and exclusion of imports from Colakoglu from the scope of Commerce's final affirmative antidumping duty determination. The potential impact on Erdemir at the time that Erdemir and Colakoglu appealed Commerce's final antidumping duty determination was known to Erdemir at that time, and in fact, Erdemir joined Colaloglu in appealing Commerce's original determination. Erdemir did not appeal the Commission's final affirmative material injury determination which would have provided it with the opportunity to preserve its rights for further reconsideration of the merits based on the outcome of Commerce's appeal. *Accord Borlem S.A. Empreedimentos Industriais* v. *United States,* 913 F.2d 933, 939 (Fed. Cir. 1990); *LG Electronics, Inc.* v. *U.S. International Trade Commission,* Slip Op. 14–8, 2014 WL 260603, at *3 (CIT Jan. 23, 2014). The interests of the finality of the agency's decision are paramount under the circumstances presented and, absent extraordinary circumstances, we decline the request to revisit the final original determination.

Authority: This notice is published pursuant to section 207.45 of the Commission's Rules of Practice and Procedure.[2]

By order of the Commission.

Issued: November 23, 2022.

Jessica Mullan,

Acting Supervisory Attorney.

[FR Doc. 2022–25984 Filed 11–28–22; 8:45 am]

BILLING CODE 7020–02–P

has changed. Therefore, in their view, it is not clear that 19 U.S.C. 1677(7)(C)(iii)(v) and 1677(35)(C) and the related SAA language address the circumstances presented here.

[2] The Commission has determined the additional analysis needed to consider the alternative reconsideration request was good cause to exercise its authority to waive the institution period pursuant to section 207.45(c) of the Commission's Rules of Practice and Procedure (19 CFR 207.45(c)).

DEPARTMENT OF LABOR

Agency Information Collection Activities; Submission for OMB Review; Comment Request; High-Voltage Continuous Mining Machine Standards for Underground Coal Mines

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 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.

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: This information collection maintains the safe use of high-voltage continuous mining machines (HVCMMs) in underground coal mines by requiring testing, examination and maintenance on machines to reduce fire, electrical shock, ignition and operation hazards. 30 CFR 75.829(b)(1), 75.831, and 75.832(a) through (c) and (g)(1through (g)(3) contain requirements for examination, maintenance, and recordkeeping on HVCMMs to reduce fire, electrical shock, ignition, and operational hazards. For additional substantive information about this ICR, see the related notice published in the **Federal Register** on August 22, 2022 (87 FR 51448).

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: High-Voltage Continuous Mining Machine Standards for Underground Coal Mines.

OMB Control Number: 1219–0140.

Affected Public: Businesses or other for-profits institutions.

Total Estimated Number of Respondents: 3.

Total Estimated Number of Responses: 4,092.

Total Estimated Annual Time Burden: 192 hours.

Total Estimated Annual Other Costs Burden: $0.

(Authority: 44 U.S.C. 3507(a)(1)(D))

Nora Hernandez,

Departmental Clearance Officer.

[FR Doc. 2022–25977 Filed 11–28–22; 8:45 am]

BILLING CODE 4510–43–P

DEPARTMENT OF LABOR

Occupational Safety and Health Administration

[Docket No. OSHA–2022–0001]

Advisory Committee on Construction Safety and Health

AGENCY: Occupational Safety and Health Administration (OSHA), Labor.

ACTION: Request for nominations.

SUMMARY: The Secretary of Labor requests nominations for membership

on the Advisory Committee for Construction Safety and Health (ACCSH).

DATES: Submit nominations for ACCSH membership by January 13, 2023.

ADDRESSES:

Nominations: You must submit nominations and supporting materials, identified by Docket No. OSHA–2022–0001, electronically at *www.regulations.gov,* which is the Federal e-Rulemaking Portal. Follow the online instructions for submissions.

Instructions: All submissions must include the agency name and the OSHA docket number for this **Federal Register** notice (Docket No. OSHA–2022–0001). OSHA will post all submissions, including personal information, in the public docket without change, which may be made available online at *www.regulations.gov.* Therefore, OSHA cautions interested parties about submitting 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. For further information on submitting nominations, see the ''Submission requirements'' heading in the section of this notice titled **SUPPLEMENTARY INFORMATION.**

Docket: To read or download nominations or other materials in the docket, go to *www.regulations.gov.* Documents in the docket are listed in the *www.regulations.gov* index; however, some information (*e.g.,* copyrighted material) is not publicly available to read or download through the website. All submissions, including copyrighted material, are available for inspection through the OSHA Docket Office. Contact the OSHA Docket Office at (202) 693–2350 (TTY number: (877) 889–5627) for assistance in locating docket submissions.

FOR FURTHER INFORMATION CONTACT:

For press inquiries: Mr. Frank Meilinger, Director, OSHA Office of Communications; telephone: (202) 693–1999; email: *meilinger.francis2@dol.gov.*

For general information about ACCSH and ACCSH membership: Mr. Damon Bonneau, OSHA, Directorate of Construction; telephone: (202) 693–2020; email: *bonneau.damon@dol.gov.*

Copies of this ***Federal Register*** *document:* Electronic copies of this **Federal Register** document are available at *www.regulations.gov.* This document, as well as news releases and other relevant information are also available on the OSHA web page at *www.osha.gov.*

SUPPLEMENTARY INFORMATION: The Secretary of Labor invites interested persons to submit nominations for membership on ACCSH.

A. Background

ACCSH advises the Secretary of Labor and the Assistant Secretary of Labor for Occupational Safety and Health (Assistant Secretary) in the formulation of standards affecting the construction industry, and on policy matters arising in the administration of the safety and health provisions under the Contract Work Hours and Safety Standards Act (Construction Safety Act (CSA)) (40 U.S.C. 3701 *et seq.*) and the Occupational Safety and Health Act of 1970 (OSH Act) (29 U.S.C. 651 *et seq.*) (see also 29 CFR 1911.10 and 1912.3). In addition, the CSA and OSHA regulations require the Assistant Secretary to consult with ACCSH before the agency proposes occupational safety and health standards affecting construction activities (40 U.S.C. 3704; 29 CFR 1911.10).

ACCSH operates in accordance with the Federal Advisory Committee Act (FACA), as amended (5 U.S.C. App. 2), and the implementing regulations (41 CFR 102–3 *et seq.*); and Department of Labor Manual Series Chapter 1–900 (8/31/2020). ACCSH generally meets two to four times a year.

B. ACCSH Membership

ACCSH consists of 15 members whom the Secretary appoints. ACCSH members generally serve two-year terms, unless they resign, cease to be qualified, become unable to serve, or the Secretary removes them (29 CFR 1912.3(e)). The Secretary may appoint ACCSH members to successive terms. No member of ACCSH, other than members who represent employers or employees, shall have an economic interest in any proposed rule that affects the construction industry (29 CFR 1912.6).

The categories of ACCSH membership are, and number of new members to be appointed to replace members whose terms will expire are:

- Five members who are qualified by experience and affiliation to present the viewpoint of employers in the construction industry-five employer representatives will be appointed;
- Five members who are similarly qualified to present the viewpoint of employees in the construction industry-five employee representatives will be appointed;
- Two representatives of State safety and health agencies-two representatives from a State safety and health agency will be appointed;
- Two public members, qualified by knowledge and experience to make a useful contribution to the work of ACCSH, such as those who have professional or technical experience and competence with occupational safety and health in the construction industry-two public representatives will be appointed; and
- One representative designated by the Secretary of the Department of Health and Human Services and appointed by the Secretary-no new appointment will be made.

Any interested person or organization may nominate one or more individuals for membership on ACCSH. Interested persons also are invited and encouraged to submit statements in support of nominees.

C. Submission Requirements

Nominations must include the following information:

- Nominee's contact information and current employment or position;
- Nominee's résumé or curriculum vitae, including prior membership on ACCSH and other relevant organizations and associations;
- Category of membership (employer, employee, public, State safety and health agency) that the nominee is qualified to represent;
- A summary of the background, experience, and qualifications that addresses the nominee's suitability for each of the nominated membership categories;
- Articles or other documents the nominee has authored that indicate the nominee's knowledge, experience, and expertise in occupational safety and health, particularly as it pertains to the construction industry; and
- A statement that the nominee is aware of the nomination, is willing to regularly attend and participate in ACCSH meetings, and has no conflicts of interest that would preclude membership on ACCSH.

D. Member Selection

The Department of Labor is committed to equal opportunity in the workplace and seeks broad-based and diverse ACCSH membership. To the extent permitted by FACA and other laws, ACCSH membership will be consistent with achieving the greatest impact, scope, and credibility among diverse stakeholders. The diversity in such membership includes, but is not limited to, race, sex, disability, sexual orientation, and gender identity. The Secretary will select the ACCSH members on the basis of their experience, knowledge, and competence in the field of occupational safety and

health, particularly as it pertains to the construction industry. Information received through this nomination process, in addition to other relevant sources of information, will assist the Secretary in making these appointments to ACCSH. The Secretary will consider individuals nominated in response to this **Federal Register** document, as well as other qualified individuals, in selecting members to ACCSH. OSHA will publish a list of ACCSH members in the **Federal Register**.

Authority and Signature

James S. Frederick, Deputy Assistant Secretary of Labor for Occupational Safety and Health, authorized the preparation of this notice pursuant to 29 U.S.C. 655, 40 U.S.C. 3704, Secretary of Labor's Order No. 8–2020 (85 FR 58393), 5 U.S.C. App. 2, and 29 CFR part 1912.

Signed at Washington, DC, on November 22, 2022.

James S. Frederick,

Deputy Assistant Secretary of Labor for Occupational Safety and Health.

[FR Doc. 2022–25976 Filed 11–28–22; 8:45 am]

BILLING CODE 4510–26–P

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice: (22–095)]

NASA Advisory Council; Technology, Innovation and Engineering Committee; Meeting

AGENCY: National Aeronautics and Space Administration.

ACTION: Notice of meeting.

SUMMARY: In accordance with the Federal Advisory Committee Act, as amended, the National Aeronautics and Space Administration (NASA) announces a meeting of the Technology, Innovation, and Engineering Committee of the NASA Advisory Council (NAC). This Committee reports to the NAC.

DATES: Thursday, December 15, 2022, 8:30 a.m.–4:45 p.m., central time.

ADDRESSES: Meeting will be a hybrid of in-person and virtual. See dial-in and Webex information below under **SUPPLEMENTARY INFORMATION**.

FOR FURTHER INFORMATION CONTACT: Mr. Mike Green, Designated Federal Officer, Space Technology Mission Directorate, NASA Headquarters, Washington, DC 20546, via email at *g.m.green@nasa.gov* or (202) 358–4710.

SUPPLEMENTARY INFORMATION: This meeting will only be available by Webex or telephonically for members of the public. If dialing in via toll number, you must use a touch-tone phone to participate in this meeting. Any interested person may join via Webex at *https://nasaenterprise.webex.com,* the meeting number is 2762 766 0883, and the password is n@cTIE121522. The toll number to listen by phone is +1–415–527–5035. To avoid using the toll number, after joining the Webex meeting, select the audio connection option that says, ''Call Me'' and enter your phone number. If using the desktop or web app, check the ''Connect to audio without pressing 1 on my phone'' box to connect directly to the meeting.

Note: If dialing in, please mute your telephone.

The agenda for the meeting includes the following topics:

—Welcome to NASA's Marshall Space Flight Center
—Space Technology Mission Directorate (STMD) Update
—NASA Nuclear Systems Update
—Technology Demonstration Missions: Cryogenic Fluid Management and Low-Earth Orbit Flight Test of an Inflatable Decelerator (LOFTID) Updates
—Early Career Initiative Overview and Researcher Presentation
—Office of the Chief Engineer Update
—Moon-to-Mars Planetary Autonomous Construction Technology (MMPACT) and Advanced Manufacturing Update

It is imperative that this meeting be held on this day to accommodate the scheduling priorities of the key participants.

Carol Hamilton,

Acting Advisory Committee Management Officer, National Aeronautics and Space Administration.

[FR Doc. 2022–25928 Filed 11–28–22; 8:45 am]

BILLING CODE 7510–13–P

NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

Institute of Museum and Library Services

Notice of Proposed Information Collection Requests: Research for the Museum Grants for American Latino History and Culture Program

AGENCY: Institute of Museum and Library Services, National Foundation on the Arts and the Humanities.

ACTION: Notice, request for comments, collection of information.

SUMMARY: The Institute of Museum and Library Services (IMLS), as part of its continuing effort to reduce paperwork and respondent burden, conducts a pre-clearance consultation program to provide the general public and federal agencies with an opportunity to comment on proposed and/or continuing collections of information in accordance with the Paperwork Reduction Act. This pre-clearance consultation program helps to ensure that requested data can be provided in the desired format, reporting burden (time and financial resources) is minimized, collection instruments are clearly understood, and the impact of collection requirements on respondents can be properly assessed. The purpose of this Notice is to solicit comments about *Research for the Grants for American Latino History and Culture Program,* specifically to inform IMLS how to structure and implement this new grantmaking program so that it is useful to potential grantees and has an impact on the field of American Latino museums and education organizations. A copy of the proposed information collection request can be obtained by contacting the individual listed below in the **ADDRESSES** section of this Notice.

DATES: Written comments must be submitted to the office listed in the **ADDRESSES** section below on or before January 28, 2023.

ADDRESSES: Send comments to Connie Bodner, Ph.D., Director of Grants Policy and Management, Office of Grants Policy and Management, Institute of Museum and Library Services, 955 L'Enfant Plaza North SW, Suite 4000, Washington, DC 20024–2135. Dr. Bodner can be reached by telephone: 202–653–4636, or by email at *cbodner@imls.gov.* Office hours are from 8:30 a.m. to 5 p.m., E.T., Monday through Friday, except federal holidays.

Persons who are deaf or hard of hearing (TTY users) can contact IMLS at 202–207–7858 via 711 for TTY-Based Telecommunications Relay Service.

FOR FURTHER INFORMATION CONTACT: Gibran Villalobos, Project Manager, Institute of Museum and Library Services, 955 L'Enfant Plaza North SW, Suite 4000, Washington DC 20024–2135. Gibran Villalobos can be reached by telephone at 202–653–4649, or by email at *gvillalobos@imls.gov.* Persons who are deaf or hard of hearing (TTY users) can contact IMLS at 202–207–7858 via 711 for TTY-Based Telecommunications Relay Service.

SUPPLEMENTARY INFORMATION: IMLS is particularly interested in public comments that help the agency to:

• Evaluate whether the proposed collection of information is necessary for the proper performance of the

functions of the agency, including whether the information will have practical utility;

- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information including the validity of the methodology and assumptions used;
- Enhance the quality, utility, and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated electronic, mechanical, or other technological collection techniques, or other forms of information technology, *e.g.,* permitting electronic submissions of responses.

I. Background

The Institute of Museum and Library Services is the primary source of federal support for the Nation's libraries and museums. We advance, support, and empower America's museums, libraries, and related organizations through grant making, research, and policy development. To learn more, visit *www.imls.gov.*

II. Current Actions

The *Research for Grants for American Latino History and Culture Program* (ALHC Program) is intended to inform IMLS as it designs and implements a new grantmaking program to build the capacity of American Latino museums and education organizations nationwide. The ALHC Program was authorized for creation by NMALA in 2020 (H.R. 2420)—the same Act that authorized creation of a new Smithsonian National Museum of the American Latino. This proposed research will be the first for the ALHC Program to help ensure its relevance to the field and accessibility to potential grantees as well as the measurement of project outcomes. Coupled with a secondary data collection effort (which will include reviewing administrative records, museum/nonprofit grantee databases, and a literature review), this study will include three specific primary data collection activities: community listening sessions, semi-structured interviews, potential applicants, and a survey of potential ALHC Program grantees.

Agency: Institute of Museum and Library Services.

Title: Research for the Museum Grants for American Latino History and Culture Program.

OMB Control Number: 3137–NEW.

Agency Number: 3137.

Respondents/Affected Public: Museum and cultural professionals at organizations that would be interested in seeking public funding through a new IMLS Museum Grants for American Latino History and Culture Program, and other stakeholders with expertise in the American Latino Museum History and Culture space.

Total Estimated Number of Annual Respondents: 250.

Frequency of Response: Once per request.

Average Minutes per Response: To be determined.

Total Estimated Number of Annual Burden Hours: To be determined.

Cost Burden (dollars): To be determined.

Public Comments Invited: Comments submitted in response to this Notice will be summarized and/or included in the request for OMB's clearance of this information collection.

Dated: November 23, 2022.

Suzanne Mbollo,

Grants Management Specialist, Institute of Museum and Library Services.

[FR Doc. 2022–26026 Filed 11–28–22; 8:45 am]

BILLING CODE 7036–01–P

NATIONAL SCIENCE FOUNDATION

Agency Information Collection Activities: Comment Request; NSF Small Business Innovation Research (SBIR) Program Phase I and Small Business Technology Transfer (STTR) Program Phase I Presubmission Project Pitch 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 30, 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 Small Business Innovation Research (SBIR) Program Phase I and Small Business Technology Transfer (STTR) Program Phase I Presubmission Project Pitch Form.

OMB Control No.: 3145–New.

Expiration Date of Approval: Not applicable.

Abstract: The NSF Small Business Innovation Research Program (SBIR) Phase I and Small Business Technology Transfer Program (STTR) Phase I Project Pitch is the new NSF SBIR/STTR pre-submission process that conveys information needed to direct the proposed SBIR/STTR project to the appropriate NSF Program Director (PD) for review and possible proposal submission invitation. This Project Pitch is to be submitted by the applying small business (as ''proposer'') to the relevant NSF SBIR/STTR Phase I technology topic. The Project Pitch outlines solicitation-specific aspects of the project (such as the proposed technology innovation and project objectives with associated level of technical risk). In the past, this Project Pitch (previously referred to as the Executive Summary) was an optional submission via email as an attached two to three-page (maximum) document and was often in varying formats or missing some parts of the required document elements, which in turn caused delays or additional corrections on behalf of the proposer. The NSF SBIR/STTR Phase I Project Pitch form captures the same requested information, as outlined in the NSF SBIR/STTR Phase I Program solicitation, but all within one secure, web-based form. In specific, the form collects submitting proposer company and team information; the proposed technology innovation; the technical objectives and challenges; and the market opportunity. The form also allows the proposer to choose (from a drop-down menu) the most relevant NSF SBIR/STTR Phase I technical topic area, ensuring that the submitted Project Pitch goes to the most appropriate Program Director.

Respondents: Small businesses who submit proposals to NSF's SBIR/STTR Phase I Program.

Estimated Number of Annual Respondents: 2,000.

Burden on the Public: 2 hours (per response) for an annual total of 4,000 hours.

Dated: November 22, 2022.

Suzanne H. Plimpton,

Reports Clearance Officer, National Science Foundation.

[FR Doc. 2022–25919 Filed 11–28–22; 8:45 am]

BILLING CODE 7555–01–P

NATIONAL SCIENCE FOUNDATION

Agency Information Collection Activities: Comment Request; Office of Equity and Civil Rights Awardee Survey 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 30, 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 E7400, 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: Office of Equity and Civil Rights Awardee Survey Form.

OMB Control No.: 3145-New.

Expiration Date of Approval: Not applicable.

Abstract: The purpose of the National Science Foundation's (NSF) Office of Equity and Civil Rights (OECR) Awardee Survey Form is to collect awardee feedback and input on NSF's awardee term and condition that requires NSF to be notified: (1) of any findings/determinations regarding the PI or co-PI that demonstrate a violation of awardee codes of conduct, policies, regulations or statutes relating to sexual harassment, other forms of harassment, or sexual assault; or (2) if the awardee places the PI, or co-PI on administrative leave or imposes an administrative action relating to a finding or investigation of a violation of awardee policies, codes of conduct, statutes or regulations relating to sexual harassment, other forms of harassment, or sexual assault. This survey will assist NSF OECR in assessing how the term and condition has been implemented at awardee organizations and whether improvements or adjustments to the term and condition are either necessary or appropriate to maximize its efficacy and ease of use. This survey will allow us to reach out directly to NSF awardees, to include Authorized Organizational Representatives, Title IX coordinators and researchers, to better understand their respective experiences with the term and condition and to gather their comments for adjustments or enhancements to it.

Respondents: Representatives from NSF Awardee Institutions.

Estimated Number of Annual Respondents: 100.

Burden on the Public: Estimated 25 minutes per respondent to complete the survey, for a total estimated burden time of 51 hours. This information should be readily available to the representatives selected.

Dated: November 23, 2022.

Suzanne H. Plimpton,

Reports Clearance Officer, National Science Foundation.

[FR Doc. 2022–26015 Filed 11–28–22; 8:45 am]

BILLING CODE 7555–01–P

NUCLEAR REGULATORY COMMISSION

[Docket No. 52–026; NRC–2008–0252]

Southern Nuclear Operating Company, Inc.,Vogtle Electric Generating Plant, Unit 4, Electrical Inspections, Tests, Analyses, and Acceptance Criteria Optimization

AGENCY: Nuclear Regulatory Commission.

ACTION: Exemption and combined license amendment; issuance.

SUMMARY: The U.S. Nuclear Regulatory Commission (NRC) is granting an exemption to allow a departure from the Tier 1 information in the plant-specific design control document (DCD) and is issuing License Amendment No. 187 to Combined License (COL) NPF–92. The COL was issued to Southern Nuclear Operating Company, Inc. (SNC); Georgia Power Company; Oglethorpe Power Corporation; MEAG Power SPVM, LLC; MEAG Power SPVJ, LLC; MEAG Power SPVP, LLC; and the City of Dalton, Georgia; for the Vogtle Electric Generating Plant (VEGP) Unit 4, located in Burke County, Georgia. SNC is the entity that is licensed to construct and operate VEGP Unit 4.

The granting of the exemption allows the departure from Tier 1 information asked for in the amendment. Because the acceptability of the exemption was determined in part by the acceptability of the amendment, the exemption and amendment are being issued concurrently.

DATES: The exemption and amendment were issued on November 22, 2022.

ADDRESSES: Please refer to Docket ID NRC–2008–0252 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–2008–0252. 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.

FOR FURTHER INFORMATION CONTACT: William ''Billy'' Gleaves, Vogtle Project Office, Office of Nuclear Reactor Regulation, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001; telephone: 301–415–5848; email: *Bill.Gleaves@nrc.gov.*

SUPPLEMENTARY INFORMATION:

I. Introduction

The NRC is issuing License Amendment No. 187 to COL NPF–92, and is granting an exemption to allow a departure from Tier 1 information in the plant-specific DCD for VEGP Unit 4. The generic AP1000 DCD is incorporated by reference in appendix D, ''Design Certification Rule for the AP1000,'' to part 52 of title 10 of the *Code of Federal Regulations* (10 CFR). The exemption, granted pursuant to paragraph A.4 of section VIII, ''Processes for Changes and Departures,'' of 10 CFR part 52, appendix D, allows the licensee to depart from the plant-specific Tier 1 information. With the requested amendment, SNC sought changes from the Tier 1 requirements in the VEGP Unit 4 plant-specific Tier 1 information and COL appendix C that remove certain Inspections, Tests, Analyses, and Acceptance Criteria (ITAAC) that are duplicated by other ITAAC and consolidate a number of other certain ITAAC. The license amendment as issued deletes ITAAC Nos. 26 (2.1.02.07b), 83 (2.1.03.09b), 103 (2.2.01.06b), 172 (2.2.03.07b), 233 (2.2.04.07b), 263 (2.2.05.06a), 296 (2.3.02.06b), 368 (2.3.06.07b), 399 (2.3.07.06a), 878 (2.3.10.11a), 467 (2.3.13.06b), 527 (2.5.02.05a), 582 (2.6.01.03a), and 687 (2.7.01.06a) in COL appendix C and plant-specific DCD Tier 1 information. In addition to deleting ITAAC, the license amendment consolidates requirements from certain ITAAC into a subsuming ITAAC as follows: ITAAC Nos. 789 (3.3.00.07aa), 792 (3.3.00.07ba), 803 (3.3.00.07x.iii.a), 806 (3.3.00.07d.iv.a), and 809 (3.3.00.07d.v.a) are subsumed into ITAAC Index No. 800 (3.3.00.07d.ii.a) and ITAAC Nos. 790 (3.3.00.07ab), 793 (3.3.00.07bb), 804 (3.3.00.07d.iii.b), 807 (3.3.00.07d.iv.b), and 810 (3.3.00.07d.v.b) are subsumed into ITAAC Index No. 801 (3.3.00.07d.ii.b), and ITAAC Index Nos. 791 (3.3.00.07ac), 794(3.3.00.07bc), 805 (3.3.00.07d.iii.c), 808 (3.3.00.07d.iv.c), and 811 (3.3.00.07d.v.c) are subsumed into ITAAC Index No. 802 (3.3.00.07d.ii.c).

Part of the justification for granting the exemption was provided by the review of the amendment. Because the exemption is necessary in order to issue the requested license amendment, the NRC granted the exemption and issued the amendment concurrently, rather than in sequence. This included issuing a combined safety evaluation containing the NRC staff's review of both the exemption request and the license amendment. The exemption met all applicable regulatory criteria set forth in §§ 50.12, 52.7, 52.63, and section VIII.A.4 of appendix D to 10 CFR part 52. The license amendment was found to be acceptable as well. The combined safety evaluation is available in ADAMS under Accession No. ML22284A133.

An exemption document was issued to SNC for VEGP Unit 4 (COL NPF–92). The exemption document for VEGP Unit 4 can be found in ADAMS under Accession No. ML22284A132. The exemption is reproduced (with the exception of abbreviated titles and additional citations) in Section II of this document. The amendment document for VEGP COL NPF–92 is available in ADAMS under Accession No. ML22284A131. A summary of the amendment document is provided in Section III of this document.

II. Exemption

Reproduced in this document is the exemption document issued to VEGP Unit 4. It makes reference to the combined safety evaluation that provides the reasoning for the findings made by the NRC (and listed under Item 1) in order to grant the exemption:

1. In a letter dated September 2, 2022, Southern Nuclear Operating Company (SNC) requested from the Nuclear Regulatory Commission (NRC or Commission) an exemption to allow departures from plant-specific Tier 1 information as part of license amendment request (LAR) 22–003, ''Electrical Inspections, Tests, Analyses, and Acceptance Criteria (ITAAC) Optimization.''

For the reasons set forth in Section 3.2 of the NRC staff's combined safety evaluation, which can be found at ADAMS Accession No. ML22284A133, the Commission finds that:

A. the exemption is authorized by law;

B. the exemption presents no undue risk to public health and safety;

C. the exemption is consistent with the common defense and security;

D. special circumstances are present in that the application of the rule in this circumstance is not necessary to serve the underlying purpose of the rule;

E. the special circumstances outweigh any decrease in safety that may result from the reduction in standardization caused by the exemption; and

F. the exemption will not result in a significant decrease in the level of safety otherwise provided by the design.

2. Accordingly, SNC is granted an exemption to allow a departure from the plant-specific Tier 1 information, with corresponding changes to Appendix C of the Facility Combined License, as described in the licensee's request dated September 2, 2022. This exemption is related to, and necessary for, the granting of License Amendment No. 187 for Unit 4, which is being issued concurrently with this exemption.

3. As explained in Section 6.0 of the NRC staff's combined safety evaluation, this exemption meets the eligibility criteria for categorical exclusion set forth in 10 CFR 51.22(c)(9). Therefore, pursuant to 10 CFR 51.22(b), no environmental impact statement or environmental assessment needs to be prepared in connection with the issuance of the exemption.

4. This exemption is effective as of the date of its issuance.

III. License Amendment Request

By letter dated September 2, 2022 (ADAMS Accession No. ML22245A122), SNC requested that the NRC amend the COL for VEGP, Unit 4, COL NPF–92. The proposed amendment is described in Section I of this **Federal Register** notice.

For the reasons set forth in the NRC staff's combined safety evaluation, the Commission has determined for these amendments that the application complies with the standards and requirements of the Atomic Energy Act of 1954, as amended (the Act), and the Commission's rules and regulations. The Commission has made appropriate findings as required by the Act and the Commission's rules and regulations in 10 CFR chapter I, which are set forth in the license amendment.

A notice of consideration of issuance of amendment to the COL, a proposed no significant hazards consideration determination, and an opportunity for a hearing in connection with these actions, was published in the **Federal Register** on September 27, 2022 (87 FR 58540). No comments were received during the 30-day comment period. The NRC has made a final no significant hazards consideration determination as discussed in Section 4.0 of the NRC staff's combined safety evaluation.

The Commission has determined that these amendments satisfy the criteria for categorical exclusion in accordance with 10 CFR 51.22(c)(9). Therefore, pursuant to 10 CFR 51.22(b), no environmental impact statement or environmental assessment need be prepared for these amendments.

IV. Conclusion

Using the reasons set forth in the combined safety evaluation, the staff granted the exemption and issued the amendment that SNC requested on September 2, 2022. The exemption and amendment were issued on November

22, 2022, as part of a combined package to SNC (ADAMS Package Accession No. ML22284A125).

Dated: November 23, 2022.

For the Nuclear Regulatory Commission.

Victor E. Hall,

Director, Vogtle Project Office, Office of Nuclear Reactor Regulation.

[FR Doc. 2022–25994 Filed 11–28–22; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[NRC–2022–0197]

Monthly Notice; Applications and Amendments to Facility Operating Licenses and Combined Licenses Involving No Significant Hazards Considerations

AGENCY: Nuclear Regulatory Commission.

ACTION: Monthly notice.

SUMMARY: Pursuant to the Atomic Energy Act of 1954, as amended (the Act), the U.S. Nuclear Regulatory Commission (NRC) is publishing this regular monthly notice. The Act requires the Commission to publish notice of any amendments issued, or proposed to be issued, and grants the Commission the authority to issue and make immediately effective any amendment to an operating license or combined license, as applicable, upon a determination by the Commission that such amendment involves no significant hazards consideration (NSHC), notwithstanding the pendency before the Commission of a request for a hearing from any person.

DATES: Comments must be filed by December 29, 2022. A request for a hearing or petitions for leave to intervene must be filed by January 30, 2023. This monthly notice includes all amendments issued, or proposed to be issued, from October 14, 2022, to November 3, 2022. The last monthly notice was published on November 1, 2022.

ADDRESSES: You may submit comments by any of the following methods; however, the NRC encourages electronic comment submission through the Federal rulemaking website:

• *Federal rulemaking website:* Go to *https://www.regulations.gov* and search for Docket ID NRC–2022–0197. Address questions about Docket IDs in *Regulations.gov* to Stacy Schumann; telephone: 301–415–0624; email: *Stacy.Schumann@nrc.gov*. For technical questions, contact the individual listed in the **FOR FURTHER INFORMATION CONTACT** section of this document.

• *Mail comments to:* Office of Administration, Mail Stop: TWFN–7–A60M, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, ATTN: Program Management, Announcements and Editing Staff.

For additional direction on obtaining information and submitting comments, see ''Obtaining Information and Submitting Comments'' in the **SUPPLEMENTARY INFORMATION** section of this document.

FOR FURTHER INFORMATION CONTACT: Susan Lent, Office of Nuclear Reactor Regulation, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, telephone: 301–415–1365, email: *Susan.Lent@nrc.gov*.

SUPPLEMENTARY INFORMATION:

I. Obtaining Information and Submitting Comments

A. Obtaining Information

Please refer to Docket ID NRC–2022–0197, facility name, unit number(s), docket number(s), application date, and subject when contacting the NRC about the availability of information for this action. You may obtain publicly available information related to this action by any of the following methods:

• *Federal Rulemaking Website:* Go to *https://www.regulations.gov* and search for Docket ID NRC–2022–0197.

• *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.

B. Submitting Comments

The NRC encourages electronic comment submission through the Federal rulemaking website (*https://www.regulations.gov*). Please include Docket ID NRC–2022–0197, facility name, unit number(s), docket number(s), application date, and subject, in your comment submission.

The NRC cautions you not to include identifying or contact information that you do not want to be publicly disclosed in your comment submission. The NRC will post all comment submissions at *https://www.regulations.gov* as well as enter the comment submissions into ADAMS. The NRC does not routinely edit comment submissions to remove identifying or contact information.

If you are requesting or aggregating comments from other persons for submission to the NRC, then you should inform those persons not to include identifying or contact information that they do not want to be publicly disclosed in their comment submission. Your request should state that the NRC does not routinely edit comment submissions to remove such information before making the comment submissions available to the public or entering the comment into ADAMS.

II. Notice of Consideration of Issuance of Amendments to Facility Operating Licenses and Combined Licenses and Proposed No Significant Hazards Consideration Determination

For the facility-specific amendment requests shown in this notice, the Commission finds that the licensees' analyses provided, consistent with section 50.91 of title 10 of *the Code of Federal Regulations* (10 CFR) ''Notice for public comment; State consultation,'' are sufficient to support the proposed determinations that these amendment requests involve NSHC. Under the Commission's regulations in 10 CFR 50.92, operation of the facilities in accordance with the proposed amendments would not (1) involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety.

The Commission is seeking public comments on these proposed determinations. Any comments received within 30 days after the date of publication of this notice will be considered in making any final determinations.

Normally, the Commission will not issue the amendments until the

expiration of 60 days after the date of publication of this notice. The Commission may issue any of these license amendments before expiration of the 60-day period provided that its final determination is that the amendment involves NSHC. In addition, the Commission may issue any of these amendments prior to the expiration of the 30-day comment period if circumstances change during the 30-day comment period such that failure to act in a timely way would result, for example in derating or shutdown of the facility. If the Commission takes action on any of these amendments prior to the expiration of either the comment period or the notice period, it will publish in the **Federal Register** a notice of issuance. If the Commission makes a final NSHC determination for any of these amendments, any hearing will take place after issuance. The Commission expects that the need to take action on any amendment before 60 days have elapsed will occur very infrequently.

A. Opportunity To Request a Hearing and Petition for Leave To Intervene

Within 60 days after the date of publication of this notice, any persons (petitioner) whose interest may be affected by any of these actions may file a request for a hearing and petition for leave to intervene (petition) with respect to that action. Petitions shall be filed in accordance with the Commission's ''Agency Rules of Practice and Procedure'' in 10 CFR part 2. Interested persons should consult a current copy of 10 CFR 2.309. The NRC's regulations are accessible electronically from the NRC Library on the NRC's website at *https://www.nrc.gov/reading-rm/doc-collections/cfr.* If a petition is filed, the Commission or a presiding officer will rule on the petition and, if appropriate, a notice of a hearing will be issued.

As required by 10 CFR 2.309(d) the petition should specifically explain the reasons why intervention should be permitted with particular reference to the following general requirements for standing: (1) the name, address, and telephone number of the petitioner; (2) the nature of the petitioner's right to be made a party to the proceeding; (3) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (4) the possible effect of any decision or order which may be entered in the proceeding on the petitioner's interest.

In accordance with 10 CFR 2.309(f), the petition must also set forth the specific contentions that the petitioner seeks to have litigated in the proceeding. Each contention must consist of a specific statement of the issue of law or fact to be raised or controverted. In addition, the petitioner must provide a brief explanation of the bases for the contention and a concise statement of the alleged facts or expert opinion that support the contention and on which the petitioner intends to rely in proving the contention at the hearing. The petitioner must also provide references to the specific sources and documents on which the petitioner intends to rely to support its position on the issue. The petition must include sufficient information to show that a genuine dispute exists with the applicant or licensee on a material issue of law or fact. Contentions must be limited to matters within the scope of the proceeding. The contention must be one that, if proven, would entitle the petitioner to relief. A petitioner who fails to satisfy the requirements at 10 CFR 2.309(f) with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene. Parties have the opportunity to participate fully in the conduct of the hearing with respect to resolution of that party's admitted contentions, including the opportunity to present evidence, consistent with the NRC's regulations, policies, and procedures.

Petitions must be filed no later than 60 days from the date of publication of this notice. Petitions and motions for leave to file new or amended contentions that are filed after the deadline will not be entertained absent a determination by the presiding officer that the filing demonstrates good cause by satisfying the three factors in 10 CFR 2.309(c)(1)(i) through (iii). The petition must be filed in accordance with the filing instructions in the ''Electronic Submissions (E-Filing)'' section of this document.

If a hearing is requested, and the Commission has not made a final determination on the issue of NSHC, the Commission will make a final determination on the issue of NSHC. The final determination will serve to establish when the hearing is held. If the final determination is that the amendment request involves NSHC, the Commission may issue the amendment and make it immediately effective, notwithstanding the request for a hearing. Any hearing would take place after issuance of the amendment. If the final determination is that the amendment request involves a significant hazards consideration, then any hearing held would take place before the issuance of the amendment unless the Commission finds an imminent danger to the health or safety of the public, in which case it will issue an appropriate order or rule under 10 CFR part 2.

A State, local governmental body, Federally recognized Indian Tribe, or agency thereof, may submit a petition to the Commission to participate as a party under 10 CFR 2.309(h)(1). The petition should state the nature and extent of the petitioner's interest in the proceeding. The petition should be submitted to the Commission no later than 60 days from the date of publication of this notice. The petition must be filed in accordance with the filing instructions in the ''Electronic Submissions (E-Filing)'' section of this document, and should meet the requirements for petitions set forth in this section, except that under 10 CFR 2.309(h)(2) a State, local governmental body, or Federally recognized Indian Tribe, or agency thereof does not need to address the standing requirements in 10 CFR 2.309(d) if the facility is located within its boundaries. Alternatively, a State, local governmental body, Federally recognized Indian Tribe, or agency thereof may participate as a non-party under 10 CFR 2.315(c).

If a petition is submitted, any person who is not a party to the proceeding and is not affiliated with or represented by a party may, at the discretion of the presiding officer, be permitted to make a limited appearance pursuant to the provisions of 10 CFR 2.315(a). A person making a limited appearance may make an oral or written statement of his or her position on the issues but may not otherwise participate in the proceeding. A limited appearance may be made at any session of the hearing or at any prehearing conference, subject to the limits and conditions as may be imposed by the presiding officer. Details regarding the opportunity to make a limited appearance will be provided by the presiding officer if such sessions are scheduled.

B. Electronic Submissions (E-Filing)

All documents filed in NRC adjudicatory proceedings including documents filed by an interested State, local governmental body, Federally recognized Indian Tribe, or designated agency thereof that requests to participate under 10 CFR 2.315(c), must be filed in accordance with 10 CFR 2.302. The E-Filing process requires participants to submit and serve all adjudicatory documents over the internet, or in some cases, to mail copies on electronic storage media, unless an exemption permitting an alternative filing method, as further discussed, is

granted. Detailed guidance on electronic submissions is located in the ''Guidance for Electronic Submissions to the NRC'' (ADAMS Accession No. ML13031A056) and on the NRC's public website at *https://www.nrc.gov/site-help/e-submittals.html.*

To comply with the procedural requirements of E-Filing, at least 10 days prior to the filing deadline, the participant should contact the Office of the Secretary by email at *Hearing.Docket@nrc.gov,* or by telephone at 301–415–1677, to (1) request a digital identification (ID) certificate, which allows the participant (or its counsel or representative) to digitally sign submissions and access the E-Filing system for any proceeding in which it is participating; and (2) advise the Secretary that the participant will be submitting a petition or other adjudicatory document (even in instances in which the participant, or its counsel or representative, already holds an NRC-issued digital ID certificate). Based upon this information, the Secretary will establish an electronic docket for the proceeding if the Secretary has not already established an electronic docket.

Information about applying for a digital ID certificate is available on the NRC's public website at *https://www.nrc.gov/site-help/e-submittals/getting-started.html.* After a digital ID certificate is obtained and a docket created, the participant must submit adjudicatory documents in Portable Document Format. Guidance on submissions is available on the NRC's public website at *https://www.nrc.gov/site-help/electronic-sub-ref-mat.html.* A filing is considered complete at the time the document is submitted through the NRC's E-Filing system. To be timely, an electronic filing must be submitted to the E-Filing system no later than 11:59 p.m. ET on the due date. Upon receipt of a transmission, the E-Filing system time-stamps the document and sends the submitter an email confirming receipt of the document. The E-Filing system also distributes an email that provides access to the document to the NRC's Office of the General Counsel and any others who have advised the Office of the Secretary that they wish to participate in the proceeding, so that the filer need not serve the document on those participants separately. Therefore, applicants and other participants (or their counsel or representative) must apply for and receive a digital ID certificate before adjudicatory documents are filed to obtain access to the documents via the E-Filing system.

A person filing electronically using the NRC's adjudicatory E-Filing system may seek assistance by contacting the NRC's Electronic Filing Help Desk through the ''Contact Us'' link located on the NRC's public website at *https://www.nrc.gov/site-help/e-submittals.html,* by email to *MSHD.Resource@nrc.gov,* or by a toll-free call at 1–866–672–7640. The NRC Electronic Filing Help Desk is available between 9:00 a.m. and 6:00 p.m., ET, Monday through Friday, except Federal holidays.

Participants who believe that they have good cause for not submitting documents electronically must file an exemption request, in accordance with 10 CFR 2.302(g), with their initial paper filing stating why there is good cause for not filing electronically and requesting authorization to continue to submit documents in paper format. Such filings must be submitted in accordance with 10 CFR 2.302(b)–(d). Participants filing adjudicatory documents in this manner are responsible for serving their documents on all other participants. Participants granted an exemption under 10 CFR 2.302(g)(2) must still meet the electronic formatting requirement in 10 CFR 2.302(g)(1), unless the participant also seeks and is granted an exemption from 10 CFR 2.302(g)(1).

Documents submitted in adjudicatory proceedings will appear in the NRC's electronic hearing docket, which is publicly available at *https://adams.nrc.gov/ehd,* unless excluded pursuant to an order of the presiding officer. If you do not have an NRC-issued digital ID certificate as previously described, click ''cancel'' when the link requests certificates and you will be automatically directed to the NRC's electronic hearing dockets where you will be able to access any publicly available documents in a particular hearing docket. Participants are requested not to include personal privacy information such as social security numbers, home addresses, or personal phone numbers in their filings unless an NRC regulation or other law requires submission of such information. With respect to copyrighted works, except for limited excerpts that serve the purpose of the adjudicatory filings and would constitute a Fair Use application, participants should not include copyrighted materials in their submission.

The following table provides the plant name, docket number, date of application, ADAMS accession number, and location in the application of the licensees' proposed NSHC determinations. For further details with respect to these license amendment applications, see the applications for amendment, which are available for public inspection in ADAMS. For additional direction on accessing information related to this document, see the ''Obtaining Information and Submitting Comments'' section of this document.

LICENSE AMENDMENT REQUEST(S)

Constellation Energy Generation, LLC; Clinton Power Station, Unit 1; DeWitt County, IL; Dresden Nuclear Power Station, Units 2 and 3; Grundy County, IL; LaSalle County Station, Units 1 and 2; LaSalle County, IL; Rock Island County, IL; Nine Mile Point Nuclear Station, LLC and Nine Mile Point Nuclear Station, Unit 2; Oswego County, NY; Quad Cities Nuclear Power Station, Units 1 and 2	
Docket No(s).	50–461, 50–237, 50–249, 50–373, 50–374, 50–410, 50–254, 50–265.
Application date	October 3, 2022.
ADAMS Accession No.	ML22276A220.
Location in Application of NSHC	Pages 5 and 6 of Attachment 1.
Brief Description of Amendment(s)	The proposed amendments requests adoption of Technical Specifications Task Force (TSTF) Traveler, TSTF–306, Revision 2, ''Add Action to LCO 3.3.6.1 to give option to isolate the penetration.''
Proposed Determination	NSHC.
Name of Attorney for Licensee, Mailing Address	Jason Zorn, Associate General Counsel, Constellation Energy Generation, 101 Constitution Ave. NW, Washington, DC 20001.
NRC Project Manager, Telephone Number	Scott Wall, 301–415–2855.
Duke Energy Progress, LLC; H. B. Robinson Steam Electric Plant, Unit No. 2; Darlington County, SC	
Docket No(s).	50–261.

LICENSE AMENDMENT REQUEST(S)—Continued

Application date	September 21, 2022.
ADAMS Accession No.	ML22264A149.
Location in Application of NSHC	Pages 12–13 of the Enclosure.
Brief Description of Amendment(s)	The proposed amendment would add a Feedwater Isolation on High-High Steam Generator Level function to Table 3.3.2–1 of Technical Specification (TS) 3.3.2, ''Engineered Safety Feature Actuation System (ESFAS) Instrumentation,'' and remove obsolete content from TSs 2.1.1.1, ''Reactor Core SLs [Safety Limits],'' and 5.6.5.b, ''Core Operating Limits Report (COLR).''
Proposed Determination	NSHC.
Name of Attorney for Licensee, Mailing Address	Kathryn B. Nolan, Deputy General Counsel, Duke Energy Corporation, 550 South Tryon Street (DEC45A), Charlotte, NC 28202.
NRC Project Manager, Telephone Number	Luke Haeg, 301–415–0272.
Holtec Decommissioning International, LLC; Palisades Nuclear Plant; Van Buren County, MI	
Docket No(s).	50–255.
Application date	September 14, 2022.
ADAMS Accession No.	ML22257A097.
Location in Application of NSHC	Pages 7–9 (Section 4.3) of Enclosure.
Brief Description of Amendment(s)	The proposed license amendment would revise the Palisades Nuclear Plant Renewed Facility Operating License No. DPR–20 to remove the Cyber Security Plan requirements contained in License Condition 2.E.
Proposed Determination	NSHC.
Name of Attorney for Licensee, Mailing Address	Erin Connolly, Corporate Counsel—Legal, Holtec International, Krishna P. Singh Technology Campus, 1 Holtec Blvd., Camden, NJ 08104.
NRC Project Manager, Telephone Number	Marlayna Doell, 301–415–3178.
NextEra Energy Point Beach, LLC; Point Beach Nuclear Plant, Units 1 and 2; Manitowoc County, WI.	
Docket No(s).	50–266, 50–301.
Application date	September 26, 2022.
ADAMS Accession No.	ML22270A084.
Location in Application of NSHC	Pages 10–12 of Enclosure.
Brief Description of Amendment(s)	The proposed amendment requested to revise Technical Specification (TS) 3.2.4, ''Quadrant Power Tilt Ratio (QPTR),'' and TS 3.3.1, ''Reactor Protection System (RPS) Instrumentation,'' to allow the use of an alternate means of determining power distribution information. The proposed TS changes would allow the use of a dedicated on-line core power distribution monitoring system (PDMS) to perform surveillance of core thermal limits. The PDMS to be used at Point Beach is the Westinghouse proprietary core analysis system called Best Estimate Analyzer for Core Operations—Nuclear.
Proposed Determination	NSHC.
Name of Attorney for Licensee, Mailing Address	Steven Hamrick, Managing Attorney—Nuclear, Florida Power and Light Company, P.O. Box 14000, Juno Beach, FL 33408–0420.
NRC Project Manager, Telephone Number	Scott Wall, 301–415–2855.
Tennessee Valley Authority; Browns Ferry Nuclear Plant, Units 1, 2, and 3; Limestone County, AL	
Docket No(s).	50–259, 50–260, 50–296.
Application date	September 29, 2022.
ADAMS Accession No.	ML22276A089.
Location in Application of NSHC	Pages E–3 and E–4 of the Enclosure.
Brief Description of Amendment(s)	The proposed amendments would revise Browns Ferry Nuclear Plant, Units 1, 2, and 3, Technical Specification 4.1, ''Site Location,'' to remove the description of the Browns Ferry site acreage.
Proposed Determination	NSHC.
Name of Attorney for Licensee, Mailing Address	David Fountain, Executive VP and General Counsel, Tennessee Valley Authority, 400 West Summit Hill Drive, WT 6A, Knoxville, TN 37902.
NRC Project Manager, Telephone Number	Kimberly Green, 301–415–1627.

III. Notice of Issuance of Amendments to Facility Operating Licenses and Combined Licenses

During the period since publication of the last monthly notice, the Commission has issued the following amendments. The Commission has determined for each of these amendments that the application complies with the standards and requirements of the Atomic Energy Act of 1954, as amended (the Act), and the Commission's rules and regulations. The Commission has made appropriate findings as required by the Act and the Commission's rules and regulations in 10 CFR chapter I, which are set forth in the license amendment.

A notice of consideration of issuance of amendment to facility operating license or combined license, as applicable, proposed NSHC determination, and opportunity for a hearing in connection with these actions, was published in the **Federal Register** as indicated in the safety evaluation for each amendment.

Unless otherwise indicated, the Commission has determined that these amendments satisfy the criteria for categorical exclusion in accordance with 10 CFR 51.22. Therefore, pursuant to 10 CFR 51.22(b), no environmental impact statement or environmental assessment need be prepared for these amendments. If the Commission has prepared an environmental assessment

under the special circumstances provision in 10 CFR 51.22(b) and has made a determination based on that assessment, it is so indicated in the safety evaluation for the amendment.

For further details with respect to each action, see the amendment and associated documents such as the Commission's letter and safety evaluation, which may be obtained using the ADAMS accession numbers indicated in the following table. The safety evaluation will provide the ADAMS accession numbers for the application for amendment and the **Federal Register** citation for any environmental assessment. All of these items can be accessed as described in the ''Obtaining Information and Submitting Comments'' section of this document.

LICENSE AMENDMENT ISSUANCE(S)

Energy Harbor Nuclear Corp. and Energy Harbor Nuclear Generation LLC; Davis-Besse Nuclear Power Station, Unit No. 1; Ottawa County, OH	
Docket No(s)	50–346.
Amendment Date	October 14, 2022.
ADAMS Accession No	ML22277A601.
Amendment No(s)	304.
Brief Description of Amendment(s)	The amendment revised the design basis for the facility to allow laminar concrete cracking of a limited width in the outer reinforcement layer of the shield building containment structure.
Public Comments Received as to Proposed NSHC (Yes/No).	No.
Northern States Power Company—Minnesota; Prairie Island Nuclear Generating Plant, Units 1 and 2; Goodhue County, MN	
Docket No(s)	50–282, 50–306.
Amendment Date	November 1, 2022.
ADAMS Accession No	ML22300A223.
Amendment No(s)	241 (Unit 1), and 229 (Unit 2).
Brief Description of Amendment(s)	The amendments revised the ''Steam Generator (SG) Program'' and the ''Steam Generator Tube Inspection Report'' Technical Specifications (TSs) requirements based on TS Task Force (TSTF) Traveler TSTF–577, Revision 1, ''Revised Frequencies for Steam Generator Tube Inspections.''
Public Comments Received as to Proposed NSHC (Yes/No).	No.
Northern States Power Company; Monticello Nuclear Generating Plant; Wright County, MN	
Docket No(s)	50–263.
Amendment Date	October 31, 2022.
ADAMS Accession No	ML22264A106.
Amendment No(s)	208.
Brief Description of Amendment(s)	The amendment revised Technical Specification 3.6.1.8, ''Residual Heat Removal (RHR) Drywell Spray,'' to modify Surveillance Requirement 3.6.1.8.2 from a frequency of every 10 years to a frequency of following maintenance that could result in nozzle blockage.
Public Comments Received as to Proposed NSHC (Yes/No).	No.
Southern Nuclear Operating Company, Inc.; Edwin I. Hatch Nuclear Plant, Units 1 and 2; Appling County, GA	
Docket No(s)	50–321, 50–366.
Amendment Date	August 19, 2022.
ADAMS Accession No	ML22192A199.
Amendment No(s)	316 (Unit 1), and 261 (Unit 2).
Brief Description of Amendment(s)	The amendments allow Hatch to adopt Technical Specification Task Force (TSTF) Traveler TSTF–580 (Provide Exception from Entering Mode 4 With No Operable RHR [Residual Heat Removal] Shutdown Cooling). The proposed change provides Hatch a technical specification exception to entering Mode 4 if both required RHR shutdown cooling subsystems are inoperable.
Public Comments Received as to Proposed NSHC (Yes/No).	No.
Southern Nuclear Operating Company, Inc.; Joseph M. Farley Nuclear Plant, Units 1 and 2; Houston County, AL	
Docket No(s)	50–348, 50–364.
Amendment Date	November 1, 2022.
ADAMS Accession No	ML22263A225.
Amendment No(s)	243 (Unit 1), and 240 (Unit 2).
Brief Description of Amendment(s)	The amendment revises the peak calculated containment internal pressure for the design basis loss-of-coolant accident described in the Joseph M. Farley Nuclear Plant, Units 1 and 2, Technical Specifications 5.5.17, ''Containment Leakage Rate Testing Program.''
Public Comments Received as to Proposed NSHC (Yes/No).	No.

LICENSE AMENDMENT ISSUANCE(S)—Continued

Susquehanna Nuclear, LLC and Allegheny Electric Cooperative, Inc.; Susquehanna Steam Electric Station, Units 1 and 2; Luzerne County, PA	
Docket No(s)	50–387, 50–388.
Amendment Date	October 28, 2022.
ADAMS Accession No	ML22256A054.
Amendment No(s)	283 (Unit 1), and 266 (Unit 2).
Brief Description of Amendment(s)	The amendments revised the allowable values for the core spray and the low pressure cooling injection systems' reactor steam dome pressure—low initiation and injection permissive instrumentation functions in Table 3.3.5.1–1 in each unit's Technical Specification 3.3.5.1, ''Emergency Core Cooling System (ECCS) Instrumentation.''
Public Comments Received as to Proposed NSHC (Yes/No).	No.
Tennessee Valley Authority; Sequoyah Nuclear Plant, Units 1 and 2; Hamilton County, TN; Watts Bar Nuclear Plant, Units 1 and 2; Rhea County, TN	
Docket No(s)	50–327, 50–328, 50–390, 50–391.
Amendment Date	October 24, 2022.
ADAMS Accession No	ML22276A161.
Amendment No(s)	Sequoyah 359 (Unit 1) and 353 (Unit 2); Watts Bar 155 (Unit 1) and 63 (Unit 2).
Brief Description of Amendment(s)	The amendments revised the steam generator tube inspection frequencies and reporting requirements in the ''Steam Generator (SG) Program'' and the ''Steam Generator Tube Inspection Report'' technical specifications for Sequoyah Nuclear Plant, Units 1 and 2, and Watts Bar Nuclear Plant, Units 1 and 2. The revisions are based on Technical Specifications Task Force (TSTF) Traveler TSTF–577, Revision 1, ''Revised Frequencies for Steam Generator Tube Inspections.''
Public Comments Received as to Proposed NSHC (Yes/No).	No.
Union Electric Company; Callaway Plant, Unit No. 1; Callaway County, MO	
Docket No(s)	50–483.
Amendment Date	October 21, 2022.
ADAMS Accession No	ML22220A132.
Amendment No(s)	228.
Brief Description of Amendment(s)	The amendment revised the licensing basis as described in the Callaway Plant, Unit No. 1 Final Safety Analysis Report to allow the use of a risk-informed approach to address safety issues discussed in Generic Letter 2004–02, ''Potential Impact of Debris Blockage on Emergency Recirculation during Design Basis Accidents at Pressurized-Water Reactors.'' In addition, the amendment: (1) revised the Technical Specifications (TSs) for the emergency core cooling system (ECCS) by deleting Surveillance Requirement (SR) 3.5.2.8 in TS 3.5.2, ''ECCS—Operating,'' and deleted its mention from SR 3.5.3.1 in TS 3.5.3, ''ECCS—Shutdown'': (2) added new TS 3.6.8, ''Containment Sumps,'' with appropriate conditions, required actions and completion times, including new SR 3.6.8.1 for visual inspection of the containment sumps; and (3) revised TS 5.5.15, ''Safety Function Determination Program,'' to clarify the application of TS Limiting Condition for Operation 3.0.6 to the containment sumps.
Public Comments Received as to Proposed NSHC (Yes/No).	No.

IV. Notice of Issuance of Amendment to Facility Operating Licenses and Combined Licenses and Final Determination of No Significant Hazards Consideration and Opportunity for a Hearing

Since publication of the last monthly notice, the Commission has issued the following amendment. The Commission has determined for this amendment that the application for the amendment complies with the standards and requirements of the Atomic Energy Act of 1954, as amended (the Act), and the Commission's rules and regulations. The Commission has made appropriate findings as required by the Act and the Commission's rules and regulations in 10 CFR chapter I, which are set forth in the license amendment.

Because of exigent circumstances or emergency situation associated with the date the amendment was needed, there was not time for the Commission to publish, for public comment before issuance, its usual notice of consideration of issuance of amendment, proposed NSHC determination, and opportunity for a hearing.

For exigent circumstances, the Commission has either issued a **Federal Register** notice providing opportunity for public comment or has used local media to provide notice to the public in the area surrounding a licensee's facility of the licensee's application and of the Commission's proposed determination of NSHC. The Commission has provided a reasonable opportunity for the public to comment, using its best efforts to make available to the public means of communication for the public to respond quickly, and in the case of telephone comments, the comments have been recorded or transcribed as appropriate and the licensee has been informed of the public comments.

In circumstances where failure to act in a timely way would have resulted, for example, in derating or shutdown of a nuclear power plant or in prevention of either resumption of operation or of increase in power output up to the plant's licensed power level, the Commission may not have had an

opportunity to provide for public comment on its NSHC determination. In such case, the license amendment has been issued without opportunity for comment prior to issuance. If there has been some time for public comment but less than 30 days, the Commission may provide an opportunity for public comment. If comments have been requested, it is so stated. In either event, the State has been consulted by telephone whenever possible.

Under its regulations, the Commission may issue and make an amendment immediately effective, notwithstanding the pendency before it of a request for a hearing from any person, in advance of the holding and completion of any required hearing, where it has determined that NSHC is involved.

The Commission has applied the standards of 10 CFR 50.92 and has made a final determination that the amendments involve NSHC. The basis for this determination is contained in the documents related to each action. Accordingly, the amendment has been issued and made effective as indicated. For those amendments that have not been previously noticed in the **Federal Register**, within 60 days after the date of publication of this notice, any persons (petitioner) whose interest may be affected by this action may file a request for a hearing and petition for leave to intervene (petition) with respect to the action. Petitions shall be filed in accordance with the guidance concerning the Commission's ''Agency Rules of Practice and Procedure'' in 10 CFR part 2 as discussed in section II.A of this document.

Unless otherwise indicated, the Commission has determined that the amendment satisfies the criteria for categorical exclusion in accordance with 10 CFR 51.22. Therefore, pursuant to 10 CFR 51.22(b), no environmental impact statement or environmental assessment need be prepared for this amendment. If the Commission has prepared an environmental assessment under the special circumstances provision in 10 CFR 51.12(b) and has made a determination based on that assessment, it is so indicated in the safety evaluation for the amendment.

For further details with respect to these actions, see the amendment and associated documents such as the Commission's letter and safety evaluation, which may be obtained using the ADAMS accession numbers indicated in the following table. The safety evaluation will provide the ADAMS accession number(s) for the application for amendment and the **Federal Register** citation for any environmental assessment. All of these items can be accessed as described in the ''Obtaining Information and Submitting Comments'' section of this document.

The following notice was previously published as separate individual notice. It was published as an individual notice either because time did not allow the Commission to wait for this monthly notice or because the action involved exigent circumstances. It is repeated here because the monthly notice lists all amendments issued or proposed to be issued involving NSHC.

For details, including the applicable notice period, see the individual notice in the **Federal Register** on the day and page cited.

LICENSE AMENDMENT REQUEST(S)—REPEAT OF INDIVIDUAL FEDERAL REGISTER NOTICE

Entergy Operations, Inc.; Arkansas Nuclear One, Unit 1; Pope County, AR	
Docket No(s)	50–313.
Application Date	September 30, 2021, as supplemented by letters dated December 2, 2021, June 2, 2022, and October 13, 2022.
ADAMS Accession Nos	ML21274A874, ML21337A245, ML22153A464 and ML22286A249.
Brief Description of Amendment(s)	The proposed amendment would revise the dose equivalent Iodine (I)–131 and the reactor coolant system (RCS) primary activity limits required by Arkansas Nuclear One, Unit 1 Technical Specification (TS) 3.4.12, ''RCS Specific Activity,'' and the primary-to-secondary leak rate limit provided in TS 3.4.13, ''RCS Operational LEAKAGE.''
Date & Cite of **Federal Register** Individual Notice.	November 3, 2022 (87 FR 66328).
Expiration Dates for Public Comments & Hearing Requests.	December 5, 2022 (comments); January 3, 2023 (hearing requests).

Dated: November 10, 2022.

For the Nuclear Regulatory Commission.

Gregory F. Suber,

Deputy Director, Division of Operating Reactor Licensing, Office of Nuclear Reactor Regulation.

[FR Doc. 2022–24989 Filed 11–28–22; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[NRC–2022–0190]

Report on Waste Burial Charges: Changes in Decommissioning Waste Disposal Costs at Low-Level Waste Burial Facilities

AGENCY: Nuclear Regulatory Commission.

ACTION: Draft NUREG; request for comment.

SUMMARY: The U.S. Nuclear Regulatory Commission (NRC) is issuing for public comment a draft report entitled, NUREG–1307, Revision 19, ''Report on Waste Burial Charges: Changes in Decommissioning Waste Disposal Costs at Low-Level Waste Burial Facilities.'' This report, which is revised periodically, explains the formula acceptable to the NRC for determining the minimum decommissioning fund requirements for nuclear power reactor licensees, as required by NRC regulations. Specifically, this report provides the adjustment factor and updates the values for the labor, energy, and waste burial escalation factors of the minimum formula.

DATES: Submit comments by December 29, 2022. Comments received after this date will be considered if it is practical to do so, but the Commission is able to ensure consideration only for comments received before this date.

ADDRESSES: You may submit comments by any of the following methods; however, the NRC encourages electronic comment submission through the Federal rulemaking website:

- *Federal rulemaking website:* Go to *https://www.regulations.gov* and search for Docket ID NRC–2022–0190. Address questions about Docket IDs in *Regulations.gov* to Stacy Schumann; telephone: 301–415–0624; email: *Stacy.Schumann@nrc.gov.* For technical questions, contact the individual listed

in the **FOR FURTHER INFORMATION CONTACT** section of this document.

• *Mail comments to:* Office of Administration, Mail Stop: TWFN–7–A60M, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, ATTN: Program Management, Announcements and Editing Staff.

For additional direction on obtaining information and submitting comments, see ''Obtaining Information and Submitting Comments'' in the **SUPPLEMENTARY INFORMATION** section of this document.

FOR FURTHER INFORMATION CONTACT: Emil Tabakov, Office of Nuclear Materials Safety and Safeguards, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001; telephone: 301–415–6814, email: *Emil.Tabakov@nrc.gov.*

SUPPLEMENTARY INFORMATION:

I. Obtaining Information and Submitting Comments

A. Obtaining Information

Please refer to Docket ID NRC–2022–0190 when contacting the NRC about the availability of information for this action. You may obtain publicly available information related to this action by any of the following methods:

• *Federal Rulemaking website:* Go to *https://www.regulations.gov* and search for Docket ID NRC–2022–0190.

• *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.* Draft NUREG–1307, Revision 19, ''Report on Waste Burial Charges: Changes in Decommissioning Waste Disposal Costs at Low-Level Waste Burial Facilities,'' is available in ADAMS under Accession No. ML22327A133.

• *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.

B. Submitting Comments

The NRC encourages electronic comment submission through the Federal rulemaking website (*https://www.regulations.gov*). Please include Docket ID NRC–2022–0190 in your comment submission.

The NRC cautions you not to include identifying or contact information that you do not want to be publicly disclosed in your comment submission. The NRC will post all comment submissions at *https://www.regulations.gov* as well as enter the comment submissions into ADAMS. The NRC does not routinely edit comment submissions to remove identifying or contact information.

If you are requesting or aggregating comments from other persons for submission to the NRC, then you should inform those persons not to include identifying or contact information that they do not want to be publicly disclosed in their comment submission. Your request should state that the NRC does not routinely edit comment submissions to remove such information before making the comment submissions available to the public or entering the comment into ADAMS.

II. Discussion

Pursuant to section 50.75 of title 10 of the *Code of Federal Regulations,* ''Reporting and recordkeeping for decommissioning planning,'' the NRC requires nuclear power reactor licensees to adjust annually, in current year dollars, their estimate of the cost to decommission their plants. The annual updates are part of the process for providing reasonable assurance that adequate funds for decommissioning will be available when needed.

Revision 19 of NUREG–1307, ''Report on Waste Burial Charges: Changes in Decommissioning Waste Disposal Costs at Low-Level Waste Burial Facilities,'' modifies the previous revision to this report issued in January 2021 (ADAMS Accession No. ML21027A302) and incorporates updates to the adjustment factor and to the labor, energy, and waste burial escalation factors of the NRC minimum decommissioning fund formula. The minimum decommissioning fund formula amounts calculated by licensees using the Barnwell low-level waste disposal facility will be impacted by a significant increase in low-level waste burial charge pricing at that site. Additionally, at the nation's three other low-level waste disposal facilities, both moderate increases in some, and decreases in other, low-level waste burial charges, coupled with moderate increases in labor rates and near doubling of energy rates for all licensees, likely will result in higher formula amounts for all licensees. Thus, based on revised low-level waste burial factors presented in this report and increases in labor and energy rates, the minimum decommissioning fund formula amounts calculated by licensees will likely reflect moderate to more substantial increases when compared to those previously reported by licensees in 2021.

Dated: November 23, 2022.

For the Nuclear Regulatory Commission.

Trent L. Wertz,

Acting Chief, Financial Assessment Branch, Division of Rulemaking, Environment, and Financial Support, Office of Nuclear Material Safety and Safeguards.

[FR Doc. 2022–26018 Filed 11–28–22; 8:45 am]

BILLING CODE 7590–01–P

OFFICE OF PERSONNEL MANAGEMENT

[OMB Control No. 3206–0269]

Revision of Information Collection: Combined Federal Campaign Applications

AGENCY: U.S. Office of Personnel Management.

ACTION: 30-Day notice.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, this notice announces that the Office of Personnel Management requests approval by the Office of Management and Budget (OMB) to renew a previously approved information collection, Combined Federal Campaign (CFC) Charity Applications, OMB Control No. 3206–0269, OPM Forms 1647–A, –B, and –E. OPM uses these documents to review the eligibility of national, international, and local charitable organizations and Department of Defense morale, welfare, and recreation (MWR)/Family Support and Youth Activities/Programs (FSYA/FSYP) organizations that wish to participate in the CFC. The proposed revisions reflect improvements in the form instructions and the addition of optional fields for charities to detail the kinds of volunteer opportunities Federal employees might consider for personal service hours (outside working hours).

On August 11, 2022, OPM published a 60-day notice and request for comments at 87 FR 49619. OPM received no comments. There are, therefore, no recommended revisions to this ICR. We estimate 6,000 responses to this information collection annually.

Each form takes approximately two hours to complete. The annual estimated burden is 12,000 hours.

DATES: Comments will be accepted until December 29, 2022. This process is conducted in accordance with 5 CFR 1320.1.

ADDRESSES: Interested persons are invited to submit comments, identified by docket number and title, by the following method:

• *Federal Rulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.

All submissions received must include the agency name and docket number for this document. The general policy for comments and other submissions from members of the public is to make these submissions available for public viewing at *http://www.regulations.gov* as they are received without change, including any personal identifiers or contact information.

FOR FURTHER INFORMATION CONTACT: A copy of this ICR, with applicable supporting documentation, may be obtained by contacting the U.S. Office of Personnel Management, Office of Combined Federal Campaign, 1900 E Street NW, Washington, DC 20415, Attention: Vanessa Bell; or sent via electronic mail to *cfc@opm.gov;* or by phone at 202–936–3406.

SUPPLEMENTARY INFORMATION: The Office of Management and Budget is particularly interested in comments that:

1. Evaluate whether the proposed collection of information is necessary for the proper performance of 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; and

4. Minimize the burden of the collection of information on those who are to respond, including using appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submissions of responses.

The Combined Federal Campaign (CFC) is the world's largest and most successful annual workplace philanthropic giving campaign, with 36 CFC Zones throughout the country and overseas raising millions of dollars each year. The mission of the CFC is to promote and support philanthropy through a program that is employee focused, cost-efficient, and effective in providing all federal employees the opportunity to improve the quality of life for all. The CFC charity applications collect information from about 6,000 national, international, and local charities for inclusion on the CFC charity list. There are no recommended revisions to this ICR.

U.S. Office of Personnel Management.

Kellie Cosgrove Riley,

Executive Director, Office of Executive Secretariat and Privacy and Information Management.

[FR Doc. 2022–25970 Filed 11–28–22; 8:45 am]

BILLING CODE 6325–46–P

OFFICE OF PERSONNEL MANAGEMENT

Notice of Federal Long Term Care Insurance Program (FLTCIP)—Suspension of Applications for FLTCIP Coverage; Correction

AGENCY: Office of Personnel Management.

ACTION: Notice; correction.

SUMMARY: On November 18, 2022, the U.S. Office of Personnel Management (OPM) published a document in the **Federal Register** announcing a suspension of applications for Federal Long Term Care Insurance Program (FLTCIP) coverage. The document did not contain the citation to the final rule, which sets forth the process for suspension of applications.

FOR FURTHER INFORMATION CONTACT: You may call 1–800–LTC–FEDS (1–800–582–3337) (TTY: 1–800–843– 3557) or visit *https://www.ltcfeds.com.* For purposes of this **Federal Register** notice only, the contact at OPM is Dyan Dyttmer, Senior Policy Analyst, at *dyan.dyttmer@opm.gov* or (202) 936–0152.

SUPPLEMENTARY INFORMATION:

Correction

In the **Federal Register** of November 18, 2022, in FR Doc. 2022–24882, on page 69346, in the first column, correct the last sentence of the **SUPPLEMENTARY INFORMATION** section to read:

OPM has issued regulations at 87 FR 68595 setting forth the process for suspension of applications in 5 CFR 875.110.

Office of Personnel Management.

Kellie Cosgrove Riley,

Executive Director, Office of Executive Secretariat and Privacy and Information Management.

[FR Doc. 2022–25659 Filed 11–28–22; 8:45 am]

BILLING CODE 6325–63–P

POSTAL REGULATORY COMMISSION

[Docket Nos. CP2019–153; MC2023–56 and CP2023–55; MC2023–57 and CP2023–56; MC2023–58 and CP2023–57; MC2023–59 and CP2023–58]

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 2, 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).:* CP2019–153; *Filing Title:* USPS Notice of Amendment to Priority Mail Express, Priority Mail & First-Class Package Service Contract 62, Filed Under Seal; *Filing Acceptance Date:* November 22, 2022; *Filing Authority:* 39 CFR 3035.105; *Public Representative:* Christopher C.Mohr; *Comments Due:* December 2, 2022.

2. *Docket No(s).:* MC2023–56 and CP2023–55; *Filing Title:* USPS Request to Add Priority Mail & First-Class Package Service Contract 227 to Competitive Product List and Notice of Filing Materials Under Seal; *Filing Acceptance Date:* November 22, 2022; *Filing Authority:* 39 U.S.C. 3642, 39 CFR 3040.130 through 3040.135, and 39 CFR 3035.105; *Public Representative:* Katalin K. Clendenin; *Comments Due:* December 2, 2022.

3. *Docket No(s).:* MC2023–57 and CP2023–56; *Filing Title:* USPS Request to Add Priority Mail Express, Priority Mail, First-Class Package Service & Parcel Select Contract 88 to Competitive Product List and Notice of Filing Materials Under Seal; *Filing Acceptance Date:* November 22, 2022; *Filing Authority:* 39 U.S.C. 3642, 39 CFR 3040.130 through 3040.135, and 39 CFR 3035.105; *Public Representative:* Kenneth R. Moeller; *Comments Due:* December 2, 2022.

4. *Docket No(s).:* MC2023–58 and CP2023–57; *Filing Title:* USPS Request to Add Priority Mail Express, Priority Mail, First-Class Package Service & Parcel Select Contract 89 to Competitive Product List and Notice of Filing Materials Under Seal; *Filing Acceptance Date:* November 22, 2022; *Filing Authority:* 39 U.S.C. 3642, 39 CFR 3040.130 through 3040.135, and 39 CFR 3035.105; *Public Representative:* Kenneth R. Moeller; *Comments Due:* December 2, 2022.

5. *Docket No(s).:* MC2023–59 and CP2023–58; *Filing Title:* USPS Request to Add Priority Mail Contract 768 to Competitive Product List and Notice of Filing Materials Under Seal; *Filing Acceptance Date:* November 22, 2022; *Filing Authority:* 39 U.S.C. 3642, 39 CFR 3040.130 through 3040.135, and 39 CFR 3035.105; *Public Representative:* Jennaca D. Upperman; *Comments Due:* December 2, 2022.

This Notice will be published in the **Federal Register**.

Erica A. Barker,

Secretary.

[FR Doc. 2022–25993 Filed 11–28–22; 8:45 am]

BILLING CODE 7710–FW–P

[1] *See* Docket No. RM2018–3, Order Adopting Final Rules Relating to Non-Public Information, June 27, 2018, Attachment A at 19–22 (Order No. 4679).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–96375; File No. SR–NASDAQ–2022–064]

Self-Regulatory Organizations; The Nasdaq Stock Market LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Amend NOM Options 7, Section 2

November 22, 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, The Nasdaq Stock Market LLC (''Nasdaq'' or ''Exchange'') filed with the Securities and Exchange Commission (''SEC'' or ''Commission'') the proposed rule change as described in Items I, II, and III, below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend The Nasdaq Options Market LLC (''NOM'') Pricing Schedule at Options 7, Section 2, ''Nasdaq Options Market—Fees and Rebates.'' [3]

The text of the proposed rule change is available on the Exchange's website at *https://listingcenter.nasdaq.com/rulebook/nasdaq/rules,* at the principal office of the Exchange, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to amend NOM's Pricing Schedule at Options 7, Section 2(1), ''Nasdaq Options Market—Fees and Rebates,'' to: (1) amend the Tier 6 Professional [4] Rebate to Add Liquidity in Penny Symbols; (2) amend the criteria for the Tier 3 and Tier 6 Rebates to Add Liquidity in Penny Symbols; and (3) add an incentive to achieve a higher Tier 6 Professional Rebate to Add Liquidity in Penny Symbols.

[3] The Exchange originally filed SR–NASDAQ–2022–061 on November 1, 2022. On November 10, 2022, the Exchange withdrew SR–NASDAQ–2022–061 and submitted this rule change.

[4] Pursuant to Options 7, Section 1(a) the term ''Professional'' or (''P'') means any person or entity that (i) is not a broker or dealer in securities, and (ii) places more than 390 orders in listed options per day on average during a calendar month for its own beneficial account(s) pursuant to Options 1, Section 1(a)(47). All Professional orders shall be appropriately marked by Participants.

Today, NOM Options 7, Section 2(1) provides for various fees and rebates applicable to NOM Participants. Specifically, the Rebates to Add Liquidity in Penny Symbols are as follows:

REBATES TO ADD LIQUIDITY IN PENNY SYMBOLS

	Tier 1	Tier 2	Tier 3	Tier 4	Tier 5	Tier 6
Customer	($0.20)	($0.25)	($0.43)	($0.44)	($0.45)	[7] ($0.48)
Professional	(0.20)	(0.25)	(0.43)	(0.44)	(0.45)	(0.48)
Broker-Dealer	(0.10)	(0.10)	(0.10)	(0.10)	(0.10)	(0.10)
Firm	(0.10)	(0.10)	(0.10)	(0.10)	(0.10)	(0.10)
Non-NOM Market Maker	(0.10)	(0.10)	(0.10)	(0.10)	(0.10)	(0.10)
NOM Market Maker	(0.20)	(0.25)	[4] (0.30)	[4] (0.32)	[11] (0.44)	(0.48)

Customer and Professional Rebates to Add Liquidity in Penny Symbols are paid per the highest tier achieved among the 6 available tiers. To determine the applicable percentage of total industry customer equity and ETF option average daily volume, unless otherwise stated, the Exchange considers the Participant's Penny and Non-Penny Symbol Customer and/or Professional volume that adds liquidity. Below are the criteria for each Rebate to Add Liquidity in Penny Symbol tier.

MONTHLY VOLUME

Tier 1	Participant adds Customer, Professional, Firm, Non-NOM Market Maker and/or Broker-Dealer liquidity in Penny Symbols and/or Non-Penny Symbols of up to 0.10% of total industry customer equity and ETF option average daily volume ("ADV") contracts per day in a month.
Tier 2	Participant adds Customer, Professional, Firm, Non-NOM Market Maker and/or Broker-Dealer liquidity in Penny Symbols and/or Non-Penny Symbols above 0.10% to 0.20% of total industry customer equity and ETF option ADV contracts per day in a month.
Tier 3	Participant: (a) adds Customer, Professional, Firm, Non-NOM Market Maker and/or Broker-Dealer liquidity in Penny Symbols and/or Non-Penny Symbols above 0.20% to 0.30% of total industry customer equity and ETF option ADV contracts per day in a month; or (b) adds Customer and/or Professional liquidity in Penny Symbols and/or Non-Penny Symbols of 0.15% to less than 0.20% of total industry customer equity and ETF option ADV contracts per day in a month and qualifies for MARS.
Tier 4	Participant adds Customer, Professional, Firm, Non-NOM Market Maker and/or Broker-Dealer liquidity in Penny Symbols and/or Non-Penny Symbols above 0.30% to 0.40% of total industry customer equity and ETF option ADV contracts per day in a month.
Tier 5	Participant adds Customer, Professional, Firm, Non-NOM Market Maker and/or Broker-Dealer liquidity in Penny Symbols and/or Non-Penny Symbols above 0.40% to 0.80% of total industry customer equity and ETF option ADV contracts per day in a month.
Tier 6	Participant adds Customer, Professional, Firm, Non-NOM Market Maker and/or Broker-Dealer liquidity in Penny Symbols and/or Non-Penny Symbols above 0.80% or more of total industry customer equity and ETF option ADV contracts per day in a month, or Participant adds: (1) Customer and/or Professional liquidity in Penny Symbols and/or Non-Penny Symbols of 0.20% or more of total industry customer equity and ETF option ADV contracts per day in a month, and (2) has added liquidity in all securities through one or more of its Nasdaq Market Center MPIDs that represent 1.00% or more of Consolidated Volume in a month or qualifies for MARS (defined below).

Penny Symbols

Today, Customers and Professionals are paid the following Penny Symbol Rebates: for Tier 1 a $0.20 per contract, for Tier 2 a $0.25 per contract, for Tier 3 a $0.43 per contract, for Tier 4 a $0.44 per contract, for Tier 5 a $0.45 per contract and for Tier 6 a $0.48 per contract. Today, Customers may increase their Tier 6 Penny Symbol Rebate if they meet certain criteria.[5]

Broker-Dealers,[6] Firms,[7] and Non-NOM Market Makers[8] are paid a $0.10 per contract Rebate to Add Liquidity in Penny Symbols regardless of the tier.

[5] Pursuant to note 7 within Options 7, Section 2(1), Participants that: (1) add Customer, Professional, Firm, Non-NOM Market Maker and/or Broker-Dealer liquidity in Penny Symbols and/or Non- Penny Symbols of 1.15% or more of total industry customer equity and ETF option ADV contracts per day in a month will receive an additional $0.02 per contract Penny Symbol Customer Rebate to Add Liquidity for each transaction which adds liquidity in Penny Symbol in that month; or (2) add Customer, Professional, Firm, Non-NOM Market Maker and/or Broker-Dealer liquidity in Penny Symbols and/or Non-Penny Symbols of 1.30% or more of total industry customer equity and ETF option ADV contracts per day in a month will receive an additional $0.05 per contract Penny Symbol Customer Rebate to Add Liquidity for each transaction which adds liquidity in Penny Symbols in that month; or (3) (a) add Customer, Professional, Firm, Non-NOM Market Maker and/or Broker-Dealer liquidity in Penny Symbols and/or Non-Penny Symbols above 0.80% of total industry customer equity and ETF option ADV contracts per day in a month, (b) add Customer, Professional, Firm, Non-NOM Market Maker and/or Broker-Dealer liquidity in Non-Penny Symbols above 0.12% of total industry customer equity and ETF option ADV contracts per day in a month, and (c) execute greater than 0.04% of Consolidated Volume ("CV") via Market-on-Close/Limit-on-Close ("MOC/LOC") volume within The Nasdaq Stock Market Closing Cross within a month will receive an additional $0.05 per contract Penny Symbol Customer Rebate to Add Liquidity for each transaction which adds liquidity in Penny Symbols in a month. Consolidated Volume shall mean the total consolidated volume reported to all consolidated transaction reporting plans by all exchanges and trade reporting facilities during a month in equity securities, excluding executed orders with a size of less than one round lot. For purposes of calculating Consolidated Volume and the extent of an equity member's trading activity, expressed as a percentage of or ratio to Consolidated Volume, the date of the annual reconstitution of the Russell Investments Indexes shall be excluded from both total Consolidated Volume and the member's trading activity.

[6] Pursuant to Options 7, Section 1(a), the term "Broker-Dealer" or ("B") applies to any transaction which is not subject to any of the other transaction fees applicable within a particular category.

[7] Pursuant to Options 7, Section 1(a), the term "Firm" or ("F") applies to any transaction that is identified by a Participant for clearing in the Firm range at OCC.

[8] Pursuant to Options 7, Section 1(a), the term "Non-NOM Market Maker" or ("O") is a registered market maker on another options exchange that is not a NOM Market Maker. A Non-NOM Market Maker must append the proper Non-NOM Market Maker designation to orders routed to NOM.

NOM Market Makers [9] are paid the following Penny Symbol Rebates: for Tier 1 a $0.20 per contract, for Tier 2 a $0.25 per contract, for Tier 3 a $0.30 per contract, for Tier 4 a $0.32 per contract, for Tier 5 a $0.44 per contract and for Tier 6 a $0.48 per contract. NOM Market Makers are also offered Penny Symbol incentives to increase their rebates.[10]

The Exchange proposes to decrease the Tier 6 Professional Rebate to Add Liquidity in Penny Symbols within Options 7, Section 2(1) from $0.48 per contract to $0.47 per contract.[11]

The Exchange also proposes to amend the criteria for the Tier 3 and Tier 6 Rebates to Add Liquidity in Penny Symbols within Options 7, Section 2(1). Today, the criteria for the Tier 3 Rebate to Add Liquidity in Penny Symbols provides,

Participant: (a) adds Customer, Professional, Firm, Non-NOM Market Maker and/or Broker-Dealer liquidity in Penny Symbols and/or Non-Penny Symbols above 0.20% to 0.30% of total industry customer equity and ETF option ADV contracts per day in a month; or (b) adds Customer and/or Professional liquidity in Penny Symbols and/or Non-Penny Symbols of 0.15% [12] to less than 0.20% [13] of total industry customer equity and ETF option ADV contracts per day in a month and qualifies for MARS.[14]

The Exchange proposes to instead provide the following Tier 3 criteria,

Participant: (a) adds Customer, Professional, Firm, Non-NOM Market Maker and/or Broker-Dealer liquidity in Penny Symbols and/or Non-Penny Symbols above 0.20% to 0.30% of total industry customer equity and ETF option ADV contracts per day in a month; or (b) adds Customer and/or Professional liquidity in Penny Symbols and/or Non-Penny Symbols of *0.05%* [15] *to less than 0.10%* of total industry customer equity and ETF option ADV contracts per day in a month and qualifies for MARS.

With this proposal, the Exchange intends to lower the criteria to achieve the Tier 3 Rebate to Add Liquidity in Penny Symbols when a Participant adds Customer and/or Professional liquidity in Penny Symbols and/or Non-Penny Symbols and qualifies for MARS. The Exchange believes that lowering the criteria would allow additional Participants to qualify for the Tier 3 Rebate to Add Liquidity in Penny Symbols.

Today, the criteria for the Tier 6 Rebate to Add Liquidity in Penny Symbols provides,

Participant adds Customer, Professional, Firm, Non-NOM Market Maker and/or Broker-Dealer liquidity in Penny Symbols and/or Non-Penny Symbols above 0.80% [16] or more of total industry customer equity and ETF option ADV contracts per day in a month, or Participant adds: (1) Customer and/or Professional liquidity in Penny Symbols and/or Non-Penny Symbols of 0.20% or more of total industry customer equity and ETF option ADV contracts per day in a month, and (2) has added liquidity in all securities through one or more of its Nasdaq Market Center MPIDs that represent 1.00% or more of Consolidated Volume in a month or qualifies for MARS (defined below).

The Exchange proposes to instead provide the following Tier 6 criteria,

Participant adds Customer, Professional, Firm, Non-NOM Market Maker and/or Broker-Dealer liquidity in Penny Symbols and/or Non-Penny Symbols *above 0.70%* [17] or more of total industry customer equity and ETF option ADV contracts per day in a month, or Participant: (1) adds [18] Customer and/or Professional liquidity in Penny Symbols and/or Non-Penny Symbols of *0.10%* or more of total industry customer equity and ETF option ADV contracts per day in a month, and (2) has added liquidity in all securities through one or more of its Nasdaq Market Center MPIDs that represent 1.00% or more of Consolidated Volume in a month or qualifies for MARS (defined below).

With this proposal, the Exchange intends to lower the criteria to achieve the Tier 6 Rebate to Add Liquidity in Penny Symbols when a Participant adds Customer, Professional, Firm, Non-NOM Market Maker and/or Broker-Dealer liquidity in Penny Symbols and/or Non-Penny Symbols or adds Customer and/or Professional liquidity in Penny Symbols and/or Non-Penny Symbols and has added liquidity in all securities through one or more of its Nasdaq Market Center MPIDs or qualifies for MARS. The Exchange believes that lowering the criteria would allow for additional Participants to qualify for the Tier 6 Rebate to Add Liquidity in Penny Symbols.

Finally, the Exchange proposes to add an incentive (''##'') to achieve a higher Tier 6 Professional Rebate to Add Liquidity in Penny Symbols within Options 7, Section 2(1). The new incentive to the Tier 6 Rebate to Add Liquidity in Penny Symbols would provide,

Participants that add Customer, Professional, Firm, Non-NOM Market Maker and/or Broker-Dealer liquidity in Penny Symbols and/or Non-Penny Symbols above 0.80% or more of total industry customer equity and ETF option ADV contracts per day in a month, or Participants that (1) add Customer and/or Professional liquidity in Penny Symbols and/or Non-Penny Symbols of 0.20% or more of total industry adds customer equity and ETF option ADV contracts per day in a month, and (2) have added liquidity in all securities through one or more of its Nasdaq Market Center MPIDs that represent 1.00% or more of Consolidated Volume in a month or qualify for MARS (defined below) will receive an additional $0.01 per contract rebate for Professional volume which adds liquidity in Penny Symbols only.

While the Exchange is lowering the Tier 6 Professional Rebate to Add Liquidity in Penny Symbols within Options 7, Section 2(1) from $0.48 per contract to $0.47 per contract, the proposed Tier 6 ''##'' incentive would permit Professionals to achieve a $0.48 per contract Tier 6 Professional Rebate to Add Liquidity in Penny Symbols provided they add the same amount of Customer and/or Professional liquidity in Penny Symbols and/or Non-Penny Symbols as they do today and continue to meet the remainder of the Tier 6 criteria as they do today.

2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act,[19] in general, and furthers the objectives of Sections 6(b)(4) and 6(b)(5)

[9] Pursuant to Options 7, Section 1(a), the term ''NOM Market Maker'' or (''M'') is a Participant that has registered as a Market Maker on NOM pursuant to Options 2, Section 1, and must also remain in good standing pursuant to Options 2, Section 9. In order to receive NOM Market Maker pricing in all securities, the Participant must be registered as a NOM Market Maker in at least one security.

[10] *See* notes 4–11 of Options 7, Section 2(1).

[11] The Exchange is not proposing to amend Non-Penny Symbol pricing.

[12] 10% of total industry customer equity and ETF option ADV contracts per day in a month equates to 33,000 contracts.

[13] 20% of total industry customer equity and ETF option ADV contracts per day in a month equates to 66,000 contracts.

[14] MARS is the Exchange's Market Access and Routing Subsidy program described within Options 7, Section 2(4).

[15] 5% of total industry customer equity and ETF option ADV contracts per day in a month equates to 16,500 contracts.

[16] 80% of total industry customer equity and ETF option ADV contracts per day in a month equates to 264,000 contracts.

[17] 70% of total industry customer equity and ETF option ADV contracts per day in a month equates to 231,000 contracts.

[18] The Exchange also proposes to relocate the word ''adds'' within the Tier 6 criteria so the paragraph reads clearly.

[19] 15 U.S.C. 78f(b).

of the Act,[20] in particular, in that it provides for the equitable allocation of reasonable dues, fees, and other charges among members and issuers and other persons using any facility, and is not designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

The Proposal Is Reasonable

The proposed changes to its Pricing Schedule are reasonable in several respects. As a threshold matter, the Exchange is subject to significant competitive forces in the market for options transaction services that constrain its pricing determinations in that market. The fact that this market is competitive has long been recognized by the courts. In *NetCoalition* v. *Securities and Exchange Commission* [21] (''NetCoalition''), the D.C. Circuit stated, ''[n]o one disputes that competition for order flow is 'fierce.' . . . As the SEC explained, '[i]n the U.S. national market system, buyers and sellers of securities, and the broker-dealers that act as their order-routing agents, have a wide range of choices of where to route orders for execution'; [and] 'no exchange can afford to take its market share percentages for granted' because 'no exchange possesses a monopoly, regulatory or otherwise, in the execution of order flow from broker dealers' . . . .'' [22]

Numerous indicia demonstrate the competitive nature of this market. For example, clear substitutes to the Exchange exist in the market for options transaction services. The Exchange is only one of sixteen options exchanges to which market participants may direct their order flow. Within this environment, market participants can freely and often do shift their order flow among the Exchange and competing venues in response to changes in their respective pricing schedules. Within the foregoing context, the proposal represents a reasonable attempt by the Exchange to attract additional order flow to the Exchange and increase its market share relative to its competitors.

Options 7, Section 2(1)

The Exchange's proposal to decrease the Tier 6 Professional Rebate to Add Liquidity in Penny Symbols within Options 7, Section 2(1) from $0.48 per contract to $0.47 per contract is reasonable because the Exchange is decreasing the Tier 6 rebate criteria and offering an incentive to permit Professionals to achieve a higher rebate. Participants who are able to achieve Tier 6 today would continue to be eligible for the Tier 6 Rebate to Add Liquidity in Penny Symbols, provided they continue to provide the same liquidity. Other Participants may also be able to qualify for the Tier 6 Rebate to Add Liquidity in Penny Symbols because of the lower volume requirements. Additionally, by submitting the same volume as today, Participants would be able to qualify for the same $0.48 per contract Professional Rebate to Add Liquidity in Penny Symbols with the proposed incentive.

The Exchange's proposal to decrease the criteria for the Tier 6 Rebate to Add Liquidity in Penny Symbols within Options 7, Section 2(1) is reasonable because Participants who are able to achieve Tier 6 rebate today would continue to be eligible for the Tier 6 Rebate to Add Liquidity in Penny Symbols, provided they continued to provide the same liquidity. Other Participants may also be able to qualify for the Tier 6 Rebate to Add Liquidity in Penny Symbols because of the lower volume requirements. The proposal permits Participants to qualify for the Tier 6 Rebate to Add Liquidity in Penny Symbols when a Participant adds Customer, Professional, Firm, Non-NOM Market Maker and/or Broker-Dealer liquidity in Penny Symbols and/or Non-Penny Symbols from 0.80% to 0.70% of total industry customer equity and ETF option ADV contracts per day in a month. Additionally, the Exchange is decreasing the criteria to achieve the Tier 6 Rebate to Add Liquidity in Penny Symbols when Participant adds Customer and/or Professional liquidity in Penny Symbols and/or Non-Penny Symbols from 0.20% to .10% or more of total industry customer equity and ETF option ADV contracts per day in a month. The remainder of the criteria within Tier 6 Rebate to Add Liquidity in Penny Symbols remains the same.[23]

The Exchange's proposal to offer a Tier 6 incentive (''##'') is reasonable because, today, Customers may achieve a higher Tier 6 Rebate to Add Liquidity in Penny Symbols by meeting the criteria in current note 7.[24] The Exchange notes that Participants who today qualify for Tier 6 Professional Rebate to Add Liquidity in Penny Symbols would be eligible for the incentive provided they continue to submit the same liquidity as today. Participants that today qualify for a lower Professional Rebate to Add Liquidity in Penny Symbols may have an opportunity to qualify for the Tier 6 Professional Rebate to Add Liquidity in Penny Symbols which pays the highest Professional Rebate to Add Liquidity in Penny Symbols.

The Exchange's proposal to decrease the Tier 6 Professional Rebate to Add Liquidity in Penny Symbols within Options 7, Section 2(1) from $0.48 per contract to $0.47 per contract, amend the criteria for the Tier 6 rebate, and add a Tier 6 rebate incentive for Penny Symbols is equitable and not unfairly discriminatory because with this proposal, Customers will continue to be eligible for the highest rebates offered by the Exchange. Customer liquidity, unlike Professional liquidity, offers unique benefits to the market which benefits all market participants. Customer liquidity is the most sought after liquidity among Participants.

[20] 15 U.S.C. 78f(b)(4) and (5).

[21] *NetCoalition* v. *SEC,* 615 F.3d 525 (D.C. Cir. 2010).

[22] *Id.* at 539 (quoting Securities Exchange Act Release No. 59039 (December 2, 2008), 73 FR 74770, 74782–83 (December 9, 2008) (SR–NYSEArca–2006–21)).

[23] The Tier 6 Rebate to Add Liquidity in Penny Symbols also requires that has added liquidity in all securities through one or more of its Nasdaq Market Center MPIDs that represent 1.00% or more of Consolidated Volume in a month or qualifies for MARS (defined below) when Participant is seeking to achieve the second part of Tier 6 to qualify for the rebate.

[24] Note 7 of Options 7, Section 2(1) provides that Participants that: (1) add Customer, Professional, Firm, Non-NOM Market Maker and/or Broker-Dealer liquidity in Penny Symbols and/or Non-Penny Symbols of 1.15% or more of total industry customer equity and ETF option ADV contracts per day in a month will receive an additional $0.02 per contract Penny Symbol Customer Rebate to Add Liquidity for each transaction which adds liquidity in Penny Symbol in that month; or (2) add Customer, Professional, Firm, Non-NOM Market Maker and/or Broker-Dealer liquidity in Penny Symbols and/or Non-Penny Symbols of 1.30% or more of total industry customer equity and ETF option ADV contracts per day in a month will receive an additional $0.05 per contract Penny Symbol Customer Rebate to Add Liquidity for each transaction which adds liquidity in Penny Symbols in that month; or (3) (a) add Customer, Professional, Firm, Non-NOM Market Maker and/or Broker-Dealer liquidity in Penny Symbols and/or Non-Penny Symbols above 0.80% of total industry customer equity and ETF option ADV contracts per day in a month, (b) add Customer, Professional, Firm, Non-NOM Market Maker and/or Broker-Dealer liquidity in Non-Penny Symbols above 0.12% of total industry customer equity and ETF option ADV contracts per day in a month, and (c) execute greater than 0.04% of Consolidated Volume (''CV'') via Market-on-Close/Limit-on-Close (''MOC/LOC'') volume within The Nasdaq Stock Market Closing Cross within a month will receive an additional $0.05 per contract Penny Symbol Customer Rebate to Add Liquidity for each transaction which adds liquidity in Penny Symbols in a month. Consolidated Volume shall mean the total consolidated volume reported to all consolidated transaction reporting plans by all exchanges and trade reporting facilities during a month in equity securities, excluding executed orders with a size of less than one round lot. For purposes of calculating Consolidated Volume and the extent of an equity member's trading activity, expressed as a percentage of or ratio to Consolidated Volume, the date of the annual reconstitution of the Russell Investments Indexes shall be excluded from both total Consolidated Volume and the member's trading activity.

Customer liquidity benefits all market participants by providing more trading opportunities, which attracts market makers. An increase in the activity of these market participants in turn facilitates tighter spreads, which may cause an additional corresponding increase in order flow from other market participants. Paying higher rebates to Customers is consistent with the treatment of Customers on other options venues that are paid the highest rebates.[25] The Exchange believes it is equitable and not unfairly discriminatory to continue to pay Professionals the same or lower rebates as Customers. With respect to Professionals, the Exchange believes that continuing to encourage Participants to add Professional liquidity creates competition among options exchanges because the Exchange believes that the rebates may cause market participants to select NOM as a venue to send Professional order flow. The Exchange notes that is equitable and not unfairly discriminatory to lower rebates for Professionals, who unlike Customers, have access to sophisticated trading systems that contain functionality not available to Customers. The Exchange would uniformly apply the Tier 6 rebate criteria and incentive to all Participants and would uniformly pay rebates to all qualifying Participants.

The Exchange's proposal to decrease the criteria to achieve the Tier 3 Rebate to Add Liquidity in Penny Symbols within Options 7, Section 2(1) is reasonable because Participants who are able to achieve Tier 3 rebate today would continue to be eligible for the Tier 3 Rebate to Add Liquidity in Penny Symbols, provided they continued to provide the same liquidity. Other Participants may also be able to qualify for the Tier 3 Rebate to Add Liquidity in Penny Symbols because of the lower volume requirements.

The Exchange's proposal to decrease the criteria to achieve the Tier 3 Rebate to Add Liquidity in Penny Symbols within Options 7, Section 2(1) is equitable and not unfairly discriminatory because the Exchange would uniformly apply the Tier 3 rebate criteria to all Participants and pay the Tier 3 rebate to all qualifying Participants.

[25] *See* Nasdaq PHLX LLC Options 7, Section 2. Phlx pays rebates exclusively to Customers. *See also* Nasdaq GEMX, LLC Options 7, Section 3. Priority Customers receive the highest rebates.

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.

Intermarket Competition

The Exchange operates in a highly competitive market in which market participants can readily favor competing venues if they deem fee levels at a particular venue to be excessive, or rebate opportunities available at other venues to be more favorable. In such an environment, the Exchange must continually adjust its fees to remain competitive with other exchanges. Because competitors are free to modify their own fees in response, and because market participants may readily adjust their order routing practices, the Exchange believes that the degree to which pricing changes in this market may impose any burden on competition is extremely limited because other options exchanges offer similar rebate programs.

Moreover, as noted above, price competition between exchanges is fierce, with liquidity and market share moving freely between exchanges in reaction to fee and rebate changes. In sum, if the changes proposed herein are unattractive to market participants, it is likely that the Exchange will lose market share as a result. Accordingly, the Exchange does not believe that the proposed changes will impair the ability of Members or competing order execution venues to maintain their competitive standing in the financial markets.

Intramarket Competition

The Exchange's proposal to decrease the Tier 6 Professional Rebate to Add Liquidity in Penny Symbols within Options 7, Section 2(1) from $0.48 per contract to $0.47 per contract, amend the criteria for the Tier 6 rebate, and add a Tier 6 rebate incentive for Penny Symbols does not impose an undue burden on competition. With this proposal, Customers will continue to be eligible for the highest rebates offered by the Exchange. Customer liquidity, unlike Professional liquidity, offers unique benefits to the market which benefits all market participants. Customer liquidity is the most sought after liquidity among Participants. Customer liquidity benefits all market participants by providing more trading opportunities, which attracts market makers. An increase in the activity of these market participants in turn facilitates tighter spreads, which may cause an additional corresponding increase in order flow from other market participants. Paying higher rebates to Customers is consistent with the treatment of Customers on other options venues that are paid the highest rebates.[26] Paying Professionals the same or lower rebates as Customers does not impose an undue burden on competition. With respect to Professionals, the Exchange believes that continuing to encourage Participants to add Professional liquidity creates competition among options exchanges because the Exchange believes that the rebates may cause market participants to select NOM as a venue to send Professional order flow. Lowering rebates for Professionals, who unlike Customers, have access to sophisticated trading systems that contain functionality not available to Customers does not impose an undue burden on competition. Finally, the Exchange would uniformly apply the Tier 6 rebate criteria and incentive to all Participants and would uniformly pay rebates to all qualifying Participants.

The Exchange's proposal to decrease the criteria to achieve the Tier 3 Rebate to Add Liquidity in Penny Symbols within Options 7, Section 2(1) does not impose an undue burden on competition because the Exchange would uniformly apply the Tier 3 rebate criteria to all Participants and pay the Tier 3 rebate to all qualifying Participants.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were either solicited or received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A)(ii) of the Act.[27]

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is: (i) necessary or appropriate in the public interest; (ii) for the protection of investors; or (iii) otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings

[26] *See* Nasdaq PHLX LLC Options 7, Section 2. Phlx pays rebates exclusively to Customers. *See also* Nasdaq GEMX, LLC Options 7, Section 3. Priority Customers receive the highest rebates.

[27] 15 U.S.C. 78s(b)(3)(A)(ii).

to determine whether the proposed rule should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–NASDAQ–2022–064 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549–1090.

All submissions should refer to File Number SR–NASDAQ–2022–064. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's internet website (*http://www.sec.gov/rules/sro.shtml*).

Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street NE, Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change. Persons submitting comments are cautioned that we do not redact or edit personal identifying information from comment submissions. You should submit only information that you wish to make available publicly.

All submissions should refer to File Number SR–NASDAQ–2022–064 and should be submitted on or before December 20, 2022.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[28]

Sherry R. Haywood,

Assistant Secretary.

[FR Doc. 2022–25947 Filed 11–28–22; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–96376; File No. SR–EMERALD–2022–30]

Self-Regulatory Organizations; MIAX Emerald, LLC; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Adopt Exchange Rule 532, Order and Quote Price Protection Mechanisms and Risk Controls

November 22, 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 10, 2022, MIAX Emerald, LLC (''MIAX Emerald'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') a proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to (i) adopt new Exchange Rule 532, Order and Quote Price Protection Mechanisms and Risk Controls; and (ii) amend Exchange Rule 518, Complex Orders.

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 adopt new Exchange Rule 532, Order and Quote Price Protection Mechanisms and Risk Controls.[3] The Exchange proposes to adopt a new Managed Protection Override feature, a new Max Put Price Protection feature, and a new MIAX Strategy Price Protection (''MSPP'') in new proposed Rule 532. The Exchange notes that the proposed functionality is identical to functionality recently adopted by the Exchange's affiliate, MIAX Options Exchange.[4]

The Exchange also proposes to relocate and amend paragraph (a), Vertical Spread Variance (''VSV'') Price Protection; paragraph (b), Calendar Spread Variance (''CSV'') Price Protection; and paragraph (c) VSV and CSV Price Protection, from Interpretations and Policies .05 of Exchange Rule 518 to new proposed Rule 532 as described below.

Additionally, the Exchange proposes to add a new Butterfly Spread Variance (''BSV'') Price Protection to proposed section (b)(2) of new proposed Rule 532.[5] Further, the Exchange proposes to relocate paragraph (d), Implied Away Best Bid or Offer (''ixABBO'') Price Protection; paragraph (f), Complex MIAX Emerald Price Collar Protection; and paragraph (g), Market Maker Single Side Protection, from Interpretations and Policies .05 of Exchange Rule 518 to new proposed Rule 532 in their entirety and without modification as section (b)(6), Complex MIAX Options Price Collar Protection; section (b)(7), Implied Away Best Bid or Offer (''ixABBO'') Price Protection; and section (b)(8), Market Maker Single Side Protection.[6]

The Exchange also proposes to amend Exchange Rule 518, Complex Orders, to

[28] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] The Exchange notes that proposed Rule 532 is identical to current Rule 532 on the MIAX Options Exchange.

[4] *See* Securities Exchange Act Release No. 94353 (March 3, 2022), 87 FR 13339 (March 9, 2022) (SR–MIAX–2021–58).

[5] The Exchange notes that the proposed functionality is identical to functionality recently adopted by the Exchange's affiliate, MIAX Options. *See* Securities Exchange Act Release No. 94353 (March 3, 2022), 87 FR 13339 (March 9, 2022) (SR–MIAX–2021–58).

[6] The proposed rulebook changes are identical to recent rulebook changes made by the Exchange's affiliate, MIAX Options. *See supra* note 4.

change the value used in the calculation that determines whether a complex order is eligible to initiate a Complex Auction [7] from the dcEBBO [8] to the cNBBO.[9] The Exchange notes that this proposed change is substantively identical (the only difference being the naming convention used by each exchange, whereas MIAX Options used the term dcMBBO [10] prior to changing to the cNBBO and MIAX Emerald uses the term dcEBBO) to a recent change made by the Exchange's affiliate, MIAX Options.[11]

Additionally, the Exchange also proposes to relabel paragraph (e) of Interpretations and Policies .05 of Exchange Rule 518 to paragraph (a), and to make a number of non-substantive changes to update internal cross references throughout Exchange Rule 518 that have changed as a result of the proposed changes contained herein.

Background

The Exchange launched in December 2018, and at that time, the Exchange Rulebook contained complex order rules that were substantially similar to the rules of its affiliate exchange, MIAX Options. Since December 2018, MIAX Options has added functionality to grow its complex order business. The Exchange proposes to amend its rules to adopt functionality that currently exists on the MIAX Options Exchange. The Exchange seeks to align functionality to its affiliate, MIAX Options, where feasible. The proposed rule changes described below are identical, or substantively identical, to rule changes filed by the Exchange's affiliate, MIAX Options.[12]

Proposal

Managed Protection Override (''MPO'')

The Exchange proposes to adopt a new Managed Protection Override feature which will work in conjunction with certain risk protections on the Exchange. If a Member [13] enables the Managed Protection Override then all risk protections connected to the Managed Protection Override feature are engaged. When a risk protection connected to the Managed Protection Override feature is triggered, and the Managed Protection Override feature is enabled, the order subject to the risk protection will be cancelled. The Exchange notes that this proposed rule change is identical to a rule currently operative on the Exchange's affiliate, MIAX Options.[14]

The Managed Protection Override will be available for the following risk protections: Vertical Spread Variance (''VSV'') Price Protection, Calendar Spread Variance (''CSV'') Price Protection, new proposed Butterfly Spread Variance (''BSV'') Price Protection, Parity Price Protection, and new proposed Max Put Price Protection. The Exchange notes that this proposed rule change is identical to a rule currently operative on the Exchange's affiliate, MIAX Options.[15]

Currently, when the Vertical Spread Variance (''VSV'') Price Protection and the Calendar Spread Variance (''CSV'') Price Protection are triggered the default behavior is to manage the order in accordance to Exchange Rule 518(c)(4).[16] Additionally, when the Parity Price Protection is triggered the default behavior is to place the order on the Strategy Book [17] at its parity protected price.[18] The Exchange believes that offering Members the option to have their orders either managed by the Exchange or cancelled gives Members greater flexibility and control over their orders while retaining risk protection functionality.

Max Put Price Protection (''MPPP'')

The Exchange proposes to adopt a new price protection for put [19] options by establishing a maximum price at which a put option may trade. This proposed rule change is identical to a rule currently operative on the Exchange's affiliate, MIAX Options.[20]

To determine the maximum price the Exchange will add a pre-set value, the Put Price Variance (''PPV''), to the strike price of the Put option. The pre-set value will be determined by the Exchange [21] and communicated to Members via Regulatory Circular. Buy orders that are priced through the maximum trading price limit will trade up to, and including, the maximum trading price limit, and will then be placed on the Book [22] and managed to the appropriate trading price limit as described in Rule 515(c)(1)(ii), or cancelled if the Managed Protection Override (''MPO'') is enabled. Sell orders that are priced higher than the maximum trading price limit will be rejected.

A bid quote through the maximum trading price limit will trade up to, and including the maximum trading price limit, then will be placed on the Book and managed to the appropriate trading price limit as described in Rule 515(c)(1)(ii), or in the case of a bid eQuote, will be cancelled. An offer quote received that is higher than the

[7] Certain option classes, as determined by the Exchange and communicated to Members via Regulatory Circular, will be eligible to participate in a Complex Auction (an ''eligible class''). Upon evaluation as set forth in subparagraph (c)(5) of Exchange Rule 518, the Exchange may determine to automatically submit a Complex Auction-eligible order into a Complex Auction. Upon entry into the System or upon evaluation of a complex order resting at the top of the Strategy Book, Complex Auction-eligible orders may be subject to an automated request for responses (''RFR''). *See* Exchange Rule 518(d).

[8] The Displayed Complex MIAX Emerald Best Bid or Offer (''dcEBBO'') is calculated using the best displayed price for each component of a complex strategy from the Simple Order Book. For stock-option orders, the dcEBBO for a complex strategy will be calculated using the Exchange's best displayed bid or offer in the individual option component(s) and the NBBO in the stock component. *See* Exchange Rule 518(a)(8).

[9] The Complex National Best Bid or Offer (''cNBBO'') is calculated using the NBBO for each component of a complex strategy to establish the best net bid and offer for a complex strategy. *See* Exchange Rule 518(a)(2).

[10] The Displayed Complex MIAX Best Bid or Offer (''dcMBBO'') is calculated using the best displayed price for each component of a complex strategy from the Simple Order Book. For stock-option orders, the dcMBBO for a complex strategy will be calculated using the Exchange's best displayed bid or offer in the individual option component(s) and the NBBO in the stock component. *See* MIAX Options Exchange Rule 518(a)(8).

[11] *See* Securities Exchange Act Release No. 94671 (April 11, 2022), 87 FR 22605 (April 15, 2022) (SR–MIAX–2022–13).

[12] *See* Securities Exchange Act Release No. 94353 (March 3, 2022), 87 FR 13339 (March 9, 2022) (SR–MIAX–2021–58) (Notice of Filing of Amendment Nos. 1 and 2 and Order Granting Approval of a Proposed Rule Change, as Modified by Amendment Nos. 1 and 2, To Adopt Exchange Rule 532, Order and Quote Price Protection Mechanisms and Risk Controls).

[13] 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.

[14] *See* MIAX Options Exchange Rule 532.

[15] *See id.*

[16] *See* Interpretations and Policies .05(c) of Exchange Rule 518.

[17] The ''Strategy Book'' is the Exchange's electronic book of complex orders and complex quotes. *See* Exchange Rule 518(a)(17).

[18] *See* Interpretations and Policies .01(g) of Exchange Rule 518.

[19] The term ''put'' means an option contract under which the holder of the option has the right, in accordance to the terms and provisions of the option, to sell to the Clearing Corporation the number of units of the underlying security covered by the option contract. *See* Exchange Rule 100.

[20] *See* MIAX Options Exchange Rule 532(a)(1).

[21] The Exchange proposes to use a pre-set value for the Put Price Variance of $0.10 to align to other similar price protections on the Exchange. The Exchange believes this value provides an adequate price range for executions while offering price protection against potentially erroneous executions. *See* MIAX Emerald Regulatory Circular 2019–73, Complex Order Price Protection Pre-set Values (August 13, 2019) available at *https://www.miaxoptions.com/sites/default/files/circular-files/MIAX_Emerald_RC_2019_73.pdf,* which establishes a $0.10 pre-set value for Vertical Spreads and Calendar Spreads.

[22] The term ''Book'' means the electronic book of buy and sell orders and quotes maintained by the System. *See* Exchange Rule 100.

maximum trading price limit is not rejected and will be placed on the Book and displayed. An offer eQuote greater than the maximum trading price limit will be cancelled.[23]

Example Max Put Price Protection for a Buy Market Order

An order to Buy 10 XYZ Jan 5 Put @ Market is received.

The current market is:

EBBO[24] 0.50 (10) × 5.50 (10)

The price protection is:

Put Price Variance (PPV) = $0.10
Max Put Price Protection = (Strike + PPV) = $5.10

Because the Buy Order is priced through the Max Put Price Protection of $5.10, the order is subject to management and posted to the order book at $5.10.

EBBO 5.10 (10) × 5.50 (10)

Example Max Put Price Protection for a Sell Limit Order

An Order to Sell 10 XYZ Jan 5 Put @ $5.25 is received.

The current market is:

EBBO 0.50 (10) × 5.50 (10)

The price protection is:

Put Price Variance (PPV) = $0.10
Put Option = XYZ Jan 5 Put
Max Put Price Protection = (Strike + PPV) = $5.10

Because the Sell Order is priced higher than the Max Put Price Protection of $5.10, the order is rejected.

Example Max Put Price Protection for a Buy Quote

A Quote to Buy 10 XYZ Jan 5 Put @ $5.50 is received.

The current market is:

EBBO 0.50 (10) × 5.50 (10)

The price protection is:

Put Price Variance (PPV) = $0.10
Put Option = XYZ Jan 5 Put
Max Put Price Protection = (Strike + PPV) = $5.10

Because the Buy Quote is priced through the Max Put Price Protection of $5.10, the quote posted to the order book and managed at $5.10.

EBBO 5.10 (10) × 5.50 (10)

Example Max Put Price Protection for a Sell Quote

A Quote to Sell 10 XYZ Jan 5 Put @ $5.25 is received.

The current market is:

EBBO 0.50 (10) × 5.50 (10)

The price protection is:

Put Price Variance (PPV) = $0.10
Put Option = XYZ Jan 5 Put
Max Put Price Protection = (Strike + PPV) = $5.10

Although the Sell Quote is priced higher than the Max Put Price Protection of $5.10, sell Quotes priced higher than the Max Put Price Protection are not rejected and therefore it is posted to the order book at $5.25.

EBBO 5.10 (10) × 5.25 (10)

The Exchange believes that offering Members the option to have orders either managed by the Exchange or cancelled when a risk protection is triggered gives Members greater flexibility and control over their orders while retaining the risk protection functionality. The Exchange notes that this proposed rule change is identical to a rule currently operative on the Exchange's affiliate, MIAX Options.[25]

Definitions

The Exchange proposes to include a ''Definitions'' section as paragraph (b)(1) in proposed Rule 532.[26] For the purposes of proposed paragraph (b) the Exchange will adopt the following definition of a Butterfly Spread in section (b)(1)(i): A ''Butterfly Spread'' is a three legged complex order with two legs to buy (sell) the same number of calls[27] (puts) and one leg to sell (buy) twice the number of calls (puts), all legs have the same expiration date but different exercise prices, and the exercise price of the middle leg is between the exercise prices of the other legs. The strike price of each leg is equidistant from the next sequential strike price.[28]

The Exchange also proposes to relocate the definition of Calendar Spread and Vertical Spread from Interpretations and Policies .05(b) and .05(a) of Exchange Rule 518 respectively, to proposed section (b)(1)(ii) and (b)(1)(iii) of proposed Rule 532 respectively. The definition of a Calendar Spread is a complex strategy consisting of the purchase of one call (put) option and the sale of another call (put) option overlying the same security that have different expirations but the same strike price.[29] The definition of a Vertical Spread is a complex strategy consisting of the purchase of one call (put) option and the sale of another call (put) option overlying the same security that have the same expiration but different strike prices.[30] The Exchange notes its definition of a Calendar Spread and a Vertical Spread is not changing under this proposal.

Butterfly Spread Price Variance (''BSV'') Price Protection

The Exchange proposes to adopt a new price protection for Butterfly Spreads as section (b)(2) of new proposed Rule 532. This proposed rule change is identical to a rule currently operative on the Exchange's affiliate, MIAX Options.[31]

A Butterfly Spread is comprised of three legs which have the same expiration date but different exercise prices, and are of the same type, either calls or puts, and are at equal strike intervals. The upper and lower strikes are each a buy (sell) and the middle strike is a sell (buy). The ratio of a butterfly spread will always be +1 −2 +1 or −1 +2 −1.

Butterfly Spread Example

Buy 1 XYZ April 50 Call
Sell 2 XYZ April 55 Calls
Buy 1 FYX April 60 Call

The Exchange will establish a price protection for Butterfly Spreads by establishing a Butterfly Spread Variance. The Exchange proposes to adopt paragraph (b)(2)(i) to provide that, the minimum possible trading price limit of a Butterfly Spread is zero minus a pre-set value. The maximum possible trading price limit of a Butterfly Spread is the absolute value of the difference between the closest strikes (the upper strike price minus the middle strike price or the middle strike price minus the lower strike price) plus a pre-set value. The Exchange notes that this proposed rule change is identical to a

[23] Orders and quotes are handled differently as orders may only be submitted by Electronic Exchange Members and quotes may only be submitted by Market Makers. The term ''Electronic Exchange Member'' or ''EEM'' means the holder of a Trading Permit who is not a Market Maker. Electronic Exchange Members are deemed ''members'' under the Exchange Act. *See* Exchange Rule 100. The term ''Market Makers'' refers to ''Lead Market Makers'', ''Primary Lead Market Makers'' and ''Registered Market Makers'' collectively. *See* Exchange Rule 100.

[24] The term ''EBBO'' means the best bid or offer on the Simple Order Book on the Exchange. *See* Exchange Rule 518(a)(10). The ''Simple Order Book'' is the Exchange's regular electronic book of orders and quotes. *See* Exchange Rule 518(a)(15).

[25] *See* MIAX Options Exchange Rule 532(a)(1).

[26] The Exchange notes that the proposed rule text is identical to current rule text on MIAX Options. *See* MIAX Options Exchange Rule 532(b)(1).

[27] The term ''call'' means an option contract under which the holder of the option has the right, in accordance with the terms of the option, to purchase from the Clearing Corporation the number of units of the underlying security covered by the option contract. *See* Exchange Rule 100.

[28] The Exchange notes that its proposed definition of a Butterfly Spread is identical to the definition of a Butterfly Spread on MIAX Options. *See* MIAX Options Exchange Rule 532(b)(1)(i).

[29] The Exchange notes that its proposed definition of a Calendar Spread is identical to the definition of a Calendar Spread on MIAX Options. *See* MIAX Options Exchange Rule 532(b)(1)(ii).

[30] The Exchange notes that its proposed definition of a Vertical Spread is identical to the definition of a Vertical Spread on MIAX Options. *See* MIAX Options Exchange Rule 532(b)(1)(iii).

[31] *See* MIAX Options Exchange Rule 532(b)(2).

rule currently operative on the Exchange's affiliate, MIAX Options.[32]

The Exchange proposes to adopt paragraph (b)(2)(ii) to provide that, if the execution price of a complex order would be outside of the limits set forth in paragraph (i) above (bid higher than the maximum trading price limit or offer lower than the minimum trading price limit), such complex order will trade up to, and including, the maximum trading price limit for bids or down to, and including, the minimum trading price limit for offers. Remaining interest will then will be placed on the Strategy Book and managed to the appropriate trading price limit as described in Rule 518(c)(4), or cancelled if the Managed Protection Override is enabled. The Exchange notes that this proposed rule change is identical to a rule currently operative on the Exchange's affiliate, MIAX Options.[33]

The Exchange proposes to adopt paragraph (b)(2)(iii) to provide that, buy orders, sell orders, and offer eQuotes [34] with a limit price less than the minimum trading price limit will be rejected. Bid eQuotes with a limit price less than the minimum trading price limit will be cancelled. Sell orders with a limit price greater than the maximum trading price limit will be rejected. Offer eQuotes with a limit price greater than the maximum trading price limit will be cancelled. The Exchange notes that this proposed rule change is identical to a rule currently operative on the Exchange's affiliate, MIAX Options.[35]

The Exchange also proposes to adopt paragraph (b)(2)(iv) to provide that, the pre-set value will be determined by the Exchange and communicated to Members via Regulatory Circular. The Exchange notes that this proposed rule change is identical to a rule currently operative on the Exchange's affiliate, MIAX Options.[36]

The minimum value of a Butterfly Spread is zero and the maximum value is capped at the absolute value of the difference between the closest strikes (the upper strike price minus the middle strike price or the middle strike price minus the lower strike price). To establish the maximum and minimum trading values, a configurable pre-set value is added to the maximum spread value and subtracted from the minimum spread value. The pre-set value will be determined by the Exchange and communicated to Members via Regulatory Circular.[37]

Example

Butterfly Spread: Buy 1 October 50 Call, Sell 2 October 55 Calls, Buy 1 October 60 Call.

October 50 Call EBBO: $11.00 × $16.00
October 55 Call EBBO: $6.00 × $11.00
October 60 Call EBBO: $1.00 × $6.00

The maximum spread value is the absolute value of the difference between the closest strikes or $5.00 (60.00 − 55.00 or 55.00 − 50.00). The minimum spread value is zero. If the pre-set value is $0.10 the maximum allowable price limit is then $5.10 and the minimum allowable price limit is then −$0.10. A strategy order to buy at $5.15 will be managed on the Strategy Book at $5.10.

Calendar Spread Variance (''CSV'') Price Protection

The Exchange proposes to (i) relocate the Calendar Spread Variance (''CSV'') Price Protection from Rule 518; (ii) amend the rule text to align to the rule text on the Exchange's affiliate, MIAX Options; (iii) amend the rule text to enable the operation of the Managed Protection Override; and (iv) extend the existing price protection to include sell orders and offer eQuotes. Specifically, the Exchange proposes to relocate the Calendar Spread Variance (''CSV'') Price Protection from Interpretations and Policies .05(b) of Rule 518 to paragraph (b)(3) of new proposed Rule 532. The Exchange notes that this proposed rule change is identical to a rule currently operative on the Exchange's affiliate, MIAX Options.[38]

The Exchange proposes to adopt paragraph (i) to state that, the maximum possible value of a Calendar Spread is unlimited, thus there is no maximum price protection for Calendar Spreads. The minimum possible trading price limit of a Calendar Spread is zero minus a pre-set value. The Exchange notes that this rule text is being relocated to Rule 532(b)(3)(i) but is not changing under this proposal.[39]

Currently, the operation of the Calendar Spread Variance (''CSV'') and Vertical Spread Variance (''VSV'') price protection is described together in Interpretations and Policies .05(c) of Rule 518. The Exchange now proposes to describe the operation of the price protection separately for each strategy. Specifically, the Exchange proposes to adopt subparagraph (ii) to proposed Rule 532(b)(3) to state that, if the execution price of a complex order would be outside of the limit set forth in subparagraph (i) above (offers lower than the minimum trading price limit), such complex order will trade down to, and including, the minimum trading price limit. The Exchange notes that this proposed rule change is identical to a rule currently operative on the Exchange's affiliate, MIAX Options.[40]

The Exchange also proposes to describe the handling of remaining interest within the rule text to provide additional detail and to incorporate the operation of the Managed Protection Override. Specifically, the Exchange proposes to adopt an additional provision to proposed Rule 532(b)(3)(ii) to provide that, remaining interest will then be placed on the Strategy Book and managed to the appropriate trading price limit as described in Rule 518(c)(4), or cancelled if the Managed Protection Override is enabled. The Exchange notes that this proposed rule change is identical to a rule currently operative on the Exchange's affiliate, MIAX Options.[41]

The Exchange proposes to adopt subparagraph (iii) to state that, buy orders, sell orders, and offer eQuotes [42] with a limit price less than the minimum trading price will be rejected. Bid eQuotes with a limit price less than the minimum trading price limit will be cancelled. Currently, the rule provides that orders to buy below the minimum trading price limit will be rejected.[43] The Exchange is proposing to extend this price protection to sell orders and offer eQuotes under this proposal. The Exchange notes that this proposed rule change is identical to a rule currently operative on the Exchange's affiliate, MIAX Options.[44]

The Exchange proposes to adopt subparagraph (iv) to state that the CSV Price Protection applies only to strategies in American-style option classes. The Exchange notes that this rule text is being relocated to proposed Rule 532(b)(3)(iv) but is not changing under this proposal.[45]

[32] *See* MIAX Options Exchange Rule 532(b)(2)(i).

[33] *See* MIAX Options Exchange Rule 532(b)(2)(ii).

[34] The Exchange proposes to extend existing price protections to sell limit orders and offer eQuotes for certain complex order spread strategies similar to MIAX Options. *See* Exchange Act Release No. 95227 (July 8, 2022), 87 FR 42229 (July 14, 2022) (SR–MIAX–2022–25).

[35] *See* MIAX Options Exchange Rule 532(b)(2)(iii).

[36] *See* MIAX Options Exchange Rule 532(b)(2)(iv).

[37] The Exchange proposes to use a pre-set value of $0.10 for Butterfly Spreads to align to the pre-set value which is used on the Exchange for Calendar Spreads and Vertical Spreads. *See supra* note 21.

[38] *See* MIAX Options Exchange Rule 532(b)(3).

[39] *See* Interpretations and Policies .05(b)(1) of Rule 518.

[40] *See* MIAX Options Exchange Rule 523(b)(3)(ii).

[41] *See id.*

[42] *See supra* note 34.

[43] *See* Interpretations and Policies .05(c) of Exchange Rule 518.

[44] *See* MIAX Options Exchange Rule 532(b)(3)(iii).

[45] *See* Interpretations and Policies .05(c)(3) of Exchange Rule 518.

The Exchange proposes to adopt subparagraph (v) to state that the pre-set value will be determined by the Exchange and communicated to Members via Regulatory Circular. The Exchange notes that this proposed rule change is identical to a rule currently operative on the Exchange's affiliate, MIAX Options.[46]

Vertical Spread Variance (''VSV'') Price Protection

The Exchange proposes to (i) relocate Vertical Spread Variance (''VSV'') Price Protection from Rule 518; (ii) amend the rule text to align to the rule text on the Exchange's affiliate, MIAX Options; (iii) amend the rule text to enable the operation of the Managed Protection Override; and (iv) extend the existing price protection to include sell orders and offer eQuotes. Specifically, the Exchange proposes to relocate the Vertical Spread Variance (''VSV'') Price Protection from Interpretations and Policies .05(a) of Rule 518 to paragraph (b)(4) of new proposed Rule 532. The Exchange notes that this proposed rule change is identical to a rule currently operative on the Exchange's affiliate, MIAX Options.[47]

The Exchange proposes to adopt subparagraph (i) to state that, the maximum possible trading price limit of the VSV is the difference between the two component strike prices plus a pre-set value. For example, a Vertical Spread consisting of the purchase of one January 30 call and the sale of one January 35 call would have a maximum trading price limit of $5.00 plus a pre-set value. The minimum possible trading price limit of a Vertical Spread is always zero minus a pre-set value. The Exchange notes that this rule text is being relocated to Rule 532(b)(4)(i) but is not changing under this proposal.[48]

Currently, the operation of the Calendar Spread Variance (''CSV'') and Vertical Spread Variance (''VSV'') price protection is described together in Interpretations and Policies .05(c) of Rule 518. The Exchange now proposes to describe the operation of the price protection separately for each strategy. Specifically, the Exchange proposes to adopt subparagraph (ii) to proposed Rule 532(b)(4) to state that, if the execution price of a complex order would be outside of the limits set forth in subparagraph (i) above (bid higher than the maximum trading price limit or offer lower than the minimum trading price limit), such complex order will trade up to, and including, the maximum trading price limit for bids or down to, and including, the minimum trading price limit for offers. The Exchange notes that this proposed rule change is identical to a rule currently operative on the Exchange's affiliate, MIAX Options.[49]

The Exchange also proposes to describe the handling of remaining interest within the rule text to provide additional detail and to incorporate the operation of the Managed Protection Override. Specifically, the Exchange proposes to adopt an additional provision to proposed Rule 532(b)(4)(ii) to provide that, remaining interest will then be placed on the Strategy Book and managed to the appropriate trading price limit as described in Rule 518(c)(4), or cancelled if the Managed Protection Override is enabled. The Exchange notes that this proposed rule change is identical to a rule currently operative on the Exchange's affiliate, MIAX Options.[50]

The Exchange proposes to adopt subparagraph (iii) to state that, buy orders, sell orders, and offer eQuotes [51] with a limit price less than the minimum trading price limit will be rejected. Bid eQuotes with a limit price less than the minimum trading price limit will be cancelled. Sell orders with a limit price greater than the maximum trading price limit will be rejected. Offer eQuotes with a limit price greater than the maximum trading price limit will be cancelled. Currently, the rule provides that orders to buy below the minimum trading price limit and orders to sell above the maximum trading price limit will be rejected by the System.[52] The Exchange is proposing to extend this price protection to sell orders and offer eQuotes under this proposal. The Exchange notes that this proposed rule change is identical to a rule currently operative on the Exchange's affiliate, MIAX Options.[53]

The Exchange also proposes to adopt subparagraph (iv) to state that, the pre-set value will be determined by the Exchange and communicated to Members via Regulatory Circular. The Exchange notes that this proposed rule change is identical to a rule currently operative on the Exchange's affiliate, MIAX Options.[54]

MIAX Strategy Price Protection (''MSPP'')

The Exchange also proposes to introduce a MIAX Strategy Price Protection (''MSPP'') which will establish a maximum protected price for buy orders and a minimum protected price for sell orders. The Exchange notes that this proposed rule change is identical to a rule currently operative on the Exchange's affiliate, MIAX Options.[55]

To determine the maximum price for a buy order the Exchange will add a pre-set value, the MIAX Strategy Price Protection Variance (''MSPPV''),[56] to the offer side value of the cNBBO.[57] To determine the minimum protected price for sell orders the Exchange will subtract the MSPPV value from the bid side value of the cNBBO. The MSPPV value will be determined by the Exchange and communicated to Members via Regulatory Circular. For market orders [58] the functional limit price will be the MSPP. All Day [59] and GTC [60] complex orders are eligible for the MIAX Strategy Price Protection. cIOC orders,[61] cAOC orders,[62] cIOC

[46] *See* MIAX Options Exchange Rule 518(b)(3)(v).

[47] *See* MIAX Options Exchange Rule 532(b)(4).

[48] *See* Interpretations and Policies .05(a)(1) of Rule 518.

[49] *See* MIAX Options Exchange Rule 532(b)(4)(ii).

[50] *See id.*

[51] *See supra* note 34.

[52] *See* Interpretations and Policies .05(c) of Exchange Rule 518.

[53] *See* MIAX Options Exchange Rule 532(b)(4)(iii).

[54] *See* MIAX Options Exchange Rule 532(b)(4)(iv).

[55] *See* MIAX Options Exchange Rule 532(b)(5).

[56] The Exchange proposes to use a pre-set value of $2.50 for the MIAX Strategy Price Protection Variance (''MSPPV''). The Exchange believes this value provides an adequate price range for executions while offering price protection against potentially erroneous executions and is identical to the value currently in use for the MSPP on the MIAX Options Exchange. *See* MIAX Options Exchange Regulatory Circular 2022–16, MIAX Order Price Protection Pre-set Values (March 4, 2022) available at *https://www.miaxoptions.com/sites/default/files/circular-files/MIAX_Options_RC_2022_16.pdf*.

[57] The cNBBO is calculated using the NBBO for each component of a complex strategy to establish the best net bid and offer for a complex strategy. For stock-option orders, the cNBBO for a complex strategy will be calculated using the NBBO in the individual option component(s) and the NBBO in the stock component. *See* Exchange Rule 518(a)(2).

[58] A market order is an order to buy or sell a stated number of option contracts at the best price available at the time of execution. *See* Exchange Rule 516(a).

[59] A Day Limit Order is an order to buy or sell which, if not executed, expires at the end of trading in the security on the day on which it was entered. *See* Exchange Rule 516(k).

[60] A Good 'til Cancelled or ''GTC'' Order is an order to buy or sell which remains in effect until it is either executed, cancelled or the underlying option expires. *See* Exchange Rule 516(l).

[61] A Complex Immediate-or-Cancel or ''cIOC'' order is a complex order that is to be executed in whole or in part upon receipt. Any portion not so executed is cancelled. *See* Exchange Rule 518(b)(4).

[62] A Complex Auction-or-Cancel or ''cAOC'' order is a complex limit order used to provide liquidity during a specific Complex Auction with a time in force that corresponds with that event. cAOC orders are not displayed to any market participant, and are not eligible for trading outside of the event. A cAOC order with a size greater than the aggregate auctioned size (as defined in Rule 518(d)(4)) will be

Continued

eQuotes,[63] and cAOC eQuotes,[64] are not eligible for the MIAX Strategy Price Protection,[65] nor are crossing orders.[66] The MIAX Strategy Price Protection is an additional price protection feature provided to all Members of the Exchange.

If the MSPP is priced less aggressively than the limit price of a complex order (*i.e.,* the MSPP is less than the complex order's bid price for a buy order, or the MSPP is greater than the complex order's offer price for a sell order), or if the order is a complex market order, the order will be (i) executed up to, and including, its MSPP for buy orders; or (ii) executed down to, and including, its MSPP for sell orders. Any unexecuted portion of such a complex order will be cancelled. The Exchange notes that this proposed rule change is identical to a rule currently operative on the Exchange's affiliate, MIAX Options.[67]

If the MSPP is priced equal to, or more aggressively than, the limit price of a complex order (*i.e.,* the MSPP is greater than the complex order's bid price for a buy order, of the MSPP is less than the complex order's offer price for a sell order) the order will be (i) displayed and/or executed up to, and including, its limit price for buy orders; or (ii) displayed and/or executed down to, and including, its limit price for sell orders. Any unexecuted portion of such a complex order: (A) will be subject to the cLEP as described in subsection (e) of Exchange Rule 518; (B) may be submitted, if eligible, to the managed interest process described in Exchange Rule 518(c)(4); or (C) may be placed on the Strategy Book at its limit price. The Exchange notes that this proposed rule change is identical to a rule currently operative on the Exchange's affiliate, MIAX Options.[68]

The MSPP is designed to work in conjunction with other features on the Exchange such as the Complex Liquidity Exposure (''cLEP'') Process. The Exchange introduced the Complex Liquidity Exposure Process (cLEP) in 2018.[69] The cLEP process was designed for complex orders and complex eQuotes that violate their Complex MIAX Price Collar (''MPC'') price.[70] The MPC price protection feature is an Exchange-wide mechanism under which a complex order or complex eQuote to sell will not be displayed or executed at a price that is lower than the opposite side cNBBO bid at the time the MPC is assigned by the System[71] (*i.e.,* upon receipt or upon opening) by more than a specific dollar amount expressed in $0.01 increments (the ''MPC Setting''), and under which a complex order or eQuote to buy will not be displayed or executed at a price that is higher than the opposite side cNBBO offer at the time the MPC is assigned by the System by more than the MPC Setting (each the ''MPC Price'').[72] The MPC Price is established (i) upon receipt of the complex order or eQuote during free trading, or (ii) if the complex order or eQuote is not received during free trading, at the opening (or reopening following a halt) of trading in the complex strategy; or (iii) upon evaluation of the Strategy Book by the System when a wide market condition, as described in Interpretations and Policies .05(e)(1) of this Rule, no longer exists.[73] Once established the MPC Price will not change during the life of the complex order or eQuote. If the MPC Price is priced less aggressively than the limit price of the complex order or eQuote (*i.e.,* the MPC Price is less than the complex order or eQuote's bid price for a buy, or the MPC Price is greater than the complex order or eQuote's offer price for a sell), or if the complex order is a market order, the complex order or eQuote will be displayed and/or executed up to its MPC Price.[74]

A complex order or complex eQuote that would violate its MPC Price begins a cLEP Auction.[75] The System will post the complex order or eQuote to the Strategy Book at its MPC Price and begin the cLEP Auction by broadcasting a liquidity exposure message to all subscribers of the Exchange's data feeds.[76] Remaining liquidity with an original limit price that is (i) less aggressive (lower for a buy order or eQuote, or higher for a sell order or eQuote) than or equal to the MPC Price will be handled in accordance with subsection (c)(2)(ii)–(v) of Rule 518, or (ii) more aggressive than the MPC Price will be subject to the Reevaluation Process.[77]

The Reevaluation process occurs at the conclusion of a cLEP Auction where the System will calculate the next potential MPC Price for remaining liquidity with an original limit price more aggressive than the existing MPC Price. The next MPC Price will be calculated as the MPC Price plus (minus) the next MPC increment for buy (sell) orders (the ''New MPC Price''). Liquidity with an original limit price equal to or less aggressive than the New MPC Price is no longer subject to the MPC price protection. Liquidity with an original limit price more aggressive than the New MPC Price (or market order liquidity) is subject to the MPC price protection feature using the New MPC Price. In certain scenarios this could lead to a cycle of cLEP Auctions and ever increasing MPC price protection prices.

The operation of the MIAX Strategy Price Protection feature during a cLEP Auction can be seen in the following example.

capped for allocation purposes at the aggregate auctioned size. *See* Exchange Rule 518(b)(3).

[63] A ''Complex Immediate or Cancel eQuote'' or ''cIOC eQuote,'' which is a complex eQuote with a time-in-force of IOC that may be matched with another complex quote or complex order for an execution to occur in whole or in part upon receipt into the System. cIOC eQuotes will not: (i) be executed against individual orders and quotes resting on the Simple Order Book; (ii) be eligible to initiate a Complex Auction or join a Complex Auction in progress; (iii) rest on the Strategy Book; or (iv) be displayed. Any portion of a cIOC eQuote that is not executed is immediately cancelled. *See* paragraph (c)(2) of Interpretations and Policies .02 of Exchange Rule 518.

[64] A ''Complex Auction or Cancel eQuote'' or ''cAOC eQuote,'' which is an eQuote submitted by a Market Maker that is used to provide liquidity during a specific Complex Auction with a time in force that corresponds with the duration of the Complex Auction. A cAOC eQuote with a size greater than the aggregate auctioned size (as defined in Rule 518(d)(4)) will be capped for allocation purposes at the aggregate auctioned size. cAOC eQuotes will not: (i) be executed against individual orders and quotes resting on the Simple Order Book; (ii) be eligible to initiate a Complex Auction, but may join a Complex Auction in progress; (iii) rest on the Strategy Book; or (iv) be displayed. *See* paragraph (c)(1) of Interpretations and Policies .02 of Exchange Rule 518.

[65] The Exchange does not believe that these order and quote types require the additional price protection afforded by the MSPP as these orders and quotes do not rest on the Strategy Book but are either executed immediately or cancelled. *See supra* notes 61, 62, 63, and 64.

[66] The Exchange does not believe that crossing orders require the additional price protection afforded by the MSPP as the execution price of these orders is pre-established. A Complex Customer Cross or ''cC2C'' Order is comprised of one Priority Customer complex order to buy and one Priority Customer complex order to sell at the same price and for the same quantity. Trading of cC2C Orders is governed by Rule 515(h)(3). *See* Exchange Rule 518(b)(5). A Complex Qualified Contingent Cross or ''cQCC'' Order is comprised of an originating complex order to buy or sell where each component is at least 1,000 contracts that is identified as being part of a qualified contingent trade, as defined in Rule 516, Interpretations and Policies .01, coupled with a contra-side complex order or orders totaling an equal number of contracts. Trading of cQCC Orders is governed by Rule 515(h)(4). *See* Exchange Rule 518(b)(6).

[67] *See* MIAX Options Exchange Rule 532(b)(5)(v).

[68] *See* MIAX Options Exchange Rule 532(b)(5)(vi).

[69] *See* Securities Exchange Act Release No. 85346 (March 18, 2019), 84 FR 10854 (March 22, 2019) (SR–EMERALD–2019–14).

[70] The Exchange notes that there are no changes to the Complex MIAX Price Collar functionality under this proposal.

[71] The term ''System'' means the automated trading system used by the Exchange for the trading of securities. *See* Exchange Rule 100.

[72] *See* Exchange Rule 518.05(f).

[73] *See* Exchange Rule 518.05(f)(3).

[74] *See* Exchange Rule 518.05(f)(5).

[75] *See* Exchange Rule 518(e).

[76] *Id.*

[77] *Id.*

Example

MPC: 0.25

The Exchange has one order (Order 1) resting on its Strategy Book: +1 component A, −1 component B:

The current market is:

EBBO component A: 4.00 (10) × 6.00 (10)
EBBO component B: 1.00 (10) × 2.50 (10)
NBBO [78] component A: 4.05 (10) × 4.15 (10)
NBBO component B: 2.30 (10) × 2.40 (10)
icEBBO: [79] 1.50 (10) × 5.00 (10)
cNBBO: 1.65 (10) × 1.85 (10)

The price protection is:

MSPPV: 2.50
Buy MSPPV: 1.85 + .2.50 = 4.35
Sell MSPPV: 1.65 − 2.50 = −.85

Order 1 to sell 10 at 1.90 is received and updates the icEBBO.

icEBBO: 1.50 (10) × 1.90 (10)

The Exchange receives a new order (Order 2) to buy 30 at the Market. For Market Orders the functional limit is the MSPP or 4.35.

Order 2 buys 10 from Order 1 at $1.90 and initiates the Complex Liquidity Exposure Process: Order 2 reprices to its MPC protected price of $2.10 (cNBO of 1.85 + 0.25) and is posted at that price on the Strategy Book and the cLEP Auction begins.

During the cLEP Auction the Exchange receives a new order (Order 3) to sell 10 at 2.10. This order locks the current same side Book Price of $2.10. At the end of the auction, Order 3 sells 10 to Order 2 at $2.10, filling Order 3.

Order 2 reprices to the next MPC protected price of $2.35 (initial MPC of 2.10 + 0.25) and is posted at that price on the Strategy Book and the next cLEP Auction begins.

During the next cLEP Auction the Exchange does not receive any interest to sell. At the end of the auction Order 2 is reevaluated and reprices to the next MPC protected price of 2.60 (previous MPC of 2.35 + 0.25) and is posted at that price on the Strategy Book and the next cLEP Auction begins.

During all subsequent cLEP Auctions the Exchange does not receive any interest to sell. At the end of each subsequent auction, Order 2 is reevaluated and repriced to the next MPC protected price as seen below until the MSPP protected price is equal to or less than the MPC protected price.

3rd MPC evaluation 2.60 + 0.25 = 2.85
4th MPC evaluation 2.85 + 0.25 = 3.10
5th MPC evaluation 3.10 + 0.25 = 3.35
6th MPC evaluation 3.35 + 0.25 = 3.60
7th MPC evaluation 3.60 + 0.25 = 3.85
8th MPC evaluation 3.85 + 0.25 = 4.10
9th MPC evaluation 4.10 + 0.25 = 4.35

At the end of the final auction, because the MSPP protected price of 4.35 is equal to the MPC protected price of 4.35, Order 2 is not repriced to the next MPC and is cancelled subject to MSPP.

icEBBO: 4.35 (10) × 5.00 (10)

The Exchange proposes to amend Exchange Rule 518(e), Reevaluation, to account for the introduction of a protected price into the cLEP process. Currently, at the conclusion of a cLEP Auction, the System will calculate the next potential MPC Price for remaining liquidity with an original limit price more aggressive than the existing MPC Price. The Exchange proposes to amend this sentence to state that, at the conclusion of a cLEP Auction, the System will calculate the next potential MPC Price for remaining liquidity with an original limit price *or protected price* more aggressive than the existing MPC Price. Additionally, the current rule text provides that, liquidity with an original limit price less aggressive (lower for a buy order or eQuote, or higher for a sell order or eQuote) than or equal to the New MPC Price will be posted to the Strategy Book at its original limit price or handled in accordance with subsection (c)(2)(ii)–(v) of Rule 518. The Exchange proposes to amend this sentence to provide that, liquidity with an original limit price *or protected price* less aggressive (lower for a buy order or eQuote, or higher for a sell order or eQuote) than or equal to the New MPC Price will be posted to the Strategy Book at its original limit price or handled in accordance with subsection (c)(2)(ii)–(v) of Rule 518.

The next MPC Price will be calculated as the MPC Price plus (minus) the next MPC increment for buy (sell) orders (the ''New MPC Price''). The System will initiate a cLEP Auction for liquidity that would execute or post at a price that would violate its New MPC Price. Liquidity with an original limit price or protected price less aggressive (lower for a buy order or eQuote, or higher for a sell order or eQuote) than or equal to the New MPC Price will be posted to the Strategy Book at its original limit price or handled in accordance with subsection (c)(2)(ii)–(v) of this Rule. The cLEP process will continue until no liquidity remains with an original limit price that is more aggressive than its MPC Price. At the conclusion of the cLEP process, any liquidity that has not been executed will be posted to the Strategy Book at its original limit price.

Additionally, the Exchange proposes to introduce the protected price into the allocation process at the end of a cLEP Auction. The current rule, Allocation at the Conclusion of a Complex Liquidity Exposure Auction, provides that, orders and quotes executed in a cLEP Auction will be allocated first in price priority based upon their original limit price, and thereafter in accordance with the Complex Auction allocation procedures described in subsection (d)(7)(i)–(vi) of this Rule (518).

The Exchange now proposes to amend this provision to state that, orders and quotes executed in a cLEP Auction will be allocated first in price priority based upon their original limit price, *orders subject to the MIAX Strategy Price Protection (''MSPP'') (as described in Rule 532(b)(5)) are allocated using their protected price,* and thereafter in accordance with the Complex Auction allocation procedures described in subsection (d)(7)(i)–(vi) of this Rule (518).

The Exchange also proposes to amend Rule 518(e), Allocation at the Conclusion of a Complex Liquidity Exposure Auction, to provide that orders and quotes executed in a cLEP Auction will be allocated first in price priority based upon their original limit price, orders subject to MSPP are allocated using their protected price, and thereafter in accordance with the Complex Auction allocation procedures described in subsection (d)(7)(i)–(vi) of this Rule.

Parity Price Protection

The Exchange proposes to amend paragraph (g), Parity Price Protection, of Interpretations and Policies .01 of Exchange Rule 518, to add a reference to the Managed Protection Override. The rule, as proposed to be amended, will provide that Married-Put and Buy-Write interest to sell (sell put and sell stock; or sell call and buy stock) that is priced below the parity protected price for the strategy will be placed on the Strategy Book at the parity protected price for the strategy, or cancelled if the Managed Protection Override is enabled. This provision allows the Parity Price Protection functionality to operate in conjunction with the Managed Protection Override feature which cancels an order when its price

[78] The term ''NBBO'' means the national best bid or offer as calculated by the Exchange based on market information received by the Exchange from the appropriate Securities Information Processor (''SIP''). *See* Exchange Rule 518(a)(14).

[79] The icEBBO is a calculation that uses the best price from the Simple Order Book for each component of a complex strategy including using displayed and non-displayed trading interest. For stock-option orders, the icEBBO for a complex strategy will be calculated using the best price (whether displayed or non-displayed) on the Simple Order Book in the individual option component(s), and the NBBO in the stock component. *See* Exchange Rule 518(a)(12).

protection feature is triggered. The Exchange notes that this proposed rule change is identical to a rule currently operative on the Exchange's affiliate, MIAX Options.[80] The Exchange believes that offering Members the option to have orders either managed by the Exchange or cancelled when a risk protection is triggered gives Members greater flexibility and control over their orders while retaining the risk protection functionality.

IIP/URIP/RIP

Currently the Exchange uses the following methods to determine whether a complex order is qualified to initiate a Complex Auction:

Initial Improvement Percentage (''IIP'')

For complex orders received prior to the opening of all individual components of a complex strategy, the System[81] will calculate an IIP value, which is a defined percentage of the current dcEBBO bid/ask differential once all of the components of the complex strategy have opened. Such percentage will be defined by the Exchange and communicated to Members[82] via Regulatory Circular.[83] If a Complex Auction-eligible order is priced equal to, or improves, the IIP value[84] and is also priced equal to, or improves, other complex orders and/or quotes resting at the top of the Strategy Book, the complex order will be eligible to initiate a Complex Auction.[85]

Upon Receipt Improvement Percentage (''URIP'')

Upon receipt of a complex order when the complex strategy is open, the System will calculate a URIP value, which is a defined percentage of the current dcEBBO bid/ask differential. Such percentage will be defined by the Exchange and communicated to Members via Regulatory Circular.[86] If a Complex Auction-eligible order is priced equal to, or improves, the URIP value[87] and is also priced to improve other complex orders and/or quotes resting at the top of the Strategy Book, the complex order will be eligible to initiate a Complex Auction.[88]

Re-Evaluation Improvement Percentage (''RIP'')

Upon evaluation of a complex order resting at the top of the Strategy Book, the System will calculate a Re-evaluation Improvement Percentage (''RIP'') value, which is a defined percentage of the current dcEBBO bid/ask differential. Such percentage will be defined by the Exchange and communicated to Members via Regulatory Circular.[89] If a complex order resting at the top of the Strategy Book is priced equal to, or improves, the RIP value,[90] the complex order will be eligible to initiate a Complex Auction.[91]

Proposal

The Exchange now proposes to replace the dcEBBO bid/ask differential with the cNBBO[92] bid/ask differential in the calculations described above for IIP, URIP, and RIP, respectively. The dcEBBO is calculated using the displayed price for each component of a complex strategy from the Simple Order Book[93] on the Exchange, whereas the cNBBO is calculated using the NBBO for each component of a complex strategy to establish the best net bid and offer for a complex strategy.[94] The Exchange believes that using the cNBBO will reduce the number of auctions generated by the Exchange System which do not receive responses or result in price improvement for the initiating order. The cNBBO, which includes the best away markets as well as the EBBO for each component of a complex strategy, will always be equal to or better than the dcEBBO, which includes the EBBO for each component of a complex strategy. The component prices contained in the cNBBO provide a more accurate indicator of the overall market interest in each component, and therefore, provides a more accurate indicator of the overall market interest in the complex strategy. The Exchange believes that this will result in a reduction of the overall number of Complex Auctions initiated on the Exchange but will in turn increase the percentage of Complex Auctions that result in price improvement, as the auction start price will be more closely aligned to prevailing market prices. The Exchange notes that this proposal is substantively identical (the only difference being the naming convention used by each exchange, whereas MIAX Options used the dcMBBO prior to changing to the cNBBO and MIAX Emerald uses the dcEBBO) to rules currently operative on the Exchange's affiliate, MIAX Options.[95]

Miscellaneous

The Exchange proposes to rename paragraph (e), Wide Market Conditions, SMAT Events and Halts, of Interpretations and Policies .05 of Exchange Rule 518, to new paragraph (a), as a result of the removal of the preceding paragraphs (a), (b), (c), and (d) from Interpretations and Policies .05 of Exchange Rule 518, which have been relocated to new proposed Rule 532. Additionally, the Exchange proposes to make a number of non-substantive changes in Rule 518 to correct internal cross references that have changed as a result of this proposal.

Implementation

The Exchange will announce the implementation of these changes in a Regulatory Circular to be published no later than 90 days following the operative date of the proposed rule. The implementation date will be no later than 90 days following the issuance of the Regulatory Circular.

2. Statutory Basis

The Exchange believes that its proposed rule change is consistent with Section 6(b) of the Act[96] in general, and furthers the objectives of Section 6(b)(5) of the Act[97] 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

[80] *See* Interpretations and Policies .01(g) of MIAX Options Exchange Rule 518.

[81] The term ''System'' means the automated trading system used by the Exchange for the trading of securities. *See* Exchange Rule 100.

[82] 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.

[83] *See* MIAX Emerald Regulatory Circular 2019–68, Complex Auction Initiating Percentages (August 13, 2019) available at *https://www.miaxoptions.com/sites/default/files/circular-files/MIAX_Emerald_RC_2019_68.pdf.*

[84] The Initial Improvement Percentage (''IIP'') is currently set to 70%. *See Id.*

[85] *See* Policy .03(a) of Exchange Rule 518.

[86] *See supra* note 83.

[87] The Upon Receipt Improvement Percentage (''URIP'') is currently set to 70%. *See supra* note 83.

[88] *See* Policy .03(b) of Exchange Rule 518.

[89] *See supra* note 83.

[90] The Reevaluation Improvement Percentage (''RIP'') is currently set to 80%. *See supra* note 83.

[91] *See* Policy .03(c) of Exchange Rule 518.

[92] The Complex National Best Bid or Offer (''cNBBO'') is calculated using the NBBO for each component of a complex strategy to establish the best net bid and offer for a complex strategy. For stock-option orders, the cNBBO for a complex strategy will be calculated using the NBBO in the individual option component(s) and the NBBO in the stock component. *See* Exchange Rule 518(a)(2).

[93] The ''Simple Order Book'' is the Exchange's regular electronic book of orders and quotes. *See* Exchange Rule 518(a)(15).

[94] *See supra* note 9.

[95] *See* Interpretations and Policies .03(a), (b), and (c) of MIAX Options Exchange Rule 518.

[96] 15 U.S.C. 78f(b).

[97] 15 U.S.C. 78f(b)(5).

and a national market system and, in general, to protect investors and the public interest.

Managed Protection Override

The Exchange believes that the Managed Protection Override feature promotes just and equitable principles of trade, removes impediments to and perfects the mechanisms of a free and open market and a national market system and, in general, protects investors and the public interest by providing a mechanism by which Members may determine the way their orders are handled when a risk protection is triggered. The Exchange believes that enabling the Butterfly Spread Variance (''BSV'') Price Protection, Calendar Spread Variance (''CSV'') Price Protection, Vertical Spread Variance (''VSV'') Price Protection, Parity Price Protection, and MAX Put Price Protection, to work in conjunction with the Managed Protection Override benefits Members by providing Members an option as to the treatment of their order when a risk protection is engaged. The Exchange believes that it has an effective way to manage orders on the Exchange so that they do not execute at potentially erroneous prices, however the Exchange believes that giving Members the option to have their orders cancelled if a risk protection is triggered protects investors and the public interest. Cancelling an order allows Members to make a decision on what to do with their order based on the then current market conditions. A Member may choose to re-submit the order at the same or different limit price. Specifically, the Exchange believes the proposed change will remove impediments to and perfect the mechanisms of a free and open market by providing Members with the option to either manage their own orders or have the Exchange manage their orders when a price protection is triggered which will promote fair and orderly markets, increase overall market confidence, and promote the protection of investors. Additionally, the Exchange notes that this proposed rule change is identical to a rule currently operative on the Exchange's affiliate, MIAX Options.[98]

Max Put Price Protection

The Exchange believes that the proposed Max Put Price Protection feature promotes just and equitable principles of trade, removes impediments to and perfects the mechanisms of a free and open market and a national market system and, in general, protects investors and the public interest by providing a risk protection mechanism that establishes a maximum price at which a put option may trade. The Max Put Price Protection is designed to prevent trades from occurring at potentially unwanted or erroneous prices. Additionally, the Exchange notes that this proposed rule change is identical to a rule currently operative on the Exchange's affiliate, MIAX Options.[99]

Butterfly Spread Price Variance (''BSV'') Price Protection

The Exchange believes that the proposed Butterfly Spread Price Variance (''BSV'') Price Protection feature promotes just and equitable principles of trade, removes impediments to and perfects the mechanisms of a free and open market and a national market system and, in general, protects investors and the public interest by providing a risk protection mechanism that will establish minimum and maximum trading values to prevent an order from trading at a potentially unwanted or erroneous price.

Additionally, the Exchange believes that making the Butterfly Spread Variance (''BSV'') Price Protection eligible for the Managed Protection Override feature benefits Members as it gives them the option to have their order cancelled if the Butterfly Spread Variance Price Protection is triggered and the Managed Protection Override feature is enabled. Cancelling orders back to Members allows them to make a decision on what to do with their order based on the then current market conditions and a Member may choose to re-submit the order at the same or different limit price. Specifically, the Exchange believes the proposed change will remove impediments to and perfect the mechanism of a free and open market by providing market participants with the option to either manage their own orders or have the Exchange manage their orders when a price protection is triggered which will promote fair and orderly markets, increase overall market confidence, and promote the protection of investors.

Calendar Spread Variance (''CSV'') Price Protection/Vertical Spread Variance (''VSV'') Price Protection

The Exchange believes that amending the Calendar Spread Variance (''CSV'') and the Vertical Spread Variance (''VSV'') Price Protection feature to enable the Managed Protection Override feature promotes just and equitable principles of trade, removes impediments to and perfects the mechanism of a free and open market and a national market system and, in general, protects investors and the public interest by providing Members the option of having the Exchange manage their order when a price protection is triggered, or having their order cancelled when a price protection is triggered, if the Managed Protection Override is enabled. The Exchange believes cancelling an order in this scenario benefits Members as it allows them to make a decision on what to do with their order based on the then current market conditions and a Member may choose to re-submit the order at the same or different limit price. Specifically, the Exchange believes the proposed change will remove impediments to and perfect the mechanism of a free and open market by providing market participants with the option to either manage their own orders or have the Exchange manage their orders when a price protection is triggered which will promote fair and orderly markets, increase overall market confidence, and promote the protection of investors.

The Exchange believes that amending the Calendar Spread Price Variance (''CSV'') and Vertical Spread Variance (''VSV'') Price Protection protects investors and the public interest and helps maintain fair and orderly markets by mitigating potential risks associated with market participants entering sell orders and offer eQuotes at clearly unintended prices and trading at prices that are extreme and potentially erroneous. Extending the existing price protections to sell orders and offer eQuotes will assist in the maintenance of a fair and orderly market and protect investors by rejecting sell orders and offer eQuotes that are priced to sell below the minimum trading limit established by the Exchange. The Exchange believes this will promote just and equitable principles of trade and ultimately protect investors. Additionally, the Exchange notes that this proposed rule change is identical to a rule currently operative on the Exchange's affiliate, MIAX Options.[100]

MIAX Strategy Price Protection (''MSPP'')

The Exchange believes that the adoption of the MIAX Strategy Price Protection (''MSPP'') promotes just and equitable principles of trade, and facilitates transactions in securities, removes impediments to and perfects

[98] *See* MIAX Options Exchange Rule 532.

[99] *See* MIAX Options Exchange Rule 532(a)(1).

[100] *See* MIAX Options Exchange Rule 532(b)(3)(iii) and (b)(4)(iii).

the mechanisms of a free and open market and a national market system and, in general, protects investors and the public interest, by providing an order price protection that establishes a minimum and maximum trading value to prevent potentially unwanted or erroneous executions from occurring. The Exchange believes that when the MSPP is priced less aggressively than the limit price of the complex order that executing the order, up to and including its MSPP for buy orders, or down to and including its MSPP for sell orders, and cancelling any unexecuted portion of the order, protects investors and the public interest. Cancelling orders back to Members allows them to make a decision on what to do with their order based on the then current market conditions and a Member may choose to re-submit the order at the same or different limit price. Specifically, the Exchange believes the proposed change will remove impediments to and perfect the mechanism of a free and open market by providing market participants with the option to either manage their own orders or have the Exchange manage their orders when a price protection is triggered which will promote fair and orderly markets, increase overall market confidence, and promote the protection of investors. Additionally, this proposed change is identical to a rule currently operative on the Exchange's affiliate, MIAX Options.[101]

Parity Price Protection

The Exchange believes that amending Interpretations and Policies .01(g), Parity Price Protection, of Exchange Rule 518, to provide that an order will be cancelled if the Managed Protection Override is enabled promotes just and equitable principles of trade, and facilitates transactions in securities, removes impediments to and perfects the mechanisms of a free and open market and a national market system and, in general, protects investors and the public interest, by providing Members and the public additional detail and clarity in the Exchange's rules. It is in the public interest for rules to be accurate and concise so as to eliminate the potential for confusion. Additionally, the Exchange notes that this proposed change is identical to a rule currently operative on the Exchange's affiliate, MIAX Options.[102]

Miscellaneous

The Exchange believes the proposed change to correct internal cross references within the Exchange's Rulebook 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 proposal ensures that the Exchange's rules are accurate. The Exchange notes that the proposed changes to correct internal cross references and to make minor non-substantive edits does not alter the application of each rule. As such, the proposed amendments would foster cooperation and coordination with persons engaged in facilitating transactions in securities and would remove impediments to and perfect the mechanism of a free and open market and national market system. In particular, the Exchange believes that the proposed rule changes will provide greater clarity to Members and the public regarding the Exchange's Rules. It is in the public interest for rules to be accurate and concise so as to eliminate the potential for confusion.

The Exchange believes this proposal promotes just and equitable principles of trade, removes impediments to and perfects the mechanisms of a free and open market and a national market system and, in general, protects investors and the public interest by providing new price protection features for MIAX Emerald Members. Additionally, the description of the System's functionality is designed to promote just and equitable principles of trade by providing a clear and accurate description to all participants of how the price protection process is applied and should assist investors in making decisions concerning their orders. Further, the Exchange believes that the price protection features and functionality provides market participants with an appropriate level of risk protection to their orders and contributes to the maintenance of a fair and orderly market.

The Exchange believes that its proposal to use the cNBBO instead of the dcEBBO in the calculation used to determine whether a complex order is qualified to initiate a Complex Auction promotes just and equitable principles of trade and removes impediments to and perfects the mechanisms of a free and open market and a national market system and, in general, protects investors and the public interest as using the cNBBO provides a better measure of the current market and is more likely to result in price improvement for the initiating order as the cNBBO is calculated using the NBBO (which in turn is calculated by taking the best prices of all exchanges into consideration) for each component of a complex strategy to establish the best net bid and offer for a complex strategy, and therefore is more representative of the prevailing market interest and market prices. The example below demonstrates the difference between the current and proposed calculations.

Example 1

(Current Auction Evaluation Based on dcEBBO)

Reevaluation Improvement Percentage (RIP) for a complex order at the best price on the Strategy Book [103] subject to dcEBBO.

RIP = 80%
EBBO: [104] Option A 2.00×2.10
EBBO: Option B 1.05×1.20
Strategy $+1A - 1B = (2.00 - 1.20) \times (2.10 - 1.05)$
dcEBBO = 0.80×1.05

A complex order is resting on the Strategy Book to buy 1 Strategy at a price of 1.00. Upon reevaluation of the Strategy Book it is determined the complex order to buy at 1.00 improves the Strategy bid by 0.20; $(1.00 - 0.80)$. The improvement percentage is then calculated as the 0.20 improvement divided by the Strategy bid/offer spread; $(1.05 - 0.80)$, in this case resulting in 80% improvement. Because the 80% improvement equals the configured RIP of 80% an auction is initiated.

Example 2

(Proposed Auction Evaluation Based on cNBBO)

Reevaluation Improvement Percentage (RIP) for a complex order at the best price on the Strategy Book subject to cNBBO.

RIP = 80%
NBBO: Option A 2.05×2.10
NBBO: Option B 1.05×1.10
Strategy $+1A - 1B = (2.05 - 1.10) \times (2.10 - 1.05)$
cNBBO = 0.95×1.05

A complex order is resting on the Strategy Book to buy 1 Strategy at a price of 1.00. Upon reevaluation of the Strategy Book it is determined the complex order to buy at 1.00 improves the Strategy bid by 0.05; $(1.00 - 0.95)$. The improvement percentage is then calculated as the 0.05 improvement divided by the Strategy bid/offer spread; $(1.05 - 0.95)$, in this case resulting in

[101] *See* MIAX Options Exchange Rule 532(b)(5).

[102] *See* Interpretations and Policies .01(g) of MIAX Options Exchange Rule 518.

[103] The ''Strategy Book'' is the Exchange's electronic book of complex orders and complex quotes. *See* Exchange Rule 518(a)(17).

[104] The term ''EBBO'' means the best bid or offer on the Exchange. *See* Exchange Rule 100.

50% improvement. Because the 50% improvement is less than the configured RIP of 80% an auction is not initiated.

The Exchange believes that using the cNBBO in its calculation to determine whether a complex order is qualified to initiate a Complex Auction will reduce the number of Complex Auctions initiated by the Exchange System which do not receive responses. Using the cNBBO instead of the dcEBBO better reflects the current state of the market and may result in Complex Auctions that receive responses which in turn may result in price improvement for the initiating order.

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.

Intra-Market Competition

Specifically, the Exchange does not believe that the proposed changes will impose any burden on intra-market competition as the rules of the Exchange apply equally to all MIAX participants. The Butterfly Spread Variance (''BSV'') Price Protection, Calendar Spread Variance (''CSV'') Price Protection, and Vertical Spread Variance (''VSV'') Price Protection, Parity Price Protection, and Max Put Price protection are all available for any MIAX Emerald Member that submits orders or quotes to the Exchange. Any MIAX Member transacting on the Exchange will benefit from the risk protections proposed herein. Additionally, any Member may elect to enable the Managed Protection Override feature to allow the Exchange to cancel their orders when a risk protection is triggered.

Additionally, the Exchange does not believe that the proposed rule change to replace the dcEBBO value with the cNBBO value in the calculation used to determine whether a complex order is qualified to initiate a Complex Auction will impose any burden on intra-market competition. As all complex orders submitted to the Exchange will be uniformly evaluated under the Exchange's rules, and the rules of the Exchange apply equally to all Members.

Inter-Market Competition

The Exchange does not believe the proposal will impose any burden on inter-market competition as the proposal is intended to protect investors by providing additional price protection functionality and further enhancements and provide additional transparency to the Exchange's risk protections. The Exchange's proposal may promote inter-market competition as the Exchange's proposal adds additional price protection features and functionality that may attract additional order flow to the Exchange, thereby promoting inter-market competition.

The Exchange believes its proposal to adopt to use the cNBBO in the calculation to determine whether to initiate a Complex Auction better reflects current market prices and may result in the initiation of Complex Auctions which result in price improvement for the initiating order. The Exchange believes the proposed rule change will enhance competition among the various markets for complex order execution, potentially resulting in more active complex order trading on all exchanges. Additionally, the Exchange believes that this change will result in a reduction of the overall number of Complex Auctions initiated on the Exchange but will in turn increase the percentage of auctions that result in price improvement, as the auction start price will be more closely aligned to prevailing market prices.

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

Because the foregoing proposed rule change does not: (i) Significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days after the date of the filing, or such shorter time as the Commission may designate, it has become effective pursuant to 19(b)(3)(A) of the Act [105] and Rule 19b–4(f)(6) [106] thereunder.

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov*. Please include File Number SR–EMERALD–2022–30 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–EMERALD–2022–30. 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–EMERALD–2022–30 and should be submitted on or before December 20, 2022.

[105] 15 U.S.C. 78s(b)(3)(A).

[106] 17 CFR 240.19b–4(f)(6). In addition, Rule 19b–4(f)(6) requires a self-regulatory organization to give the Commission written notice of its intent to file the proposed rule change 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.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[107]

Sherry R. Haywood,

Assistant Secretary.

[FR Doc. 2022–25948 Filed 11–28–22; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–96378; File No. SR–EMERALD–2022–31]

Self-Regulatory Organizations; MIAX Emerald, LLC; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Amend Exchange Rule 518, Complex Orders

November 22, 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 10, 2022, MIAX Emerald, LLC (''MIAX Emerald'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') a proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend Exchange Rule 518, Complex Orders.

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 518, Complex Orders, to adopt a new optional order instruction, ''Do Not Leg ('DNL'),'' to paragraph (b), Types of Complex Orders.

The Exchange currently offers its Members[3] a number of complex order types enumerated in paragraph (b) of Rule 518. The Exchange offers a Complex Auction-on-Arrival Order,[4] a Complex Auction-or-Cancel Order,[5] a Complex Immediate-or-Cancel Order,[6] a Complex Customer Cross Order,[7] a Complex Qualified Contingent Cross Order,[8] a Complex PRIME Order,[9] a Complex Attributable Order,[10] and a Complex Auction-on-Arrival-Only Order.[11]

The Exchange now proposes to adopt a new optional order instruction for complex orders entitled, ''Do Not Leg'' or ''DNL.'' A complex order that is marked with the DNL instruction will not leg into the Simple Order Book.[12] Additionally, a complex order that is marked with the DNL instruction must be executed at a price that complies with Exchange Rule 518(c)(2)(ii). The DNL order instruction will be available for use with all complex order types (excluding Complex Customer Cross Orders, Complex Qualified Contingent Cross Orders, and cPRIME Orders) offered on the Exchange.

Complex Customer Cross Orders[13] and Complex Qualified Contingent Cross Orders[14] are order types that execute immediately upon entry (provided that they satisfy certain criteria) and would therefore not leg into the Simple Order Book. Specifically, Complex Customer Cross (''cC2C'') Orders as defined in Rule 518(b)(5), are automatically executed upon entry provided that the execution is at least $0.01 better than (inside) the icEBBO[15] (as defined in Rule 518(a)(12)) price or the best net price of a complex order (as defined in Rule 518(a)(5)) on the Strategy Book[16] (as defined in Rule 518(a)(17)), whichever is more aggressive.[17] Complex Qualified Contingent Cross (''cQCC'') Orders, as defined in Rule 518(b)(6), are automatically executed upon entry provided that, with respect to each option leg of the cQCC Order, the execution (i) is not at the same price as a Priority Customer Order[18] on the Exchange's Book;[19] and (ii) is at or between the NBBO.[20]

Additionally, the DNL instruction will not be available for cPRIME Orders, as cPRIME Orders are another type of a crossing order. Specifically, a cPRIME Order is a paired order with an established minimum execution price that must meet certain defined internal criteria to be eligible to participate in a cPRIME Auction.[21] Specifically, the initiating price for a cPRIME Agency Order must be better than (inside) the icEBBO for the strategy and any other complex orders on the Strategy Book. The System will reject cPRIME Agency Orders submitted with an initiating price that is equal to or worse than (outside) the icEBBO or any other complex orders on the Strategy Book.[22] Currently, a cPRIME Auction has a duration of 100 milliseconds.[23]

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[107] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 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.

[4] *See* Exchange Rule 518(b)(2).

[5] *See* Exchange Rule 518(b)(3).

[6] *See* Exchange Rule 518(b)(4).

[7] *See* Exchange Rule 518(b)(5).

[8] *See* Exchange Rule 518(b)(6).

[9] *See* Exchange Rule 518(b)(7).

[10] *See* Exchange Rule 518(b)(8).

[11] *See* Exchange Rule 518(b)(9).

[12] The ''Simple Order Book'' is the Exchange's regular electronic book of orders and quotes. *See* Exchange Rule 518(a)(15).

[13] *See* Exchange Rule 518(b)(5).

[14] *See* Exchange Rule 518(b)(6).

[15] The Implied Complex MIAX Emerald Best Bid or Offer (''icEBBO'') is a calculation that uses the best price from the Simple Order Book for each component of a complex strategy including displayed and non-displayed trading interest. For stock-option orders, the icEBBO for a complex strategy will be calculated using the best price (whether displayed or non-displayed) on the Simple Order Book in the individual option component(s), and the NBBO in the stock component. *See* Exchange Rule 518(a)(12).

[16] The ''Strategy Book'' is the Exchange's electronic book of complex orders and complex quotes. *See* Exchange Rule 518(a)(17).

[17] *See* Exchange Rule 515(h)(3).

[18] The term ''Priority Customer'' means a person or entity that (i) is not a broker or dealer in securities, and (ii) does not place more than 390 orders in listed options per day on average during a calendar month for its own beneficial account(s). *See* Exchange Rule 100.

[19] The term ''Book'' means the electronic book of buy and sell orders and quotes maintained by the System. *See* Exchange Rule 100.

[20] *See* Exchange Rule 515(h)(4). The term ''NBBO'' means the national best bid or offer as calculated by the Exchange based on market information received by the Exchange from OPRA. *See* Exchange Rule 100.

[21] *See* Interpretations and Policies .12(a) of Exchange Rule 515A.

[22] *See* Interpretations and Policies .12(a)(i) of Exchange Rule 515A.

[23] *See* MIAX Emerald Exchange System Settings on the Exchange's public website, available at *https://www.miaxoptions.com/sites/default/files/page-files/MIAX_EMERALD_System_Settings_11122018.pdf.*

Additionally, the Exchange notes that at least two other option exchanges provide similar functionality.[24]

2. Statutory Basis

The Exchange believes that its proposed rule change is consistent with Section 6(b) of the Act [25] in general, and furthers the objectives of Section 6(b)(5) of the Act [26] 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 Exchange believes that its proposal to adopt a new order instruction for complex orders promotes just and equitable principles of trade, removes impediments to and perfects the mechanisms of a free and open market and a national market system and, in general, protects investors and the public interest. The Exchange believes it is reasonable to provide investors additional control over the disposition of their complex orders, in connection with their attempt to provide and not remove liquidity, or in connection with applicable fees for executions.

The Exchange believes its proposed rule change promotes just and equitable principles of trade and removes impediments to and perfects the mechanisms of a free and open market and a national market system and, in general, protects investors and the public interest by allowing investors to have greater control over the execution of their orders.

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 intra-market competition as the DNL order instruction is optional and will be available for all Members on the Exchange that submit complex orders to the Exchange.

The Exchange does not believe that the proposed rule change will impose any burden on inter-market competition but may enhance inter-market competition. The Exchange notes that it operates in a highly competitive market in which market participants can readily direct order flow to competing venues who offer similar functionality. The Exchange believes the proposed rule change will enhance competition among the various markets for complex order execution, potentially resulting in more active complex order trading on all exchanges.

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

Because the foregoing proposed rule change does not: (i) Significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days after the date of the filing, or such shorter time as the Commission may designate, it has become effective pursuant to 19(b)(3)(A) of the Act [27] and Rule 19b–4(f)(6) [28] thereunder.

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–EMERALD–2022–31 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–EMERALD–2022–31. 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–EMERALD–2022–31 and should be submitted on or before December 20, 2022.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[29]

Sherry R. Haywood,

Assistant Secretary.

[FR Doc. 2022–25950 Filed 11–28–22; 8:45 am]

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[24] *See* Cboe Exchange Rule 5.33(b), Complex Only, which defines a ''Complex Only'' order as a Day or IOC complex order a Market-Maker may designate to execute only against complex orders in the COB and not Leg into the Simple Book. The terms ''Complex Order Book'' and ''COB'' mean the Cboe Exchange's electronic book of complex orders used for all trading sessions. *See* Cboe Exchange Rule 5.33(b); *see also* NYSEArca Options Exchange Rule 6.91P–O(e)(1)(C).

[25] 15 U.S.C. 78f(b).

[26] 15 U.S.C. 78f(b)(5).

[27] 15 U.S.C. 78s(b)(3)(A).

[28] 17 CFR 240.19b–4(f)(6). In addition, Rule 19b–4(f)(6) requires a self-regulatory organization to give the Commission written notice of its intent to file the proposed rule change 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.

[29] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–96380; File No. SR–CBOE–2022–051]

Self-Regulatory Organizations; Cboe Exchange, Inc.; Notice of Designation of Longer Period for Commission Action on a Proposed Rule Change To Amend Rules Relating to the Processing of Auction Responses

November 23, 2022.

On October 3, 2022, Cboe Exchange, Inc. filed with the Securities and Exchange Commission (the ''Commission''), pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 (the ''Act''),[1] and Rule 19b–4 thereunder,[2] a proposed rule change to amend its rules relating to the processing of auction responses. The proposed rule change was published for comment in the **Federal Register** on October 20, 2022.[3] The Commission has received no comment letters on the proposed rule change.

Section 19(b)(2) of the Act[4] provides that, within 45 days of the publication of notice of the filing of a proposed rule change, or within such longer period up to 90 days as the Commission may designate if it finds such longer period to be appropriate and publishes its reasons for so finding or as to which the self-regulatory organization consents, the Commission shall either approve the proposed rule change, disapprove the proposed rule change, or institute proceedings to determine whether the proposed rule change should be disapproved. The 45th day after publication of the notice for this proposed rule change is December 4, 2022.

The Commission is extending the 45-day time period for Commission action on the proposed rule change. The Commission finds that it is appropriate to designate a longer period within which to take action on the proposed rule change so that it has sufficient time to consider the proposed rule change. Accordingly, pursuant to Section 19(b)(2) of the Act,[5] the Commission designates January 18, 2023 as the date by which the Commission shall either approve or disapprove, or institute proceedings to determine whether to disapprove, the proposed rule change (File No. SR–CBOE–2022–051).

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[6]

Sherry R. Haywood,

Assistant Secretary.

[FR Doc. 2022–26044 Filed 11–28–22; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–96382; File No. 4–698]

Joint Industry Plan; Notice of Designation of a Longer Period for Commission Action on a Proposed Amendment to the National Market System Plan Governing the Consolidated Audit Trail

November 23, 2022.

On May 13, 2022, the Operating Committee for Consolidated Audit Trail, LLC (''CAT LLC''), on behalf of the Participants[1] to the National Market System Plan Governing the Consolidated Audit Trail (the ''CAT NMS Plan'' or ''Plan''),[2] filed with the Securities and Exchange Commission (''Commission''), pursuant to section 11A of the Securities Exchange Act of 1934 (''Act'')[3] and Rule 608 of Regulation National Market System (''NMS'') thereunder,[4] a proposed amendment to the CAT NMS Plan (''Proposed Amendment'') to implement a revised funding model (''Executed Share Model'') for the consolidated audit trail (''CAT'') and to establish a fee schedule for Participant CAT fees in accordance with the Executed Share Model.[5] The Proposed Amendment was published for comment in the **Federal Register** on June 1, 2022.[6]

On August 30, 2022, the Commission instituted proceedings pursuant to Rule 608(b)(2)(i) of Regulation NMS[7] to determine whether to disapprove the Proposed Amendment or to approve the Proposed Amendment with any changes or subject to any conditions the Commission deems necessary or appropriate.[8] On November 16, 2022, CAT LLC submitted a partial amendment to the Proposed Amendment.[9]

Rule 608(b)(2)(i) of Regulation NMS provides that proceedings to determine whether a plan or amendment should be disapproved shall be concluded within 180 days of the date of publication of notice of the plan or amendment and that the time for conclusion of such proceedings may be extended for up to 60 days (up to 240 days from the date of notice publication) if the Commission determines that a longer period is appropriate and publishes the reasons for such determination or the plan participants consent to a longer period.[10] The 180th day after publication of the Notice for the Proposed Amendment is November 28, 2022. The Commission is extending this 180-day period.

The Commission finds that it is appropriate to designate a longer period within which to conclude proceedings regarding the Proposed Amendment so that it has sufficient time to consider the Proposed Amendment and the comments received. Accordingly, pursuant to Rule 608(b)(2)(i) of Regulation NMS,[11] the Commission designates January 27, 2023 as the date by which the Commission shall conclude the proceedings to determine whether to approve or disapprove the

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[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 96081 (October 14, 2022), 87 FR 63830.

[4] 15 U.S.C. 78s(b)(2).

[5] *Id.*

[6] 17 CFR 200.30–3(a)(31).

[1] The Participants are: BOX Exchange LLC; Cboe BYX Exchange, Inc., Cboe BZX Exchange, Inc., Cboe EDGA Exchange, Inc., Cboe EDGX Exchange, Inc., Cboe C2 Exchange, Inc., Cboe Exchange, Inc., Financial Industry Regulatory Authority, Inc., The Investors' Exchange LLC, Long-Term Stock Exchange, Inc., MEMX LLC, Miami International Securities Exchange LLC, MIAX Emerald, LLC, MIAX PEARL, LLC, Nasdaq BX, Inc., Nasdaq GEMX, LLC, Nasdaq ISE, LLC, Nasdaq MRX, LLC, Nasdaq PHLX, Inc., The Nasdaq Stock Market LLC, New York Stock Exchange LLC, NYSE American LLC, NYSE Arca, Inc., NYSE Chicago, Inc., and NYSE National, Inc. (collectively, the ''Participants'').

[2] The CAT NMS Plan is a national market system plan approved by the Commission pursuant to Section 11A of the Exchange Act and the rules and regulations thereunder. *See* Securities Exchange Act Release No. 79318 (Nov. 15, 2016), 81 FR 84696 (Nov. 23, 2016) (''CAT NMS Plan Approval Order''). The CAT NMS Plan functions as the limited liability company agreement of the jointly owned limited liability company formed under Delaware state law through which the Participants conduct the activities of the CAT (''Company''). On August 29, 2019, the Participants replaced the CAT NMS Plan in its entirety with the limited liability company agreement of a new limited liability company named Consolidated Audit Trail, LLC (''CAT LLC''), which became the Company. The latest version of the CAT NMS Plan is available at *https://catnmsplan.com/about-cat/cat-nms-plan.*

[3] 15 U.S.C 78k–1.

[4] 17 CFR 242.608.

[5] *See* Letter from Michael Simon, CAT NMS Plan Operating Committee Chair, to Vanessa Countryman, Secretary, Commission (May 13, 2022) (''Transmittal Letter'').

[6] *See* Securities Exchange Act Release No. 94984 (May 25, 2022), 87 FR 33226 (''Notice''). Comments received in response to the Notice can be found on the Commission's website at *https://www.sec.gov/comments/4-698/4-698-a.htm.*

[7] 17 CFR 242.608(b)(2)(i).

[8] *See* Securities Exchange Act Release No. 95634 (Aug. 30, 2022), 87 FR 54558 (Sept. 6, 2022) (''OIP''). Comments received in response to the OIP can be found on the Commission's website at *https://www.sec.gov/comments/4-698/4-698-a.htm.*

[9] *See* Letter from Michael Simon, CAT NMS Plan Operating Committee Chair, to Vanessa Countryman, Secretary, Commission (Nov. 15, 2022).

[10] 17 CFR 242.608(b)(2)(i).

[11] *Id.*

Proposed Amendment or to approve the Proposed Amendment with any changes or subject to any conditions the Commission deems necessary or appropriate (File No. 4–698).

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[12]

Sherry R. Haywood,

Assistant Secretary.

[FR Doc. 2022–26045 Filed 11–28–22; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Investment Company Act Release No. 34758; File No. 812–15358]

Cantor Fitzgerald Sustainable Infrastructure Fund and Cantor Fitzgerald Investment Advisors, L.P.

November 22, 2022.

AGENCY: Securities and Exchange Commission (''Commission'' or ''SEC'').

ACTION: Notice.

Notice of an application for an order pursuant to 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) of the Act, pursuant to sections 6(c) and 23(c) of the Act for certain exemptions from rule 23c–3 under the Act, and pursuant to section 17(d) of the Act and rule 17d–1 thereunder.

SUMMARY OF APPLICATION: Applicants request an order to permit certain registered closed-end management investment companies to issue multiple classes of shares and to impose early withdrawal charges and asset-based distribution and/or service fees.

APPLICANTS: Cantor Fitzgerald Sustainable Infrastructure Fund and Cantor Fitzgerald Investment Advisors, L.P.

FILING DATES: The application was filed on June 27, 2022, and amended on October 6, 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 SEC'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 19, 2022, and should be accompanied by proof of service on 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 at *Secretarys-Office@sec.gov*.

ADDRESSES: The Commission: *Secretarys-Office@sec.gov. Applicants:* Terrence Davis, Esq., *davist@gtlaw.com*.

FOR FURTHER INFORMATION CONTACT: Jennifer O. Palmer, 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' second amended and restated application, dated October 6, 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, at *http://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.

Sherry R. Haywood,

Assistant Secretary.

[FR Doc. 2022–25956 Filed 11–28–22; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–96384; File No. SR-CboeBZX–2022–045]

Self-Regulatory Organizations; Cboe BZX Exchange, Inc.; Order Instituting Proceedings To Determine Whether To Approve or Disapprove a Proposed Rule Change To Amend the Opening Auction Process Provided Under Rule 11.23(b)(2)(B)

November 23, 2022.

On August 15, 2022, Cboe BZX Exchange, Inc. (''Exchange'' or ''BZX'') filed with the Securities and Exchange Commission (''Commission''), pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'')[1] and Rule 19b–4 thereunder,[2] a proposed rule change to amend the Opening Auction process provided under Rule 11.23(b)(2)(B). The proposed rule change was published for comment in the **Federal Register** on August 31, 2022.[3] On October 12, 2022, pursuant to section 19(b)(2) of the Act,[4] the Commission designated a longer period within which to approve the proposed rule change, disapprove the proposed rule change, or institute proceedings to determine whether to disapprove the proposed rule change.[5] The Commission has received no comments on the proposed rule change. This order institutes proceedings under section 19(b)(2)(B) of the Act[6] to determine whether to approve or disapprove the proposed rule change.

I. Summary of the Proposed Rule Change[7]

BZX holds an Opening Auction for each security listed on the Exchange. During an Opening Auction, all executions, if any, occur at a single price, and that price must be within a certain range established by the Exchange. The Exchange proposes to amend its Opening Auction process by, under certain circumstances, delaying the Opening Auction and if necessary gradually widening the bands within which the Opening Auction price must fall. The Exchange also proposes associated changes reflecting the proposed modifications to its process.[8]

[12] 17 CFR 200.30–3(a)(85).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 95601 (Aug. 25, 2022), 87 FR 53514 (''Notice'').

[4] 15 U.S.C. 78s(b)(2).

[5] *See* Securities Exchange Act Release No. 96038, 87 FR 63115 (Oct. 18, 2022). The Commission designated November 29, 2022 as the date by which the Commission shall approve or disapprove, or institute proceedings to determine whether to disapprove, the proposed rule change.

[6] 15 U.S.C. 78s(b)(2)(B).

[7] For a full description of all aspects of the proposed rule change, including BZX's justification for it, please see the Notice, *supra* note 3.

[8] For example, the Exchnage proposes to amend BZX Rules 11.23(b)(1)(A) and (B), to reflect that the Opening Auction may occur at a time other than 9:30 a.m. It also proposes to amend BZX Rule 11.23(b)(1)(B) to provide that Eligible Auction Orders designated for the Opening Auction may not be cancelled or modified from 9:28 a.m. until the Opening Auction has concluded except that Regular Hours Only (''RHO'') limit orders designated for the Opening Auction may be modified, but not cancelled, from 9:28 a.m. until the time the Opening Auction has concluded. Any such RHO limit orders modified from 9:28 a.m. until the Opening Auction has concluded would be treated as late-limit-on-open orders.

A. The Current Opening Auction Process

Each Opening Auction price is the price level within the Collar Price Range [9] that maximizes the number of shares executed between the Continuous Book [10] and Auction Book [11] in the Opening Auction.[12] In the event of a volume based tie at multiple price levels, the Opening Auction price is the price that results in the minimum total imbalance. In the event of a volume based tie and a tie in minimum total imbalance at multiple price levels, the Opening Auction price is the price closest to the Volume Based Tie Breaker.[13] The Volume Based Tie Breaker for an Opening Auction is the midpoint of the NBBO [14] where there is a Valid NBBO; [15] where there is no Valid NBBO, the Volume Based Tie Breaker is the Final Last Sale Eligible Trade (''FLSET'').[16] The Exchange estimates that there is no Valid NBBO for approximately 5.81% of Opening Auctions.[17]

According to the Exchange, because the FLSET is typically based on the most recent execution in a security during Regular Trading Hours,[18] its value may be significantly away from the Indicative Price [19] at the time of the Opening Auction Process, especially in more thinly traded securities.[20] The Exchange states that it: (1) has observed instances where auction eligible orders priced in-line with the Indicative Price were not executed in the Opening Auction because they were outside the Collar Price Range established using the FLSET; and (2) believes that certain of these instances resulted in orders not receiving executions in the Opening Auction that would have otherwise occurred at prices that would have been acceptable to both parties.[21] To support this, BZX states that, from January 1, 2022 through July 12, 2022, across 73,927 total Opening Auctions in BZX-listed securities, (1) there were 324 instances in which Market-On-Open (''MOO'') orders [22] did not receive an execution in the Opening Auction and were thus cancelled; (2) in 168 of those instances, the Opening Auction would have been extended under the proposed changes to the BZX Opening Process; and (3) 10,936 shares could have potentially received an execution.[23]

B. Proposed Changes to the Opening Auction Process

The Exchange proposes to change its Opening Auction functionality only in the following circumstances: where (1) there is an Indicative Price, (2) there is not a Valid NBBO, and (3) the Indicative Price is not within the FLSET-established Collar Price Range.[24] In these circumstances, BZX proposes to delay the Opening Auction as follows.

1. BZX would delay the Opening Auction for one second. If after that delay there is a Valid NBBO or the Indicative Price is within the Collar Price Range, the Opening Auction price would be established pursuant to the Standard Opening Auction Process.[25] If there is no Valid NBBO and the Indicative Price is not within the Collar Price Range after the one-second delay, the Opening Auction would be delayed by one additional second, at which point if there is a Valid NBBO or the Indicative Price is within the Collar Price Range, the Opening Auction price would be established pursuant to the Standard Opening Process. If after the additional one-second delay there is no Valid NBBO or the Indicative Price is not within the Collar Price Range, the process would continue to be applied in one-second increments until either the Opening Auction occurs or until five seconds has lapsed (*i.e.,* 9:30:05 a.m.).

2. If the Opening Auction has not occurred by 9:30:05, the System would widen the Collar Price Range in the direction of the Indicative Price by 5% of the Volume Based Tie Breaker, which would be the FLSET as of 9:30:05 a.m. (''Widening Amount'').[26] The System would check to see whether the Indicative Price is inside the widened Collar Price Range every second between 9:30:05 and 9:30:30 a.m.

a. If the Indicative Price is within the widened Collar Price Range, the Opening Auction price would be established pursuant to the Standard Opening Auction Process.

b. If the Indicative Price is not within the widened Collar Price Range, the Opening Auction would be further delayed, as discussed below.

3. If by 9:30:30 a.m. the Indicative Price is not within the widened Collar Price Range, the Collar Price Range would again widen by the Widening Amount. The System would check to see whether the Indicative Price is inside the widened Collar Price Range every second between 9:30:30 and 9:31:30 a.m.

a. If an Indicative Price is inside the widened Collar Price Range during a check, the Opening Auction price would be established pursuant to the Standard Opening Auction Process.

[9] ''Collar Price Range'' is defined in BZX Rule 11.23(a)(6) as ''the range from a set percentage below the Collar Midpoint (as defined below) to above the Collar Midpoint, such set percentage being dependent on the value of the Collar Midpoint at the time of the auction, as described below. The Collar Midpoint will be the Volume Based Tie Breaker for all applicable auctions, except for IPO Auctions in ETPs (as defined in Rule 11.8, Interpretation and Policy .02(d)(2)), for which the Collar Midpoint will be the issue price. Specifically, the Collar Price Range will be determined as follows: where the Collar Midpoint is $25.00 or less, the Collar Price Range shall be the range from 10% below the Collar Midpoint to 10% above the Collar Midpoint; where the Collar Midpoint is greater than $25.00 but less than or equal to $50.00, the Collar Price Range shall be the range from 5% below the Collar Midpoint to 5% above the Collar Midpoint; and where the Collar Midpoint is greater than $50.00, the Collar Price Range shall be the range from 3% below the Collar Midpoint to 3% above the Collar Midpoint.''

[10] ''Continuous Book'' is defined in BZX Rule 11.23(a)(7) as ''all orders on the BZX Book that are not Eligible Auction Orders.''

[11] ''Auction Book'' is defined in BZX Rule 11.23(a)(1) as ''all Eligible Auction Orders on the BZX Book.''

[12] *See* BZX Rule 11.23(b)(2)(B) (governing the determination of the BZX Official Opening Price).

[13] Volume Based Tie Breaker is defined in BZX Rule 11.23(a)(23).

[14] NBBO is defined in BZX Rule 1.5(o) as ''the national best bid or offer.''

[15] Valid NBBO is defined in BZX Rule 11.23(a)(23) as an NBBO where: ''(i) there is both a NBB and NBO for the security; (ii) the NBBO is not crossed; and (iii) the midpoint of the NBBO is less than the Maximum Percentage away from both the NBB and the NBO.'' The Maximum Percentage will be determined by the Exchange and will be published in a circular distributed to Members with reasonable advance notice. *Id.*

[16] FLSET is defined in BZX Rule 11.23(a)(9) as ''the last round lot trade occurring during Regular Trading Hours on the Exchange if the trade was executed within the last one second prior to either the Closing Auction or, for Halt Auctions, trading in the security being halted. Where the trade was not executed within the last one second, the last round lot trade reported to the consolidated tape received by the Exchange during Regular Trading Hours and, where applicable, prior to trading in the security being halted will be used. If there is no qualifying trade for the current day, the BZX Official Closing Price from the previous trading day will be used.''

[17] *See* Notice, *supra* note 3, 87 FR at 53515, n.12.

[18] Regular Trading Hours is defined in BZX Rule 1.5(w) as ''the time between 9:30 a.m. and 4:00 p.m. Eastern Time.''

[19] Indicative Price is defined in BZX Rule 11.23(a)(10) as ''the price at which the most shares from the Auction Book and the Continuous Book would match. In the event of a volume based tie at multiple price levels, the Indicative Price will be the price which results in the minimum total imbalance. In the event of a volume based tie and a tie in minimum total imbalance at multiple price levels, the Indicative Price will be the price closest to the Volume Based Tie Breaker.''

[20] *See id.* at 53515.

[21] *See id.*

[22] For reasons explained in the Notice, BZX uses unexecuted MOO orders in Opening Auctions as a proxy for crossed-interest that went unexecuted.

[23] *See id.* at 53519.

[24] *See id.* at 53516.

[25] Proposed Rule 11.23(b)(2)(B)(i) defines the ''Standard Opening Process,'' which mirrors the existing process described in Rule 11.23(b)(2)(B).

[26] The Widening Amount would be locked-in as of 9:30:05, and will not change between 9:30:05 and 9:34:30 even in the event that a round lot trade reported to the consolidated tape was received by the Exchange during that time (*i.e.,* a FLSET).

b. If the Indicative Price is not within the widened Collar Price Range, the Opening Auction would be further delayed, as discussed below.

4. If by 9:31:30 a.m. the Indicative Price is not within the widened Collar Price Range, the System will check to see whether the Indicative Price is inside the widened Collar Price Range every second between 9:31:30 and 9:34:30 a.m.

a. If an Indicative Price is inside the widened Collar Price Range during a check, the Opening Auction price would be established pursuant to the Standard Opening Auction Process.

b. Unless the Opening Auction has occurred, the Collar Price Range would widen in the direction of the Indicative Price by the Widening Amount each minute from 9:31:30 to 9:34:30.

5. If no Opening Auction has occurred by 9:34:30 a.m., the Opening Auction would occur pursuant to the Standard Opening Auction Process using the expanded Collar Price Range as of 9:34:30.

In summary, the Opening Auction would be delayed until either: (1) the NBBO becomes a Valid NBBO; (2) the Indicative Price is within the Collar Price Range (*i.e.,* if the Opening Auction occurred between 9:30:01 and 9:30:05) or within the widened Collar Price Range (*i.e.,* if the Opening Auction occurred between 9:30:06 and 9:34:30); (3) there no longer is an Indicative Price; [27] or (4) four minutes and 30 seconds elapsed.

BZX states that these modifications are designed to prevent the cancellation of auction eligible orders priced equally or more aggressive than the Indicative Price, which the Exchange believes would facilitate the presence of sufficient liquidity and information to make the Opening Auction a meaningful price formation event in BZX-listed securities.[28]

C. The BZX Official Opening Price and Limit Up Limit Down Bands

The Exchange states that ending the Opening Auction Process at or before 9:34:30 a.m. would ensure that the Exchange is able to disseminate the BZX Official Opening Price with sufficient time to be used to calculate the initial limit up-limit down (''LULD'') bands, and that the price of executions occurring during the proposed delay price would provide a better foundation for the initial LULD bands.[29]

BZX asserts that the expected benefit of allowing crossed auction interest to execute at the best possible price outweighs the minimal and finite delay (up to four minutes and 30 seconds) in the dissemination of the BZX Opening Price and LULD bands. BZX argues that this tradeoff currently exists in the national market system: the New York Stock Exchange LLC (''NYSE'') may delay its opening process indefinitely.[30] Further, the Exchange states that the possible risks resulting from delaying dissemination of the LULD bands would be mitigated by the infrequency with which LULD halts occur within the first four minutes and 30 seconds of the trading day.[31]

II. Proceedings To Determine Whether To Approve or Disapprove SR–CboeBZX–2022–045 and Grounds for Disapproval Under Consideration

The Commission is instituting proceedings pursuant to Section 19(b)(2)(B) of the Act [32] to determine whether the proposed rule change should be approved or disapproved. Institution of proceedings is appropriate at this time in view of the legal and policy issues raised by the proposal. Institution of proceedings does not indicate that the Commission has reached any conclusions with respect to any of the issues involved. Rather, as described below, the Commission seeks and encourages interested persons to provide additional comment on the proposed rule change.

Pursuant to section 19(b)(2)(B) of the Act,[33] the Commission is providing notice of the grounds for disapproval under consideration. As described above, the Exchange has proposed to amend the Opening Auction Process Provided Under Rule 11.23(b)(2)(B). In certain cases, the proposed Opening Auction Process would result in a delay in the calculation of the BZX Official Opening Price, which in most cases is the reference price for initial LULD price bands for BZX-listed securities.

The Commission is instituting proceedings to allow for additional analysis of, and input from commenters with respect to, the consistency of the proposal with sections 6(b)(5) [34] and 6(b)(8) [35] of the Act. Section 6(b)(5) of the Act requires that the rules of a national securities exchange be designed, among other things, to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system and, in general, to protect investors and the public interest, and not be designed to permit unfair discrimination between customers, issuers, brokers, or dealers. Section 6(b)(8) of the Act requires that the rules of a national securities exchange not impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

III. Procedure: Request for Written Comments

The Commission requests that interested persons provide written submissions of their data, views, and arguments with respect to the issues identified above, as well as any other concerns they may have with the proposal. In particular, the Commission invites the written views of interested persons concerning whether the proposed rule change is consistent with section 6(b)(5), 6(b)(8), or any other provision of the Act, or the rules and regulations thereunder. Although there do not appear to be any issues relevant to approval or disapproval that would be facilitated by an oral presentation of data, views, and arguments, the Commission will consider, pursuant to Rule 19b–4 under the Act,[36] any request for an opportunity to make an oral presentation.[37]

Interested persons are invited to submit written data, views, and arguments regarding whether the proposed rule change should be approved or disapproved by December 20, 2022. Any person who wishes to file a rebuttal to any other person's submission must file that rebuttal by January 3, 2023.

The Commission asks that commenters address the sufficiency of the Exchange's statements in support of the proposal and any other issues raised

[27] If after each one-second delay there is no longer an Indicative Price (*i.e.,* there is no longer crossed interest), the Opening Auction would occur immediately pursuant to proposed Rule 11.23(2)(B)(v), which would result in the BZX Official Opening Price being the FLSET, which would be the previous BZX Official Closing Price unless a FLSET occurred after 9:30:00.

[28] *See id.* at 53516.

[29] *See id.* at 53517, 53520.

[30] *See id.* at 53515.

[31] According to the Exchange, during the period of June 1, 2021 through May 31, 2022, a LULD halt occurred in BZX-listed symbols during the first four minutes and 30 seconds of the trading day roughly 0.01% of the time (15/134,615). *See id.* at 53519, 53520, n.38.

[32] 15 U.S.C. 78s(b)(2)(B).

[33] *Id.*

[34] 15 U.S.C. 78f(b)(5).

[35] 15 U.S.C. 78f(b)(8).

[36] 17 CFR 240.19b–4.

[37] Section 19(b)(2) of the Act, as amended by the Securities Acts Amendments of 1975, Public Law 94–29 (June 4, 1975), grants to the Commission flexibility to determine what type of proceeding—either oral or notice and opportunity for written comments—is appropriate for consideration of a particular proposal by a self-regulatory organization. *See* Securities Acts Amendments of 1975, Senate Comm. on Banking, Housing & Urban Affairs, S. Rep. No. 75, 94th Cong., 1st Sess. 30 (1975).

by the proposed rule change under the Act. In this regard, the Commission seeks commenters' views regarding whether a delay in the calculation of the BZX Official Opening Price would affect the trading of BZX-listed securities or would impact any processes that rely on the calculation of the BZX Official Opening Price, including the calculation and dissemination of initial LULD price bands. The Commission also seeks comment on the sufficiency of the Exchange's quantitative support for the proposal (including any intereprations thereof) and whether any additional data would be useful in evaulating the consistency of the proposed rule change 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 No. SR–CboeBZX–2022–045 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549–1090.

All submissions should refer to File No. SR–CboeBZX–2022–045. The 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 No. SR–CboeBZX–2022–045 and should be submitted BY December 20, 2022. Rebuttal comments should be submitted by January 3, 2023.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[38]

Sherry R. Haywood,

Secretary.

[FR Doc. 2022–26051 Filed 11–28–22; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–96377; File No. SR–NYSE–2022–52]

Self-Regulatory Organizations; New York Stock Exchange LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Amend Rule 104

November 22, 2022.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the ''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on November 14, 2022, New York Stock Exchange LLC (''NYSE'' or the ''Exchange'') filed with the Securities and Exchange Commission (the ''Commission'') the proposed rule change as described in Items I and II below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend Rule 104 (Dealings and Responsibilities of DMMs) to correct a cross-reference in subsection (c)(5). The proposed rule change is available on the Exchange's website at *www.nyse.com,* at the principal office of the Exchange, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of those statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to amend Rule 104 to correct a cross-reference in subsection (c)(5).

Rule 104(c)(5) provides that ''[t]he requirements Rule 104(f)(2) and (3) will be operative with respect to ETPs upon implementation of the applicable Depth Guidelines by the Exchange, but in any event no later than eighteen weeks after ETPs listed on the Exchange pursuant to Rules 5P and 8P begin trading.'' The correct reference should be to Rule 104(c)(2) and (3). Current Rule 104(c), titled ''Functions of DMMs'', was formerly Rule 104(f). Earlier this year, the Exchange re-numbered Rule 104(f), which became current Rule 104(c).[3] As part of that filing, the Exchange inadvertently failed to update the reference to ''the requirements of Rule 104(f)(2) and (3)'' in current Rule 104(c).[4] The Exchange accordingly proposes to correct the cross-reference in Rule 104(c)(5) by replacing ''f'' with ''c''.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b)(5) of the Exchange Act,[5] 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 facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system and, in general, to protect investors and the public interest.

The Exchange believes that the proposed change to Rule 104(c)(5) to correct a cross-reference to a previously renumbered subsection would remove impediments to and perfect the

[38] 17 CFR 200.30–3(a)(57).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 95691 (September 7, 2022), 87 FR 56099 (September 13, 2022) (SR–NYSE–2022–32) (Order Approving a Proposed Rule Change To Amend NYSE Rule 7.35B Relating to the Closing Auction and Make Certain Conforming and Non-Substantive Changes to NYSE Rules 7.31, 7.35, 7.35B and 104).

[4] 15 U.S.C. 78f(b).

[5] 15 U.S.C. 78f(b)(5).

mechanism of a free and open market and a national market system because the proposed change is designed to update an internal rule reference. The Exchange believes that market participants would benefit from the increased clarity, thereby reducing potential confusion and ensuring that persons subject to the Exchange's jurisdiction, regulators, and the investing public can more easily navigate and understand the Exchange's rules. The Exchange further believes that the proposed amendment would not be inconsistent with the public interest and the protection of investors because investors will not be harmed and in fact would benefit from increased clarity, thereby reducing potential confusion.

B. Self-Regulatory Organization's Statement on Burden on Competition

In accordance with Section 6(b)(8) of the Act,[6] the Exchange believes that the proposed rule change would not impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. The proposed rule change is not intended to address competitive issues but is rather concerned with making a correction to the Exchange rules. Since the proposal does not substantively modify system functionality or processes on the Exchange, the proposed changes will not impose any burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The Exchange has filed the proposed rule change pursuant to Section 19(b)(3)(A)(iii) of the Act[7] and Rule 19b–4(f)(6) thereunder.[8] Because the proposed rule change does not: (i) significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative prior to 30 days from the date on which it was filed, or such shorter time as the Commission may designate, if consistent with the protection of investors and the public interest, the proposed rule change has become effective pursuant to Section 19(b)(3)(A) of the Act[9] and Rule 19b–4(f)(6)(iii) thereunder.[10]

A proposed rule change filed under Rule 19b–4(f)(6)[11] normally does not become operative prior to 30 days after the date of the filing. However, pursuant to Rule 19b–4(f)(6)(iii),[12] the Commission may 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 Commission believes that waiver of the operative delay is consistent with the protection of investors and the public interest because it will allow the Exchange to promptly correct a rule reference and avoid any potential investor or public confusion about the rule. Accordingly, the Commission hereby waives the 30-day operative delay and designates the proposal operative upon filing.[13]

At any time within 60 days of the filing of such proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings under Section 19(b)(2)(B)[14] of the Act to determine whether the proposed rule change should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–NYSE–2022–52 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–NYSE–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 the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change. Persons submitting comments are cautioned that we do not redact or edit personal identifying information from comment submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–NYSE–2022–52 and should be submitted on or before December 20, 2022.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[15]

Sherry R. Haywood,

Assistant Secretary.

[FR Doc. 2022–25949 Filed 11–28–22; 8:45 am]

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[6] 15 U.S.C. 78f(b)(8).

[7] 15 U.S.C. 78s(b)(3)(A)(iii).

[8] 17 CFR 240.19b–4(f)(6).

[9] 15 U.S.C. 78s(b)(3)(A).

[10] 17 CFR 240.19b–4(f)(6). In addition, Rule 19b–4(f)(6) requires a self-regulatory organization to give the Commission written notice of its intent to file the proposed rule change, along with a brief description and text of the proposed rule change, at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Exchange has satisfied this requirement.

[11] 17 CFR 240.19b–4(f)(6).

[12] 17 CFR 240.19b–4(f)(6)(iii).

[13] For purposes only of accelerating the operative date of this proposal, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[14] 15 U.S.C. 78s(b)(2)(B).

[15] 17 CFR 200.30–3(a)(12), (59).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–96374; File No. SR–NYSEARCA–2022–78]

Self-Regulatory Organizations; NYSE Arca, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Amend the NYSE Arca Options Fee Schedule Concerning the Options Regulatory Fee

November 22, 2022.

Pursuant to Section 19(b)(1) [1] of the Securities Exchange Act of 1934 (the ''Act'') [2] and Rule 19b–4 thereunder,[3] notice is hereby given that, on November 14, 2022, NYSE Arca, Inc. (''NYSE Arca'' or the ''Exchange'') filed with the Securities and Exchange Commission (the ''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend the NYSE Arca Options Fee Schedule (''Fee Schedule'') regarding the Options Regulatory Fee (''ORF''), effective November 14, 2022.[4] The proposed rule change is available on the Exchange's website at *www.nyse.com,* at the principal office of the Exchange, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of those statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

[1] 15 U.S.C.78s(b)(1).

[2] 15 U.S.C. 78a.

[3] 17 CFR 240.19b–4.

[4] The Exchange previously filed to amend the Fee Schedule on September 28, 2022 (SR–NYSEARCA–2022–65) and withdrew such filing on November 14, 2022.

A. Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to amend the Fee Schedule to (1) waive the ORF for the period November 1, 2022 through January 31, 2023; (2) eliminate the requirement that the Exchange may only modify the ORF semi-annually; and (3) delete outdated language relating to the ORF for August 30, 2019 (the ''August 2019 ORF'').

Background

As a general matter, the Exchange may only use regulatory funds such as the ORF ''to fund the legal, regulatory, and surveillance operations'' of the Exchange.[5] More specifically, the ORF is designed to recover a material portion, but not all, of the Exchange's costs for the supervision and regulation of OTP Holders and OTP Firms (collectively, ''OTP Holders''), including the Exchange's regulatory program and legal expenses associated with options, such as the costs related to in-house staff, third-party service providers, and technology that facilitate surveillance, investigation, examinations and enforcement (collectively, the ''ORF Costs''). ORF funds may also be used for indirect expenses such as human resources and other administrative costs. The Exchange monitors the amount of revenue collected from the ORF to ensure that this revenue, in combination with other regulatory fees and fines, does not exceed regulatory costs.

The ORF is assessed on OTP Holders for options transactions that are cleared by the OTP Holder through the Options Clearing Corporation (''OCC'') in the Customer range regardless of the exchange on which the transaction occurs.[6] All options transactions must clear via a clearing firm and such clearing firms can then choose to pass through all, a portion, or none of the cost of the ORF to its customers, *i.e.,* the entering firms. Because the ORF is collected from OTP Holder clearing firms by the OCC on behalf of NYSE Arca,[7] the Exchange believes that using options transactions in the Customer range serves as a proxy for how to apportion regulatory costs among such OTP Holders. In addition, the Exchange notes that the costs relating to monitoring OTP Holders with respect to Customer trading activity are generally higher than the costs associated with monitoring OTP Holders that do not engage in Customer trading activity, which tends to be more automated and less labor-intensive. By contrast, regulating OTP Holders that engage in Customer trading activity is generally more labor intensive and requires a greater expenditure of human and technical resources as the Exchange needs to review not only the trading activity on behalf of Customers, but also the OTP Holder's relationship with its Customers via more labor-intensive exam-based programs.[8] As a result, the costs associated with administering the customer component of the Exchange's overall regulatory program are materially higher than the costs associated with administering the non-customer component (*e.g.,* OTP Holder proprietary transactions) of its regulatory program.

ORF Collections and Monitoring of ORF

Exchange rules establish that the Exchange may only increase or decrease the ORF semi-annually, that any such fee change will be effective on the first business day of February or August, and that market participants must be notified of any such change via Trader Update at least 30 calendar days prior to the effective date of the change.[9]

Because the ORF is based on options transactions volume, the amount of ORF collected is variable. For example, if options transactions reported to OCC in a given month increase, the ORF collected from OTP Holders will likely increase as well. Similarly, if options

[5] The Exchange considers surveillance operations part of regulatory operations. The limitation on the use of regulatory funds also provides that they shall not be distributed. *See* Bylaws of NYSE Arca, Inc., Art. II, Sec. 2.06.

[6] *See* Fee Schedule, NYSE Arca GENERAL OPTIONS and TRADING PERMIT (OTP) FEES, Regulatory Fees, Options Regulatory Fee (''ORF''), *available here, https://www.nyse.com/publicdocs/nyse/markets/arca-options/NYSE_Arca_Options_Fee_Schedule.pdf.*

[7] *See id.* The Exchange uses reports from OCC when assessing and collecting the ORF. The ORF is not assessed on outbound linkage trades. An OTP Holder is not assessed the fee until it has satisfied applicable technological requirements necessary to commence operations on NYSE Arca. *See id.*

[8] The Exchange notes that many of the Exchange's market surveillance programs require the Exchange to look at and evaluate activity across all options markets, such as surveillance for position limit violations, manipulation, front-running and contrary exercise advice violations/expiring exercise declarations. The Exchange and other options SROs are parties to a 17d–2 agreement allocating among the SROs regulatory responsibilities relating to compliance by the common members with rules for expiring exercise declarations, position limits, OCC trade adjustments, and Large Option Position Report reviews. *See, e.g.,* Securities Exchange Act Release No. 85097 (February 11, 2019), 84 FR 4871 (February 19, 2019).

[9] *See* Fee Schedule, *supra* note 6.

transactions reported to OCC in a given month decrease, the ORF collected from OTP Holders will likely decrease as well. Accordingly, the Exchange monitors the amount of ORF collected to ensure that it does not exceed the ORF Costs. If the Exchange determines the amount of ORF collected exceeds costs over an extended period, the Exchange may adjust the ORF by submitting a fee change filing to the Securities and Exchange Commission (the ''Commission'').

Temporary ORF Waiver

Based on the Exchange's recent review of regulatory costs and ORF collections, the Exchange proposes to waive the ORF from November 1, 2022 through January 31, 2023 in order to help ensure that the amount collected from the ORF, in combination with other regulatory fees and fines, does not exceed the Exchange's total regulatory costs. The Exchange proposes to resume assessing the ORF on February 1, 2023 at the current rate of $0.0055 per contract. The Exchange notified OTP Holders of the proposed change to the ORF via Trader Update on September 29, 2022 (which was at least 30 calendar days prior to the proposed operative date of the waiver, November 1, 2022) so that market participants have an opportunity to configure their systems to account for the waiver of the ORF. The Exchange's proposal to waive the ORF for the month of January 2023 would similarly provide OTP Holders with additional time in the new year to make any necessary adjustments or preparations for the resumption of the ORF effective February 1, 2023.

The proposed waiver is based on recent options volumes. The options industry has continued to experience extremely high options trading volumes and volatility, and options volume in 2022 remains high, particularly when compared to options volume in 2019 and 2020. The persisting increased options volumes have, in turn, impacted the Exchange's ORF collection.

For example, total average daily volume in 2022, to date, is 115% higher than total average daily volume in 2019, and customer average daily volume in 2022, to date, is 123% higher than customer average daily volume in 2019. Below is industry data from OCC[10] illustrating the significant increase in options volume between 2019 and 2022:

	2019	2020	2021	2022
Customer ADV	15,234,198	25,598,023	34,730,276	33,939,560
Total ADV	35,083,673	55,369,993	74,339,870	75,497,647

In addition, the below industry data from OCC demonstrates the high options trading volumes (especially when compared to 2019 and 2020) and volatility that the industry has continued to experience in 2022:

	April 2022	May 2022	June 2022	July 2022	August 2022	September 2022
Customer ADV	33,266,801	34,202,077	31,469,858	30,506,706	33,013,156	34,149,000
Total ADV	73,140,597	76,254,734	70,628,926	68,535,963	73,487,342	77,134,470

Because of the sustained impact of the unprecedented trading volumes that have persisted through 2021 and 2022, along with the difficulty of predicting when volumes may return to more normal levels, the Exchange proposes to waive the ORF from November 1, 2022 through January 31, 2023 to help ensure that ORF collection will not exceed ORF Costs for 2022. The Exchange cannot predict whether options volume will remain at these levels going forward and projections for future regulatory costs are estimated, preliminary, and may change. However, the Exchange believes that the proposed waiver of the ORF would allow the Exchange to continue to monitor the amount collected from the ORF to help ensure that ORF collection, in combination with other regulatory fees and fines, does not exceed regulatory costs without the need to account for any ORF collection during that timeframe. The Exchange proposes to resume assessing the current ORF rate of $0.0055 per contract side as of February 1, 2023.

Semi-Annual Changes to ORF

As noted above, the Fee Schedule currently specifies that the Exchange may only increase or decrease the ORF semi-annually and that any such fee change will be effective on the first business day of February or August.[11] NYSE Arca proposes to eliminate this requirement to afford the Exchange increased flexibility in amending the ORF.[12] Although the Exchange proposes to eliminate the requirement to adjust the ORF only semi-annually, it would continue to submit a proposed rule change for each modification of the ORF and notify OTP Holders of any planned change to the ORF by Trader Update at least 30 calendar days prior to the effective date of such change. The Exchange believes that the prior notification to OTP Holders will provide guidance on the timing of any changes to the ORF and ensure that OTP Holders are prepared to configure their systems to properly account for the ORF. The Exchange will also issue a Trader Update informing OTP Holders of the ORF adjustment proposed in this filing, as described below, at least 30 calendar days prior to the proposed effective date.

August 2019 ORF

The Exchange proposes to delete language in the Fee Schedule pertaining to the August 2019 ORF, which was relevant only for the August 30, 2019 trading day and thus no longer reflects a fee currently assessed by the Exchange. The Exchange believes this change would improve the clarity of the

[10] The OCC publishes options and futures volume in a variety of formats, including daily and monthly volume by exchange, available here: *https://www.theocc.com/Market-Data/Market-Data-Reports/Volume-and-Open-Interest/Monthly-Weekly-Volume-Statistics.* The volume discussed in this filing is based on a compilation of OCC data for monthly volume of equity-based options and monthly volume of ETF-based options, in contract sides.

[11] *See* Fee Schedule, *supra* note 6.

[12] The Exchange notes that at least one other options exchange has previously removed this requirement with respect to adjusting the ORF. *See, e.g.,* Securities Exchange Act Release No. 76950 (January 21, 2016), 81 FR 4687 (January 27, 2016) (SR–NASDAQ–2016–003) (Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Amend the Options Regulatory Fee).

Fee Schedule by removing obsolete language.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with the provisions of Section 6(b) [13] of the Act, in general, and Section 6(b)(4) and (5) [14] of the Act, in particular, in that it is designed to provide for the equitable allocation of reasonable dues, fees, and other charges among its members and other persons using its facilities and does not unfairly discriminate between customers, issuers, brokers, or dealers.

The Proposal Is Reasonable

The Exchange believes the proposed temporary waiver of the ORF is reasonable because it would help ensure that collections from the ORF do not exceed a material portion of the Exchange's ORF Costs. As noted above, the Exchange may only use regulatory funds such as ORF ''to fund the legal, regulatory, and surveillance operations'' of the Exchange.[15] In this regard, the ORF is designed to recover a material portion, but not all, of the Exchange's ORF Costs.

Although there can be no assurance that the Exchange's final costs for 2022 will not differ materially from its expectations and prior practice, nor can the Exchange predict with certainty whether options volume will remain at the current level going forward, the Exchange believes that the amount collected based on the current ORF rate, when combined with regulatory fees and fines, may result in collections in excess of the estimated ORF Costs for the year. Particularly, as noted above, the options market has continued to experience unanticipated and elevated volumes in 2022, particularly as compared to 2019 and 2020, due in large part to the continued extreme volatility in the marketplace as a result of the COVID–19 pandemic. This unprecedented spike in volatility, which has persisted through 2021 and 2022, resulted in significantly higher volume than was originally projected by the Exchange, thereby resulting in substantially higher ORF collections than projected (particularly as compared to ORF Costs, which had been projected to decrease in 2022). The Exchange therefore believes that it would be reasonable to waive ORF from November 1, 2022 through January 31, 2023 to help ensure that ORF collection does not exceed the ORF Costs for 2022.[16] Particularly, the Exchange believes that waiving the ORF from November 1, 2022 to January 31, 2023 and taking into account all of the Exchange's other regulatory fees and fines would allow the Exchange to continue covering a material portion of ORF Costs, while lessening the potential for generating excess funds that may otherwise occur using the current rate. The Exchange would resume assessing its current ORF ($0.0055 per contract) as of February 1, 2023. The Exchange also believes that resumption of the ORF at the current rate on February 1, 2023 (unless the Exchange determines it necessary to adjust the ORF rate to help ensure that ORF collections do not exceed ORF Costs) is reasonable because it would permit the Exchange to resume collecting an ORF that is designed to recover a material portion, but not all, of the Exchange's projected ORF Costs. The Exchange would continue monitoring in advance of the resumption of the ORF and when ORF collection resumes on February 1, 2023 and, if the Exchange determines that, in light of projected volumes and ORF Costs, the ORF rate should be modified to help ensure that ORF collections would not exceed ORF Costs, adjust the ORF by submitting a filing a proposed rule change and notifying OTP Holders of such change by Trader Update.

The Exchange believes that the proposed elimination of language specifying that the Exchange may only increase or decrease the ORF semi-annually and that any such fee change must be effective on the first business day of February or August is reasonable because it is designed to afford the Exchange increased flexibility in making necessary adjustments to the ORF, as the Exchange is required to monitor the amount collected from the ORF to ensure that it, in combination with its other regulatory fees and fines, does not exceed ORF Costs. The Exchange also believes the proposed change is reasonable because the Exchange will continue to provide market participants with 30 days advance notice of changes to the ORF, thereby providing OTP Holders with adequate time to make any necessary adjustments to accommodate the change.

The Exchange also believes that the proposed deletion of language relating to the August 2019 ORF is reasonable because it would remove obsolete language and thus improve the clarity of the Fee Schedule.

The Proposal Is an Equitable Allocation of Fees

The Exchange believes its proposal is an equitable allocation of fees among its market participants. The Exchange believes that the proposed waiver would not place certain market participants at an unfair disadvantage because all options transactions must clear via a clearing firm. Such clearing firms can then choose to pass through all, a portion, or none of the cost of the ORF to its customers, *i.e.,* the entering firms. Because the ORF is collected from OTP Holder clearing firms by the OCC on behalf of NYSE Arca, the Exchange believes that using options transactions in the Customer range serves as a proxy for how to apportion ORF Costs among such OTP Holders. In addition, the Exchange notes that the costs relating to monitoring OTP Holders with respect to Customer trading activity are generally higher than the costs associated with monitoring OTP Holders that do not engage in Customer trading activity, which tends to be more automated and less labor-intensive. By contrast, regulating OTP Holders that engage in Customer trading activity is generally more labor intensive and requires a greater expenditure of human and technical resources as the Exchange needs to review not only the trading activity on behalf of Customers, but also the OTP Holder's relationship with its Customers via more labor-intensive exam-based programs. As a result, the costs associated with administering the customer component of the Exchange's overall regulatory program are materially higher than the costs associated with administering the non-customer component (*e.g.,* OTP Holder proprietary transactions) of its regulatory program. Thus, the Exchange believes that a temporary waiver of the ORF is an equitable allocation of fees because it would apply equally to all OTP Holders on all their transactions that clear in the Customer range at the OCC. The Exchange also believes that recommencing the ORF on February 1, 2023 at the current rate, unless the Exchange determines it necessary to adjust the ORF to ensure that ORF collections do not exceed ORF Costs, is equitable because the Exchange would resume assessing an ORF designed to recover a material portion, but not all, of the Exchange's projected ORF Costs, and the ORF would likewise resume applying equally to all OTP Holders on options transactions in the Customer range.

[13] 15 U.S.C. 78f(b).

[14] 15 U.S.C. 78f(b)(4) and (5).

[15] *See* note 5, *supra.*

[16] The Exchange's proposal to also waive the ORF for the month of January 2023 would provide OTP Holders with additional time in the new year to make any necessary adjustments or preparations for the resumption of the ORF effective February 1, 2023.

The Exchange also believes that the proposed change to eliminate the requirement that the Exchange modify the ORF only semi-annually in February or August is equitable because the change would impact all OTP Holders subject to the ORF uniformly, and all OTP Holders would continue to receive at least 30 days' advance notice of changes to the ORF. The proposed change to remove language relating to the August 2019 ORF is also equitable because it would eliminate language from the Fee Schedule that is no longer applicable to any OTP Holders.

The Proposed Fee Is Not Unfairly Discriminatory

The Exchange believes that the proposal is not unfairly discriminatory. The Exchange believes that the proposed waiver of the ORF would not place certain market participants at an unfair disadvantage because all options transactions must clear via a clearing firm. Such clearing firms can then choose to pass through all, a portion, or none of the cost of the ORF to its customers, *i.e.,* the entering firms. Because the ORF is collected from OTP Holder clearing firms by the OCC on behalf of NYSE Arca, the Exchange believes that using options transactions in the Customer range serves as a proxy for how to apportion regulatory costs among such OTP Holders. In addition, the Exchange notes that the costs relating to monitoring OTP Holders with respect to Customer trading activity are generally higher than the costs associated with monitoring OTP Holders that do not engage in Customer trading activity, which tends to be more automated and less labor-intensive. By contrast, regulating OTP Holders that engage in Customer trading activity is generally more labor intensive and requires a greater expenditure of human and technical resources as the Exchange needs to review not only the trading activity on behalf of Customers, but also the OTP Holder's relationship with its Customers via more labor-intensive exam-based programs. As a result, the costs associated with administering the customer component of the Exchange's overall regulatory program are materially higher than the costs associated with administering the non-customer component (*e.g.,* OTP Holder proprietary transactions) of its regulatory program. Thus, the Exchange believes the temporary waiver of the ORF and the proposed modification of language relating to the Exchange's ability to modify the ORF are not unfairly discriminatory because the changes would apply to all OTP Holders subject to the ORF and the Exchange would provide all such OTP Holders with 30 days' advance notice of planned changes to the ORF. The Exchange also believes that recommencing the ORF on February 1, 2023 at the current rate, unless the Exchange determines it necessary to adjust the ORF to ensure that ORF collections do not exceed ORF Costs, is not unfairly discriminatory because the Exchange would resume assessing an ORF designed to recover a material portion, but not all, of the Exchange's projected ORF Costs, and the ORF would resume applying equally to all OTP Holders based on their transactions that clear in the Customer range at the OCC.

The Exchange believes that the proposed change to eliminate the semi-annual change requirement is not unfairly discriminatory because the change would apply to all OTP Holders subject to the ORF. Furthermore, all OTP Holders would continue to be notified of changes to the ORF at least 30 days prior to the effectiveness of any such change. The proposed change to remove language relating to the August 2019 ORF is also not unfairly discriminatory because it would eliminate language from the Fee Schedule describing a fee that was effective only for August 30, 2019 and thus no longer impacts any OTP Holders.

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.

Intramarket Competition. The Exchange believes the proposed change would not impose an undue burden on competition because the ORF is charged to all OTP Holders on all their transactions that clear in the Customer range at the OCC; thus, the amount of ORF imposed is based on the amount of Customer volume transacted. The Exchange believes that the proposed temporary waiver of the ORF would not place certain market participants at an unfair disadvantage because all options transactions must clear via a clearing firm. Such clearing firms can then choose to pass through all, a portion, or none of the cost of the ORF to its customers, *i.e.,* the entering firms. In addition, because the ORF is collected from OTP Holder clearing firms by the OCC on behalf of NYSE Arca, the Exchange believes that using options transactions in the Customer range serves as a proxy for how to apportion regulatory costs among such OTP Holders. The Exchange also believes recommencing the ORF on February 1, 2023 at the current rate (unless the Exchange determines it necessary at that time to adjust the ORF to ensure that ORF collections do not exceed ORF Costs) would not impose an undue burden on competition because it would permit the Exchange to resume collecting an ORF that is designed to recover a material portion, but not all, of the Exchange's projected ORF Costs and the ORF would, as currently, apply to all OTP Holders on their options transactions that clear in the Customer range at the OCC. The Exchange further believes that the proposed change to remove the semi-annual requirement would not impose any burden on competition because the change would impact all OTP Holders subject to the ORF, and the Exchange will continue to provide advance notice of changes to the ORF to all OTP Holders via Trader Update. The Exchange also believes that the proposed change to eliminate language relating to the August 2019 ORF would not impact intramarket competition because it would simply add clarity to the Fee Schedule by removing text describing a fee that is no longer effective.

Intermarket Competition. The proposed fee change is not designed to address any competitive issues. Rather, the proposed change is designed to help the Exchange adequately fund its regulatory activities while seeking to ensure that total collections from regulatory fees do not exceed total regulatory costs and to promote clarity in the Fee Schedule by deleting obsolete text.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change is effective upon filing pursuant to Section 19(b)(3)(A) [17] of the Act and subparagraph (f)(2) of Rule 19b–4 [18] thereunder, because it establishes a due, fee, or other charge imposed by the Exchange.

At any time within 60 days of the filing of such proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such

[17] 15 U.S.C. 78s(b)(3)(A).

[18] 17 CFR 240.19b–4(f)(2).

action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings under Section 19(b)(2)(B) [19] of the Act to determine whether the proposed rule change should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov*. Please include File No. SR–NYSEARCA–2022–78 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 No. SR–NYSEARCA–2022–78. 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 No. SR–NYSEARCA–2022–78, and should be submitted on or before December 20, 2022.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[20]

Sherry R. Haywood,

Assistant Secretary.

[FR Doc. 2022–25945 Filed 11–28–22; 8:45 am]

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[19] 15 U.S.C. 78s(b)(2)(B).

[20] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–96373; File No. SR–NYSEAMER–2022–52]

Self-Regulatory Organizations; NYSE American LLC; Notice of Filing and Immediate Effectiveness of Proposed Change To Amend the NYSE American Options Fee Schedule Concerning the Options Regulatory Fee

November 22, 2022.

Pursuant to Section 19(b)(1) [1] of the Securities Exchange Act of 1934 (the ''Act'') [2] and Rule 19b–4 thereunder,[3] notice is hereby given that, on November 14, 2022, NYSE American LLC (''NYSE American'' or the ''Exchange'') filed with the Securities and Exchange Commission (the ''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend the NYSE American Options Fee Schedule (''Fee Schedule'') regarding the Options Regulatory Fee (''ORF''), effective November 14, 2022.[4] The proposed change is available on the Exchange's website at *www.nyse.com,* at the principal office of the Exchange, and at the Commission's Public Reference Room.

[1] 15 U.S.C. 78s(b)(1).

[2] 15 U.S.C. 78a.

[3] 17 CFR 240.19b–4.

[4] The Exchange previously filed to amend the Fee Schedule on September 28, 2022 (SR–NYSEAMER–2022–45) and withdrew such filing on November 14, 2022.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of those statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to amend the Fee Schedule to (1) waive the ORF for the period November 1, 2022 through January 31, 2023; (2) eliminate the requirement that the Exchange may only modify the ORF semi-annually; and (3) delete outdated language relating to the ORF for August 30, 2019 (the ''August 2019 ORF'').

Background

As a general matter, the Exchange may only use regulatory funds such as the ORF ''to fund the legal, regulatory, and surveillance operations'' of the Exchange.[5] More specifically, the ORF is designed to recover a material portion, but not all, of the Exchange's costs for the supervision and regulation of ATP Holders, including the Exchange's regulatory program and legal expenses associated with options, such as the costs related to in-house staff, third-party service providers, and technology that facilitate surveillance, investigation, examinations and enforcement (collectively, the ''ORF Costs''). ORF funds may also be used for indirect expenses such as human resources and other administrative costs. The Exchange monitors the amount of revenue collected from the ORF to ensure that this revenue, in combination with other regulatory fees and fines, does not exceed regulatory costs.

The ORF is assessed on ATP Holders for options transactions that are cleared

[5] The Exchange considers surveillance operations part of regulatory operations. The limitation on the use of regulatory funds also provides that they shall not be distributed. *See* Thirteenth Amended and Restated Operating Agreement of NYSE American LLC, Article IV, Section 4.05 and Securities Exchange Act Release No. 87993 (January 16, 2020), 85 FR 4050 (January 23, 2020) (SR–NYSEAMER–2020–04).

by the ATP Holder through the Options Clearing Corporation (''OCC'') in the Customer range regardless of the exchange on which the transaction occurs.[6] All options transactions must clear via a clearing firm and such clearing firms can then choose to pass through all, a portion, or none of the cost of the ORF to its customers, *i.e.,* the entering firms. Because the ORF is collected from ATP Holder clearing firms by the OCC on behalf of NYSE American,[7] the Exchange believes that using options transactions in the Customer range serves as a proxy for how to apportion regulatory costs among such ATP Holders. In addition, the Exchange notes that the costs relating to monitoring ATP Holders with respect to Customer trading activity are generally higher than the costs associated with monitoring ATP Holders that do not engage in Customer trading activity, which tends to be more automated and less labor-intensive. By contrast, regulating ATP Holders that engage in Customer trading activity is generally more labor intensive and requires a greater expenditure of human and technical resources as the Exchange needs to review not only the trading activity on behalf of Customers, but also the ATP Holder's relationship with its Customers via more labor-intensive exam-based programs.[8] As a result, the costs associated with administering the customer component of the Exchange's overall regulatory program are materially higher than the costs associated with administering the non-customer component (*e.g.,* ATP Holder proprietary transactions) of its regulatory program.

ORF Collections and Monitoring of ORF

Exchange rules establish that the Exchange may only increase or decrease the ORF semi-annually, that any such fee change will be effective on the first business day of February or August, and that market participants must be notified of any such change via Trader Update at least 30 calendar days prior to the effective date of the change.[9]

Because the ORF is based on options transactions volume, the amount of ORF collected is variable. For example, if options transactions reported to OCC in a given month increase, the ORF collected from ATP Holders will likely increase as well. Similarly, if options transactions reported to OCC in a given month decrease, the ORF collected from ATP Holders will likely decrease as well. Accordingly, the Exchange monitors the amount of ORF collected to ensure that it does not exceed the ORF Costs. If the Exchange determines the amount of ORF collected exceeds costs over an extended period, the Exchange may adjust the ORF by submitting a fee change filing to the Securities and Exchange Commission (the ''Commission'').

Temporary ORF Waiver

Based on the Exchange's recent review of regulatory costs and ORF collections, the Exchange proposes to waive the ORF from November 1, 2022 through January 31, 2023 in order to help ensure that the amount collected from the ORF, in combination with other regulatory fees and fines, does not exceed the Exchange's total regulatory costs. The Exchange proposes to resume assessing the ORF on February 1, 2023 at the current rate of $0.0055 per contract. The Exchange notified ATP Holders of the proposed change to the ORF via Trader Update on September 29, 2022 (which was at least 30 calendar days prior to the proposed operative date of the waiver, November 1, 2022) so that market participants have an opportunity to configure their systems to account for the waiver of the ORF. The Exchange's proposal to waive the ORF for the month of January 2023 would similarly provide ATP Holders with additional time in the new year to make any necessary adjustments or preparations for the resumption of the ORF effective February 1, 2023.

The proposed waiver is based on recent options volumes. The options industry has continued to experience extremely high options trading volumes and volatility, and options volume in 2022 remains high, particularly when compared to options volume in 2019 and 2020. The persisting increased options volumes have, in turn, impacted the Exchange's ORF collection.

For example, total average daily volume in 2022, to date, is 115% higher than total average daily volume in 2019, and customer average daily volume in 2022, to date, is 123% higher than customer average daily volume in 2019. Below is industry data from OCC[10] illustrating the significant increase in options volume between 2019 and 2022:

	2019	2020	2021	2022
Customer ADV	15,234,198	25,598,023	34,730,276	33,939,560
Total ADV	35,083,673	55,369,993	74,339,870	75,497,647

In addition, the below industry data from OCC demonstrates the high options trading volumes (especially when compared to 2019 and 2020) and volatility that the industry has continued to experience in 2022:

	April 2022	May 2022	June 2022	July 2022	August 2022	September 2022
Customer ADV	33,266,801	34,202,077	31,469,858	30,506,706	33,013,156	34,149,000

[6] *See* Fee Schedule, Section VII, Regulatory Fees, Options Regulatory Fee (''ORF''), *available here, https://www.nyse.com/publicdocs/nyse/markets/american-options/NYSE_American_Options_Fee_Schedule.pdf.*

[7] *See id.* The Exchange uses reports from OCC when assessing and collecting the ORF. The ORF is not assessed on outbound linkage trades. An ATP Holder is not assessed the fee until it has satisfied applicable technological requirements necessary to commence operations on NYSE American. *See id.*

[8] The Exchange notes that many of the Exchange's market surveillance programs require the Exchange to look at and evaluate activity across all options markets, such as surveillance for position limit violations, manipulation, front-running and contrary exercise advice violations/expiring exercise declarations. The Exchange and other options SROs are parties to a 17d–2 agreement allocating among the SROs regulatory responsibilities relating to compliance by the common members with rules for expiring exercise declarations, position limits, OCC trade adjustments, and Large Option Position Report reviews. *See, e.g.,* Securities Exchange Act Release No. 85097 (February 11, 2019), 84 FR 4871 (February 19, 2019).

[9] *See* Fee Schedule, *supra* note 6.

[10] The OCC publishes options and futures volume in a variety of formats, including daily and monthly volume by exchange, available here: *https://www.theocc.com/Market-Data/Market-Data-Reports/Volume-and-Open-Interest/Monthly-Weekly-Volume-Statistics.* The volume discussed in this filing is based on a compilation of OCC data for monthly volume of equity-based options and monthly volume of ETF-based options, in contract sides.

	April 2022	May 2022	June 2022	July 2022	August 2022	September 2022
Total ADV	73,140,597	76,254,734	70,628,926	68,535,963	73,487,342	77,134,470

Because of the sustained impact of the unprecedented trading volumes that have persisted through 2021 and 2022, along with the difficulty of predicting when volumes may return to more normal levels, the Exchange proposes to waive the ORF from November 1, 2022 through January 31, 2023 to help ensure that ORF collection will not exceed ORF Costs for 2022. The Exchange cannot predict whether options volume will remain at these levels going forward and projections for future regulatory costs are estimated, preliminary, and may change. However, the Exchange believes that the proposed waiver of the ORF would allow the Exchange to continue to monitor the amount collected from the ORF to help ensure that ORF collection, in combination with other regulatory fees and fines, does not exceed regulatory costs without the need to account for any ORF collection during that timeframe. The Exchange proposes to resume assessing the current ORF rate of $0.0055 per contract side as of February 1, 2023.

Semi-Annual Changes to ORF

As noted above, the Fee Schedule currently specifies that the Exchange may only increase or decrease the ORF semi-annually and that any such fee change will be effective on the first business day of February or August.[11] NYSE American proposes to eliminate this requirement to afford the Exchange increased flexibility in amending the ORF.[12] Although the Exchange proposes to eliminate the requirement to adjust the ORF only semi-annually, it would continue to submit a proposed rule change for each modification of the ORF and notify ATP Holders of any planned change to the ORF by Trader Update at least 30 calendar days prior to the effective date of such change. The Exchange believes that the prior notification to ATP Holders will provide guidance on the timing of any changes to the ORF and ensure that ATP Holders are prepared to configure their systems to properly account for the ORF. The Exchange will also issue a Trader Update informing ATP Holders of the ORF adjustment proposed in this filing, as described below, at least 30 calendar days prior to the proposed effective date.

August 2019 ORF

The Exchange proposes to delete language in the Fee Schedule pertaining to the August 2019 ORF, which was relevant only for the August 30, 2019 trading day and thus no longer reflects a fee currently assessed by the Exchange. The Exchange believes this change would improve the clarity of the Fee Schedule by removing obsolete language.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with the provisions of Section 6(b)[13] of the Act, in general, and Section 6(b)(4) and (5)[14] of the Act, in particular, in that it is designed to provide for the equitable allocation of reasonable dues, fees, and other charges among its members and other persons using its facilities and does not unfairly discriminate between customers, issuers, brokers, or dealers.

The Proposal Is Reasonable

The Exchange believes the proposed temporary waiver of the ORF is reasonable because it would help ensure that collections from the ORF do not exceed a material portion of the Exchange's ORF Costs. As noted above, the Exchange may only use regulatory funds such as ORF ''to fund the legal, regulatory, and surveillance operations'' of the Exchange.[15] In this regard, the ORF is designed to recover a material portion, but not all, of the Exchange's ORF Costs.

Although there can be no assurance that the Exchange's final costs for 2022 will not differ materially from its expectations and prior practice, nor can the Exchange predict with certainty whether options volume will remain at the current level going forward, the Exchange believes that the amount collected based on the current ORF rate, when combined with regulatory fees and fines, may result in collections in excess of the estimated ORF Costs for the year. Particularly, as noted above, the options market has continued to experience unanticipated and elevated volumes in 2022, particularly as compared to 2019 and 2020, due in large part to the continued extreme volatility in the marketplace as a result of the COVID–19 pandemic. This unprecedented spike in volatility, which has persisted through 2021 and 2022, resulted in significantly higher volume than was originally projected by the Exchange, thereby resulting in substantially higher ORF collections than projected (particularly as compared to ORF Costs which had been projected to decrease in 2022). The Exchange therefore believes that it would be reasonable to waive ORF from November 1, 2022 through January 31, 2023 to help ensure that ORF collection does not exceed the ORF Costs for 2022.[16] Particularly, the Exchange believes that waiving the ORF from November 1, 2022 to January 31, 2023 and taking into account all of the Exchange's other regulatory fees and fines would allow the Exchange to continue covering a material portion of ORF Costs, while lessening the potential for generating excess funds that may otherwise occur using the current rate. The Exchange would resume assessing its current ORF ($0.0055 per contract) as of February 1, 2023. The Exchange also believes that resumption of the ORF at the current rate on February 1, 2023 (unless the Exchange determines it necessary to adjust the ORF rate to help ensure that ORF collections do not exceed ORF Costs) is reasonable because it would permit the Exchange to resume collecting an ORF that is designed to recover a material portion, but not all, of the Exchange's projected ORF Costs. The Exchange would continue monitoring in advance of the resumption of the ORF and when ORF collection resumes on February 1, 2023 and, if the Exchange determines that, in light of projected volumes and ORF Costs, the ORF rate should be modified to help ensure that ORF collections would not exceed ORF Costs, adjust the ORF by submitting a filing a proposed rule change and notifying ATP Holders of such change by Trader Update.

The Exchange believes that the proposed elimination of language specifying that the Exchange may only increase or decrease the ORF semi-

[11] *See* Fee Schedule, *supra* note 6.

[12] The Exchange notes that at least one other options exchange has previously removed this requirement with respect to adjusting the ORF. *See, e.g.,* Securities Exchange Act Release No. 76950 (January 21, 2016), 81 FR 4687 (January 27, 2016) (SR–NASDAQ–2016–003) (Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Amend the Options Regulatory Fee).

[13] 15 U.S.C. 78f(b).

[14] 15 U.S.C. 78f(b)(4) and (5).

[15] *See* note 5, *supra.*

[16] The Exchange's proposal to also waive the ORF for the month of January 2023 would provide ATP Holders with additional time in the new year to make any necessary adjustments or preparations for the resumption of the ORF effective February 1, 2023.

annually and that any such fee change must be effective on the first business day of February or August is reasonable because it is designed to afford the Exchange increased flexibility in making necessary adjustments to the ORF, as the Exchange is required to monitor the amount collected from the ORF to ensure that it, in combination with its other regulatory fees and fines, does not exceed ORF Costs. The Exchange also believes the proposed change is reasonable because the Exchange will continue to provide market participants with 30 days advance notice of changes to the ORF, thereby providing ATP Holders with adequate time to make any necessary adjustments to accommodate the change.

The Exchange also believes that the proposed deletion of language relating to the August 2019 ORF is reasonable because it would remove obsolete language and thus improve the clarity of the Fee Schedule.

The Proposal Is an Equitable Allocation of Fees

The Exchange believes its proposal is an equitable allocation of fees among its market participants. The Exchange believes that the proposed waiver would not place certain market participants at an unfair disadvantage because all options transactions must clear via a clearing firm. Such clearing firms can then choose to pass through all, a portion, or none of the cost of the ORF to its customers, *i.e.,* the entering firms. Because the ORF is collected from ATP Holder clearing firms by the OCC on behalf of NYSE American, the Exchange believes that using options transactions in the Customer range serves as a proxy for how to apportion ORF Costs among such ATP Holders. In addition, the Exchange notes that the costs relating to monitoring ATP Holders with respect to Customer trading activity are generally higher than the costs associated with monitoring ATP Holders that do not engage in Customer trading activity, which tends to be more automated and less labor-intensive. By contrast, regulating ATP Holders that engage in Customer trading activity is generally more labor intensive and requires a greater expenditure of human and technical resources as the Exchange needs to review not only the trading activity on behalf of Customers, but also the ATP Holder's relationship with its Customers via more labor-intensive exam-based programs. As a result, the costs associated with administering the customer component of the Exchange's overall regulatory program are materially higher than the costs associated with administering the non-customer component (*e.g.,* ATP Holder proprietary transactions) of its regulatory program. Thus, the Exchange believes that a temporary waiver of the ORF is an equitable allocation of fees because it would apply equally to all ATP Holders on all their transactions that clear in the Customer range at the OCC. The Exchange also believes that recommencing the ORF on February 1, 2023 at the current rate, unless the Exchange determines it necessary to adjust the ORF to ensure that ORF collections do not exceed ORF Costs, is equitable because the Exchange would resume assessing an ORF designed to recover a material portion, but not all, of the Exchange's projected ORF Costs, and the ORF would likewise resume applying equally to all ATP Holders on options transactions in the Customer range.

The Exchange also believes that the proposed change to eliminate the requirement that the Exchange modify the ORF only semi-annually in February or August is equitable because the change would impact all ATP Holders subject to the ORF uniformly, and all ATP Holders would continue to receive at least 30 days' advance notice of changes to the ORF. The proposed change to remove language relating to the August 2019 ORF is also equitable because it would eliminate language from the Fee Schedule that is no longer applicable to any ATP Holders.

The Proposed Fee Is Not Unfairly Discriminatory

The Exchange believes that the proposal is not unfairly discriminatory. The Exchange believes that the proposed waiver of the ORF would not place certain market participants at an unfair disadvantage because all options transactions must clear via a clearing firm. Such clearing firms can then choose to pass through all, a portion, or none of the cost of the ORF to its customers, *i.e.,* the entering firms. Because the ORF is collected from ATP Holder clearing firms by the OCC on behalf of NYSE American, the Exchange believes that using options transactions in the Customer range serves as a proxy for how to apportion regulatory costs among such ATP Holders. In addition, the Exchange notes that the costs relating to monitoring ATP Holders with respect to Customer trading activity are generally higher than the costs associated with monitoring ATP Holders that do not engage in Customer trading activity, which tends to be more automated and less labor-intensive. By contrast, regulating ATP Holders that engage in Customer trading activity is generally more labor intensive and requires a greater expenditure of human and technical resources as the Exchange needs to review not only the trading activity on behalf of Customers, but also the ATP Holder's relationship with its Customers via more labor-intensive exam-based programs. As a result, the costs associated with administering the customer component of the Exchange's overall regulatory program are materially higher than the costs associated with administering the non-customer component (*e.g.,* ATP Holder proprietary transactions) of its regulatory program. Thus, the Exchange believes the temporary waiver of the ORF and the proposed modification of language relating to the Exchange's ability to modify the ORF are not unfairly discriminatory because the changes would apply to all ATP Holders subject to the ORF and the Exchange would provide all such ATP Holders with 30 days' advance notice of planned changes to the ORF. The Exchange also believes that recommencing the ORF on February 1, 2023 at the current rate, unless the Exchange determines it necessary to adjust the ORF to ensure that ORF collections do not exceed ORF Costs, is not unfairly discriminatory because the Exchange would resume assessing an ORF designed to recover a material portion, but not all, of the Exchange's projected ORF Costs, and the ORF would resume applying equally to all ATP Holders based on their transactions that clear in the Customer range at the OCC.

The Exchange believes that the proposed change to eliminate the semi-annual change requirement is not unfairly discriminatory because the change would apply to all ATP Holders subject to the ORF. Furthermore, all ATP Holders would continue to be notified of changes to the ORF at least 30 days prior to the effectiveness of any such change. The proposed change to remove language relating to the August 2019 ORF is also not unfairly discriminatory because it would eliminate language from the Fee Schedule describing a fee that was effective only for August 30, 2019 and thus no longer impacts any ATP Holders.

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.

Intramarket Competition. The Exchange believes the proposed change would not impose an undue burden on

competition because the ORF is charged to all ATP Holders on all their transactions that clear in the Customer range at the OCC; thus, the amount of ORF imposed is based on the amount of Customer volume transacted. The Exchange believes that the proposed temporary waiver of the ORF would not place certain market participants at an unfair disadvantage because all options transactions must clear via a clearing firm. Such clearing firms can then choose to pass through all, a portion, or none of the cost of the ORF to its customers, *i.e.,* the entering firms. In addition, because the ORF is collected from ATP Holder clearing firms by the OCC on behalf of NYSE American, the Exchange believes that using options transactions in the Customer range serves as a proxy for how to apportion regulatory costs among such ATP Holders. The Exchange also believes recommencing the ORF on February 1, 2023 at the current rate (unless the Exchange determines it necessary at that time to adjust the ORF to ensure that ORF collections do not exceed ORF Costs) would not impose an undue burden on competition because it would permit the Exchange to resume collecting an ORF that is designed to recover a material portion, but not all, of the Exchange's projected ORF Costs and the ORF would, as currently, apply to all ATP Holders on their options transactions that clear in the Customer range at the OCC. The Exchange further believes that the proposed change to remove the semi-annual requirement would not impose any burden on competition because the change would impact all ATP Holders subject to the ORF, and the Exchange will continue to provide advance notice of changes to the ORF to all ATP Holders via Trader Update. The Exchange also believes that the proposed change to eliminate language relating to the August 2019 ORF would not impact intramarket competition because it would simply add clarity to the Fee Schedule by removing text describing a fee that is no longer effective.

Intermarket Competition. The proposed fee change is not designed to address any competitive issues. Rather, the proposed change is designed to help the Exchange adequately fund its regulatory activities while seeking to ensure that total collections from regulatory fees do not exceed total regulatory costs and to promote clarity in the Fee Schedule by deleting obsolete text.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change is effective upon filing pursuant to Section 19(b)(3)(A) [17] of the Act and subparagraph (f)(2) of Rule 19b–4 [18] thereunder, because it establishes a due, fee, or other charge imposed by the Exchange.

At any time within 60 days of the filing of such proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings under Section 19(b)(2)(B) [19] of the Act to determine whether the proposed rule change should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov*. Please include File No. SR–NYSEAMER–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 No. SR–NYSEAMER–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 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 No. SR–NYSEAMER–2022–52, and should be submitted on or before December 20, 2022.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[20]

Sherry R. Haywood,

Assistant Secretary.

[FR Doc. 2022–25943 Filed 11–28–22; 8:45 am]

BILLING CODE 8011–01–P

[17] 15 U.S.C. 78s(b)(3)(A).

[18] 17 CFR 240.19b–4(f)(2).

[19] 15 U.S.C. 78s(b)(2)(B).

[20] 17 CFR 200.30–3(a)(12).

DEPARTMENT OF STATE

[Public Notice 11923]

Bureau of Political-Military Affairs, Directorate of Defense Trade Controls: Notifications to the Congress of Proposed Commercial Export Licenses

ACTION: Notice.

SUMMARY: The Directorate of Defense Trade Controls and the Department of State give notice that the attached Notifications of Proposed Commercial Export Licenses were submitted to the Congress on the dates indicated.

DATES: The dates of notification to Congress are as shown on each of the 19 letters.

FOR FURTHER INFORMATION CONTACT: Ms. Paula C. Harrison, Directorate of Defense Trade Controls (DDTC), Department of State at (202) 663–3310; or access the DDTC website at *https://*

www.pmddtc.state.gov/ddtcpublic and select ''Contact DDTC,'' then scroll down to ''Contact the DDTC Response Team'' and select ''Email.'' Please add this subject line to your message, ''ATTN: Congressional Notification of Licenses.''

SUPPLEMENTARY INFORMATION: Section 36(f) of the Arms Export Control Act (*22 U.S.C. 2776*) requires that notifications to the Congress pursuant to sections 36(c) and 36(d) be published in the **Federal Register** in timely manner.

The following comprise recent such notifications and are published to give notice to the public.

July 6, 2022.
The Honorable Nancy Pelosi, *Speaker of the House of Representatives.*

Dear Madam Speaker:

Pursuant to Section 36(c) of the Arms Export Control Act, please find enclosed a certification of a proposed license amendment for the export of defense articles, including technical data and defense services, in the amount of $50,000,000 or more.

The transaction contained in the attached certification involves the export of defense articles, including technical data and defense services, to Finland, Italy, Japan, the Netherlands, and Norway to support the design, development, manufacture, and testing of composite components and subassemblies for the F–35 Lightning II aircraft center fuselage.

The U.S. government is prepared to license the export of these items having taken into account political, military, economic, human rights, and arms control considerations.

More detailed information is contained in the formal certification which, though unclassified, contains business information submitted to the Department of State by the applicant, publication of which could cause competitive harm to the U.S. firm concerned.

Sincerely,
Naz Durakoglu,
Assistant Secretary, Bureau of Legislative Affairs.
Enclosure: Transmittal No. DDTC 22–005.

July 6, 2022
The Honorable Nancy Pelosi, *Speaker of the House of Representatives.*

Dear Madam Speaker:

Pursuant to Section 36(c) of the Arms Export Control Act, please find enclosed a certification of a proposed license amendment for the export of defense articles, including technical data and defense services, in the amount of $50,000,000 or more.

The transaction contained in the attached certification involves the export of defense articles, including technical data and defense services, to Chile, France, and the UK to support the Whole Life Support Program for the E–3D Sentry aircraft.

The U.S. government is prepared to license the export of these items having taken into account political, military, economic, human rights, and arms control considerations.

More detailed information is contained in the formal certification which, though unclassified, contains business information submitted to the Department of State by the applicant, publication of which could cause competitive harm to the U.S. firm concerned.

Sincerely,
Naz Durakoglu,
Assistant Secretary, Bureau of Legislative Affairs.
Enclosure: Transmittal No. DDTC 22–009.

July 6, 2022
The Honorable Nancy Pelosi, *Speaker of the House of Representatives.*

Dear Madam Speaker:

Pursuant to Section 36(c) of the Arms Export Control Act, please find enclosed a certification of a proposed license for the export of firearms, parts, and components abroad controlled under Category I of the U.S. Munitions List in the amount of $1,000,000 or more.

The transaction contained in the attached certification involves the export of 7.62mm and 5.56mm machine guns, and related spare parts and components to India.

The U.S. government is prepared to license the export of these items having taken into account political, military, economic, human rights, and arms control considerations.

More detailed information is contained in the formal certification which, though unclassified, contains business information submitted to the Department of State by the applicant, publication of which could cause competitive harm to the U.S. firm concerned.

Sincerely,
Naz Durakoglu,
Assistant Secretary, Bureau of Legislative Affairs.
Enclosure: Transmittal No. DDTC 22–011.

July 6, 2022
The Honorable Nancy Pelosi, *Speaker of the House of Representatives.*

Dear Madam Speaker:

Pursuant to Section 36(c) of the Arms Export Control Act, please find enclosed a certification of a proposed license for the export of defense articles, including technical data and defense services, in the amount of $100,000,000 or more.

The transaction contained in the attached certification involves the export of defense articles, including technical data and defense services, to the UK to support the design, development, manufacture, supply, testing, and integration of two High Powered Assemblies and two high power switching contactors for incorporation into an Electrical Power Management System for the Joint Strike Fighter F–35 Lightning II.

The U.S. government is prepared to license the export of these items having taken into account political, military, economic, human rights, and arms control considerations.

More detailed information is contained in the formal certification which, though unclassified, contains business information submitted to the Department of State by the applicant, publication of which could cause competitive harm to the U.S. firm concerned.

Sincerely,
Naz Durakoglu,
Assistant Secretary, Bureau of Legislative Affairs.
Enclosure: Transmittal No. DDTC 22–022.

July 18, 2022
The Honorable Nancy Pelosi, *Speaker of the House of Representatives.*

Dear Madam Speaker:

Pursuant to Section 36(c) of the Arms Export Control Act, please find enclosed a certification of a proposed license for the export of firearms, parts, and components abroad controlled under Category I of the U.S. Munitions List in the amount of $1,000,000 or more.

The transaction contained in the attached certification involves the export of 5.56 mm automatic rifles and sound suppressors to the UK.

The U.S. government is prepared to license the export of these items having taken into account political, military, economic, human rights, and arms control considerations.

More detailed information is contained in the formal certification which, though unclassified, contains business information submitted to the Department of State by the applicant, publication of which could cause competitive harm to the U.S. firm concerned.

Sincerely,
Naz Durakoglu,
Assistant Secretary, Bureau of Legislative Affairs.
Enclosure: Transmittal No. DDTC 22–028.

August 1, 2022
The Honorable Nancy Pelosi, *Speaker of the House of Representatives.*

Dear Madam Speaker:

Pursuant to Section 36(c) of the Arms Export Control Act, please find enclosed a certification of a proposed license for the export of defense articles, including technical data and defense services, in the amount of $100,000,000 or more.

The transaction contained in the attached certification involves the export of defense articles, including technical data and defense services, to Italy and UK to support the maintenance, repair, overhaul, training, base activation, and general operational support of the F135 propulsion system.

The U.S. government is prepared to license the export of these items having taken into account political, military, economic, human rights, and arms control considerations.

More detailed information is contained in the formal certification which, though unclassified, contains business information submitted to the Department of State by the applicant, publication of which could cause competitive harm to the U.S. firm concerned.

Sincerely,
Naz Durakoglu,
Assistant Secretary, Bureau of Legislative Affairs.
Enclosure: Transmittal No. DDTC 21–069.

August 10, 2022
The Honorable Nancy Pelosi, *Speaker of the House of Representatives.*

Dear Madam Speaker:

Pursuant to Section 36(c) of the Arms Export Control Act, please find enclosed a certification of a proposed license for the export of firearms components abroad

controlled under Category I of the U.S. Munitions List in the amount of $1,000,000 or more.

The transaction contained in the attached certification involves the export to Georgia of CM5 and M5 5.56mm automatic rifles.

The U.S. government is prepared to license the export of these items having taken into account political, military, economic, human rights, and arms control considerations.

More detailed information is contained in the formal certification which, though unclassified, contains business information submitted to the Department of State by the applicant, publication of which could cause competitive harm to the U.S. firm concerned.

Sincerely,
Naz Durakoglu,
Assistant Secretary, Bureau of Legislative Affairs.
Enclosure: Transmittal No. DDTC 21–058.

August 10, 2022
The Honorable Nancy Pelosi, *Speaker of the House of Representatives.*

Dear Madam Speaker:

Pursuant to Section 36(c) of the Arms Export Control Act, please find enclosed a certification of a proposed license for the export of firearms, parts, and components abroad controlled under Category I of the U.S. Munitions List in the amount of $1,000,000 or more.

The transaction contained in the attached certification involves the export to Thailand of M5 5.56mm automatic rifles and suppressors.

The U.S. government is prepared to license the export of these items having taken into account political, military, economic, human rights, and arms control considerations.

More detailed information is contained in the formal certification which, though unclassified, contains business information submitted to the Department of State by the applicant, publication of which could cause competitive harm to the U.S. firm concerned.

Sincerely,
Naz Durakoglu,
Assistant Secretary, Bureau of Legislative Affairs.
Enclosure: Transmittal No. DDTC 21–071.

August 10, 2022
The Honorable Nancy Pelosi, *Speaker of the House of Representatives.*

Dear Madam Speaker:

Pursuant to Section 36(c) of the Arms Export Control Act, please find enclosed a certification of a proposed license for the export of defense articles, including technical data and defense services, in the amount of $100,000,000 or more.

The transaction contained in the attached certification involves the export of defense articles, including technical data and defense services, to Australia and the Republic of Korea to provide Integrated Logistical Support for the 737 AEW&C MESA Radar/IFF Subsystem.

The U.S. government is prepared to license the export of these items having taken into account political, military, economic, human rights, and arms control considerations.

More detailed information is contained in the formal certification which, though unclassified, contains business information submitted to the Department of State by the applicant, publication of which could cause competitive harm to the U.S. firm concerned.

Sincerely,
Naz Durakoglu,
Assistant Secretary, Bureau of Legislative Affairs.
Enclosure: Transmittal No. DDTC 21–084.

August 10, 2022
The Honorable Nancy Pelosi, *Speaker of the House of Representatives.*

Dear Madam Speaker:

Pursuant to Section 36(c) of the Arms Export Control Act, please find enclosed a certification of a proposed license for the export of defense articles, including technical data and defense services, in the amount of [] $100,000,000 or more.

The transaction contained in the attached certification involves the export of defense articles, including technical data and defense services to Australia to support the integration, installation, operation, training, testing, maintenance, and repair of radio systems.

The U.S. government is prepared to license the export of these items having taken into account political, military, economic, human rights, and arms control considerations.

More detailed information is contained in the formal certification which, though unclassified, contains business information submitted to the Department of State by the applicant, publication of which could cause competitive harm to the U.S. firm concerned.

Sincerely,
Naz Durakoglu,
Assistant Secretary, Bureau of Legislative Affairs.
Enclosure: Transmittal No. DDTC 22–015.

August 17, 2022
The Honorable Nancy Pelosi, *Speaker of the House of Representatives.*

Dear Madam Speaker:

Pursuant to Section 36(c) of the Arms Export Control Act, please find enclosed a certification of a proposed license for the export of defense articles, including technical data and defense services, in the amount of $100,000,000 or more.

The transaction contained in the attached certification involves the export of defense articles, including technical data and defense services, to Hungary, Norway, and the UK to support the integration, engineering, processing, assembly, operation, repair, testing and maintenance of the National Advanced Surface to Air Missile System (NASAMS).

The U.S. government is prepared to license the export of these items having taken into account political, military, economic, human rights, and arms control considerations.

More detailed information is contained in the formal certification which, though unclassified, contains business information submitted to the Department of State by the applicant, publication of which could cause competitive harm to the U.S. firm concerned.

Sincerely,
Naz Durakoglu,
Assistant Secretary, Bureau of Legislative Affairs.
Enclosure: Transmittal No. DDTC 21–079.

August 17, 2022
The Honorable Nancy Pelosi, *Speaker of the House of Representatives.*

Dear Madam Speaker:

Pursuant to Section 36(c) of the Arms Export Control Act, please find enclosed a certification of a proposed license for the export of defense articles, including technical data and defense services, in the amount of $100,000,000 or more.

The transaction contained in the attached certification involves the export of defense articles, including technical data and defense services, to Australia and the Republic of Korea to support the upgrades and execution of the E–737 Airborne Early Warning and Control System Compliance Upgrade Program.

The U.S. government is prepared to license the export of these items having taken into account political, military, economic, human rights, and arms control considerations.

More detailed information is contained in the formal certification which, though unclassified, contains business information submitted to the Department of State by the applicant, publication of which could cause competitive harm to the U.S. firm concerned.

Sincerely,
Naz Durakoglu,
Assistant Secretary, Bureau of Legislative Affairs.
Enclosure: Transmittal No. DDTC 22–002.

August 17, 2022
The Honorable Nancy Pelosi, *Speaker of the House of Representatives.*

Dear Madam Speaker:

Pursuant to Section 36(c) of the Arms Export Control Act, please find enclosed a certification of a proposed license for the export of firearms, parts, and components abroad controlled under Category I of the U.S. Munitions List in the amount of $1,000,000 or more.

The transaction contained in the attached certification involves the export of 7.62mm and 12.7mm machine guns and spare parts to Oman.

The U.S. government is prepared to license the export of these items having taken into account political, military, economic, human rights, and arms control considerations.

More detailed information is contained in the formal certification which, though unclassified, contains business information submitted to the Department of State by the applicant, publication of which could cause competitive harm to the U.S. firm concerned.

Sincerely,
Naz Durakoglu,
Assistant Secretary, Bureau of Legislative Affairs.
Enclosure: Transmittal No. DDTC 22–007.

August 17, 2022
The Honorable Nancy Pelosi, *Speaker of the House of Representatives.*

Dear Madam Speaker:

Pursuant to Section 36(c) of the Arms Export Control Act, please find enclosed a certification of a proposed license for the export of firearms, parts, and components abroad controlled under Category I of the

U.S. Munitions List in the amount of $1,000,000 or more.

The transaction contained in the attached certification involves the export of defense articles, including technical data, and defense services, to Norway to support the integration, maintenance, and support of 503D .50 caliber gatling machinegun systems.

The U.S. government is prepared to license the export of these items having taken into account political, military, economic, human rights, and arms control considerations.

More detailed information is contained in the formal certification which, though unclassified, contains business information submitted to the Department of State by the applicant, publication of which could cause competitive harm to the U.S. firm concerned.

Sincerely,
Naz Durakoglu,
Assistant Secretary, Bureau of Legislative Affairs.
Enclosure: Transmittal No. DDTC 22–031.

August 24, 2022
The Honorable Nancy Pelosi, *Speaker of the House of Representatives.*

Dear Madam Speaker:

Pursuant to Section 36(c) of the Arms Export Control Act, please find enclosed a certification of a proposed license for the export of firearms abroad controlled under Category I of the U.S. Munitions List in the amount of $1,000,000 or more.

The transaction contained in the attached certification involves the export to Thailand of 9mm automatic rifles.

The U.S. government is prepared to license the export of these items having taken into account political, military, economic, human rights, and arms control considerations.

More detailed information is contained in the formal certification which, though unclassified, contains business information submitted to the Department of State by the applicant, publication of which could cause competitive harm to the U.S. firm concerned.

Sincerely,
David Bonine,
Senior Bureau Official, Bureau of Legislative Affairs.
Enclosure: Transmittal No. DDTC 22–001.

August 25, 2022
The Honorable Nancy Pelosi, *Speaker of the House of Representatives.*

Dear Madam Speaker:

Pursuant to Section 36(c) of the Arms Export Control Act, please find enclosed a certification of a proposed license amendment for the export of defense articles, including technical data and defense services, in the amount of $14,000,000 or more.

The transaction contained in the attached certification involves the export of defense articles, including technical data and defense services, to the UAE and the UK for sustainment of C–17A Globemaster III transport aircraft including associated spares, support equipment, and aircrew and maintenance training.

The U.S. government is prepared to license the export of these items having taken into account political, military, economic, human rights, and arms control considerations.

More detailed information is contained in the formal certification which, though unclassified, contains business information submitted to the Department of State by the applicant, publication of which could cause competitive harm to the U.S. firm concerned.

Sincerely,
David Bonine,
Senior Bureau Official, Bureau of Legislative Affairs.
Enclosure: Transmittal No. DDTC 20–054.

August 25, 2022
The Honorable Nancy Pelosi, *Speaker of the House of Representatives.*

Dear Madam Speaker:

Pursuant to Section 36(c) of the Arms Export Control Act, please find enclosed a certification of a proposed license for the export of firearms, parts, and components abroad controlled under Category I of the U.S. Munitions List in the amount of $1,000,000 or more.

The transaction contained in the attached certification involves the export of M4 5.56mm automatic rifles to Qatar.

The U.S. government is prepared to license the export of these items having taken into account political, military, economic, human rights, and arms control considerations.

More detailed information is contained in the formal certification which, though unclassified, contains business information submitted to the Department of State by the applicant, publication of which could cause competitive harm to the U.S. firm concerned.

Sincerely,
David Bonine,
Senior Bureau Official, Bureau of Legislative Affairs.
Enclosure: Transmittal No. DDTC 21–064.

August 30, 2022
The Honorable Nancy Pelosi, *Speaker of the House of Representatives.*

Dear Madam Speaker:

Pursuant to Section 36(c) of the Arms Export Control Act, please find enclosed a certification of a proposed license for the export of defense articles, including technical data and defense services, in the amount of $50,000,000 or more.

The transaction involves the transfer of defense articles, including technical data, and defense services, to Saudi Arabia, UK, Australia, and the UAE for the sale, operation, integration, and maintenance of tactical radio systems and accessories.

The U.S. government is prepared to license the export of these items having taken into account political, military, economic, human rights, and arms control considerations.

More detailed information is contained in the formal certification which, though unclassified, contains business information submitted to the Department of State by the applicant, publication of which could cause competitive harm to the U.S. firm concerned.

Sincerely,
David Bonine,
Senior Bureau Official, Bureau of Legislative Affairs.
Enclosure: Transmittal No. DDTC 22–017.

September 15, 2022
The Honorable Nancy Pelosi, *Speaker of the House of Representatives.*

Dear Madam Speaker:

Pursuant to Section 36(c) of the Arms Export Control Act, please find enclosed a certification of a proposed license for the export of defense articles, including technical data and defense services, in the amount of $100,000,000 or more.

The transaction contained in the attached certification involves the export of defense articles, including technical data and defense services, to Canada, Denmark, Germany, Italy, Luxembourg, Norway, Poland, and the UK to support the provision of Post Design Services, Additional Initial Spares, In-Service Support Services and proposal efforts for system modifications to the North Atlantic Treaty Organization Alliance Ground Surveillance Contractor Logistics Support Program.

The U.S. government is prepared to license the export of these items having taken into account political, military, economic, human rights, and arms control considerations.

More detailed information is contained in the formal certification which, though unclassified, contains business information submitted to the Department of State by the applicant, publication of which could cause competitive harm to the U.S. firm concerned.

Sincerely,
Naz Durakoglu,
Assistant Secretary, Bureau of Legislative Affairs.
Enclosure: Transmittal No. DDTC 22–008.

Michael F. Miller,

Deputy Assistant Secretary, Directorate of Defense Trade Controls, Department of State.

[FR Doc. 2022–26038 Filed 11–28–22; 8:45 am]

BILLING CODE 4710–25–P

OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE

Notice of Product Exclusion Extensions: China's Acts, Policies, and Practices Related to Technology Transfer, Intellectual Property, and Innovation

AGENCY: Office of the United States Trade Representative (USTR).

ACTION: Notice.

SUMMARY: In prior notices, the U.S. Trade Representative modified the actions in the Section 301 investigation of China's acts, policies, and practices related to technology transfer, intellectual property, and innovation by excluding from additional duties certain medical-care products needed to address COVID, and subsequently extended certain of these exclusions. The current COVID exclusions—covering 81 medical-care products—are scheduled to expire on November 30, 2022. This notice announces the U.S. Trade Representative's determination to further extend the 81 COVID exclusions for an additional three months.

DATES: The modification announced in this notice extends the COVID exclusions through February 28, 2023.

FOR FURTHER INFORMATION CONTACT: For general questions about this notice, contact Associate General Counsel Philip Butler or Assistant General Counsel Edward Marcus at (202) 395–5725. For specific questions on customs classification or implementation of the product exclusions, contact *traderemedy@cbp.dhs.gov.*

SUPPLEMENTARY INFORMATION:

A. Background

On December 29, 2020, USTR announced the extension of 80 product exclusions on medical-care and/or COVID response products; further modifications in the form of 19 product exclusions to remove Section 301 duties from additional medical-care and/or COVID response products; and that USTR might consider further extensions and/or modifications as appropriate. *See* 85 FR 85831.

These 99 exclusions were later extended until September 30, 2021. 86 FR 13785. On August 27, 2021, USTR published a notice requesting public comments on whether any of these exclusions should be further extended for up to six months. 86 FR 48280. To provide time for USTR to review the comments it received in response to the August 27 notice, USTR announced the interim extension of these 99 exclusions through November 14, 2021, (86 FR 54011) and a subsequent extension, through November 30, 2021. 86 FR 63438.

On November 16, 2021, USTR announced the extension of 81 of the COVID exclusions for an additional 6 months (until May 31, 2022) and that USTR might consider further extensions and/or modifications as appropriate. 86 FR 63438. On June 3, USTR announced a subsequent extension of 81 of the COVID exclusions for an additional 6 months (until November 30, 2022). 87 FR 33871.

B. Determination To Extend COVID Exclusions

In light of the continuing efforts to combat COVID, the U.S. Trade Representative has determined that a 3 month extension of the 81 COVID related product exclusions is warranted. The U.S. Trade Representative's decision to extend the 81 product exclusions takes into account public comments previously provided, the advice of advisory committees and the interagency Section 301 Committee, and the advice of the White House COVID–19 Response Team.

As provided in the November 16 notice, the exclusion extensions in the annex to this notice are available for any product that meets the description in the product exclusion. Further, the scope of each exclusion is governed by the scope of the ten-digit Harmonized Tariff Schedule of the United States (HTSUS) subheadings and product descriptions set forth in U.S. note 20(sss) to subchapter III of chapter 99 of the HTSUS. U.S. Customs and Border Protection will issue instructions on entry guidance and implementation.

The U.S. Trade Representative may continue to consider further extensions and/or additional modifications as appropriate.

Annex

The U.S. Trade Representative has determined to extend all exclusions previously extended under heading 9903.88.66 and U.S. notes 20(sss)(i), 20(sss)(ii), 20(sss)(iii), and 20(sss)(iv) to subchapter III of chapter 99 of the Harmonized Tariff Schedule of the United States (HTSUS). *See* 87 FR 33871 (June 3, 2022). The extension is effective with respect to goods entered for consumption, or withdrawn from warehouse for consumption, on or after 12:01 a.m. eastern standard time on December 1, 2022, and before 11:59 p.m. eastern standard time on February 28, 2023. Effective on December 1, 2022, the article description of heading 9903.88.66 of the HTSUS is modified by deleting ''December 1, 2022,'' and by inserting ''February 28, 2023'' in lieu thereof.

Greta Peisch,

General Counsel, Office of the United States Trade Representative.

[FR Doc. 2022–25990 Filed 11–28–22; 8:45 am]

BILLING CODE 3290–F3–P

DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

[Docket No. FMCSA–2014–0104; FMCSA–2017–0058; FMCSA–2017–0060; FMCSA–2018–0135; FMCSA–2019–0109]

Qualification of Drivers; Exemption Applications; Hearing

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

ACTION: Notice of renewal of exemptions; request for comments.

SUMMARY: FMCSA announces its decision to renew exemptions for nine individuals from the hearing requirement in the Federal Motor Carrier Safety Regulations (FMCSRs) for interstate commercial motor vehicle (CMV) drivers. The exemptions enable these hard of hearing and deaf individuals to continue to operate CMVs in interstate commerce.

DATES: The exemptions are applicable on November 30, 2022. The exemptions expire on November 30, 2024. Comments must be received on or before December 29, 2022.

ADDRESSES: You may submit comments identified by the Federal Docket Management System Docket No. FMCSA–2014–0104, FMCSA–2017–0058, FMCSA–2017–0060, FMCSA–2018–0135, or Docket No. FMCSA–2019–0109 using any of the following methods:

- *Federal eRulemaking Portal:* Go to *www.regulations.gov,* insert the docket number, FMCSA–2014–0104, FMCSA–2017–0058, FMCSA–2017–0060, FMCSA–2018–0135, or FMCSA–2019–0109 in the keyword box, and click ''Search.'' Next, sort the results by ''Posted (Newer-Older),'' choose the first notice listed, and click on the ''Comment'' button. Follow the online instructions for submitting comments.
- *Mail:* Dockets Operations; U.S. Department of Transportation, 1200 New Jersey Avenue SE, West Building Ground Floor, Room W12–140, Washington, DC 20590–0001.
- *Hand Delivery:* West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE, Washington, DC 20590–0001, between 9 a.m. and 5 p.m., ET, Monday through Friday, except Federal Holidays.
- *Fax:* (202) 493–2251.

To avoid duplication, please use only one of these four methods. See the ''Public Participation'' portion of the **SUPPLEMENTARY INFORMATION** section for instructions on submitting comments.

FOR FURTHER INFORMATION CONTACT: Ms. Christine A. Hydock, Chief, Medical Programs Division, FMCSA, DOT, 1200 New Jersey Avenue SE, Room W64–224, Washington, DC 20590–0001, (202) 366–4001, *fmcsamedical@dot.gov.* Office hours are from 8:30 a.m. to 5 p.m., ET, Monday through Friday, except Federal holidays. If you have questions regarding viewing or submitting material to the docket, contact Dockets Operations, (202) 366–9826.

SUPPLEMENTARY INFORMATION:

I. Public Participation

A. Submitting Comments

If you submit a comment, please include the docket number for this notice (Docket No. FMCSA–2014–0104, Docket No. FMCSA–2017–0058, Docket No. FMCSA–2017–0060, Docket No. FMCSA–2018–0135, or Docket No. FMCSA–2019–0109), indicate the

specific section of this document to which each comment applies, and provide a reason for each suggestion or recommendation. You may submit your comments and material online or by fax, mail, or hand delivery, but please use only one of these means. FMCSA recommends that you include your name and a mailing address, an email address, or a phone number in the body of your document so that FMCSA can contact you if there are questions regarding your submission.

To submit your comment online, go to *www.regulations.gov,* insert the docket number, FMCSA–2014–0104, FMCSA–2017–0058, FMCSA–2017–0060, FMCSA–2018–0135, or FMCSA–2019–0109 in the keyword box, and click ''Search.'' Next, sort the results by ''Posted (Newer-Older),'' choose the first notice listed, click the ''Comment'' button, and type your comment into the text box on the following screen. Choose whether you are submitting your comment as an individual or on behalf of a third party and then submit.

If you submit your comments by mail or hand delivery, submit them in an unbound format, no larger than 8½ by 11 inches, suitable for copying and electronic filing. If you submit comments by mail and would like to know that they reached the facility, please enclose a stamped, self-addressed postcard or envelope.

FMCSA will consider all comments and material received during the comment period.

B. Viewing Comments

To view comments go to *www.regulations.gov.* Insert the docket number, FMCSA–2014–0104, FMCSA–2017–0058, FMCSA–2017–0060, FMCSA–2018–0135, or FMCSA–2019–0109 in the keyword box and click ''Search.'' Next, sort the results by ''Posted (Newer-Older),'' choose the first notice listed, and click ''Browse Comments.'' If you do not have access to the internet, you may view the docket online by visiting Dockets Operations in Room W12–140 on the ground floor of the DOT West Building, 1200 New Jersey Avenue SE, Washington, DC 20590–0001, between 9 a.m. and 5 p.m., ET, Monday through Friday, except Federal holidays. To be sure someone is there to help you, please call (202) 366–9317 or (202) 366–9826 before visiting Dockets Operations.

C. Privacy Act

In accordance with 49 U.S.C. 31315(b)(6), DOT solicits comments from the public on the exemption request. DOT posts these comments, without edit, including any personal information the commenter provides, to *www.regulations.gov.* As described in the system of records notice DOT/ALL 14 (Federal Docket Management System (FDMS)), which can be reviewed at *https://www.transportation.gov/individuals/privacy/privacy-act-system-records-notices,* the comments are searchable by the name of the submitter.

II. Background

Under 49 U.S.C. 31136(e) and 31315(b), FMCSA may grant an exemption from the FMCSRs for no longer than a 5-year period if it finds such exemption would likely achieve a level of safety that is equivalent to, or greater than, the level that would be achieved absent such exemption. The statute also allows the Agency to renew exemptions at the end of the 5-year period. FMCSA grants medical exemptions from the FMCSRs for a 2-year period to align with the maximum duration of a driver's medical certification.

The physical qualification standard for drivers regarding hearing found in 49 CFR 391.41(b)(11) states that a person is physically qualified to drive a CMV if that person first perceives a forced whispered voice in the better ear at not less than 5 feet with or without the use of a hearing aid or, if tested by use of an audiometric device, does not have an average hearing loss in the better ear greater than 40 decibels at 500 Hz, 1,000 Hz, and 2,000 Hz with or without a hearing aid when the audiometric device is calibrated to American National Standard (formerly ASA Standard) Z24.5—1951.

This standard was adopted in 1970 and was revised in 1971 to allow drivers to be qualified under this standard while wearing a hearing aid (35 FR 6458, 6463 (Apr. 22, 1970) and 36 FR 12857 (July 3, 1971), respectively).

The nine individuals listed in this notice have requested renewal of their exemptions from the hearing standard in § 391.41(b)(11), in accordance with FMCSA procedures. Accordingly, FMCSA has evaluated these applications for renewal on their merits and decided to extend each exemption for a renewable 2-year period.

III. Request for Comments

Interested parties or organizations possessing information that would otherwise show that any, or all, of these drivers are not currently achieving the statutory level of safety should immediately notify FMCSA. The Agency will evaluate any adverse evidence submitted and, if safety is being compromised or if continuation of the exemption would not be consistent with the goals and objectives of 49 U.S.C. 31136(e) and 31315(b), FMCSA will take immediate steps to revoke the exemption of a driver.

IV. Basis for Renewing Exemptions

In accordance with 49 U.S.C. 31136(e) and 31315(b), each of the nine applicants has satisfied the renewal conditions for obtaining an exemption from the hearing requirement. The nine drivers in this notice remain in good standing with the Agency. In addition, for commercial driver's license (CDL) holders, the Commercial Driver's License Information System and the Motor Carrier Management Information System are searched for crash and violation data. For non-CDL holders, the Agency reviews the driving records from the State Driver's Licensing Agency. These factors provide an adequate basis for predicting each driver's ability to continue to safely operate a CMV in interstate commerce. Therefore, FMCSA concludes that extending the exemption for each of these drivers for a period of 2 years is likely to achieve a level of safety equal to that existing without the exemption.

As of November 30, 2022, and in accordance with 49 U.S.C. 31136(e) and 31315(b), the following nine individuals have satisfied the renewal conditions for obtaining an exemption from the hearing requirement in the FMCSRs for interstate CMV drivers:

Deonte Blanks (TX)
Alan Bridgeford (AZ)
Michael Dohanish (OH)
Ralph Domel (TX)
Bruce Dunn (LA)
Teela Gilmore (GA)
Gregory Hale (CA)
Scott Perdue (GA)
Adalberto Rodriguez (NY)

The drivers were included in docket numbers FMCSA–2014–0104, FMCSA–2017–0058, FMCSA–2017–0060, FMCSA–2018–0135, or FMCSA–2019–0109. Their exemptions are applicable as of November 30, 2022, and will expire on November 30, 2024.

V. Conditions and Requirements

The exemptions are extended subject to the following conditions: (1) each driver must report any crashes or accidents as defined in § 390.5; and (2) report all citations and convictions for disqualifying offenses under 49 CFR 383 and 49 CFR 391 to FMCSA; and (3) each driver prohibited from operating a motorcoach or bus with passengers in interstate commerce. The driver must also have a copy of the exemption when driving, for presentation to a duly authorized Federal, State, or local

enforcement official. In addition, the exemption does not exempt the individual from meeting the applicable CDL testing requirements. Each exemption will be valid for 2 years unless rescinded earlier by FMCSA. The exemption will be rescinded if: (1) the person fails to comply with the terms and conditions of the exemption; (2) the exemption has resulted in a lower level of safety than was maintained before it was granted; or (3) continuation of the exemption would not be consistent with the goals and objectives of 49 U.S.C. 31136(e) and 31315(b).

VI. Preemption

During the period the exemption is in effect, no State shall enforce any law or regulation that conflicts with this exemption with respect to a person operating under the exemption.

VII. Conclusion

Based upon its evaluation of the nine exemption applications, FMCSA renews the exemptions of the aforementioned drivers from the hearing requirement in § 391.41(b)(11). In accordance with 49 U.S.C. 31136(e) and 31315(b), each exemption will be valid for two years unless revoked earlier by FMCSA.

Larry W. Minor,

Associate Administrator for Policy.

[FR Doc. 2022–25981 Filed 11–28–22; 8:45 am]

BILLING CODE 4910–EX–P

DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

[Docket No. FMCSA–2021–0186]

Parts and Accessories Necessary for Safe Operation; Rosco Vision, Inc.; Application for an Exemption

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

ACTION: Notice of final disposition; grant of exemption.

SUMMARY: The Federal Motor Carrier Safety Administration (FMCSA) announces its decision to grant a limited 5-year exemption to Rosco Vision, Inc. (Rosco) to allow motor carriers to operate commercial motor vehicles (CMVs) with the company's CV (Commercial Vehicle) Digital Camera Monitor System (CMS) (CV Digital CMS) installed as an alternative to the two rear-vision mirrors required by the Federal Motor Carrier Safety Regulations (FMCSRs). The Agency has determined that granting the exemption would likely achieve a level of safety equivalent to or greater than the level of safety provided by the regulation.

DATES: This exemption is applicable December 4, 2022 and ending December 4, 2027.

FOR FURTHER INFORMATION CONTACT: José R. Cestero, Vehicle and Roadside Operations Division, Office of Carrier, Driver, and Vehicle Safety, MC–PSV, Federal Motor Carrier Safety Administration, 1200 New Jersey Avenue SE, Washington, DC 20590–0001; (202) 366–5541; *jose.cestero@dot.gov.*

Docket: For access to the docket to read background documents or comments submitted in response to the notice requesting public comments on the exemption application, go to *www.regulations.gov* at any time or visit Room W12–140 on the ground level of the West Building, 1200 New Jersey Avenue SE, Washington, DC between 9 a.m. and 5 p.m., ET, Monday through Friday, except Federal holidays. To be sure someone is there to help you, please call (202) 366–9317 or (202) 366–9826 before visiting Docket Operations. The on-line Federal document management system is available 24 hours each day, 365 days each year. The docket number is listed at the beginning of this notice.

I. Background

FMCSA has authority under 49 U.S.C. 31136(e) and 31315(b) to grant exemptions from certain parts of the FMCSRs. FMCSA must publish a notice of each exemption request in the **Federal Register** (49 CFR 381.315(a)). The Agency must provide the public an opportunity to inspect the information relevant to the application, including any safety analyses that have been conducted. The Agency must also provide an opportunity for public comment on the request.

The Agency reviews safety analyses and public comments submitted and determines whether granting the exemption would likely achieve a level of safety equivalent to, or greater than, the level that would be achieved by the current regulation (49 CFR 381.305). The decision of the Agency must be published in the **Federal Register** (49 CFR 381.315(b)) with the reasons for denying or granting the application and, if granted, the name of the person or class of persons receiving the exemption, and the regulatory provision from which the exemption is granted. The notice must also specify the effective period (up to 5 years) and explain the terms and conditions of the exemption. The exemption may be renewed (49 CFR 381.300(b)).

II. Rosco's Application for Exemption

Rosco applied for an exemption from 49 CFR 393.80(a) to allow its CV Digital CMS to be installed as an alternative to the two rear-vision mirrors required by the Federal Motor Carrier Safety Regulations (FMCSRs) on CMVs. A copy of the application is included in the docket referenced at the beginning of this notice.

Section 393.80(a) of the FMCSRs requires that each bus, truck, and truck-tractor be equipped with two rear-vision mirrors, one at each side. The mirrors must be positioned to reflect to the driver a view of the highway to the rear and the area along both sides of the CMV. Section 393.80(a) cross-references the National Highway Traffic Safety Administration's (NHTSA) standards for mirrors on motor vehicles (49 CFR 571.111, Federal Motor Vehicle Safety Standard [FMVSS] No. 111, ''Rear Visibility''). Paragraph S7.1 of FMVSS No. 111 provides requirements for mirrors on multipurpose passenger vehicles and trucks with a gross vehicle weight rating (GVWR) greater than 4,536 kg and less than 11,340 kg and each bus, other than a school bus, with a GVWR of more than 4,536 kg. Paragraph S8.1 provides requirements for mirrors on multipurpose passenger vehicles and trucks with a GVWR of 11,340 kg or more.

The CV Digital CMS consists of three cameras, each with a specific field of view (FOV), firmly mounted to the top of the vehicle's external A-pillar location, enclosed in an aerodynamic package that provides environmental protection for the cameras. Each camera presents a clear image to the driver by means of an internal monitor firmly mounted to the left and right A-pillar of the CMV, *i.e.,* the structural member between the windshield and door of the cab. The installation of the monitors on the A-pillars creates no additional visual obstruction, while eliminating the substantial blind spots created by conventional mirrors. Rosco states that its CV Digital CMS meets and/or exceeds the visibility requirements provided in FMVSS No. 111 based on the following factors:

- The CMS provides the driver with an enhanced FOV when compared to conventional mirrors.
- The interior viewing monitors feature an ambient light sensor which will allow the system to dynamically adjust the screen brightness to the optimal level based on the amount of ambient light. This prevents driver eye strain when viewing the monitors at night.

• The camera assemblies have an automatically activated heating system to ensure there is no buildup of ice or moisture on the lens that could potentially obstruct the cameras' function.

• The internal monitors are located such that the system's ergonomics reduce upper-body range of motion, thereby reducing driver fatigue.

Rosco believes that mounting the system as described would maintain a level of safety that is equivalent to, or greater than, the level of safety achieved without the exemption.

III. Summary of Comments

FMCSA published a notice of the application in the **Federal Register** on December 21, 2021, requesting public comment (86 FR 72305). The Agency received comments from four individuals who generally opposed granting the application and one comment in support of the application subject to conditions.

One commenter who opposed the exemption generally discourages the use of cameras to replace mirrors. Three other commenters suggested that the cameras be used in conjunction with standard rearview mirrors, rather than replacing them, due to concerns that an unsafe operating condition would exist in the event of a camera failure. And one commentor suggested that any CMS installed in the United States comply with the United Nations Economic Commission for Europe (UNECE) R46 rev 06—*Devices for Indirect Vision* (UNECE R46).[1]

Although the Agency received 4 comments opposing this exemption, FMCSA has received numerous positive comments in support of other, similar camera-based mirror system exemptions, such as in Stoneridge, Inc. ''MirrorEye Camera Monitor System'' (84 FR 5557, February 21, 2019), Vision Systems North America ''SmartVision System'' (85 FR 2486, January 15, 2020), and Robert Bosch, LLC and Mekra Lang North America, LLC (Bosch) ''Digital Mirror System'' (85 FR 58106, September 17, 2020). Seventeen motor carriers, associations and individuals supported the Stoneridge application specifically noting the following benefits: (1) superior total field-of-view around a CMV, including reduction/elimination of blind spots (2) increased visibility when driving at night and during inclement weather, (3) enhanced vehicle maneuverability in backing, turning, and lane changes through use of trailer scanning, (4) and reduced driver fatigue.

Vision Systems North America's application was supported by 5 motor carriers, associations, and individuals. These commenters specifically noted the following benefits of the camera-based mirror system proposed; (1) improved field-of-view around a CMV, including reduction/elimination glare and blind spots (2) increased visibility when driving at night and during inclement weather, and (3) reduced driver fatigue.

The American Bus Association (ABA) commented in support of the Bosch Digital Mirror System. The ABA noted that the Bosch system provided the following visibility benefits; (1) anti-glare, (2) improved visibility at night and during adverse weather conditions, and (3) elimination of blind spots by providing a broader field of vision around the vehicle.

In addition to the positive comments received relating to other CMS systems, the Agency has not received any reports of accidents or other safety concerns relating to the previously granted CMS exemption applications.

IV. FMCSA Decision Granting Exemption

FMCSA evaluated Rosco's application for exemption and the comments received. For the reasons discussed below, FMCSA is granting the exemption to allow motor carriers to install and operate CMVs with the CV Digital CMS as an alternative to the two rear-vision mirrors required by the FMCSRs. FMCSA believes that the CV Digital CMS is likely to achieve a level of safety equivalent to or greater than the level of safety provided by the regulation.

A. Equivalent Level of Safety Analysis

FMCSA section 393.80 cross references FMVSS No. 111 which requires CMVs with a GVWR of 11,340 kg (25,000 pounds) or more to be equipped with a rearview mirror size of unit magnification of no less than 323 cm^2 (50 in^2) on each side of the vehicle. In its comments to a 2019 National Highway Traffic Safety Administration Advance Notice of Proposed Rulemaking on rear visibility, the Engine Manufacturers Association [2] (EMA) noted that CMV manufacturers are equipping CMVs with mirrors that are more than twice the minimum size required for each side of the vehicle, as well as adding convex mirrors to provide the driver a still greater FOV. The manufacturers install these larger, less aerodynamic mirrors to provide the driver the enhanced visibility that is crucial to the safe operation of a large truck. Similarly, CMS like Rosco's CV Digital CMS are capable of providing an enhanced FOV that exceeds FMVSS No. 111 and the current rear-vision mirrors installed on CMVs.

FMCSA notes that CMS systems are authorized for use in a number of European countries as a legal alternative to the traditional rear-vision mirrors under the requirements of United Nations Economic Commission for Europe (UNECE) R46 which specifies minimum safety, ergonomic, and performance requirements for CMS in place of mandatory inside and outside rearview mirrors for road vehicles. This regulation references ISO (International Organization for Standardization) standard 16505 Rev 2019 which addresses CMS definitions and required performance for use in road vehicles. The specifications for CMS systems in ISO 16505 exceed the FOV requirements in FMVSS No. 111. Rosco stated that although the CV Digital CMS is designed to meet UNECE R46, it has not yet applied for certification of its system in countries that require UNECE R46 certification because it does not intend to offer its devices for sale in those countries.

FMCSA has reviewed the Rosco CV Digital CMS submission and has determined that the Rosco system exceeds both the FOV required by FMVSS No. 111 and rear-vision mirrors currently installed by manufacturers.

FMCSA acknowledges the concerns of four individual commenters regarding potential system failure of the CV Digital CMS. FMCSA notes that the CV Digital CMS is designed with redundancy in the event of camera failure such that if one of the cameras within the camera assembly were to fail, the system automatically adjusts the view of the interior monitor for that side to a full screen view of the remaining working camera.

In the event of camera or monitor failure, the CMV would not be subject to an out-of-service order because it is not a critical inspection item under CVSA's out-of-service-criteria [3] (OOSC),

[1] See *https://unece.org/un-regulations-addenda-1958-agreement.*

[2] Engine Manufacturers Association (EMA) comments to NHTSA ANPRM Federal Motor Vehicle Safety Standard No. 111, Rear Visibility (84 FR 54533, October 10, 2019), *https://www.regulations.gov/comment/NHTSA-2018-0021-0493.*

[3] The CVSA OOSC states that any motor vehicle which by reason of its mechanical condition or loading that would be likely to cause an accident or breakdown is considered ''Out-of-Service.'' Violations, other than Out-of-Service conditions, detected during the inspection process will not preclude the completion of the current trip or

Continued

in the same way conventional mirrors are not out of service if cracked or damaged while in operation. Instead, the CMV would be subject to the requirements of 49 CFR 396.11 which would require a driver to complete a driver vehicle inspection report at the end of the workday and require the motor carrier to correct any identified safety defects before permitting or requiring a driver to operate the CMV again.

Additionally, under 49 CFR 392.7(a), CMV drivers must satisfy themselves that a vehicle is in safe condition before operating the vehicle. This obligation would include ensuring that both rear-vision mirrors (or in this case, all components of the CV Digital CMS including all external cameras and both internal monitors) are in good working order. CMVs are also subject to the periodic inspection requirements under 49 CFR 396.17 which would include an inspection of the CV Digital CMS. To further ensure that the CV Digital CMS system is properly maintained, the terms and conditions of the exemption specify that motor carriers and drivers operating CMVs under this exemption must inspect the CV Digital CMS before operation of the CMV.

FMCSA believes that the CV Digital CMS is likely to achieve a level of safety equivalent to or greater than the level of safety than standard rear-view mirrors because it provides a greater FOV, it eliminates the blind spots on both sides of the vehicle, provides a monitor with low light sensitivity feature, and includes a camera heating system, all of which exceed the current requirements of 49 CFR 393.80. The FMCSRs impose several operational controls that will help ensure that the CV Digital CMS is functioning properly. Before driving a vehicle, a driver must be satisfied that the vehicle is in safe operating condition, and that any system failures reported have been corrected prior to vehicle re-dispatch. Additionally, the driver must complete a driver vehicle inspection report at the completion of the workday, noting any system defects or failures that occurred during operation of the vehicle.

B. Duration of Exemption

The Agency grants the exemption for a 5-year period, beginning December 4, 2022 and ending December 4, 2027 unless rescinded earlier by FMCSA. During the exemption period, motor carriers operating CMVs may install and utilize the Rosco CV Digital CMS in lieu of the two rear-vision mirrors required by section 393.80 of the FMCSRs.

C. Conditions of Exemption

1. This exemption is limited to the Rosco CV Digital CMS installed on CMVs and does not apply to any other camera-based mirror replacement system/technology.

2. Drivers operating CMVs under this exemption must inspect the CV Digital CMS each time before operating the CMV and ensure that it is in proper working order.

3. Drivers operating CMVs under this exemption must inspect the equipment at the end of each day and note any defects in the equipment. The motor carrier must repair any defects noted by the driver before it operates the CMV.

4. The motor carrier must, in addition to existing periodic inspections required by 49 CFR 396.17, periodically inspect the CV Digital CMS.

5. Interested parties possessing information that would demonstrate that motor carriers operating CMVs utilizing the Rosco CV Digital CMS installed as an alternative to two rear-vision mirrors are not achieving the requisite statutory level of safety should immediately notify FMCSA by email at *MCPSV@DOT.GOV.* The Agency will evaluate any such information and, if safety is being compromised or if the continuation of the exemption is not consistent with 49 U.S.C. 31136(e) and 31315(b), will take immediate steps to revoke the exemption.

D. Preemption

In accordance with 49 U.S.C. 31313(d), as implemented by 49 CFR 381.600, during the period this exemption is in effect, no State shall enforce any law or regulation applicable to interstate commerce that conflicts with or is inconsistent with this exemption with respect to a person operating under the exemption. States may, but are not required to, adopt the same exemption with respect to operations in intrastate commerce.

E. Termination

FMCSA does not believe the motor carrier, the drivers, and CMVs covered by the exemption will experience any deterioration of their safety record. However, should this occur, FMCSA will take all steps necessary to protect the public interest, including revocation of the exemption without prior notice. The exemption will be rescinded if: (1) motor carriers and/or CMVs fail to comply with the terms and conditions of the exemption; (2) the exemption has resulted in a lower level of safety than maintained before it was granted; or (3) continuation of the exemption would not be consistent with the goals and objectives of 49 U.S.C. 31136(e) or 31315(b).

Robin Hutcheson,

Administrator.

[FR Doc. 2022–25983 Filed 11–28–22; 8:45 am]

BILLING CODE 4910–EX–P

dispatch. However, such violations must be corrected or repaired prior to redispatch. See *https://www.cvsa.org/inspections/out-of-service-criteria/.*

DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

[Docket No. FMCSA–2013–0121; FMCSA–2014–0102; FMCSA–2018–0136]

Qualification of Drivers; Exemption Applications; Hearing

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

ACTION: Notice of renewal of exemptions; request for comments.

SUMMARY: FMCSA announces its decision to renew exemptions for five individuals from the hearing requirement in the Federal Motor Carrier Safety Regulations (FMCSRs) for interstate commercial motor vehicle (CMV) drivers. The exemptions enable these hard of hearing and deaf individuals to continue to operate CMVs in interstate commerce.

DATES: The exemptions are applicable on December 16, 2022. The exemptions expire on December 16, 2024. Comments must be received on or before December 29, 2022.

ADDRESSES: You may submit comments identified by the Federal Docket Management System Docket No. FMCSA–2013–0121, Docket No. FMCSA–2014–0102, or Docket No. FMCSA–2018–0136 using any of the following methods:

- *Federal eRulemaking Portal:* Go to *www.regulations.gov/,* insert the docket number, FMCSA–2013–0121, FMCSA–2014–0102, or FMCSA–2018–0136 in the keyword box, and click ''Search.'' Next, sort the results by ''Posted (Newer-Older),'' choose the first notice listed, and click on the ''Comment'' button. Follow the online instructions for submitting comments.
- *Mail:* Dockets Operations; U.S. Department of Transportation, 1200 New Jersey Avenue SE, West Building Ground Floor, Room W12–140, Washington, DC 20590–0001.
- *Hand Delivery:* West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE, Washington, DC 20590–0001, between 9 a.m. and 5 p.m.,

ET, Monday through Friday, except Federal Holidays.

• *Fax:* (202) 493–2251.

To avoid duplication, please use only one of these four methods. See the ''Public Participation'' portion of the **SUPPLEMENTARY INFORMATION** section for instructions on submitting comments.

FOR FURTHER INFORMATION CONTACT: Ms. Christine A. Hydock, Chief, Medical Programs Division, FMCSA, DOT, 1200 New Jersey Avenue SE, Room W64–224, Washington, DC 20590–0001, (202) 366–4001, *fmcsamedical@dot.gov.* Office hours are 8:30 a.m. to 5 p.m., ET, Monday through Friday, except Federal holidays. If you have questions regarding viewing or submitting material to the docket, contact Dockets Operations, (202) 366–9826.

SUPPLEMENTARY INFORMATION:

I. Public Participation

A. Submitting Comments

If you submit a comment, please include the docket number for this notice (Docket No. FMCSA–2013–0121, Docket No. FMCSA–2014–0102, or Docket No. FMCSA–2018–0136), indicate the specific section of this document to which each comment applies, and provide a reason for each suggestion or recommendation. You may submit your comments and material online or by fax, mail, or hand delivery, but please use only one of these means. FMCSA recommends that you include your name and a mailing address, an email address, or a phone number in the body of your document so that FMCSA can contact you if there are questions regarding your submission.

To submit your comment online, go to *www.regulations.gov/,* insert the docket number, FMCSA–2013–0121, FMCSA–2014–0102, or FMCSA–2018–0136 in the keyword box, and click ''Search.'' Next, sort the results by ''Posted (Newer-Older),'' choose the first notice listed, click the ''Comment'' button, and type your comment into the text box on the following screen. Choose whether you are submitting your comment as an individual or on behalf of a third party and then submit.

If you submit your comments by mail or hand delivery, submit them in an unbound format, no larger than 8½ by 11 inches, suitable for copying and electronic filing. FMCSA will consider all comments and material received during the comment period.

B. Viewing Comments

To view comments go to *www.regulations.gov.* Insert the docket number, FMCSA–2013–0121, FMCSA–2014–0102, or FMCSA–2018–0136 in the keyword box, and click ''Search.'' Next, sort the results by ''Posted (Newer-Older),'' choose the first notice listed, and click ''Browse Comments.'' If you do not have access to the internet, you may view the docket online by visiting Dockets Operations in Room W12–140 on the ground floor of the DOT West Building, 1200 New Jersey Avenue SE, Washington, DC 20590–0001, between 9 a.m. and 5 p.m., ET, Monday through Friday, except Federal holidays. To be sure someone is there to help you, please call (202) 366–9317 or (202) 366–9826 before visiting Dockets Operations.

C. Privacy Act

In accordance with 49 U.S.C. 31315(b)(6), DOT solicits comments from the public on the exemption requests. DOT posts these comments, without edit, including any personal information the commenter provides, to *www.regulations.gov.* As described in the system of records notice DOT/ALL 14 (Federal Docket Management System (FDMS)), which can be reviewed at *https://www.transportation.gov/individuals/privacy/privacy-act-system-records-notices,* the comments are searchable by the name of the submitter.

II. Background

Under 49 U.S.C. 31136(e) and 31315(b), FMCSA may grant an exemption from the FMCSRs for no longer than a 5-year period if it finds such exemption would likely achieve a level of safety that is equivalent to, or greater than, the level that would be achieved absent such exemption. The statutes also allow the Agency to renew exemptions at the end of the 5-year period. FMCSA grants medical exemptions from the FMCSRs for a 2-year period to align with the maximum duration of a driver's medical certification.

The physical qualification standard for drivers regarding hearing found in 49 CFR 391.41(b)(11) states that a person is physically qualified to drive a CMV if that person first perceives a forced whispered voice in the better ear at not less than 5 feet with or without the use of a hearing aid or, if tested by use of an audiometric device, does not have an average hearing loss in the better ear greater than 40 decibels at 500 Hz, 1,000 Hz, and 2,000 Hz with or without a hearing aid when the audiometric device is calibrated to American National Standard (formerly ASA Standard) Z24.5—1951.

This standard was adopted in 1970 and was revised in 1971 to allow drivers to be qualified under this standard while wearing a hearing aid, 35 FR 6458, 6463 (Apr. 22, 1970) and 36 FR 12857 (July 3, 1971).

The five individuals listed in this notice have requested renewal of their exemptions from the hearing standard in § 391.41(b)(11), in accordance with FMCSA procedures. Accordingly, FMCSA has evaluated these applications for renewal on their merits and decided to extend each exemption for a renewable 2-year period.

III. Request for Comments

Interested parties or organizations possessing information that would otherwise show that any, or all, of these drivers are not currently achieving the statutory level of safety should immediately notify FMCSA. The Agency will evaluate any adverse evidence submitted and, if safety is being compromised or if continuation of the exemption would not be consistent with the goals and objectives of 49 U.S.C. 31136(e) and 31315(b), FMCSA will take immediate steps to revoke the exemption of a driver.

IV. Basis for Renewing Exemptions

In accordance with 49 U.S.C. 31136(e) and 31315(b), each of the five applicants has satisfied the renewal conditions for obtaining an exemption from the hearing requirement. The five drivers in this notice remain in good standing with the Agency. In addition, for commercial driver's license (CDL) holders, the Commercial Driver's License Information System and the Motor Carrier Management Information System are searched for crash and violation data. For non-CDL holders, the Agency reviews the driving records from the State Driver's Licensing Agency. These factors provide an adequate basis for predicting each driver's ability to continue to safely operate a CMV in interstate commerce. Therefore, FMCSA concludes that extending the exemption for each of these drivers for a period of 2 years is likely to achieve a level of safety equal to that existing without the exemption.

As of December 16, 2022, and in accordance with 49 U.S.C. 31136(e) and 31315(b), the following five individuals have satisfied the renewal conditions for obtaining an exemption from the hearing requirement in the FMCSRs for interstate CMV drivers:

James Dignan (TX)
Ahmed Gabr (NC)
Arnold Hatton (DE)
Fernando Ramirez-Savon (FL)
Eric Woods (MD)

The drivers were included in docket numbers FMCSA–2013–0121, FMCSA–

2014–0102, or FMCSA–2018–0136. Their exemptions are applicable as of December 16, 2022 and will expire on December 16, 2024.

V. Conditions and Requirements

The exemptions are extended subject to the following conditions: (1) each driver must report any crashes or accidents as defined in § 390.5T; and (2) report all citations and convictions for disqualifying offenses under 49 CFR parts 383 and 391 to FMCSA; and (3) each driver prohibited from operating a motorcoach or bus with passengers in interstate commerce. The driver must also have a copy of the exemption when driving, for presentation to a duly authorized Federal, State, or local enforcement official. In addition, the exemption does not exempt the individual from meeting the applicable CDL testing requirements. Each exemption will be valid for 2 years unless rescinded earlier by FMCSA. The exemption will be rescinded if: (1) the person fails to comply with the terms and conditions of the exemption; (2) the exemption has resulted in a lower level of safety than was maintained before it was granted; or (3) continuation of the exemption would not be consistent with the goals and objectives of 49 U.S.C. 31136(e) and 31315(b).

VI. Preemption

During the period the exemption is in effect, no State shall enforce any law or regulation that conflicts with this exemption with respect to a person operating under the exemption.

VII. Conclusion

Based upon its evaluation of the five exemption applications, FMCSA renews the exemptions of the aforementioned drivers from the hearing requirement in § 391.41(b)(11). In accordance with 49 U.S.C. 31136(e) and 31315(b), each exemption will be valid for 2 years unless revoked earlier by FMCSA.

Larry W. Minor,

Associate Administrator for Policy.

[FR Doc. 2022–25980 Filed 11–28–22; 8:45 am]

BILLING CODE 4910–EX–P

DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

[Docket No. FMCSA–2018–0334]

Hours of Service of Drivers: National Cattlemen's Beef Association; Livestock Marketing Association; American Farm Bureau Federation; American Beekeeping Federation; American Honey Producers Association; and National Aquaculture Association; Application for Exemption

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

ACTION: Notice of final disposition; denial of application for exemption.

SUMMARY: FMCSA announces its decision to deny the joint application from the National Cattlemen's Beef Association, Livestock Marketing Association, American Farm Bureau Federation, American Beekeeping Federation, American Honey Producers Association and National Aquaculture Association for an exemption from certain provisions in the hours-of-service (HOS) rules. The requested exemption was made on behalf of drivers who transport livestock, insects, and aquatic animals. The applicants requested approval for drivers, after 10 consecutive hours off duty, to drive through the 16th consecutive hour after coming on duty, and to drive a total of 15 hours during that 16-hour period. FMCSA analyzed the application and public comments and has determined that the exemption would not achieve a level of safety that is equivalent to, or greater than, the level that would be achieved absent such exemption.

DATES: FMCSA denied the application for exemption on November 29, 2022.

ADDRESSES: You may submit comments identified by Federal Docket Management System (FDMS) Number FMCSA–2018–0334 by any of the following methods:

- *Federal eRulemaking Portal: www.regulations.gov.* See the Public Participation and Request for Comments section below for further information.
- *Mail:* Dockets Operations, U.S. Department of Transportation, 1200 New Jersey Avenue 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 Avenue SE, between 9 a.m. and 5 p.m. E.T., Monday through Friday, except Federal holidays.
- *Fax:* (202) 493–2251.

Each submission must include the Agency name and the docket number (FMCSA–2018–0334) for this notice. Note that DOT posts all comments received without change to *www.regulations.gov,* including any personal information included in a comment. Please see the Privacy heading below.

Docket: For access to the docket to read background documents or comments, go to *www.regulations.gov* at any time or visit Room W12–140 on the ground level of the West Building, 1200 New Jersey Avenue SE, Washington, DC, between 9 a.m. and 5 p.m., ET, Monday through Friday, except Federal holidays. To be sure someone is there to help you, please call (202) 366–9317 or (202) 366–9826 before visiting Dockets Operations.

Privacy: In accordance with 49 U.S.C. 31315(b), DOT solicits comments from the public to better inform its exemption process. DOT posts these comments, without edit, including any personal information the commenter provides, to *www.regulations.gov,* as described in the system of records notice DOT/ALL 14–FDMS, which can be reviewed at *https://www.transportation.gov/privacy.*

FOR FURTHER INFORMATION CONTACT: Mr. Richard Clemente, Driver and Carrier Operations Division; Office of Carrier, Driver and Vehicle Safety Standards, FMCSA, at (202) 366–2722 or by email at *richard.clemente@dot.gov.* If you have questions on viewing or submitting material to the docket, contact Dockets Operations at (202) 366–9826.

SUPPLEMENTARY INFORMATION:

I. Public Participation and Request for Comments

FMCSA encourages you to participate by submitting comments and related materials.

Submitting Comments

If you submit a comment, please include the docket number for this notice (FMCSA–2018–0334), indicate the specific section of this document to which the comment applies, and provide a reason for suggestions or recommendations. You may submit your comments and material online or by fax, mail, or hand delivery, but please use only one of these means. FMCSA recommends that you include your name and a mailing address, an email address, or a phone number in the body of your document so the Agency can contact you if it has questions regarding your submission.

To submit your comment online, go to *www.regulations.gov* and put the docket number (''FMCSA–2018–0334'') in the

''Keyword'' box, and click ''Search.'' When the new screen appears, click on the ''Comment'' button and type your comment into the text box in the following screen. Choose whether you are submitting your comment as an individual or on behalf of a third party and then submit. If you submit your comments by mail or hand delivery, submit them in an unbound format, no larger than 8½ by 11 inches, suitable for copying and electronic filing. If you submit comments by mail and would like to know that they reached the facility, please enclose a stamped, self-addressed postcard or envelope. FMCSA will consider all comments and material received during the comment period.

II. Legal Basis

FMCSA has authority under 49 U.S.C. 31136(e) and 31315(b) to grant exemptions from Federal Motor Carrier Safety Regulations (FMCSRs). FMCSA must publish a notice of each exemption request in the **Federal Register** (49 CFR 381.315(a)). The Agency must provide the public an opportunity to inspect the information relevant to the application, including any safety analyses that have been conducted. The Agency must provide an opportunity for public comment on the request.

The Agency reviews safety analyses and public comments submitted and determines whether granting the exemption would likely achieve a level of safety equivalent to, or greater than, the level that would be achieved by the current regulation (49 CFR 381.305). The Agency must publish its decision in the **Federal Register** (49 CFR 381.315(b)) with the reasons for denying or granting the application and, if granted, the name of the person or class of persons receiving the exemption and the regulatory provision from which the exemption is granted. The notice must specify the effective period and explain the terms and conditions of the exemption. The exemption may be renewed (49 CFR 381.300(b)).

III. Request for Exemption

The National Cattlemen's Beef Association, Livestock Marketing Association, American Farm Bureau Federation, American Beekeeping Federation, American Honey Producers Association and National Aquaculture Association (applicants) submitted a joint exemption application from 49 CFR 395.3(a)(2) and (a)(3). The exemption would allow covered drivers, after taking 10 consecutive hours off duty, to drive through the 16th consecutive hour after coming on duty, and to drive a total of 15 hours during that 16-hour period. They note that livestock haulers are currently permitted to operate in ''an exempt zone within a radius of 150 air miles'' of the source of an agricultural commodity (49 CFR 395.1(k)(1)). FMCSA's published regulatory guidance provides that time spent working within the 150 air-mile radius does not count toward the driver's daily and weekly HOS limits (83 FR 26374). Accordingly, the 15- and 16-hour limits requested by the applicants would begin after a livestock hauler travels outside the 150 air-mile radius. The requested exemption would apply to all livestock, insect, and aquatic animal transporters and their drivers.

The applicants state that the maximum driving and on-duty limits of the HOS regulations as applied to their operations may place the well-being of livestock at risk during transport and impose significant burdens on livestock haulers, particularly in rural communities across the country. They advise that their drivers would comply with all other HOS rules, including the 60/70-hour limits.

The applicants add that while most of their trips fall within the current HOS limits, some of the longer trips cannot be completed under the 11- and 14-hour rules. These trips are affected by ''immutable factors'' such as weather. In the cattle industry, the locations of cow-calf operations, grazing lands, feedlots, and processing facilities determine how far a livestock hauler must travel in a single trip. Livestock haulers transport animals from farms and ranches to auction markets, where the stock is sold. Once sold, the animals are often transported to grazing lands and feed yards, mostly located in the Central Plains and Southwest. After grazing and feeding, livestock are transported a final time to processing facilities, where they are transformed into consumable meat and sold. In addition, transportation of bees necessary to pollinate numerous crops, tree nuts, fruits, and vegetables requires some of the longest trips in the country. The applicants estimate that 25–30 percent of livestock-hauling trips would be conducted under the requested exemption.

The applicants suggest they could achieve a level of safety equivalent to or greater than the level of safety that would be obtained without the exemption by adopting fatigue risk management systems. The applicants describe a fatigue management system for livestock haulers developed in Australia. Specifically, the applicants propose: participating in training to be developed by the livestock industry, in consultation with FMCSA, that addresses fatigue countermeasures; adopting fatigue risk management practices including completing a safe driving plan before each trip and completing a fitness for duty assessment before each trip; and adopting company practices to support fatigue risk management, including internal audits. The applicants included with their petition an appendix including 54 supporting documents.

A copy of the application for exemption and appendices is available for review in the docket for this notice.

IV. Public Comments

On February 6, 2019, FMCSA published notice of this application and requested public comment (84 FR 2304). The Agency received 359 total sets of comments, 43 opposed to the request. The following five organizations opposed the exemption: the National Transportation Safety Board (NTSB); Commercial Vehicle Safety Alliance (CVSA); Truckload Carriers Association (TCA); Iowa Motor Truck Association (IMTA); and the Animal Welfare Institute.

IMTA commented that livestock haulers should be held to the same HOS standards as the rest of the industry. If these loads require the truck to keep moving due to the live animals on the truck or trailer, and the run can't be completed within the normal 11 hours of driving, then the carrier should be required to put a team of two drivers into the vehicle. That would enable them to get the load delivered, while remaining in compliance with the standard HOS regulations. IMTA further added that livestock haulers are already exempt from HOS under the agricultural exemption when running within a 150-mile radius and from the requirement to operate electronic logging devices (ELDs).

TCA raised a similar objection regarding the 150 air-mile radius-from-the-source exemption for livestock haulers, adding that this requested exemption would add significant driving and on-duty time to a driver's trip, as the ''HOS clock'' does not start until they drive outside of the exempt zone.

CVSA added that it opposes this exemption request, as it is both unjustified and impractical. According to CVSA, exemptions from federal safety regulations, first and foremost, have the potential to undermine safety, while also complicating the enforcement process. For these reasons, and to protect the safety of these truck drivers and the general motoring public, CVSA requested the Agency to deny the petition.

NTSB added that although the applicants propose implementing a fatigue risk management system to provide an adequate level of safety in lieu of the standard HOS requirements, FMCSA does not have a means to track, evaluate, or validate the effectiveness of such a system. NTSB said that FMCSA should therefore deny the requested exemption, and any similar exemption.

Two hundred ninety-four comments were filed in support of the request. Fifty-two were filed by State trucking associations related to livestock and cattlemen, including comments from all the original applicants. The remainder of the supporting comments were from individuals and trucking companies, primarily those hauling livestock. The supporters of the exemption reiterated the scenario provided in the application and supported four additional hours of drive time to facilitate longer hauls that are necessitated by the distances between where cattle are born, fed, and harvested. The supporters referenced industry guidelines that direct drivers to avoid stops while hauling livestock, especially in warmer weather, as the trailers are designed to cool the animals while in motion. According to many who supported the request, the majority of livestock cannot withstand the stress of 10 hours stopped without airflow or the added time on the trailer necessitated by such an extended rest. Sixteen commenters took no position either for or against the exemption request, and 6 others asked that livestock carriers be exempted from the ELD regulations.

V. FMCSA Safety Analysis and Decision

FMCSA evaluated the joint application and public comments and denies the exemption request. Research studies demonstrate that long work hours reduce sleep and harm driver health, and that crash risk increases with work hours. The HOS regulations impose limits on when and how long an individual may drive, to ensure that drivers stay awake and alert, and to reduce the possibility of cumulative fatigue. As stated by opponents of the exemption, livestock haulers have been required to operate within the confines of the HOS regulations for over 80 years.

Livestock haulers are entirely exempt from all HOS regulations under the agricultural commodities exemption in 49 CFR 395.1(k)(1), which covers a 150 air-mile radius from the source of the agricultural commodities. In addition, Section 23018 of the Bipartisan Infrastructure Law, Public Law 117–58, 135 Stat. 429, Nov. 15, 2021, enacted after applicants filed their exemption request, now provides that drivers transporting livestock are also exempt from all HOS regulations within a 150 air-mile radius from the final destination of the livestock. Livestock haulers remain exempt from the requirement to use ELDs.

If the Agency were to grant the exemption, drivers transporting agricultural commodities would be allowed six or more hours of driving time within the 150 air-mile exempt zones for the transportation of agricultural commodities, in addition to the 15 hours of driving time outside the zone. The Agency finds that allowing 21 or more hours of driving during a work shift would not likely achieve a level of safety that is equivalent to, or greater than, the level that would be achieved absent the exemption.

Although the applicants suggest that they could adopt a fatigue risk management system to ensure safety, fatigue risk management systems must be scientifically validated. FMCSA has promoted the voluntary adoption of fatigue management programs, including the North American Fatigue Management Program. Those voluntary fatigue management measures do not replace the safety benefits of compliance with the HOS regulations.

For these reasons, and to protect the safety of these truck drivers and the public, the FMCSA denies the request for exemption.

Robin Hutcheson,

Administrator.

[FR Doc. 2022–25999 Filed 11–28–22; 8:45 am]

BILLING CODE 4910–EX–P

DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

[Docket No. FMCSA–2014–0212; FMCSA–2014–0215; FMCSA–2015–0323; FMCSA–2016–0007; FMCSA–2018–0052; FMCSA–2018–0053; FMCSA–2018–0054; FMCSA–2020–0050; FMCSA–2020–0051]

Qualification of Drivers; Exemption Applications; Epilepsy and Seizure Disorders

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

ACTION: Notice of renewal of exemptions; request for comments.

SUMMARY: FMCSA announces its decision to renew exemptions for 15 individuals from the requirement in the Federal Motor Carrier Safety Regulations (FMCSRs) that interstate commercial motor vehicle (CMV) drivers have ''no established medical history or clinical diagnosis of epilepsy or any other condition which is likely to cause loss of consciousness or any loss of ability to control a CMV.'' The exemptions enable these individuals who have had one or more seizures and are taking anti-seizure medication to continue to operate CMVs in interstate commerce.

DATES: The exemptions are applicable on November 27, 2022. The exemptions expire on November 27, 2024. Comments must be received on or before December 29, 2022.

ADDRESSES: You may submit comments identified by the Federal Docket Management System Docket No. FMCSA–2014–0212, Docket No. FMCSA–2014–0215, Docket No. FMCSA–2015–0323, Docket No. FMCSA–2016–0007, Docket No. FMCSA–2018–0052, Docket No. FMCSA–2018–0053, Docket No. FMCSA–2018–0054, Docket No. FMCSA–2020–0050, and Docket No. FMCSA–2020–0051 using any of the following methods:

- *Federal eRulemaking Portal:* Go to *www.regulations.gov/,* insert the docket number FMCSA–2014–0212, FMCSA–2014–0215, FMCSA–2015–0323, FMCSA–2016–0007, FMCSA–2018–0052, FMCSA–2018–0053, FMCSA–2018–0054, FMCSA–2020–0050, or FMCSA–2020–0051 in the keyword box, and click ''Search.'' Next, sort the results by ''Posted (Newer-Older),'' choose the first notice listed, and click on the ''Comment'' button. Follow the online instructions for submitting comments.
- *Mail:* Dockets Operations; U.S. Department of Transportation, 1200 New Jersey Avenue SE, West Building Ground Floor, Room W12–140, Washington, DC 20590–0001.
- *Hand Delivery:* West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE, Washington, DC 20590–0001 between 9 a.m. and 5 p.m., ET, Monday through Friday, except Federal Holidays.
- *Fax:* (202) 493–2251.

To avoid duplication, please use only one of these four methods. See the ''Public Participation'' portion of the **SUPPLEMENTARY INFORMATION** section for instructions on submitting comments.

FOR FURTHER INFORMATION CONTACT: Ms. Christine A. Hydock, Chief, Medical Programs Division, FMCSA, DOT, 1200 New Jersey Avenue SE, Room W64–224, Washington, DC 20590–0001, (202) 366–4001, *fmcsamedical@dot.gov.* Office hours are from 8:30 a.m. to 5 p.m., ET, Monday through Friday, except Federal holidays. If you have questions

regarding viewing or submitting material to the docket, contact Dockets Operations, (202) 366–9826.

SUPPLEMENTARY INFORMATION:

I. Public Participation

A. Submitting Comments

If you submit a comment, please include the docket number for this notice (FMCSA–2014–0212, FMCSA–2014–0215, FMCSA–2015–0323, FMCSA–2016–0007, FMCSA–2018–0052, FMCSA–2018–0053, FMCSA–2018–0054, FMCSA–2020–0050, or FMCSA–2020–0051), indicate the specific section of this document to which each comment applies, and provide a reason for each suggestion or recommendation. You may submit your comments and material online or by fax, mail, or hand delivery, but please use only one of these means. FMCSA recommends that you include your name and a mailing address, an email address, or a phone number in the body of your document so that FMCSA can contact you if there are questions regarding your submission.

To submit your comment online, go to *www.regulations.gov/,* insert the docket number, FMCSA–2014–0212, FMCSA–2014–0215, FMCSA–2015–0323, FMCSA–2016–0007, FMCSA–2018–0052, FMCSA–2018–0053, FMCSA–2018–0054, FMCSA–2020–0050, or FMCSA–2020–0051 in the keyword box, and click ''Search.'' Next, sort the results by ''Posted (Newer-Older),'' choose the first notice listed, click the ''Comment'' button, and type your comment into the text box on the following screen. Choose whether you are submitting your comment as an individual or on behalf of a third party and then submit.

If you submit your comments by mail or hand delivery, submit them in an unbound format, no larger than 8½ by 11 inches, suitable for copying and electronic filing. If you submit comments by mail and would like to know that they reached the facility, please enclose a stamped, self-addressed postcard or envelope.

FMCSA will consider all comments and material received during the comment period.

B. Viewing Comments

To view comments go to *www.regulations.gov.* Insert the docket number, FMCSA–2014–0212, FMCSA–2014–0215, FMCSA–2015–0323, FMCSA–2016–0007, FMCSA–2018–0052, FMCSA–2018–0053, FMCSA–2018–0054, FMCSA–2020–0050, or FMCSA–2020–0051 in the keyword box, and click ''Search.'' Next, sort the results by ''Posted (Newer-Older),'' choose the first notice listed, and click ''Browse Comments.'' If you do not have access to the internet, you may view the docket online by visiting Dockets Operations in Room W12–140 on the ground floor of the DOT West Building, 1200 New Jersey Avenue SE, Washington, DC 20590–0001, between 9 a.m. and 5 p.m., ET, Monday through Friday, except Federal holidays. To be sure someone is there to help you, please call (202) 366–9317 or (202) 366–9826 before visiting Dockets Operations.

C. Privacy Act

In accordance with 49 U.S.C. 31315(b)(6), DOT solicits comments from the public on the exemption request. DOT posts these comments, without edit, including any personal information the commenter provides, to *www.regulations.gov.* As described in the system of records notice DOT/ALL 14 (Federal Docket Management System (FDMS)), which can be reviewed at *https://www.transportation.gov/individuals/privacy/privacy-act-system-records-notices,* the comments are searchable by the name of the submitter.

II. Background

Under 49 U.S.C. 31136(e) and 31315(b), FMCSA may grant an exemption from the FMCSRs for no longer than a 5-year period if it finds such exemption would likely achieve a level of safety that is equivalent to, or greater than, the level that would be achieved absent such exemption. The statutes also allow the Agency to renew exemptions at the end of the 5-year period. However, FMCSA grants medical exemptions from the FMCSRs for a 2-year period to align with the maximum duration of a driver's medical certification.

The physical qualification standard for drivers regarding epilepsy found in 49 CFR 391.41(b)(8) states that a person is physically qualified to drive a CMV if that person has no established medical history or clinical diagnosis of epilepsy or any other condition which is likely to cause the loss of consciousness or any loss of ability to control a CMV.

In addition to the regulations, FMCSA has published advisory criteria [1] to assist Medical Examiners in determining whether drivers with certain medical conditions are qualified to operate a CMV in interstate commerce.

The 15 individuals listed in this notice have requested renewal of their exemptions from the epilepsy and seizure disorders prohibition in § 391.41(b)(8), in accordance with FMCSA procedures. Accordingly, FMCSA has evaluated these applications for renewal on their merits and decided to extend each exemption for a renewable 2-year period.

III. Request for Comments

Interested parties or organizations possessing information that would otherwise show that any, or all, of these drivers are not currently achieving the statutory level of safety should immediately notify FMCSA. The Agency will evaluate any adverse evidence submitted and, if safety is being compromised or if continuation of the exemption would not be consistent with the goals and objectives of 49 U.S.C. 31136(e) and 31315(b), FMCSA will take immediate steps to revoke the exemption of a driver.

IV. Basis for Renewing Exemptions

In accordance with 49 U.S.C. 31136(e) and 31315(b), each of the 15 applicants has satisfied the renewal conditions for obtaining an exemption from the epilepsy and seizure disorders prohibition. The 15 drivers in this notice remain in good standing with the Agency, have maintained their medical monitoring and have not exhibited any medical issues that would compromise their ability to safely operate a CMV during the previous 2-year exemption period. In addition, for commercial driver's license (CDL) holders, the Commercial Driver's License Information System and the Motor Carrier Management Information System are searched for crash and violation data. For non-CDL holders, the Agency reviews the driving records from the State Driver's Licensing Agency. These factors provide an adequate basis for predicting each driver's ability to continue to safely operate a CMV in interstate commerce. Therefore, FMCSA concludes that extending the exemption for each renewal applicant for a period of 2 years is likely to achieve a level of safety equal to that existing without the exemption.

As of November 27, 2022, and in accordance with 49 U.S.C. 31136(e) and 31315(b), the following 15 individuals have satisfied the renewal conditions for obtaining an exemption from the epilepsy and seizure disorders prohibition in the FMCSRs for interstate CMV drivers:

Thomas Avery (NY)

[1] These criteria may be found in APPENDIX A TO PART 391—MEDICAL ADVISORY CRITERIA, section H. *Epilepsy:* § 391.41(b)(8), paragraphs 3, 4, and 5, which is available on the internet at *https://www.gpo.gov/fdsys/pkg/CFR-2015-title49-vol5/pdf/CFR-2015-title49-vol5-part391-appA.pdf.*

Scott Baggarley (WA)
Kevin Beamon (NY)
Joshua Cirilo (MN)
Paul Gomez (CA)
Jesse Hansen (MN)
Donald Horst (MD)
Keith Hubbard (PA)
Billy Hunter (KY)
Chad Knott (MD)
Louis Lerch (IA)
Rick Morrison (NC)
Thomas Ork (NY)
Curtis Palubicki (MN)
Devyn Roberts (KY)

The drivers were included in docket number FMCSA–2014–0212, FMCSA–2014–0215, FMCSA–2015–0323, FMCSA–2016–0007, FMCSA–2018–0052, FMCSA–2018–0053, FMCSA–2018–0054, FMCSA–2020–0050, or FMCSA–2020–0051. Their exemptions are applicable as of November 27, 2022 and will expire on November 27, 2024.

V. Conditions and Requirements

The exemptions are extended subject to the following conditions: (1) each driver must remain seizure-free and maintain a stable treatment during the 2-year exemption period; (2) each driver must submit annual reports from their treating physicians attesting to the stability of treatment and that the driver has remained seizure-free; (3) each driver must undergo an annual medical examination by a certified ME, as defined by § 390.5; and (4) each driver must provide a copy of the annual medical certification to the employer for retention in the driver's qualification file, or keep a copy of his/her driver's qualification file if he/she is self-employed. The driver must also have a copy of the exemption when driving, for presentation to a duly authorized Federal, State, or local enforcement official. The exemption will be rescinded if: (1) the person fails to comply with the terms and conditions of the exemption; (2) the exemption has resulted in a lower level of safety than was maintained before it was granted; or (3) continuation of the exemption would not be consistent with the goals and objectives of 49 U.S.C. 31136(e) and 31315(b).

VI. Preemption

During the period the exemption is in effect, no State shall enforce any law or regulation that conflicts with this exemption with respect to a person operating under the exemption.

VII. Conclusion

Based on its evaluation of the 15 exemption applications, FMCSA renews the exemptions of the aforementioned drivers from the epilepsy and seizure disorders prohibition in § 391.41(b)(8). In accordance with 49 U.S.C. 31136(e) and 31315(b), each exemption will be valid for 2 years unless revoked earlier by FMCSA.

Larry W. Minor,

Associate Administrator for Policy.

[FR Doc. 2022–25982 Filed 11–28–22; 8:45 am]

BILLING CODE 4910–EX–P

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

[Docket No. FRA–2010–0028]

CSX Transportation's Request To Amend Its Positive Train Control Safety Plan and Positive Train Control System

AGENCY: Federal Railroad Administration (FRA), Department of Transportation (DOT).

ACTION: Notice of availability and request for comments.

SUMMARY: This document provides the public with notice that, on November 11, 2022, CSX Transportation (CSX) submitted an updated request for amendment (RFA) to its FRA-approved Positive Train Control Safety Plan (PTCSP). As this RFA may involve a request for FRA's approval of proposed material modifications to an FRA-certified positive train control (PTC) system, FRA is publishing this notice and inviting public comment on the railroad's RFA to its PTCSP.

DATES: FRA will consider comments received by December 19, 2022. FRA may consider comments received after that date to the extent practicable and without delaying implementation of valuable or necessary modifications to a PTC system.

ADDRESSES: *Comments:* Comments may be submitted by going to *https://www.regulations.gov* and following the online instructions for submitting comments.

Instructions: All submissions must include the agency name and the applicable docket number. The relevant PTC docket number for this host railroad is Docket No. FRA–2010–0028. For convenience, all active PTC dockets are hyperlinked on FRA's website at *https://railroads.dot.gov/train-control/ptc/ptc-annual-and-quarterly-reports.* All comments received will be posted without change to *https://www.regulations.gov;* this includes any personal information.

FOR FURTHER INFORMATION CONTACT: Gabe Neal, Staff Director, Signal, Train Control, and Crossings Division, telephone: 816–516–7168, email: *Gabe.Neal@dot.gov.*

SUPPLEMENTARY INFORMATION: In general, Title 49 United States Code (U.S.C.) section 20157(h) requires FRA to certify that a host railroad's PTC system complies with title 49 Code of Federal Regulations (CFR) part 236, subpart I, before the technology may be operated in revenue service. Before making certain changes to an FRA-certified PTC system or the associated FRA-approved PTCSP, a host railroad must submit, and obtain FRA's approval of, an RFA to its PTCSP under 49 CFR 236.1021.

Under 49 CFR 236.1021(e), FRA's regulations provide that FRA will publish a notice in the **Federal Register** and invite public comment in accordance with 49 CFR part 211, if an RFA includes a request for approval of a material modification of a signal and train control system. Accordingly, this notice informs the public that, on November 11, 2022, CSX submitted an updated RFA to its PTCSP for its Interoperable Electronic Train Management System (I–ETMS) and that RFA is available in Docket No. FRA–2010–0028.

Interested parties are invited to comment on CSX's RFA to its PTCSP by submitting written comments or data. During FRA's review of this railroad's RFA, FRA will consider any comments or data submitted within the timeline specified in this notice and to the extent practicable, without delaying implementation of valuable or necessary modifications to a PTC system. *See* 49 CFR 236.1021; *see also* 49 CFR 236.1011(e). Under 49 CFR 236.1021, FRA maintains the authority to approve, approve with conditions, or deny a railroad's RFA to its PTCSP at FRA's sole discretion.

Privacy Act Notice

In accordance with 49 CFR 211.3, FRA solicits comments from the public to better inform its decisions. DOT posts these comments, without edit, including any personal information the commenter provides, to *https://www.regulations.gov,* as described in the system of records notice (DOT/ALL–14 FDMS), which can be reviewed at *https://www.transportation.gov/privacy.* See *https://www.regulations.gov/privacy-notice* for the privacy notice of regulations.gov. To facilitate comment tracking, we encourage commenters to provide their name, or the name of their organization; however, submission of names is completely optional. If you wish to provide comments containing proprietary or confidential information, please contact FRA for alternate submission instructions.

Issued in Washington, DC.

Carolyn R. Hayward-Williams,

Director, Office of Railroad Systems and Technology.

[FR Doc. 2022–25963 Filed 11–28–22; 8:45 am]

BILLING CODE 4910–06–P

DEPARTMENT OF TRANSPORTATION

Pipeline and Hazardous Materials Safety Administration

[Docket No. PHMSA–2022–0161]

Pipeline Safety: Informational Public Meeting Addressing Multiple Safety Topics Including Methane Emission Reduction, Safety Bulletins, and NTSB Recommendations

AGENCY: Pipeline and Hazardous Materials Safety Administration (PHMSA), DOT.

ACTION: Notice of an informational public meeting.

SUMMARY: This notice announces an informational public meeting to address multiple safety topics including progress on reduction of methane emissions, energy transformation, safety bulletins, and National Transportation Safety Board (NTSB) recommendations. PHMSA will also webcast the in-person public meeting in Houston, Texas, which is scheduled for December 13–15, 2022.

DATES: The informational public meeting will be held on December 13–15, 2022, from 8:30 a.m. until 4:30 p.m., CT at the Westin Galleria, in Houston, Texas. Members of the public who wish to attend this meeting are asked to register no later than December 7, 2022. Individuals requiring accommodations, such as sign language interpretation or other aids, are asked to notify Jessica Appel by email at *Jessica.Appel.ctr@dot.gov* no later than November 30, 2022. PHMSA will also webcast this meeting. For additional information, please see the **ADDRESSES** section of this notice.

ADDRESSES: The informational public meeting will be held at: Westin Galleria Houston, 5060 West Alabama Street, Houston, Texas. The agenda and instructions on how to attend are available on the meeting website at *https://primis.phmsa.dot.gov/meetings/MtgHome.mtg?mtg=161.*

Presentations from the informational public meeting will be available on the meeting website no later than 5 business days following the meeting.

FOR FURTHER INFORMATION CONTACT: Linda Daugherty by email at *Linda.Daugherty@dot.gov.*

SUPPLEMENTARY INFORMATION:

I. Background

The mission of PHMSA is to protect people and the environment by advancing the safe transportation of energy products and other hazardous materials that are essential to our daily lives. PHMSA's mission includes prevention of the release of natural gas which releases methane into the atmosphere. PHMSA is aggressively pursuing the DOT Strategic Goals of Safety, Climate & Sustainability, and Transformation in efforts to be profiled during the informational public meeting. PHMSA will discuss with the public and industry how it is improving safety by issuing advisory bulletins based on lessons learned from events like the geohazard related failure which threatened the community of Satartia, Mississippi, and the crude oil spill following an anchor strike on an offshore pipeline near Long Beach, California. PHMSA will also discuss recent learnings related to hard spot analyses and challenges presented by pipeline flow reversals. The meeting will highlight technology transformations to combat climate change and keep aging pipeline infrastructure safe for use in transporting energy of the future.

Additionally, the NTSB recently recommended that PHMSA revise its regulations for potential impact radius (PIR) calculations and this meeting will provide the Agency an opportunity to gather input from both industry and public stakeholders. Ensuring PIR calculations fully consider the potential impacts to congested urban areas is particularly important and supports efforts to ensure equitable safety protections for all people.

The informational public meeting will continue a dialogue on the Agency's climate and energy transformation efforts, such as reducing methane emissions, and PHMSA's current role regarding carbon dioxide and hydrogen pipelines. PHMSA anticipates further discussion on these important matters in 2023.

The overall purpose of the informational public meeting is to share important safety information with the public and industry as well as gather input to inform future rulemaking decisions.

II. Informational Public Meeting Details and Agenda

The informational public meeting will take place in-person December 13–15, 2022, in Houston, Texas. During the meeting, PHMSA will review a variety of topics and invite participant input. Following opening remarks, the webinar will address the following topics: (1) Recent and Potential Safety Advisories (Geohazard/Land Movement, Maritime Issues, Hard Spots, Flow Reversals); (2) The Future: Technology and New Regulatory Requirements (Technology Transfer: Innovative Tools That Can Be Used by Industry and PHMSA's New Regulation Implementation Process); (3) Failure Investigation Forum (Overview of Recent Accidents/Incidents and Common Enforcement Items Found During Incidents); (4) Potential Impact Radius (Discussion of Incident and NTSB Recommendation); and (5) The Future: Climate and Energy Transformation (Reducing Methane Emissions, Hydrogen and Hydrogen Blending, Carbon Dioxide/Carbon Capture, Utilization, and Storage.)

III. Public Participation

The informational meeting will be open to the public. Members of the public who wish to attend are requested to register on the meeting website and include their names and organization affiliation (see **ADDRESSES**). PHMSA is committed to providing all participants with equal access to these meetings. If you need special accommodations, please contact Jessica Appel by email at *Jessica.Appel.ctr@dot.gov.*

PHMSA is not always able to publish a notice in the **Federal Register** quickly enough to provide timely notification regarding last minute changes that impact a previously announced meeting. Therefore, individuals should check the meeting website listed in the **ADDRESSES** section of this notice regarding any possible changes.

Issued in Washington, DC, on November 23, 2022, under authority delegated in 49 CFR 1.97.

Alan K. Mayberry,

Associate Administrator for Pipeline Safety.

[FR Doc. 2022–26052 Filed 11–28–22; 8:45 am]

BILLING CODE 4910–60–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Publication of the Tier 2 Tax Rates

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice.

SUMMARY: Publication of the tier 2 tax rates for calendar year 2023 as required by section 3241(d) of the Internal Revenue Code. Tier 2 taxes on railroad employees, employers, and employee representatives are one source of

funding for benefits under the Railroad Retirement Act.

DATES: The tier 2 tax rates for calendar year 2023 apply to compensation paid in calendar year 2023.

FOR FURTHER INFORMATION CONTACT: Kathleen Edmondson, CC:EEE:EOET:ET1, Internal Revenue Service, 1111 Constitution Avenue NW, Washington, DC 20224, Telephone Number (202) 317–6798 (not a toll-free number). TIER 2 TAX RATES: The tier 2 tax rate for 2023 under section 3201(b) on employees is 4.9 percent of compensation. The tier 2 tax rate for 2023 under section 3221(b) on employers is 13.1 percent of compensation. The tier 2 tax rate for 2023 under section 3211(b) on employee representatives is 13.1 percent of compensation.

Rachel D. Levy,

Associate Chief Counsel (Employee Benefits, Exempt Organizations and Employment Taxes).

[FR Doc. 2022–26004 Filed 11–28–22; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–0860]

Agency Information Collection Activity: Reimbursement of Qualifying Adoption Expenses for Certain Veterans

AGENCY: Veterans Health Administration, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: Veterans Health Administration (VHA), 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 30, 2023.

ADDRESSES: Submit written comments on the collection of information through Federal Docket Management System (FDMS) at *www.Regulations.gov* or to Janel Keyes, Office of Regulations, Appeals, and Policy (10BRAP), Department of Veterans Affairs, 810 Vermont Avenue NW, Washington, DC 20420 or email to *Janel.Keyes@va.gov.* Please refer to ''OMB Control No. 2900–0860'' 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. 2900–0860'' 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, VHA invites comments on: (1) whether the proposed collection of information is necessary for the proper performance of VHA's functions, including whether the information will have practical utility; (2) the accuracy of VHA'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: Public Law 104–13; 44 U.S.C. 3501–3521.

Title: Reimbursement of Qualifying Adoption Expenses for Certain Veterans, VA Form 10–10152.

OMB Control Number: 2900–0860.

Type of Review: Extension of a currently approved collection.

Abstract: The VA's authority to provide reimbursement of qualifying adoption expenses for certain covered Veterans is found in Section 236 of the Military Construction, Veterans Affairs, and Related Agencies Appropriations Act, 2018, Public Law 115–141 (March 23, 2018) (the ''2018 Act'') and Section 235 of the Military Construction, Veterans Affairs, and Related Agencies Appropriations Act, 2019, Public Law 115–244 (September 21, 2018) (the ''2019 Act''), which renewed and extended in nearly identical form Section 260 of the prior authorizing ''2017 Act,'' Public Law 114–223. VA has eliminated the section in the regulations that specifies an expiration date in order to accommodate Congressional renewal and extension of this authority under subsequent appropriations law.

Veterans with a service-connected disability that results in their inability to procreate without the use of fertility treatments are authorized to receive reimbursement for certain adoption-related expenses for an adoption that is finalized after September 29, 2016 (the date the 2017 Act was enacted). To implement this benefit, VA uses VA Form 10–10152, paralleling DD 2675, which requires any Veteran requesting reimbursement of qualifying adoption expenses to submit the same types of evidence as required under similar DoD policy. VA Form 10–10152 was previously approved by OMB through the PRA clearance process, and VA now seeks a three-year extension of that approval of this information collection.

Affected Public: Individuals or households.

Estimated Annual Burden: 480 hours.

Estimated Average Burden per Respondent: 6 hours.

Frequency of Response: Once annually.

Estimated Number of Respondents: 80.

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. 2022–25933 Filed 11–28–22; 8:45 am]

BILLING CODE 8320–01–P

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–0662]

Agency Information Collection Activity Under OMB Review: Civil Rights Discrimination Complaint

AGENCY: Human Resources and Administration/Operations, Security, and Preparedness (HRA/OSP), Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (PRA) of 1995, this notice announces that the Human Resources and Administration/Operations, Security and Preparedness, Diversity & Inclusion, Department of Veterans Affairs, will submit the collection of information abstracted below to the Office of Management and Budget (OMB) for review and comment. The PRA submission describes the nature of the information collection and its expected cost and burden and it includes the actual data collection instrument.

DATES: Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to *www.reginfo.gov/public/do/PRAMain.* Find this particular information collection by selecting ''Currently under 30-day Review—Open for Public Comments'' or by using the search function. Refer to ''OMB Control No. 2900–0662.

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. 2900–0662'' in any correspondence.

SUPPLEMENTARY INFORMATION:

Authority: 44 U.S.C. 3501–21. Under the PRA of 1995 (Pub. L 104–13; 44 U.S.C. 3501–3521), 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, HRA/OSP invites comments on: (1) whether the proposed collection of information is necessary for the proper performance of ORMDI's functions, including whether the information will have practical utility; (2) the accuracy of HRA/OSP'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.

Title: Civil Rights Discrimination Complaint, VA Form 08–0381.

OMB Control Number: 2900–0662.

Type of Review: Revision of a currently approved collection.

Abstract: Veterans and other customers who believe that their civil rights were violated by agency employees while receiving medical care or services in VA medical centers, or institutions such as state home receiving federal financial assistance from VA, complete VA Form 08–0381 to file a formal complaint of the alleged discrimination.

An agency may not conduct or sponsor, and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number. The **Federal Register** Notice with a 60-day comment period soliciting comments on this collection of information was published at 87 FR 187 on September 28, 2022, pages 58944 and 58945.

Affected Public: Individuals or Households.

Estimated Annual Burden: 113 Hours.

Estimated Average Burden per Respondent: 15 minutes.

Frequency of Response: On occasion.

Estimated Number of Respondents: 450.

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. 2022–25996 Filed 11–28–22; 8:45 am]

BILLING CODE 8320–01–P

FEDERAL REGISTER

Vol. 87 Tuesday,

No. 228 November 29, 2022

Part II

Small Business Administration

13 CFR Parts 121, 125, 128, et al.
Veteran-Owned Small Business and Service-Disabled Veteran-Owned Small Business—Certification; Final Rule

SMALL BUSINESS ADMINISTRATION

13 CFR Parts 121, 125, 128, and 134

RIN 3245–AH69

Veteran-Owned Small Business and Service-Disabled Veteran-Owned Small Business—Certification

AGENCY: U.S. Small Business Administration.

ACTION: Final rule.

SUMMARY: The Small Business Administration (SBA) amends its regulations to implement a statutory requirement to certify Veteran-Owned Small Business Concerns and Service-Disabled Veteran-Owned Small Business Concerns participating in the Veteran Small Business Certification Program.

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

FOR FURTHER INFORMATION CONTACT: Timothy Green, U.S. Small Business Administration, Office of Veterans Business Development, 409 Third Street SW, 5th Floor, Washington, DC 20416; (202) 205–6777; *Timothy.green@sba.gov.* This phone number may also be reached by individuals who are deaf or hard of hearing, or who have speech disabilities, through the Federal Communications Commission's TTY-Based Telecommunications Relay Service teletype service at 711.

SUPPLEMENTARY INFORMATION:

I. Background

The U.S. Small Business Administration (SBA) amends its regulations to establish a certification program for Veteran-Owned Small Businesses (VOSB) and Service-Disabled Veteran-Owned Small Businesses (SDVOSB) to implement section 862 of the National Defense Authorization Act for Fiscal Year 2021, Public Law 116–283, 128 Stat. 3292 (January 1, 2021) (NDAA 2021).

The Veteran-Owned Small Business and Service-Disabled Veteran-Owned Small Business Programs, set forth in 38 U.S.C. 8127, authorize Federal contracting officers to restrict competition to eligible VOSBs and SDVOSBs for Department of Veterans Affairs (VA) contracts. Previously, to be eligible for VA contracts, VOSBs and SDVOSBs had to be verified by VA's Center for Verification and Evaluation (CVE) in accordance with 38 U.S.C. 8127. There was no Government-wide SDVOSB certification program, and firms seeking to be awarded SDVOSB sole source or set-aside contracts with Federal agencies other than the VA only needed to self-certify their status as set forth in section 36 of the Small Business Act, 15 U.S.C. 657f.

Section 862 of the NDAA 2021 amended the VOSB/SDVOSB requirements to transfer the responsibility for certification of VOSBs and SDVOSBs to SBA as of January 1, 2023 (Transfer Date) and created a certification requirement at SBA for SDVOSBs seeking sole source and set-aside contracts across the Federal Government. Section 862 also created a one-year grace period after the Transfer Date for businesses to file an application for SDVOSB certification with SBA and to continue to self-certify. Self-certified SDVOSBs that apply within the one-year grace period will maintain eligibility until SBA makes a final eligibility decision. With the exception of this grace period, once this rulemaking is finalized, VOSBs and SDVOSBs that are not certified by SBA's Veteran Small Business Certification Program will not be eligible to receive sole source or set-aside VOSB or SDVOSB awards across the Federal Government.

Firms verified by VA's CVE prior to the Transfer Date will be deemed certified by SBA during the time that remains in the firm's three-year term of eligibility. To be recertified by SBA after the Transfer Date, those verified firms will be required to meet all conditions of eligibility as described in SBA's revised regulations. In addition, the Administrator may extend a participant's eligibility period up to one year. To facilitate the transition of those firms already verified by VA's CVE before the Transfer Date with an eligibility period that expires in the first year of the Program, SBA intends to extend the eligibility of those verified firms for a period up to one year. Firms must continue to meet the VOSB or SDVOSB requirements at all times while certified and may be subject to a program examination or a VOSB or SDVOSB status protest.

SBA will implement the Veteran Small Business Certification Program in a new 13 CFR part 128. Part 128 is organized into the following subparts: Subpart A—Provisions of General Applicability; Subpart B—Eligibility Requirements for the Veteran Small Business Certification Program; Subpart C—Certification of VOSB or SDVOSB Status; Subpart D—Federal Contract Assistance; Subpart E—Protests Concerning VOSB and SDVOSBs; Subpart F—Penalties and Retention of Records; and Subpart G—Surplus Personal Property for VOSB Programs.

As part of the process to draft the regulations governing the Veteran Small Business Certification Program, SBA published a proposed rule in the **Federal Register** on July 6, 2022 (87 FR 40141). The proposed rule solicited public comments to assist SBA in drafting a final rule to implement the Veteran Small Business Certification Program. SBA received 168 comments from 90 commenters in response to the proposed rule (Regulations.Gov Docket #SBA–2022–0007). SBA has reviewed all input from interested stakeholders while drafting this rule.

SBA received a number of comments requesting that SBA eliminate self-certification entirely. As discussed further below, SBA has considered these comments and decided to implement its proposal to continue allowing self-certification for SDVOSBs at the subcontract level and for purposes of SDVOSB goaling credit. SBA determined that eliminating all forms of self-certification at this time would be contrary to its overarching goal of harmonizing its small business certification programs, which largely allow self-certification for purposes of subcontracts and goaling. Establishing a policy to eliminate self-certification for these purposes could also adversely impact the implementation of the Veteran Small Business Certification Program. Given the broad implications to the federal small business procurement system, SBA believes a change of this magnitude is outside the scope of this rule. SBA intends to comprehensively review the use of self-certification in its socioeconomic certification programs for goaling and subcontracting purposes with federal government stakeholders and SBA contracting program participants. However, SBA anticipates sunsetting these forms of self-certification after five years, through a separate rulemaking.

II. Section-by-Section Analysis

For ease of review, SBA organized its final rule for part 128 ''Section-by-Section Analysis'' into subparts and sections. Each section has a citation, heading, and the section's source citation which correspond to either 13 CFR part 125 (SBA's previous regulations governing the SDVO SBC program) or 38 CFR part 74 (VA's Veterans Small Business regulations). Sections with no corresponding regulation are marked ''New.''

Subpart A—Provisions of General Applicability

Section 128.100 What is the purpose of this part? (New)

As proposed, § 128.100 added a general purpose section for the Veteran

Small Business Certification Program with statutory authority for contractual assistance to VOSBs and SDVOSBs. There was no equivalent section in previous SDVOSB regulations at part 125. SBA received no comments on this section. As such, SBA is implementing § 128.100 as proposed.

Section 128.101 What type of assistance is available under this part? (New)

Given the unique nature of VA's contractual assistance program, SBA proposed to distinguish the differences in contractual assistance available between VOSB/SDVOSB contracts at VA and SDVOSB contracts across the rest of the Federal Government. There was no equivalent section in previous SDVOSB regulations in part 125. SBA received no comments on this section. As such, SBA is implementing § 128.101 as proposed to clarify the two types of assistance available to participants in the Veteran Small Business Certification Program.

Section 128.102 What definitions are important in the Veteran Small Business Certification Program? (Former § 125.12 and 38 CFR 74.1)

Proposed § 128.102 consolidated the definitions sections of former 13 CFR 125.12 and 38 CFR 74.1. In general, proposed § 128.102 adopted VA's existing definitions that applied to the verification process, removed duplicate definitions between VA and SBA regulations, removed VA definitions that referenced SBA's definitions at former § 125.12, and eliminated definitions that were no longer applicable to the SBA's new certification program. Former § 125.12 included definitions of the terms ''veteran owned small business concern'' and ''small business concern owned and controlled by service-disabled veterans.'' SBA proposed to move these definitions into the eligibility section at § 128.200 in subpart B. However, upon review, SBA decided to include definitions of these terms and has added them to § 128.102 in this final rule.

SBA received 1 comment asking SBA to remove the definition of ''principal place of business'' in § 128.102, as it is no longer relevant to modern recordkeeping. In part 128, the sole reference to ''principal place of business'' is in § 128.303(b), which requires the participant to retain a copy of the application materials at the principal place of business for inspection during program examinations. SBA agrees with the commenter that this requirement is not relevant to modern recordkeeping practices and serves no practical purpose for the program or applicant. Accordingly, SBA has removed this definition and the requirement at § 128.303(b) to maintain these records at the principal place of business.

In this final rule, SBA adds definitions for the terms ''certification database'' and ''qualifying veteran'' to add clarity to the regulations. The final rule provides that the ''certification database'' is the database of certified VOSBs and SDVOSBs eligible to participate in the Veteran Small Business Certification Program. The final rule defines ''qualifying veteran'' to mean a veteran upon which a VOSB's eligibility is based, or in the case of an SDVOSB, a service-disabled veteran (or in the case of a veteran with permanent and severe disability, the spouse or permanent caregiver of such veteran) upon which a SDVOSB's eligibility is based.

Proposed § 128.102 included definitions for the following terms, which have been removed from this final rule: ''eligible individual,'' ''interested party,'' ''joint venture,'' ''primary industry classification,'' and ''unconditional ownership.'' The final rule replaces the term ''eligible individual'' with the term ''qualifying veteran,'' as explained above. SBA moves the definition of ''interested party'' in this final rule to part 134, as explained further below. The final rule removes the definition of the term ''joint venture'' from § 128.102 because it is unnecessary, as § 128.402 describes joint ventures in detail. The final rule also removes the term ''primary industry classification'' because it is no longer relevant to part 128, as eligibility is based on the qualifying veteran and certification is no longer based on primary industry classification, as explained further below. Finally, the final rule moves the definition of the term ''unconditional ownership'' from the definitions section to § 128.202, which addresses ownership.

Subpart B—Eligibility Requirements for the Veteran Small Business Certification Program

Section 128.200 What are the requirements a concern must meet to qualify as a VOSB or SDVOSB? (New)

As proposed, this section reflected the separate and distinct eligibility requirements for certification as a VOSB or SDVOSB. Previously, only firms that were small in their primary North American Industry Classification System (NAICS) code were considered eligible for certification as VOSBs or SDVOSBs. Proposed § 128.200 did not require an applicant to be small in its primary industry but instead proposed to allow an entity to apply for certification if the concern, together with its affiliates, meets the size standard corresponding to any NAICS code under which it currently conducts business activities. This policy is consistent with changes SBA has also proposed making in the WOSB program. *See* 87 FR 55642.

SBA received 4 comments in support of proposed §§ 128.200(a)(1) and 128.200(b)(1), which expanded program eligibility to firms that qualify as small in any NAICS code in which they currently conduct business, and 2 comments that opposed this proposal. One commenter suggested that certified VOSBs and SDVOSBs should be small in all NAICS codes in which they operate and the other commenter suggested that SBA remove ''currently conducts business activities'' because the commenter believed this requirement would limit opportunities for businesses entering new industries. SBA believes that requiring an applicant to demonstrate that it qualifies as small for any industry under which it currently conducts business is more appropriate than requiring a firm to demonstrate that it qualifies as small under its primary industry classification.

To be eligible for a specific VOSB/SDVOSB contract, a firm must qualify as small under the size standard corresponding to the NAICS code assigned to that contract. Whether a firm qualifies as small under its primary industry classification is not relevant to that determination. SBA believes that the certification process should ensure that an applicant is owned and controlled by one or more veterans or service-disabled veterans, and that it could qualify as a small business for a VOSB/SDVOSB set-aside contract.

However, SBA agrees with the commenter that the language ''currently conducts business activities'' could be vague or overly restrictive and has amended §§ 128.200(a)(1) and 128.200(b)(1) in this final rule to provide that a VOSB or SDVOSB must be small under the size standard corresponding to at least one NAICS code listed in its SAM profile. This will allow SBA to determine that an applicant is small in at least one NAICS code by reviewing the firm's SAM profile, without restricting the firm's ability to expand its operations into new industries.

SBA proposed § 128.200(c)(2) to clarify that certification is only required for VOSB/SDVOSB sole source and set-

aside awards. Firms that do not apply for certification in the Veteran Small Business Certification Program may continue to self-certify their status, receive contract awards outside the Veteran Small Business Certification Program through open competition or other types of set-asides, and count toward an agency's goals. This approach is consistent with SBA's WOSB and 8(a) BD programs, which allow businesses to self-certify as ED/WOSBs or SDBs for awards that are made outside of those respective programs and for agencies to receive WOSB or SDB credit for such awards. SBA received several comments in opposition to this approach.

With this final rule, SBA follows its statutory mandate to certify VOSB and SDVOSB status for set-aside and sole source awards. The final rule also adopts proposed § 128.200 to allow self-certification outside of VOSB and SDVOSB set-aside and sole source awards by prime contractors and subcontractors for goaling purposes, as it does in the 8(a) BD and WOSB programs. While SBA acknowledges the potential issues to implement self-certification for these purposes, it believes that for the time being, applying this treatment equally to the Veteran Small Business Certification Program is appropriate. After comprehensive review of the use of self-certification in socioeconomic certification programs for goaling and subcontracting purposes with federal government stakeholders and SBA contracting program participants, SBA anticipates sunsetting these forms of self-certification after five years, through a separate rulemaking.

Section 128.201 What other eligibility requirements apply for certification as a VOSB or SDVOSB? (Former 38 CFR 74.2(b) Through (f))

Proposed § 128.201 generally added conditions of eligibility for certification that were incorporated from existing CVE requirements at 38 CFR 74.2(b) through (f). However, the proposed rule eliminated consideration of whether an individual who is currently incarcerated, or on parole or probation, owns or controls an applicant concern in determining whether the applicant possesses good character and thus may qualify as a VOSB or SDVOSB. SBA received 6 comments in support of the elimination of incarceration, parole, or probation as eligibility exclusions to the Veteran Small Business Certification Program. Whether an individual involved with the applicant is currently incarcerated, or on parole or probation, is a responsibility issue, and whether a concern possesses the responsibility to perform a contract is a contract-specific issue, not an underlying eligibility issue. SBA views the issues related to whether the concern has the necessary integrity to perform a contract in the same way as it does questions relating to whether the concern has the necessary financial wherewithal, capacity or tenacity, and perseverance to perform a contract. All are responsibility issues determined by a contracting officer relating to a specific contract. The elimination of these eligibility factors will not affect the veteran's obligation to meet the control requirements at § 128.203, at the time of application and to maintain a firm's certification as a VOSB or SDVOSB. Accordingly, SBA did not adopt the VA's eligibility requirement that excludes individuals currently incarcerated, on parole, or on probation.

Instead, SBA proposed that good character review would be limited to ensuring that an applicant or principal was not debarred or suspended. SBA considered a modified good character requirement that could render an applicant ineligible if there were outstanding issues relating to moral turpitude or business integrity but concluded it is an issue of responsibility determined by the contracting officer, as explained above. SBA received 3 comments recommending elimination of the good character requirement altogether. SBA considered the comments and decided to remove the ''good character'' provision from § 128.201 in the final rule. Since the ''good character'' analysis was limited to issues of suspension and debarment, this requirement was duplicative, as suspension and debarment is already addressed in § 128.201(a). Further, ''good character'' is not a requirement for eligibility to participate in SBA's WOSB or HUBZone programs, and as explained throughout this rule, SBA seeks to make its contracting program regulations as consistent as possible.

The final rule reorganizes paragraph (a) of § 128.201, addressing suspension and debarment, to make several clarifications. The final rule clarifies that if a participant is debarred from federal contracting, SBA will immediately decertify the firm and remove it from the certification database. If a participant is suspended from federal contracting, SBA will propose the firm for decertification.

Section 128.202 Who does SBA consider to own a VOSB or SDVOSB? (Former § 125.13)

Proposed § 128.202 incorporated SBA's ownership requirements at former § 125.13 and revised the section to add references to non-service-disabled veterans. Proposed § 128.202(f) incorporated the requirements of 38 CFR 74.3(b), requiring participants to provide notice of any change of ownership. Proposed § 128.202(f) required participants to notify SBA of a change of ownership and attest to continued eligibility in accordance with proposed § 128.307. SBA received no comment on these proposed regulations and is implementing these sections as proposed. In the final rule, SBA also made several revisions to ''Ownership of a corporation'' at § 128.202(e) to eliminate duplicative regulations, reduce complexity of the section, and encourage readability.

With this final rule, SBA also adds 128.202(b)(3) as a limited exception to unconditional ownership. With this final rule, SBA does not abandon its previous interpretation of ''unconditional ownership'' but merely adds a limited exception for a commercially reasonable right of first refusal. Unconditional ownership continues to mean that a qualifying veteran's ownership must be unrestricted. However, SBA believes that allowing non-qualifying-veterans a commercially reasonable right of first refusal benefits the program by acknowledging that qualifying veterans often partner with non-qualifying-veterans to form VOSBs and SDVOSBs. This approach encourages investment in VOSBs and SDVOSBs, allows non-qualifying-veterans to protect their business investments, and allows more firms to qualify for certification.

Section 128.203 Who does SBA consider to control a VOSB or SDVOSB? (Former § 125.14)

Proposed § 128.203 incorporated SBA's control requirements at former § 125.14 and revised the section to add references to non-service-disabled veterans. SBA previously administered only the SDVOSB self-certification program and former § 125.14 did not specifically reference VOSB requirements. To be verified by VA and subsequently certified by SBA after the Transfer Date, VOSBs are required to meet the same control requirements as SDVOSBs per 38 CFR 74.4. SBA did not propose any other changes to SBA's control regulations at former § 125.14.

In the proposed rule, SBA requested comment from the public on whether additional changes to former § 125.14 were necessary. Commenters generally supported uniformity between SBA's regulations at parts 124, 127, and 128, to support reciprocity between SBA's contracting programs. SBA believes uniformity between its small business

contracting programs facilitates reciprocity and makes the programs easier to use for participants. As discussed throughout this rule, SBA attempted to achieve uniformity wherever possible. Additionally, SBA received numerous comments on specific topics related to control, including comments regarding franchises, SBA's use of ''rebuttable presumptions,'' and ''extraordinary circumstances.''

The proposed rule asked for comments on whether SBA should address the eligibility of franchises in the final rule. SBA received 6 comments in support of addressing control issues associated with franchises. SBA considered these comments. However, to make the control regulations for the Veteran Small Business Certification Program as consistent as possible with the WOSB and 8(a) BD program regulations, SBA has decided not to address franchises specifically in the final rule. Applications from franchisees will be reviewed on a case-by-case basis, in accordance with how those programs evaluate control of franchises. In general, SBA reviews whether the franchisee has the right to profit from its efforts and bears the risk of loss commensurate with ownership.

SBA received 13 comments related to the ''rebuttable presumptions'' at proposed § 128.203(i). The proposed regulations described a number of rebuttable presumptions of control by a non-qualifying-veteran, including circumstances where the non-veteran: is a former employer; receives the highest compensation; provides critical bonding or financial support; co-locates with another firm in a similar line of business; shares services and resources; and holds required licenses.

SBA has considered the comments received and revised the section (redesignated as § 128.203(h)) to be more consistent with the 8(a) BD program regulations governing control. The 8(a) BD regulations provide a non-exhaustive list of circumstances that may lead to a finding of control by a non-disadvantaged individual. Likewise, this final rule provides a non-exhaustive list of circumstances at § 128.203(h)(2) that may lead to a finding of control by a non-qualifying-veterans. The final rule provides that in certain circumstances, a concern may demonstrate that a non-qualifying-veteran does not control the firm. SBA believes this lighter approach to control balances flexibility for the applicant or participant while maintaining the integrity of the certification process.

In this final rule, SBA has revised § 128.203(i) (proposed § 128.203(k)) to be less restrictive and more consistent with the WOSB and 8(a) BD program regulations governing outside employment and normal business hours. The final rule at § 128.203(i) states that the qualifying veteran cannot engage in outside activities that prevent the individual from devoting sufficient time and attention to the business concern to control its management and daily operations. Where a qualifying veteran claiming to control a business concern devotes fewer hours to the business than its normal hours of operation, SBA would assume that the individual does not control the business concern, unless the firm provides evidence that the qualifying veteran has ultimate managerial and supervisory control over both the long-term decision making and day-to-day management of the business.

SBA received 1 comment on proposed § 128.203(m) (redesignated at § 128.203(j)), which addressed the exception to control by a non-veteran in ''extraordinary circumstances.'' SBA's former regulations at § 125.14(m) stated that SBA would not find that a lack of control exists where a service-disabled veteran does not have the unilateral power and authority to make decisions in certain extraordinary circumstances. ''Extraordinary circumstances'' were defined at proposed § 128.102 and former § 125.12, as including: adding a new equity stakeholder; dissolution of the company; sale of the company; the merger of the company; and the company declaring bankruptcy. The commenter suggested that SBA add the following to the definition of extraordinary circumstances at § 128.102: ''amendments of the bylaws, operating agreement, or other corporate governance documents.'' SBA considered this comment but has decided not to expand the list of allowable extraordinary circumstances to include these additional circumstances. However, in the final rule, SBA has clarified that ''sale of the company'' includes sale of all assets of the company. The final rule also removes the term ''extraordinary circumstances'' from the definitions section at § 128.102 and instead lists them in the control section of the regulations at § 128.203(j).

Section 128.204 What size standards apply to VOSBs and SDVOSBs? (Former § 125.15)

Proposed § 128.204 included SBA's size requirements at former § 125.15 and revised the section to incorporate VOSBs. SBA previously administered only the SDVOSB self-certification program, so former § 125.15 did not specifically reference VOSB requirements. To be verified by VA and subsequently certified by SBA on the Transfer Date, VOSBs are required to meet the same size requirements as SDVOSBs. SBA received 1 comment on proposed § 128.204(a), which established size ''at the time of contract offer,'' noting that this was inconsistent with SBA's size requirements at § 121.404(a), which provide that SBA determines the size of a concern ''as of the date the concern submits a written self-certification that it is small to the procuring activity as part of its initial offer or response which includes price.'' In response to this comment, SBA has amended § 128.204 to be consistent with § 121.404. Additionally, to remove any confusion regarding size status at the time of application and the time of offer, SBA reorganized proposed § 124.204 to include a paragraph (a) addressing size at time of application and paragraph (b) addressing size at time of contract offer.

Subpart C—Certification of VOSB or SDVOSB Status

Section 128.300 How is a concern certified as a VOSB or SDVOSB? (Former 38 CFR 74.2)

Proposed § 128.300 included VA's eligibility requirements at 38 CFR 74.2(a), with revisions to remove references to VA and to reflect SBA's certification program. SBA's proposed rule also granted certification based on an applicant's participation in SBA's 8(a) Business Development and WOSB/EDWOSB programs. In granting certification for these programs, SBA reviews ownership and control of the applicant to determine eligibility. The ownership and control requirements that apply to disadvantaged individuals for 8(a) certification and those applying to women for WOSB/EDWOSB certification are basically the same as those applying to veterans and service-disabled veterans for the Veteran Small Business Certification Program. An applicant would be required to certify that there are no material changes in its ownership or control since its 8(a) or WOSB certification, and SBA would then accept its previous determinations that the identified individual owned and controlled the VOSB/SDVOSB applicant. In such cases, SBA would confirm the identified individual's eligibility as a veteran or service-disabled veteran.

SBA received 8 comments to its proposal at § 128.300(b) and (c) to grant reciprocity to participants in SBA's 8(a) BD and WOSB programs that are owned and controlled by one or more veterans, or in the case of an SDVOSB, service-

disabled veterans. All 8 comments agreed that reciprocity between SBA's certification programs would create administration efficiencies as well as reduced processing time for applicants. One comment expressed that the success of reciprocity would heavily rely on the uniformity between regulations, where possible.

In this final rule, SBA removed the references to the 8(a) BD Program and the WOSB Program from § 128.300 and moved them to §§ 128.303(b) and 128.303(c). Section 128.303 describes what an applicant must apply to be certified as a VOSB or SDVOSB. Section 128.303(b) provides that 8(a) BD program participants must demonstrate that the disadvantaged individual is a qualifying veteran, provide documentation of its most recent annual review (or of its 8(a) BD program acceptance if it has not yet undergone annual review), and certify that there have been no material changes in its ownership or control. Similarly, section 128.303(c) provides that an ED/WOSB firm must demonstrate that the woman/women upon whom the firm's eligibility is based is a qualifying veteran, provide documentation of its ED/WOSB certification or its most recent annual recertification, and certify that there have been no material changes in its ownership or control.

Section 128.301 Where must an application be filed? (Former § 74.10)

Proposed § 128.301 included VA's requirements at 38 CFR 74.10 for application to CVE, proposed revisions to remove references to VA, and reflected that an applicant must apply to SBA for certification after the rule is effective. SBA did not receive comment on this section. SBA is implementing § 128.301 as proposed.

Section 128.302 How does SBA process applications for certification? (Former § 74.11)

Proposed § 128.302 included VA's guidelines for application processing by CVE at 38 CFR 74.11. As proposed, this section removed specific processing guidelines in § 128.302(a). SBA also proposed to add an additional sentence at the end of § 128.302(e) to establish SBA's authority to decertify a firm if the firm failed to inform SBA of any changed circumstance in accordance with § 128.306. The regulation at 38 CFR 74.11(e)(1), which requires participants to notify VA of bankruptcy details within 30 days, was incorporated into §§ 128.302(e) and 128.307 to require participants to notify SBA in the event of a bankruptcy filing. SBA received no comment on this section and is implementing § 128.302 as proposed.

Section 128.303 What must a concern submit to apply for VOSB or SDVOSB certification? (Former § 74.12)

Proposed § 128.303 amended VA's documentation requirements at 38 CFR 74.12 for application to CVE. This amendment included general requirements for submission to SBA rather than listing each document individually as with the current VA regulation. As proposed, this section granted certification based on participants in SBA's 8(a) BD and WOSB/EDWOSB programs that are owned and controlled by one or more veterans, or in the case of SDVOSBs, service-disabled veterans. The proposed amendment demonstrated how applicants may submit documentation as evidence of program eligibility. Proposed § 128.303 added paragraphs (d) and (e) to require a concern to provide a full explanation in the case of an applicant that was previously decertified, previously denied certification, or failed to notify SBA of a material change affecting its eligibility.

In terms of demonstrating that an applicant qualifies as a small business, the proposed rule provided that an applicant must demonstrate that it qualifies as small under the size standard corresponding to any NAICS code under which it currently conducts business activities. The change to this language was discussed above in the discussion of § 128.200. SBA received no comments on this section and is implementing the remainder of § 128.303 as proposed.

Section 128.304 Can an Applicant appeal SBA's initial decision to deny an application? (Former § 74.13)

Proposed § 128.304 included VA's regulation at 38 CFR 74.13 for a denied application with CVE. Proposed § 128.304(a) established that there is no reconsideration process for denied applications. SBA believes that the appeals process with SBA's Office of Hearings and Appeals (OHA) as outlined in 13 CFR part 134 serves as an adequate substitute for the process of reconsideration. Given that the proposed rule did not permit reconsideration for initial applications, SBA proposed to shorten the reapplication period after denial from 6 months to 90 calendar days.

SBA received several comments requesting clarity on an applicant's due process rights for denials, decertification, and protests to SBA Office of Hearings and Appeals (OHA) in § 128.304, § 128.310, and § 128.500. In response, this final rule amends part 134 so that all elements of the certification process, including appeal rights for denied applicants, terminations, and protests, are addressed.

In addition, the final rule provides that a denial or decertification based on the failure to provide sufficient evidence of the qualifying individual's status as a veteran or a service-disabled veteran is not subject to appeal to OHA. SBA believes it important to include a statement in § 128.304 to address appeals for denials solely based on an individual's status as a veteran or service-disabled veteran. The decision as to whether an individual is a veteran or service-disabled veteran is one outside of SBA's authority and it would not be appropriate for SBA to evaluate this eligibility criteria. It also removes the provisions stating the filing party bears the risk that the delivery method chosen will not result in timely receipt by OHA and specifying how the decision will be issued, since these requirements would be governed by part 134.

Section 128.305 Can an Applicant or Participant reapply for certification after a denied certification or decertification? (Former 38 CFR 74.14)

Proposed § 128.305 included VA's reapplication requirements contained in 38 CFR 74.14 that the applicant must wait for a period of 90 calendar days after a denial decision before a new application will be processed (proposed § 128.305(a)). SBA received 2 comments in support of the proposed changes at § 128.305. As stated above, SBA's proposed rule adopted the existing VA regulations for reapplication in 38 CFR 74.14 but believes that it is more appropriate to adopt the format of SBA's WOSB regulation at § 127.305 instead. There are no material changes to the substantive requirements at § 128.305, however the format was changed in the interest of creating uniform regulations between programs.

Proposed § 128.305(b) provided that participants may reapply for certification within 120 calendar days prior to the end of their eligibility period and the subsequent eligibility period would be based on the date of the new determination letter. SBA believes that discussing the 120-day recertification window in proposed § 128.305(b) may be confusing to the reader and more appropriate to discuss in § 128.306, which explains how a concern may maintain its VOSB or SDVOSB certification. Accordingly, in this final rule, SBA provides that a participant may recertify within 120

calendar days prior to the end of their eligibility period—to § 128.306(a).

Section 128.306 How does a concern maintain its VOSB or SDVOSB certification? (Former 38 CFR 74.15)

Proposed § 128.306 included VA's three-year program eligibility term and continuing obligation requirements at 38 CFR 74.15, with a provision specifying that a business concern would receive an eligibility term of three years from the date of SBA's approval letter establishing its VOSB or SDVOSB certified status. Although SBA received comments supporting annual recertification, SBA does not believe that yearly recertification is necessary. SBA wants to ensure that it meets its statutory mandate, but at the same time does not want to impose any unnecessary burden on VOSBs and SDVOSBs.

Proposed paragraphs (e) and (f) of this section included the consequences of a program examination. For organizational purposes, SBA moved these provisions to the section specifically addressing program examinations, § 128.308(c).

SBA received a number of comments in support of SBA's 3-year term of eligibility for the Veteran Small Business Certification Program. Three comments proposed an additional one-year period of eligibility on the Transfer Date for those firms already certified by VA or an additional period of eligibility granted at the discretion of the Administrator or designee. SBA agrees this extension will allow SBA to process the large number of applications it will receive in the first year of the program. An extension will allow SBA to focus on applications from self-certified SDVOSB firms, while not delaying recertifications from firms already participating in VA's program. Accordingly, the final rule provides in § 128.306(d) that the Administrator or designee may extend eligibility up to one year beyond the three-years eligibility period.

Section 128.307 What are a Participant's ongoing obligations to SBA? (Former § 74.3(b))

Proposed § 128.307 included the requirement at 38 CFR 74.3(b) for participants to notify CVE of any change of ownership. The proposed section did not require prior SBA approval of a material change. Sections 36 and 36A of the Small Business Act (15 U.S.C. 657f and 657f–1) ''require the periodic recertification'' of a firm's status as an eligible VOSB or SDVOSB. As noted above in the discussion of § 128.306, SBA proposed that a VOSB or SDVOSB certification generally last three years. SBA has interpreted the ''periodic recertification'' requirement set forth in the Small Business Act to require recertification every three years. SBA received one comment on this section supporting this requirement and is implementing § 128.307 as proposed.

Section 128.308 What is a program examination and what will SBA examine? (Former § 74.20)

Proposed § 128.308 adopted VA's 38 CFR 74.2(a) verification exam requirements. Proposed § 128.308(a) included a general description of the certification exam and stated that examiners will review a participant's current eligibility and its eligibility at the time of its application or its most recent size recertification. For the final rule, SBA will remove the reference to the most recent size recertification as it is not applicable to the Veteran Small Business Certification Program. SBA may conduct a program examination at any time after the application.

Proposed § 128.308(b) stated that SBA may conduct the program examination at one or all of the participant's offices or work sites, to be determined by SBA. SBA received 1 comment requesting that SBA conduct virtual program examinations rather than in-person visits. SBA has removed the language referencing physical site visits from § 128.308(b), allowing SBA to conduct either virtual or on-site visits, as appropriate.

Section 128.309 What are the ways a Participant may exit the Veteran Small Business Certification Program? (Former § 74.21)

Proposed § 128.309 included VA's guidelines on exiting the CVE program at 38 CFR 74.21. The proposed section included a paragraph providing that failure to recertify would be a basis on which to remove a firm from the Veteran Small Business Certification Program. With the final rule, SBA organized the ways a participant could exit the program into four categories: voluntary withdrawal, decertification by SBA through the proposed decertification process, decertification due to adverse protest findings, and decertification due to suspension or debarment.

SBA received one comment on § 128.309 recommending that SBA include misrepresentation and false statements as a basis for decertification from the program. The commenter suggested that if decertified or denied certification on this basis, such decertified firms or denied applicants should have appeal rights to OHA. The commenter also suggested that if a representative of an applicant or participant submits a false statement, SBA should take steps to bar that representative from participation in SBA contracting programs. SBA agrees but believes that for organizational purposes, these requirements are more appropriate for inclusion in the additional eligibility requirements at § 128.201(b).

Section 128.310 What are the procedures for decertification? (Former § 74.22)

Proposed § 128.310 included VA's 38 CFR 74.22 guidelines on canceling program participation by the agency. SBA did not receive relevant comments on this section and has implemented this section as proposed with only minor modifications to improve clarity.

Subpart D—Federal Contract Assistance

Section 128.400 What are VOSB and SDVOSB contracts? (Former § 125.17)

As proposed, § 128.400(a) changed the text in former § 125.17 to reflect VA's authority to award set-aside and sole source to VOSBs and SDVOSBs. Proposed § 128.400(a) referenced the VA Acquisition Regulation (VAAR) at chapter 8 of title 48, Code of Federal Regulations. In the final rule, SBA clarified in § 128.400(a) that VOSB contracts are exclusively VA procurements, including prime contracts and subcontracts for which the VA is the procuring agency.

Proposed § 128.400(b) distinguished VA contracts from SDVOSB contracts with the rest of the Federal Government. SBA received no relevant comments on this section.

Section 128.401 What requirements must a VOSB or SDVOSB meet to submit an offer on a contract? (Former § 125.18)

Proposed § 128.401(a) changed the requirements at former § 125.18(a), which required self-certification of SDVOSB status at the time of offer, to require a concern to be certified as a VOSB or SDVOSB to be eligible for a VOSB or SDVOSB set-aside or sole source contract. The proposed rule also included provisions to allow an uncertified VOSB or SDVOSB to submit an offer while their application is pending with SBA. In the proposed rule, SBA explained that it intended to prioritize those applications where the contracting officer has identified the applicant as the apparent successful offeror. SBA received 2 comments asking SBA to remove this priority review. The commenters did not

support allowing uncertified firms to submit an offer while their application is pending. The commenters believed that this procedure would result in wasted time and resources for SBA, the contracting activity, and all impacted bidders. They stated it would introduce a source of delay in the award process because contracting officers would be required to wait for the apparent awardee to be certified and the apparent awardee could end up not being eligible for certification. In addition, VA's existing regulations require offerors to be certified at the time of offer. Based on the comments received, SBA has opted to revise § 128.401(a) in this final rule to require SDVOSBs and VOSBs to be certified at the time of offer, subject to the grace period required by NDAA 2021.

Proposed § 128.401(b) added eligibility for VOSB joint ventures and referenced § 128.402, which addressed the joint venture requirements for both VOSBs and SDVOSBs. The remainder of proposed § 128.401 described the requirements applicable to VOSB and SDVOSB contracts, including: compliance with the non-manufacturer rule at § 121.406(b)(1); requirements for Multiple Award Contracts; contract-level recertification requirements; compliance with the limitations on subcontracting at § 125.6; and treatment of an ''ostensible subcontractor.'' These requirements are consistent with the requirements applicable to SBA's other small business contracting programs. SBA did not receive relevant comments on these provisions and has generally implemented them as proposed, with only minor modifications intended to add clarity to the regulations.

Section 128.402 When may a joint venture submit an offer on a VOSB or SDVOSB contract? (Former § 125.18(b))

SBA proposed a stand-alone section at § 128.402 to describe the joint venture requirements applicable to VOSBs and SDVOSBs. As proposed, SBA did not require SDVOSB joint ventures to be certified to be eligible for non-VA contracts. SBA received 1 comment asking SBA to require certification for all joint ventures. With the exception of 8(a) BD sole source contracts, SBA does not require certification of joint ventures in its certification programs and SBA is seeking to create uniformity among its programs wherever possible. Accordingly, in this final rule, SBA has removed the requirement that VOSB joint ventures be certified.

The proposed rule included a provision at § 128.402(b)(10) providing that a VOSB or SDVOSB participant cannot be a joint venture partner on more than one joint venture that submits an offer for a specific VOSB or SDVOSB contract. Procuring agencies and small businesses have raised concerns to SBA in the context of multiple award contracts where it is possible that one firm could be a member of several joint ventures that receive contracts. In such a situation, several agencies were troubled that orders under the Multiple Award Contract may not be fairly competed if one firm was part of two or more quotes. They believed that one firm having access to pricing information for several quotes could skew the pricing received for the order. SBA received 1 comment in support of proposed § 128.402(b)(10). To make this requirement more prominent within the section and to be more consistent with corresponding changes that have been proposed for SBA's other certification programs (*see* 87 FR 55642), SBA has moved it to § 128.402(a)(3).

In addition, the final rule revises the organization of this section to more closely match the corresponding sections governing joint ventures for SBA's other contracting programs. The final rule also clarifies that where § 128.402 references the requirements of a VOSB or SDVOSB joint venture partner for eligibility purposes, the VOSB or SDVOSB status of that joint venture partner must correspond with the type of award (*e.g.,* to be eligible for a SDVOSB contract, a SDVOSB joint venture partner must be the managing venturer of the joint venture).

Sections 128.403 Through 128.408 (Former §§ 125.21 Through 125.26)

Proposed §§ 128.403 (former § 125.21, addressing requirements not available as VOSB or SDVOSB contracts), 128.405 (former § 125.23, addressing sole source contracts), and 128.406 (former § 125.24, addressing VOSB or SDVOSB contracts at or below the simplified acquisition threshold) generally mirrored SBA's former requirements but distinguished VA procurements from all other procurements, where necessary.

Proposed § 128.403 provided that VA procurements are governed by the VAAR and that for non-VA SDVOSB procurements, a contracting activity was limited in which procurements could be made available as SDVOSB contracts based on the requirements of 18 U.S.C. 4124 or 4125 (awards to Federal Prison Industries, Inc.), 41 U.S.C. 8501 (awards to Javits-Wagner-O'Day Act participating non-profit agencies for the blind and severely disabled), and the procurement's current acceptance in 8(a) BD program. SBA did not receive any comments on this section and is implementing it as proposed.

Proposed § 128.404(d) added a requirement to SBA's existing regulations, prohibiting agencies from requiring one or more certifications in addition to its VOSB/SDVOSB certification. SBA has consistently interpreted the authority in the Small Business Act for socioeconomic set-asides to prohibit an agency from requiring multiple certifications (*i.e.,* SDVOSB, 8(a), HUBZone, WOSB). This policy is already reflected in SBA's regulations at § 125.2(e)(6)(i) with respect to set-aside orders under multiple award contracts, and SBA is in the process of amending its 8(a), HUBZone, and WOSB regulations to reflect this policy as well. *See* 87 FR 55642. Accordingly, SBA is implementing this provision as proposed.

Proposed § 128.407 incorporated the provision at former § 125.25, permitting the SBA Administrator to appeal a contracting officer's decision not to make a particular requirement available for award as an SDVOSB sole source or a SDVOSB set-aside contract. SBA received no comments on this section and adopts it as proposed.

Proposed § 128.408 incorporated the requirements at former § 125.26, describing the procedures applicable to the Administrator's appeal authority provided in former § 125.25. SBA received no comments on this section and adopts it as proposed.

Subpart E—Protests Concerning VOSBs and SDVOSBs

Section 128.500 What are the requirements for filing a VOSB or SDVOSB status protest? (New)

Proposed § 128.500 addressed status protests for VOSBs and SDVOSBs. Prior to this final rule, SBA's Director of Government Contracting processed all status protests of self-certified SDVOSBs for non-VA contracts in accordance with 13 CFR part 125, and SBA's OHA heard all challenges to a VOSB or SDVOSB's inclusion in the VA database in accordance with 38 U.S.C. 8127(f)(6)(B)(i). However, NDAA 2021 transferred the entirety of 38 U.S.C. 8127(f) to 15 U.S.C. 657f and authorized OHA to decide all status protests of VOSBs and SDVOSBs, regardless of the procuring agency. Accordingly, proposed part 128 did not include the SDVOSB status protest requirements described in former §§ 125.27 through 125.31. Proposed § 128.500(a) provided that OHA would hear protests challenging a VOSB or SDVOSB's inclusion in the certification database

based on the status of the concern as a small business concern or the ownership or control of the concern, in accordance with part 134. Proposed § 128.500(b) clarified that there were separate procedures for size protests and status protests.

The final rule adds paragraph (c), which provides that when challenging the SDVOSB status of a joint venture, the managing SDVOSB party to the joint venture must be a certified SDVOSB as of the date of the joint venture's initial offer, including price, for the SDVOSB contract and compliance with the joint venture agreement requirements set forth in § 128.402(c) is determined as of the date of the final proposal revision for negotiated acquisitions and final bid for sealed bidding.

Subpart F—Penalties and Retention of Records

Proposed §§ 128.600 and 128.601 adopted SBA's regulations at former §§ 125.32 and 125.33 and revised these sections to add references to VOSBs. SBA received no comments on these sections. SBA is implementing § 128.600 as proposed. In this final rule, SBA has deleted proposed § 128.601, because SBA believes it was unnecessary and potentially confusing, given the new requirements for firms to be certified to receive VOSB and SDVOSB contracts.

Subpart G—Surplus Personal Property for Veteran-Owned Small Business Programs

Section 128.700 How does a VOSB obtain Federal surplus personal property? (Former § 125.100)

The Veterans Small Business Enhancement Act provides that VOSBs should be considered for surplus personal property distributions. Those firms seeking to participate in the program are required to be verified by VA's CVE as a condition of eligibility. Proposed § 128.700(a)(1) reflected the transfer of certification to SBA as mandated by NDAA 2021. SBA did not receive any comments on this section and is implementing § 128.700 as proposed.

Parts 121, 125, and 134

This final rule amends references to the current SDVOSB program in part 121. These amendments correspond to the new part 128.

SBA amends the definition of ''similarly situated entity'' in § 125.1 to clarify that a subcontractor must be certified as VOSB or SDVOSB in order to qualify as a similarly situated entity for purposes of complying with the limitations on subcontracting. The final rule also amends § 125.6(a) to clarify that the limitations on subcontracting apply to VOSB contracts. The VA statute at 38 U.S.C. 8127(k) provides that the limitations on subcontracting in section 46 of the Small Business Act (15 U.S.C. 657s), including the definition of the term ''similarly situated entity,'' ''shall apply with respect to a small business concern owned and controlled by veterans that is awarded a contract under this section.'' These amendments are meant to ensure that SBA's regulations are consistent with this statutory provision.

SBA also amends 13 CFR part 125 to remove the SDVOSB regulations in subparts A through F, consisting of §§ 125.12 through 125.100.

SBA amends part 134 to reflect updated OHA appeal and protest procedures in accordance with NDAA 2021, which transferred the entirety of 38 U.S.C. 8127(f) to 15 U.S.C. 657f and authorized OHA to decide all status protests of VOSBs and SDVOSBs, regardless of the procuring agency, and to decide all challenges to inclusion in the SBA certification database. In the proposed rule, SBA stated that revisions to part 134 would likely occur through a separate direct final rule. In response to this statement, one commenter strongly urged SBA to include amendments to part 134 in the final rule to clarify OHA's role in deciding all VOSB and SDVOSB status protests per NDAA 2021. SBA agrees with this comment and believes there is good cause to include amendments to part 134 in this rule because the revisions reflect statutory requirements and do not substantially alter the existing processes used by OHA. In the interest of efficiency and continuity, SBA chooses to revise part 134 in this final rule rather than through a separate rulemaking.

The final rule amends § 134.102, the rules for establishing OHA's jurisdiction, to remove paragraph (q), and to revise paragraphs (u) and (v). Previous paragraph (q) applied to appeals from the SDVOSB protests decided under part 125 and was deleted because it is now obsolete. Revised § 134.102(u) addresses protests of eligibility for inclusion in the Veteran Small Business Certification Program, and revised § 134.102(v) addresses appeals of denials of certification in and decertification from the Veteran Small Business Certification Program.

The final rule amends § 134.201, governing the scope the rules of Subpart B of part 134, by removing paragraph (b)(3) and revising paragraphs (b)(8) and (b)(9). Revised § 134.201(b)(8) provides that the rules of practice for protests of eligibility for inclusion in the Veteran Small Business Certification Program are in subpart J of part 134; revised § 134.201(b)(9) provides that the rules of practice for appeals of denials and cancellations of certification for inclusion in the Veteran Small Business Certification Program are in subpart K of part 134.

The final rule deletes subpart E of part 134, which applied to appeals from the SDVOSB protests decided under part 125, because it is now obsolete.

Finally, the final rule revises subparts J and K of part 134 to reflect the transfer of authority for certifying VOSBs and SDVOSBs from VA to SBA. As stated above, revised subpart J addresses protests of eligibility for inclusion in the Veteran Small Business Certification Program, and revised subpart K addresses appeals of denials and cancellations of certification for inclusion in the Veteran Small Business Certification Program.

III. Compliance With Executive Orders 12866, 12988, 13132, 13175, 13563, the Congressional Review Act (5 U.S.C. 801–808), the Paperwork Reduction Act (44 U.S.C., Ch. 35), and the Regulatory Flexibility Act

Executive Order 12866

The Office of Management and Budget (OMB) has determined that this final rule is a significant regulatory action for the purposes of Executive Order 12866. Accordingly, the next section contains SBA's Regulatory Impact Analysis.

Regulatory Impact Analysis

1. Is there a need for the regulatory action?

This rulemaking is necessary to satisfy statutory requirements to implement section 862 of the National Defense Authorization Act for Fiscal Year 2021 amendments to the Small Business Act which requires SBA to certify VOSBs and SDVOSBs.

2. What is the baseline, and the incremental benefits and costs of this regulatory action?

OMB directs agencies to establish an appropriate baseline to evaluate any benefits, costs, or transfer impacts of regulatory actions and alternative approaches considered. The baseline should represent the agency's best assessment of what the world would look like absent the regulatory action. For a regulatory action that modifies or replaces an existing regulation, a baseline assuming no change to the regulation generally provides an appropriate benchmark for evaluating

benefits, costs, or transfer impacts of proposed regulatory changes and their alternatives.

Baseline

Section 862 of NDAA 2021 amended sections 36 and 36A of the Small Business Act to require SBA to certify the status of VOSBs and SDVOSBs seeking sole source and set-aside contracts across the Federal Government. This regulation is intended to replace VA's existing regulations governing the verification of VOSBs and SDVOSBs for sole source or set-aside contracts awarded by VA. Prior to NDAA 2021, SDVOSB firms seeking to contract with Federal agencies other than VA only needed to self-certify their status. SDVOSB firms self-certified on the Transfer Date must apply within a one-year grace period after the Transfer Date.

This final rule will not add any additional burden to current participants in VA's VIP Verification Program. The VIP Verification Program has a three-year term of eligibility and to enter the program, applicants submit an online application with documents supporting the application. To remain in the program, VA requires participants to notify the agency of a change in circumstances such as a change in ownership or control of the firm. VA also requires participants to undergo a program examination to verify the accuracy of any statement or information provided as part of the verification application process. At the end of the three-year term of eligibility, a participant must reapply to the program using the same procedures as the initial application.

This final rule will institute the same process of initial application, program examination, and recertification at the end of the applicant's three-year term of eligibility. Firms verified by VA prior to the Transfer Date will be deemed eligible by SBA for the time that remains in the firm's three-year term of eligibility. To remain certified by SBA after the Transfer Date, those verified firms will be required to meet all conditions of eligibility as described in the regulations such as program examinations and recertification at the end of the firm's term of eligibility. Current participants in the VIP Verification Program would have no additional cost burden associated with SBA's regulations implementing the Veteran Small Business Certification Program. VA existing regulations for VOSBs and SDVOSBs that contract solely with the VA serve as an appropriate benchmark for this regulatory impact analysis. Accordingly, this analysis will focus on the benefits and costs to those previously self-certified SDVOSBs that would be required to certify with SBA.

Benefit

The benefit of the final regulation is a reduction in the ambiguity and uncertainty for contracting officers in the process of making Federal contract awards to eligible SDVOSB firms that were previously only required to self-certify. Under the existing system for agencies outside of VA, the burden of SDVOSB eligibility compliance is placed upon the awarding contracting officer. Contracting officers must review the documentation of the apparent successful offeror on a SDVOSB contract. Under this final rule, the burden is placed upon SBA. All a contracting officer needs to do is to confirm that the firm is in fact a certified SDVOSB in SBA's certification database and a responsible contractor. A contracting officer would not have to look at any documentation provided by a firm or prepare any internal memorandum memorializing any review. This will encourage more contracting officers to set aside opportunities for Veteran Small Business Certification Program participants as the validation process will be controlled by SBA in the System for Award Management (SAM), the Dynamic Small Business Search (DSBS) database, and SBA's certification database. The reduced responsibility to verify eligibility at contract award may also result in a minor cost savings to the contracting agencies.

Cost

While current participants in the Vet VIP Verification Program would have no additional costs associated with this final rule, SBA anticipates costs associated with self-certified SDVOSBs currently seeking contracts with the rest of the Federal Government. Previously, those firms only needed to self-certify their status to pursue SDVOSB sole source and set-asides. With NDAA 2021, those firms must apply to SBA for certification within a one-year grace period ending on January 1, 2024. Eligible SDVOSB firms that are certified by SBA after the Transfer Date will then be required to meet all program eligibility requirements going forward to include: notify SBA of a change in circumstances, undergo a program examination, and reapply for certification at the end of their eligibility period.

To estimate the number of SDVOSB applicants within the first year of the certification, SBA reviewed firms actively registered as SDVOSBs in SAM. SBA believes that the number of firms listed in SAM is the most recent and reliable data to estimate participation and total costs of the Veteran Small Business Certification Program for the purposes of this regulatory impact study. Registration in SAM is required for all businesses seeking to contract with the Federal Government, registrants may select to represent themselves as SDVOSBs without going through a certification process, and firms must recertify their registration one-year after initial SAM registration. While it is not anticipated that every firm registered as an SDVOSB in SAM will apply for certification within the first year of the Veteran Small Business Certification Program, SAM registrations serve as what SBA would consider the maximum number of firms that would likely seek certification.

Accordingly, SBA estimates that as many as 21,468 self-certified SDVOSBs could apply for initial certification within the first year of the program. This estimate is based on 32,284 SDVOSB firms registered in SAM and excludes 10,816 firms registered in SAM but already verified by VA as of December 2021.

SDVOSBs Registered in SAM	32,284
Less: VA-Verified SDVOSBs Included in SAM	10,635
Self-Certified SDVOSBs	21,649
Less: VA-Verified VOSBs Self-Certified as SDVOSBs	181
Self-Certified SDVOSBs Anticipated to Seek SBA Certification	21,468

Although the table above represents the entire population of self-certified SDVOSBs, SBA does not believe all 21,468 firms will apply for certification in the first year. To estimate the total participation in the first year, SBA used 17,174 total firms or 80% of the total self-certified SDVOSBs in SAM as a basis for determining program costs. The following table represents the estimated total number of program participant actions during the first five years of the Veteran Small Business Certification Program.

NUMBER OF PROGRAM PARTICIPANTS

Year	Initial applications	Program examinations	Recertifications	Yearly totals
1	17,174	1,025	2,114	19,288
2	8,500	560	2,006	10,506
3	7,500	420	527	8,027
4	7,500	810	7,715	15,215
5	7,500	635	4,202	11,706
Totals	48,174	3,455	16,565	64,739

For the purposes of this final rule, SBA estimated ''time to complete'' for three types of certification actions: initial application, program examination, and recertification at the end of the eligibility period. For the initial application, SBA estimates that applicants will complete the application process in 1 hour, a program examination in 1 hour, and recertification in 1 hour. The estimated time to complete includes entering information into SBA's online application platform and submission of supporting documentation to prove eligibility. It also assumes that the information requested by SBA during initial certification is already held by the firms during the ordinary course of business, was previously required to self-certify, and requires minimum preparation prior to submission. Similarly, participants will be minimally burdened during program examinations and recertifications. During their period of eligibility, participants are required to review, maintain, and update documentation submitted to SBA during initial certification. In the event of a change in circumstances while in the program, participants will have previously notified SBA of the change and already uploaded documentation to support eligibility. SBA's final rule does not require additional information or documents that the firm would not already have on hand and does not impose additional burdens on the participant. SBA received one comment stating that SBA's estimate for the time burden for applicants was lower than the actual time it would take, due to system issues and document submission requirements. SBA does not anticipate having system issues and intends to make the document submission requirements clear on the application platform, to allow applicants to be able to complete the process within one hour. Additionally, SBA plans to offer training courses and materials prior to application so that applicants are familiar with the process and documents required for submission.

Hourly cost to the participant is based on the estimated manager's salary of $93.44/hour (based on the median hourly wage of $46.72 for construction managers, according to the BLS 2020 Occupational Outlook Handbook, plus 100% for benefits and overhead). Based on an estimate of 1 hour per program action and an hourly cost of $93.44, the five-year total cost burden will be $6,372,062. SBA estimates that an applicant's cost burden to apply and maintain eligibility for this program would require 3 total hours at a cost burden of $280.32 per applicant.

COSTS TO PARTICIPANTS

Year	Initial applications	Program examinations	Recertifications	Yearly totals
1	$1,604,776	$95,776	$197,532	$1,898,084
2	794,240	52,326	187,441	1,034,007
3	700,800	39,712	49,243	789,755
4	700,800	75,686	720,923	1,497,410
5	700,800	59,334	392,672	1,152,807
Totals	4,501,416	322,835	1,547,811	6,372,062

SBA believes that participants will not incur any start-up costs, operation or maintenance costs, service costs, or require additional capital as a result of this final rule because there should be no cost in setting up or maintaining systems to collect the required information. As stated previously, the information requested should be collected and retained by the applicant in the ordinary course of business.

SBA estimates the cost to the government of implementing the certification program to be $30M across fiscal year FY2022 and FY2023 and approximately $20M annually thereafter. SBA worked with VA and OMB to secure a $10M transfer from VA's Supply Fund to cover transition costs, including tech system development. An additional $20M was requested in the President's Budget for FY2023 for year one program operations. SBA and VA anticipate an up to 250% surge in application volume relative to VA's current volume. The increase in volume will be handled primarily by surging contract support. SBA's $20M request includes $2.5M for full time equivalents (FTEs) (current salaries and expenses (S&E) for VA FTEs assigned to the program), $1.35M for information technology (IT) overhead (system maintenance and standard IT services for staff and contractors), and $16M in contract costs (based on FY2021 VA contract costs scaled to account for application surge and projected efficiencies). The cost of operating the program may decrease after the initial application surge but would rise every third year when the 2023 cohort is up for recertification. This cost estimate also eliminates CVE's costs of administering the program. CVE reported a cost of $12,302,497 for 14,762 cases in FY2021. This cost is not directly comparable to SBA's estimate, however, because it excludes items like some support costs, that are included in SBA's cost estimate.

3. What are the alternatives to this rulemaking?

This final rule implements specific statutory provisions in Section 862 of the 2021 NDAA. There are no alternatives that would meet the statutory requirements.

Executive Order 12988

This final rule meets applicable standards set forth in sections 3(a) and 3(b)(2) of Executive Order 12988, Civil Justice Reform, to minimize litigation, eliminate ambiguity, and reduce burden. The action does not have retroactive or preemptive effect.

Executive Order 13132

This final rule does not have federalism implications as defined in Executive Order 13132. 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, as specified in the Executive order. As such it does not warrant the preparation of a federalism assessment.

Executive Order 13175

This final 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.

Executive Order 13563

This Executive order directs agencies to, among other things: (a) afford the public a meaningful opportunity to comment through the internet on proposed regulations, with a comment period that should generally consist of not less than 60 days; (b) provide for an ''open exchange'' of information among government officials, experts, stakeholders, and the public; and (c) seek the views of those who are likely to be affected by the rulemaking, even before issuing a notice of proposed rulemaking. As far as practicable or relevant, SBA considered these requirements in developing this rule, as discussed below.

1. *Did the agency use the best available techniques to quantify anticipated present and future costs when responding to E.O. 12866 (e.g., identifying changing future compliance costs that might result from technological innovation or anticipated behavioral changes)?*

To the extent possible, the agency utilized the most recent data available in the Federal Procurement Data System-Next Generation, SAM, and VA's VIP database.

2. *Public participation: Did the agency: (a) Afford the public a meaningful opportunity to comment through the internet on any proposed regulation, with a comment period that should generally consist of not less than 60 days; (b) provide for an ''open exchange'' of information among Government officials, experts, stakeholders, and the public; (c) provide timely online access to the rulemaking docket on Regulations.gov; and (d) seek the views of those who are likely to be affected by rulemaking, even before issuing a notice of proposed rulemaking?*

SBA published a proposed rule in the **Federal Register** on July 6, 2022 (87 FR 40141). The proposed rule solicited public comments to assist SBA in drafting a final rule to implement a Veteran Small Business Certification Program. SBA received 168 comments from 90 commenters in response to the proposed rule (Regulations.Gov Docket #SBA–2022–0007). SBA has reviewed all input from interested stakeholders while drafting this rule.

3. *Flexibility: Did the agency identify and consider regulatory approaches that reduce burdens and maintain flexibility and freedom of choice for the public?*

This rulemaking is necessary to satisfy statutory requirements to implement section 862 of the NDAA 2021. A description of the need for this regulatory action and the benefits and costs associated with this action, including possible distributional impacts that relate to Executive Order 13563, are included above in the Regulatory Impact Analysis under Executive Order 12866.

Congressional Review Act (5 U.S.C. 801–808)

The Congressional Review Act, 5 U.S.C. 801 *et seq.,* as amended by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a ''major rule'' may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. SBA will submit a report containing this rulemaking and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This rulemaking has been reviewed and determined by OMB not to be a ''major rule'' under 5 U.S.C. 804(2).

Paperwork Reduction Act, 44 U.S.C. Ch. 35

In carrying out its statutory mandate to certify VOSB and SDVOSB firms, SBA intends to collect information from VOSB and SDVOSB applicants or participants through an online application system. This collection of information will require submission or retention of documents that support the applicant's certification and continued eligibility.

SBA intends to implement a certification and information collection platform that replicates the VA CVE's currently approved information collection (OMB Control Number 2900–0675). In other words, the information collected by SBA will include eligibility documents previously collected by VA. SBA does not anticipate that these changes would impact the content of the information currently collected or add additional burden to what is currently required by VA for verification.

As discussed above, this final rule will fully implement the statutory requirement for small business concerns to be certified by SBA in order to be awarded a set-aside or sole source contract under the Veteran Small Business Certification Program. As a result of these changes, the final rule eliminates SDVOSB self-certification and sets the standards for certification by SBA. SBA anticipates that these changes will impact self-certified firms; however, this impact would be minimal as this information is already held by applicants during the ordinary course of business, was previously required for self-certification, and would require minimum preparation prior to submission.

Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA), 5 U.S.C. 601–612, requires an agency to consider the potential economic impact that a draft regulatory action may have on small entities. Agencies must prepare an initial RFA (IRFA) for any proposed rulemakings and a final RFA (FRFA) for final rulemakings when such rulemakings are subject to notice and comment procedures under section 553(b) of the Administrative Procedure Act. Section 605 of the RFA permits an agency to forgo such analyses by certifying a draft rulemaking that is not expected to have a significant economic impact or not expected to impact a substantial number of small entities.

Generally, an agency's certification must include a statement providing the factual basis for this determination, such as a description of the affected entities and an estimate of the cost of the impacts that justify the ''no impact'' certification.

SBA, hereby, certifies to the Chief Counsel of Advocacy of SBA and others that the instant final rulemaking will not have a significant economic impact on a substantial number of small entities. SBA previously certified that the instant rulemaking would likely not have a significant economic impact on a substantial number of small entities. *See* 87 FR 40141, 40150. SBA did not receive any comments during the public comment period disputing this certification. Immediately below, SBA sets forth the factual basis for this final certification by addressing the following questions: (1) What are the reasons for and objectives of the rule?; (2) What are SBA's description and estimate of the number of small businesses to which the rule will apply?; (3) What are the projected reporting, recordkeeping, and other compliance requirements of the rule?; (4) What are the relevant Federal rules that may duplicate, overlap, or conflict with the rule?; and (5) What alternatives will allow the Agency to accomplish its regulatory objectives while minimizing the impact on small businesses?

1. What are the reasons for and objective of the rule?

This final rulemaking is necessary to satisfy statutory requirements to implement Section 862 of the National Defense Authorization Act for Fiscal Year 2021 amendments to the Small Business Act, which require the transfer and consolidation of VOSB and SDVOSB certification operations to SBA. Section 862 of NDAA 2021 amends sections 36 and 36A of the Small Business Act to require SBA to certify the status of VOSBs and SDVOSBs seeking sole source and set-aside contracts across the Federal Government. This final rulemaking intends to replace VA's existing regulations governing the verification of VOSBs and SDVOSBs for sole source or set-aside contracts awarded by VA. Prior to NDAA 2021, SDVOSB firms seeking to contract with Federal agencies other than VA only needed to self-certify their status. SDVOSB firms that have self-certified on the Transfer Date, described herein, must apply within a one-year grace period after the Transfer Date for certification by SBA.

2. What are SBA's description and estimate of the number of small businesses to which the rule will apply?

This final rulemaking will not have a significant economic impact on a substantial number of small entities. The instant rulemaking adds no additional burden to current participants in VA's VIP Verification Program, as the requirements for the new SBA certification program will be nearly identical to those of VA. The only change in this rule affecting small businesses is the requirement that is specific to SDVOSBs, wherein SDVOSBs must apply to SBA for certification for set-aside and sole source awards. Before this rulemaking, there has been no Government-wide SDVOSB certification program. Firms seeking sole source or set-aside contracts with Federal agencies other than the VA only needed to self-certify as SDVOSBs.

To estimate the number of SDVOSB applicants within the first year of the certification, SBA reviewed firms actively registered as SDVOSBs in the System for Award Management (SAM). SBA believes that the number of firms listed in SAM is the most recent and reliable data to estimate participation and total costs of the Veteran-Owned Small Business Federal Contracting Program for the purposes of this analysis because registration in SAM is required for all businesses seeking to contract with the Federal Government, registrants may select to represent themselves as SDVOSBs without going through a certification process, and firms must recertify their registration one-year after initial SAM registration. While it is not anticipated that every firm registered as an SDVOSB in SAM will apply for certification within the first year of the Veteran-Owned Small Business Federal Contracting Program, SAM registrations serve as what SBA would consider the maximum number of firms that would likely seek certification.

Accordingly, SBA estimates that as many as 21,500 self-certified SDVOSBs could apply for initial certification within the first year of the program. This estimate is based on 32,284 SDVOSB firms registered in SAM and excludes 10,816 firms registered in SAM but already verified by VA as of December 2021.

3. What are the projected reporting, recordkeeping, and other compliance requirements of the rule?

SBA identified three types of reporting required by this final rule: initial application, program examination, and recertification at the end of the eligibility period.This final rulemaking will institute the same process of initial application, program examination, and recertification at the end of the applicant's three-year term of eligibility that currently exists for VA's VIP Verification Program. In short, the process for initial application, examination, and recertification will largely remain the same, albeit managed now by SBA. For the initial application, applicants will be required to enter information into SBA's online application platform and submit supporting documentation to prove eligibility. However, these entries will closely mirror the existing entries for VA's VIP Verification Program. Further, the information required for initial application as VOSB and SDVOSB is already held by the firms during the ordinary course of business and would require minimum preparation prior to submission. Firms likely already have the documentation required for application, examination, and recertification through the transferred program because either such documentation was already required for certifications through VA's VIP Verification Program or such documentation is likely needed for a firm to knowingly self-certify as an SDVOSB.

For the program examinations and recertifications, participants would be minimally burdened. The rule does not require recordkeeping beyond what firms do in the ordinary course of business.

For compliance, during their period of eligibility, participants would be required to review, maintain, and update documentation submitted to SBA during initial certification. In the event of a change in circumstances while in the program, participants would have previously notified SBA of the change and already uploaded documentation to support eligibility.

SBA is aware of reporting, recordkeeping and other compliance requirements and is therefore minimizing the impact on participants in the program by accepting verifications already received from VA's CVE program during the term of the firm's eligibility period, granting up to a one-year extension on recertification for verified firms, and by providing SDVOSB firms that self-certify a one-year grace period to apply for certification.

4. What are the relevant Federal rules, which may duplicate, overlap, or conflict with the rule?

VA regulations at 38 CFR part 74 currently govern the qualification of veteran-owned and service-disabled veteran-owned small businesses for the VA's Veterans preference programs in Federal contracting. This regulation is intended to replace VA's existing regulations governing the verification of VOSBs and SDVOSBs for sole source or set-aside contracts awarded by VA.

5. What alternatives will allow the Agency to accomplish its regulatory objectives while minimizing the impact on small entities?

This final rule is intended to maintain the contracting program for SDVOSBs and VOSBs under the requirements of Section 862 of NDAA 2021. SBA is minimizing the impact on VOSBs and SDVOSBs by accepting verifications already received from VA's CVE program during the term of the firm's eligibility period, granting up to a one-year extension on recertification for verified firms, and by providing SDVOSB firms that self-certify a one-year grace period to apply for certification. The additional costs to VOSBs and SDVOSBs for certification will likely be minimal, because the required documentation (*e.g.,* articles of incorporation, bylaws, stock ledgers or certificates, tax records) is already maintained in the normal course of business and is used to support existing certifications and self-certifications. Moreover, applicants must already provide this information to VA's CVE for verification. SBA does not anticipate that these changes will impact the content of the information currently collected.

In sum, SBA believes that this final rulemaking comprises provisions to preserve the benefits of VA's contracting programs for VOSBs and SDVOSBs while minimizing costs and satisfying the requirements of Section 862 of NDAA 2021.

For the aforementioned reasons, SBA certifies that the instant final rulemaking will not have a significant economic impact on a substantial number of small entities.

List of Subjects

13 CFR Part 121

Administrative practice and procedure, Government procurement, Government property, Grant programs—business, Individuals with disabilities, Loan programs—business, Small businesses.

13 CFR Part 125

Government contracts, Government procurement, Reporting and recordkeeping requirements, Small businesses, Technical assistance.

13 CFR Part 128

Government contracts, Government procurement, Reporting and recordkeeping requirements, Small businesses, Technical assistance, Veterans.

For the reasons stated in the preamble, SBA amends 13 CFR chapter I as follows:

PART 121—SMALL BUSINESS SIZE REGULATIONS

■ 1. The authority citation for part 121 is revised to read as follows:

Authority: 15 U.S.C. 632, 634(b)(6), 636(a)(36), 662, 694a(9), and 9012.

§ 121.103 [Amended]

■ 2. Amend § 121.103 in paragraph (h)(1)(ii) by removing the references to ''§ 125.18(b)(2) and (3)'' and adding in their place a reference to ''§ 128.402(c) and (d)''.

§ 121.404 [Amended]

■ 3. Amend § 121.404 in paragraph (d) by removing the reference to ''§ 125.18(b)(2) and (3)'' and adding in its place a reference to ''§ 128.402(c) and (d)''.

PART 125—GOVERNMENT CONTRACTING PROGRAMS

■ 4. The authority citation for part 125 is revised to read as follows:

Authority: 15 U.S.C. 632(p), (q), 634(b)(6), 637, 644, 657b, and 657r.

■ 5. Amend § 125.1 by revising the definition of ''Similarly situated entity'' to read as follows:

§ 125.1 What definitions are important to SBA's Government Contracting Programs?

* * * * *

Similarly situated entity means a subcontractor that has the same small business program status as the prime contractor. This means that: For a HUBZone contract, a subcontractor that is a certified HUBZone small business concern; for a small business set-aside, partial set-aside, or reserve, a subcontractor that is a small business concern; for a SDVOSB contract, a subcontractor that is a certified SDVOSB; for a VOSB contract, a subcontractor that is a certified VOSB; for an 8(a) contract, a subcontractor that is a certified 8(a) BD Program Participant; for a WOSB or EDWOSB contract, a subcontractor that is a certified WOSB or EDWOSB. In addition to sharing the same small business program status as the prime contractor, a similarly situated entity must also be small for the NAICS code that the prime contractor assigned to the subcontract the subcontractor will perform.

* * * * *

§ 125.6 [Amended]

■ 6. Amend § 125.6 by:

■ a. Removing ''an SDVO SBC contract,'' in paragraph (a) introductory text and adding in its place ''an SDVOSB contract, a VOSB contract,''; and

■ b. Removing ''SDVO,'' in paragraph (f)(1)(v) and adding in its place ''SDVOSB, VOSB,''.

Subparts A through F [Removed]

■ 7. Remove subparts A through F, consisting of §§ 125.12 through 125.100.

■ 8. Add part 128 to read as follows:

PART 128—VETERAN SMALL BUSINESS CERTIFICATION PROGRAM

Subpart A—Provisions of General Applicability

Sec.

Subpart B—Eligibility Requirements for the Veteran Small Business Certification Program

Subpart C—Certification of VOSB or SDVOSB Status

Authority: 15 U.S.C. 632(q), 634(b)(6), 644, 645, 657f, 657f–1.

Subpart A—Provisions of General Applicability

§ 128.100 What is the purpose of this part?

Section 8127 of Title 38 within the U.S. Code (38 U.S.C. 8127) authorizes certain procurement mechanisms to provide Veteran-Owned Small Business Concerns (VOSB) and Service-Disabled Veteran-Owned Small Business Concerns (SDVOSB) with contracting assistance opportunities at the Department of Veterans Affairs (VA). Section 36 of the Small Business Act (15 U.S.C. 657f) authorizes certain procurement mechanisms to provide SDVOSBs with contracting assistance opportunities across the Federal Government. In addition, sections 36 and 36A of the Small Business Act (15 U.S.C. 657f, 657f–1) authorize the Small Business Administration (SBA) to certify the status of VOSB and SDVOSBs. This part implements these mechanisms and ensures that the program created, referred to as the Veteran Small Business Certification Program, is substantially related to this important congressional goal in accordance with applicable law.

§ 128.101 What type of assistance is available under this part?

Contracting officers are authorized to restrict competition or award sole source contracts or orders to eligible SDVOSBs. In addition, 48 CFR chapter 8 authorizes VA contracting officers to restrict competition or award sole source contracts or orders to eligible VOSBs and SDVOSBs.

§ 128.102 What definitions are important in the Veteran Small Business Certification Program?

Applicant means a firm applying for certification in the Veteran-Owned Small Business Contracting Program.

Certification database means the database of certified VOSBs and SDVOSBs eligible to participate in the Veteran Small Business Certification Program.

Contracting officer has the meaning given such term in section 2101(1) of the Office of Federal Procurement Policy Act (41 U.S.C. 2101(1)).

Day-to-day operations means the marketing, production, sales, and administrative functions of the firm.

Employee Stock Ownership Plan (ESOP) has the meaning given such term in section 4975(e)(7) of the Internal Revenue Code of 1986 (26 U.S.C. 4975(e)(7)).

Negative control includes, but is not limited to, instances where a non-qualifying-veteran has the ability, under the concern's governing documents (*e.g.,* charter, by-laws, operating agreement, or shareholder's agreement), to prevent a quorum or otherwise block action by the board of directors or qualifying veteran owner(s).

Non-veteran means any individual who does not claim veteran status, or upon whose status an Applicant or Participant does not rely in qualifying for certification.

Participant means a small business that has been certified by SBA as eligible to participate in the Veteran Small Business Certification Program or verified by VA's Center for Verification and Evaluation prior to January 1, 2023, and appearing in the certification database.

Permanent caregiver, for purposes of this part, means the spouse, or an individual, 18 years of age or older, who is legally designated, in writing, to undertake responsibility for managing the well-being of the service-disabled veteran with a permanent and severe disability, as determined by the Department of Veterans Affairs' Veterans Benefits Administration, to include housing, health and safety. A permanent caregiver may, but does not need to, reside in the same household as the service-disabled veteran with a permanent and severe disability. In the case of a service-disabled veteran with a permanent and severe disability lacking legal capacity, the permanent caregiver shall be a parent, guardian, or person having legal custody. There may be no more than one permanent caregiver per service-disabled veteran with a permanent and severe disability.

(1) A permanent caregiver may be appointed, in a number of ways, including:

(i) By a court of competent jurisdiction;

(ii) By the Department of Veterans Affairs, National Caregiver Support Program, as the Primary Family Caregiver of a Veteran participating in the Program of Comprehensive Assistance for Family Caregivers (this designation is subject to the Veteran and the caregiver meeting other specific criteria as established by law and the Secretary and may be revoked if the eligibility criteria do not continue to be met); or

(iii) By a legal designation.

(2) Any appointment of a permanent caregiver must in all cases be accompanied by a written determination from the Department of Veterans Affairs that the veteran has a permanent and total service-connected disability as set forth in 38 CFR 3.340 for purposes of receiving disability compensation or a disability pension. The appointment must also delineate why the permanent caregiver is given the appointment, must include the consent of the veteran to the appointment and how the appointment would contribute to managing the veteran's well-being.

Qualifying veteran means a veteran upon which a VOSB's eligibility is based, or in the case of an SDVOSB, a service-disabled veteran (or in the case of a veteran with permanent and severe disability, the spouse or permanent caregiver of such veteran) (as those terms are defined in this part) upon which a SDVOSB's eligibility is based.

Service-connected has the meaning given that term in 38 U.S.C. 101(16).

Service-disabled veteran means a veteran who possesses either a valid

disability rating letter issued by the Department of Veterans Affairs, establishing a service-connected rating between 0 and 100 percent, or a valid disability determination from the Department of Defense or is registered in the Beneficiary Identification and Records Locator Subsystem or successor system, maintained by Department of Veterans Affairs' Veterans Benefits Administration as a service-disabled veteran. Reservists or members of the National Guard disabled from a disease or injury incurred or aggravated in line of duty or while in training status also qualify.

Service-Disabled Veteran-Owned Small Business Concern (SDVOSB) means a small business concern that meets the requirements described in § 128.200(b).

Service-disabled veteran with a permanent and severe disability means a veteran with a service-connected disability that has been determined by the Department of Veterans Affairs, in writing, to have a permanent and total service-connected disability as set forth in 38 CFR 3.340 for purposes of receiving disability compensation or a disability pension.

Small business concern (SBC) means, a concern that, with its affiliates, meets the size standard corresponding to any North American Industry Classification System (NAICS) code listed in its SAM profile, pursuant to part 121 of this chapter. At the time of contract offer, a VOSB or SDVOSB must be small within the size standard corresponding to the NAICS code assigned to the contract.

Surviving spouse has the meaning given the term in 38 U.S.C. 101(3).

System for Award Management (SAM) (or any successor system) means a federal system available at *www.sam.gov* that consolidates various federal procurement systems (*e.g.,* Central Contractor Registration, Federal Agency Registration, Online Representations and Certifications Application, Excluded Parties List System) and the Catalog of Federal Domestic Assistance into one system.

VA means the U.S. Department of Veterans Affairs.

Veteran has the meaning given such term in 38 U.S.C. 101(2). A Reservist or member of the National Guard called to Federal active duty or disabled from a disease or injury incurred or aggravated in line of duty or while in training status also qualifies as a veteran.

Veterans Affairs Acquisition Regulation (VAAR) is the set of rules, located at 48 CFR chapter 8, that specifically govern requirements exclusive to VA prime and subcontracting actions.

Veteran-Owned Small Business Concern (VOSB) means a small business concern that meets the requirements described in § 128.200(a).

Subpart B—Eligibility Requirements for the Veteran Small Business Certification Program

§ 128.200 What are the requirements a concern must meet to qualify as a VOSB or SDVOSB?

(a) *Qualification as a VOSB.* To qualify as a VOSB, a business entity must be:

(1) A small business concern as defined in part 121 of this chapter under the size standard corresponding to any NAICS code listed in its SAM profile;

(2) Not less than 51 percent owned and controlled by one or more veterans.

(b) *Qualification as an SDVOSB.* To qualify as an SDVOSB, a business entity must be:

(1) A small business concern as defined in part 121 of this chapter under the size standard corresponding to any NAICS code listed in its SAM profile;

(2) Not less than 51 percent owned and controlled by one or more service-disabled veterans or, in the case of a veteran with a disability that is rated by the Secretary of Veterans Affairs as a permanent and total disability who are unable to manage the daily business operations of such concern, the spouse or permanent caregiver of such veteran.

(c) *VOSB and SDVOSB certification requirement.* (1) A concern must be certified as a VOSB or SDVOSB pursuant to § 128.300 in order to be awarded a VOSB or SDVOSB set-aside or sole source contract. Any small business concern that submits a complete certification application to SBA on or before December 31, 2023, shall be eligible to self-certify for SDVOSB sole source or set-aside contracts (other than VA contracts) until SBA declines or approves the concern's application. Any small business concern that does not submit a complete SDVOSB certification application to SBA on or before December 31, 2023, will no longer be eligible to self-certify for SDVOSB sole source or set-aside contracts effective January 1, 2024.

(2) Other small business concerns that meet the eligibility requirements of this part but do not seek SDVOSB set-aside or sole source contracts may continue to self-certify their SDVOSB status, receive prime contract or subcontract awards that are not SDVOSB set-aside or sole source contracts, and count toward an agency's goal for SDVOSB awards.

§ 128.201 What other eligibility requirements apply for certification as a VOSB or SDVOSB?

(a) *Suspension and debarment.* (1) In order to be eligible for VOSB or SDVOSB certification and to remain certified, the concern and any of its owners must not have an active exclusion in SAM.

(2) An Applicant or Participant must immediately notify SBA of any active exclusion.

(3) If, after certifying a Participant, SBA discovers that a firm has been suspended from Federal Government contracting, SBA will propose the firm for decertification pursuant to § 128.310.

(4) If, after certifying a Participant, SBA discovers that a firm has been debarred from federal government contracting, SBA will remove the Participant from the certification database immediately, notwithstanding the provisions of § 128.310.

(b) *False statements.* If, during the processing of an application, SBA determines, by a preponderance of the evidence standard, that an Applicant or its representative has knowingly submitted false information, regardless of whether correct information would cause SBA to deny the application, and regardless of whether correct information was given to SBA in accompanying documents, SBA will deny the application. If, after certifying a Participant, SBA discovers that a firm or its representative knowingly submitted false information, SBA will initiate proceedings to decertify the Participant and remove it from the certification database pursuant to § 128.310. Whenever SBA determines that the Applicant or representative of an Applicant submitted false information, the matter will be referred to the SBA Office of Inspector General for review. In addition, SBA may request that Government-wide debarment proceedings be initiated by the agency.

(c) *Financial obligations.* An Applicant is not eligible for certification as a VOSB or SDVOSB if the concern, or any of the principals, fail to pay significant financial obligations owed to the Federal Government, including unresolved tax liens and defaults on Federal loans, or other government-assisted financing. An Applicant may become eligible for certification as a VOSB or SDVOSB if the firm or the affected principals can demonstrate that the financial obligations owed have been settled, discharged, or forgiven by the Federal Government. If, after certifying a Participant, SBA discovers that the Participant or any principals have failed to pay significant financial

obligations owed to the Federal Government, SBA will initiate proceedings to decertify the Participant and remove it from the certification database pursuant to § 128.310.

§ 128.202 Who does SBA consider to own a VOSB or SDVOSB?

To qualify as a VOSB, one or more veterans must unconditionally and directly own at least 51 percent of the concern. To qualify as a SDVOSB, one or more service-disabled veterans must unconditionally and directly own at least 51 percent of the concern.

(a) *Direct ownership.* To be considered direct ownership, the qualifying veteran must own 51 percent of the concern directly, and not through another business entity or trust (including an ESOP). However, ownership by a trust, such as a living trust, may be considered direct ownership where the trust is revocable, and qualifying veterans are the grantors, trustees, and the current beneficiaries of the trust.

(b) *Unconditional ownership.* To be considered unconditional, ownership must not be subject to any conditions, executory agreements, voting trusts, restrictions on or assignments of voting rights, or other arrangements causing or potentially causing ownership benefits to go to another (other than after death or incapacity).

(1) The pledge or encumbrance of stock or other ownership interest as collateral, including seller-financed transactions, does not affect the unconditional nature of ownership if the terms follow normal commercial practices and the owner retains control absent violations of the terms.

(2) In determining unconditional ownership, SBA will disregard any unexercised stock options or similar agreements held by qualifying veterans. However, any unexercised stock options or similar agreements (including rights to convert non-voting stock or debentures into voting stock) held by non-veterans will be treated as exercised, except for any ownership interests which are held by investment companies licensed under 15 U.S.C. 681 *et. seq.*

(3) A right of first refusal granting the non-qualifying-veteran the contractual right to purchase the ownership interests of the qualifying veteran, does not affect the unconditional nature of ownership, if the terms follow normal commercial practices. If those rights are exercised by the non-qualifying-veteran, a Participant must notify SBA in accordance with § 128.307. If the exercise of those rights results in the qualifying veteran(s) owning less than 51% of the concern, SBA will initiate decertification pursuant to § 128.310.

(c) *Ownership of a partnership.* In the case of a concern that is a partnership, at least 51% of aggregate voting interest must be unconditionally owned by one or more qualifying veterans. The ownership must be reflected in the concern's partnership agreement.

(d) *Ownership of a limited liability company.* In the case of a concern which is a limited liability company, at least 51% of each class of member interest must be unconditionally owned by one or more qualifying veterans.

(e) *Ownership of a corporation.* In the case of a concern which is a corporation, at least 51% of the aggregate of all stock outstanding and at least 51% of each class of voting stock outstanding must be unconditionally owned by one or more qualifying veterans. In the case of a publicly-owned business, not less than 51 percent of the stock (not including any stock owned by an ESOP) must be unconditionally owned by one or more qualifying veterans.

(f) *Change of ownership.* A Participant may change its ownership or business structure so long as one or more qualifying veterans own and control it after the change. A Participant must notify SBA of a change of ownership in accordance with § 128.307 and attest to its continued eligibility.

(g) *Dividends and distributions.* One or more qualifying veterans must be entitled to receive:

(1) At least 51 percent of the annual distribution of profits paid to the owners of a corporation, partnership, or limited liability company concern, and a qualifying veteran's ability to share in the profits of the concern must be commensurate with the extent of his/her ownership interest in that concern.

(2) 100 percent of the value of each share of stock owned by them in the event that the stock or member interest is sold;

(3) At least 51 percent of the retained earnings of the concern and 100 percent of the unencumbered value of each share of stock or member interest owned in the event of dissolution of the corporation, partnership, or limited liability company; and

(h) *Community property.* Ownership will be determined without regard to community property laws.

(i) *Surviving spouse.* (1) A small business concern owned and controlled by one or more service-disabled veterans immediately prior to the death of a service-disabled veteran who was the owner of the concern, the death of whom causes the concern to be less than 51 percent owned by one or more service-disabled veterans, will continue to qualify as a small business concern owned and controlled by service-disabled veterans during the time period specified in paragraph (i)(2) of this section if:

(i) The surviving spouse of the deceased veteran acquires such veteran's ownership interest in such concern;

(ii) Such veteran had a service-connected disability (as defined in 38 U.S.C. 101(16)); and

(iii) For a Participant, immediately prior to the death of such veteran, and during the period described in paragraph (i)(2) of this section, the small business concern is included in the certification database.

(2) The time period described in paragraph (i)(1)(iii) of this section is the time period beginning on the date of the veteran's death and ending on the earlier of—

(i) The date on which the surviving spouse remarries;

(ii) The date on which the surviving spouse relinquishes an ownership interest in the small business concern;

(iii) In the case of a surviving spouse of a veteran with a service-connected disability rated as 100 percent disabling or who dies as a result of a service-connected disability, 10 years after the date of the death of the veteran; or

(iv) In the case of a surviving spouse of a veteran with a service-connected disability rated as less than 100 percent disabling who does not die as a result of a service-connected disability, 3 years after the date of the death of the veteran.

§ 128.203 Who does SBA consider to control a VOSB or SDVOSB?

(a) *General.* To be an eligible VOSB, the management and daily business operations of the concern must be controlled by one or more veterans. To be an eligible SDVOSB, the management and daily business operations of the concern must be controlled by one or more service-disabled veterans (or in the case of a veteran with permanent and severe disability, the spouse or permanent caregiver of such veteran). Control by one or more qualifying veterans means that one or more qualifying veterans controls both the long-term decision-making and the day-to-day operations of the Applicant or Participant.

(b) *Managerial position and experience.* A qualifying veteran must hold the highest officer position in the concern (usually President or Chief Executive Officer) and must have managerial experience of the extent and complexity needed to control the concern. The qualifying veteran need

not have the technical expertise or possess the required license to be found to control of the concern if the qualifying veteran can demonstrate that he or she has ultimate managerial and supervisory control over those who possess the required licenses or technical expertise.

(c) *Control over a partnership.* In the case of a partnership, one or more qualifying veterans must serve as general partners, with control over all partnership decisions.

(d) *Control over a limited liability company.* In the case of a limited liability company, one or more qualifying veterans must serve as managing members, with control over all decisions of the limited liability company.

(e) *Control over a corporation.* One or more qualifying veterans must control the Board of Directors of the concern.

(1) SBA will deem qualifying veterans to control the Board of Directors where:

(i) One qualifying veteran owns 100% of all voting stock and is on the Board of Directors;

(ii) One qualifying veteran owns at least 51% of all voting stock, the qualifying veteran is on the Board of Directors, and no supermajority voting requirements exist for shareholders to approve corporation actions. Where supermajority voting requirements are provided for in the concern's articles of incorporation, its by-laws, or by state law, the qualifying veteran must own at least the percent of the voting stock needed to overcome any such supermajority voting requirements; or

(iii) Two or more qualifying veterans together own at least 51% of all voting stock, each such qualifying veteran is on the Board of Directors, no supermajority voting requirements exist, and the qualifying veteran shareholders can demonstrate that they have made enforceable arrangements to permit one qualifying veteran to vote the stock of all qualifying veterans as a block without a shareholder meeting. Where the concern has supermajority voting requirements, the qualifying veteran shareholders must own at least that percentage of voting stock needed to overcome any such supermajority ownership requirements.

(2) Where a concern does not meet the requirements set forth in paragraph (e)(1) of this section, the qualifying veteran(s) must control the Board of Directors through actual numbers of voting directors or, where permitted by state law, through weighted voting (*e.g.,* in a concern having a two-person Board of Directors where one individual on the Board is a qualifying veteran and one is not, the qualifying veteran vote must be weighted—worth more than one vote—in order for the concern to be eligible). Where a concern seeks to comply with this paragraph (e)(2):

(i) Provisions for the establishment of a quorum cannot permit non-qualifying-veteran Directors to control the Board of Directors, directly or indirectly; and

(ii) Any Executive Committee of Directors must be controlled by qualifying veteran Directors unless the Executive Committee can only make recommendations to and cannot independently exercise the authority of the Board of Directors.

(iii) Non-qualifying-veterans may be found to control or have the power to control in circumstances where non-qualifying-veterans control the Board of Directors of the Applicant or Participant, either directly through majority voting membership, or indirectly, where the by-laws allow non-qualifying-veterans to prevent a quorum or block actions proposed by the qualifying veterans.

(3) Non-voting, advisory, or honorary Directors may be appointed without affecting qualifying veterans' control of the Board of Directors.

(4) Arrangements regarding the structure and voting rights of the Board of Directors must comply with applicable state law.

(f) *Supermajority requirements.* One or more qualifying veteran(s) must meet all supermajority voting requirements regarding the management and daily business operations of the concern, regardless of the legal structure of the firm. An Applicant must inform the SBA, when applicable, of any supermajority voting requirements provided for in its articles of incorporation, its by-laws, by state law, or otherwise. Similarly, after being certified, a Participant must inform the SBA of changes regarding supermajority voting requirements.

(g) *Unexercised rights.* A qualifying veteran's unexercised right to cause a change in the control or management of the concern does not in itself constitute control, regardless of how quickly or easily the right could be exercised.

(h) *Limitations on control by non-qualifying-veterans.* (1) A non-qualifying-veteran must not:

(i) Exercise actual control or have the power to control the concern;

(ii) Have business relationships that cause such dependence that the qualifying veteran cannot exercise independent business judgment without great economic risk;

(iii) Control the Applicant or Participant through loan arrangements (which does not include providing a loan guaranty on commercially reasonable terms);

(iv) Provide critical financial or bonding support or a critical license to the Applicant or Participant, which directly or indirectly allows the non-qualifying-veteran significantly to influence business decisions of the qualifying veteran.

(2) A non-qualifying-veteran may be involved in the management of the concern, and may be a stockholder, partner, limited liability member, officer, and/or director of the concern. However, a non-qualifying-veteran generally may not:

(i) Be a former employer, or a principal of a former employer, of any qualifying veteran, unless the concern demonstrates that the relationship between the former employer or principal and the qualifying veteran does not give the former employer actual control or the potential to control the Applicant or Participant and such relationship is in the best interests of the concern; or

(ii) Receive compensation from the concern in any form as a director, officer, or employee, that exceeds the compensation to be received by the qualifying veteran who holds the highest officer position (usually Chief Executive Officer or President), unless the concern demonstrates that the compensation to be received by the non-qualifying veteran is commercially reasonable or that the qualifying veteran has elected to take lower compensation to benefit the concern.

(i) *Limitation on outside obligations.* The qualifying veteran who holds the highest officer position of the business concern may not engage in outside obligations that prevent the qualifying veteran from devoting the time and attention to the concern necessary to control its management and daily business operations. A qualifying veteran generally must devote full-time during the business's normal hours of operations, unless the concern demonstrates that the qualifying veteran has ultimate managerial and supervisory control over both the long-term decision making and day-to-day management of the concern. Where a qualifying veteran claiming to control a business concern devotes fewer hours to the business than its normal hours of operation, SBA will assume that the qualifying veteran does not control the concern, unless the concern demonstrates that the qualifying veteran has ultimate managerial and supervisory control over both the long-term decision making and day-to-day management of the business.

(j) *Exception for extraordinary circumstances.* SBA will not find that a

lack of control exists where a qualifying veteran does not have the unilateral power and authority to make decisions regarding the following extraordinary circumstances:

(1) Adding a new equity stakeholder;

(2) Dissolution of the company;

(3) Sale of the company or all assets of the company;

(4) The merger of the company; and

(5) Company declaring bankruptcy.

(k) *Exception for active duty.* Notwithstanding the requirements of this section, where a qualifying veteran is a reserve component member in the United States military who has been called to active duty, the concern may elect to designate in writing one or more individuals to control the concern on behalf of the qualifying veteran during the period of active duty. The concern must keep records evidencing the qualifying veteran's active duty status and the written designation of control and provide those documents to SBA.

§ 128.204 What size standards apply to VOSBs and SDVOSBs?

(a) *Time of certification.* At the time of certification, a VOSB or SDVOSB must be a small business under the size standard corresponding to any NAICS code listed in its SAM profile. If SBA is unable to verify that an Applicant is small, SBA may deny the concern's application as a certified VOSB or SDVOSB, or SBA may request a formal size determination pursuant to part 121 of this chapter.

(b) *Time of contract offer.* In connection with a VOSB or SDVOSB contract, a VOSB or SDVOSB must be small under the size standard corresponding to the NAICS code assigned to the contract at the time it submits its initial offer or response which includes price. To be eligible for a VOSB or SDVOSB multiple award contract, a VOSB or SDVOSB must be small pursuant to the requirements of § 121.404(a)(1) of this chapter. If the contracting officer is unable to verify that the VOSB or SDVOSB is small, the contracting officer should submit a size protest to SBA in accordance with part 121 of this chapter.

Subpart C—Certification of VOSB or SDVOSB Status

§ 128.300 How is a concern certified as a VOSB or SDVOSB?

A concern must apply to SBA for certification as a VOSB or SDVOSB. The concern must submit evidence that it is a small business owned and controlled by one or more qualifying veterans. SBA will consider the information provided by the concern in order to determine whether the concern qualifies. If SBA determines that a concern meets the eligibility requirements of a VOSB or SDVOSB, it will notify the concern and designate the concern as a certified VOSB or SDVOSB in the certification database.

§ 128.301 Where must an application be filed?

An application for certification as a VOSB or SDVOSB must be electronically filed according to the instructions on SBA's website at *www.sba.gov.* Upon receipt of the Applicant's electronic submission, an acknowledgment message will be dispatched to the concern containing estimated processing time and other information.

§ 128.302 How does SBA process applications for certification?

(a) SBA's Director of Government Contracting (D/GC) (or designee) is authorized to approve or deny applications for certification as a VOSB or SDVOSB.

(b) SBA, in its sole discretion, may request clarification of information relating to eligibility at any time in the eligibility determination process. SBA will take into account any clarifications made by an Applicant in response to such a request.

(c) SBA, in its sole discretion, may request additional documentation at any time in the eligibility determination process. Failure to adequately respond to the documentation request shall constitute grounds for a denial.

(d) An Applicant's eligibility will be based on the totality of circumstances, including facts set forth in the application, supporting documentation, any information received in response to any SBA request for clarification, any independent research conducted by SBA, and any changed circumstances. The Applicant bears the burden of proof to demonstrate its eligibility as a VOSB or SDVOSB.

(e) The Applicant must inform SBA of any changed circumstances that occur during its application review and that could affect its eligibility for the program (*e.g.,* change in size status, ownership, or control, filing of bankruptcy, or calling to active duty) and may withdraw its application at that time. Changed circumstances will be considered by SBA in determining an Applicant's eligibility and may constitute grounds for denial of the application. The D/GC may propose decertification for any VOSB or SDVOSB that failed to inform SBA of any changed circumstances that affected its eligibility for the program during the processing of the application.

(f) The decision of the D/GC to approve or deny an application will be in writing. A decision to deny certification status will state the specific reason(s) for denial and will inform the Applicant of any appeal rights.

(g) If the D/GC approves the application, the period of program eligibility will be specified in the concern's certification letter.

(h) SBA will send a copy of the decision letter to the electronic mail address provided with the application. SBA will consider any decision sent to this electronic mail address provided to have been received by the applicant concern. It is the responsibility of the Applicant to ensure all contact information is current in the certification database.

§ 128.303 What must a concern submit to apply for VOSB or SDVOSB certification?

(a) To be certified by SBA as a VOSB or SDVOSB, a concern must provide documents and information demonstrating that it is owned and controlled by one or more qualifying veterans and qualifies as a small business concern as defined in part 121 of this chapter under the size standard corresponding to any NAICS code listed in its SAM profile. A list of the minimum required documents that must be submitted can be found on SBA's website at *www.sba.gov* on or before January 1, 2023.

(b) Where an Applicant small business concern is a participant in the 8(a) Business Development (BD) Program and the individual upon whom 8(a) BD Program eligibility is based is a qualifying veteran, the Applicant may use documentation of its most recent annual review, or documentation of its 8(a) BD Program acceptance if it has not yet had an annual review, in support of its application for certification as a VOSB or SDVOSB. An Applicant must certify that there have been no material changes in its ownership or control since its 8(a) BD Program certification or annual review and demonstrate that the individual(s) who own and control it are qualifying veterans.

(c) A small business concern that is certified by the WOSB/EDWOSB Program and the individual(s) upon whom WOSB/EDWOSB Program eligibility is based is one or more qualifying veterans may use documentation of its most recent annual recertification, or documentation of its acceptance in support of its application for certification. An Applicant must certify that there are no material changes in its ownership or control

since its WOSB certification or recertification and demonstrate that the individuals who own and control it are qualifying veterans.

(d) If a concern was decertified or previously denied certification from the Veteran Small Business Certification Program within the past 3 years, it must include with its application for certification a full explanation of why it was decertified or denied certification, and what, if any, changes have been made. If SBA is not satisfied with the explanation provided, SBA will deny the concern.

(e) If the concern was decertified for failure to notify SBA of a material change affecting its eligibility pursuant to § 128.307, it must include with its application for certification a full explanation of why it failed to notify SBA of the material change. If SBA is not satisfied with the explanation provided, SBA will deny the concern.

(f) Participants must retain documentation demonstrating satisfaction of all qualifying requirements during the entire period of participation.

§ 128.304 Can an Applicant appeal SBA's initial decision to deny an application?

An Applicant may appeal SBA's decision to deny an application for certification as a VOSB or SDVOSB by filing an appeal with the SBA's Office of Hearings and Appeals (OHA) in accordance with part 134 of this chapter. A denial or decertification based on the failure to provide sufficient evidence of the qualifying individual's status as a veteran or a service-disabled veteran is not subject to appeal to OHA.

§ 128.305 Can an Applicant or Participant reapply for certification after a denied certification or decertification?

An Applicant that SBA denied certification or a Participant that SBA has decertified may submit an application for certification no sooner than ninety (90) calendar days from the date of final agency decision (*i.e.,* the SBA decision if no appeal is filed or the decision of SBA's OHA where an appeal is filed pursuant to § 128.304) if it believes that it has overcome all of the reasons for denial or decertification and is currently eligible.

§ 128.306 How does a concern maintain its VOSB or SDVOSB certification?

(a) Any Participant seeking to remain certified must recertify its eligibility every 3 years. There is no limitation on the number of times a business may recertify. Participants may recertify within 120 calendar days prior to the termination of their eligibility period. If the concern fails to recertify, SBA may decertify the firm at the end of their eligibility period.

(b) The Participant must maintain its eligibility during its participation in the program and must inform SBA of any changes that may affect its eligibility within 30 calendar days in accordance with § 128.307.

(c) The Participant must respond to any program examination initiated by SBA to remain a certified VOSB or SDVOSB.

(d) At the discretion of the Administrator (or designee), a Participant's eligibility period may be extended by a period of up to one year.

§ 128.307 What are a Participant's ongoing obligations to SBA?

Once certified, a VOSB or SDVOSB must notify SBA of any material changes that could affect its eligibility, within 30 calendar days of any such change, and attest to its continued eligibility. Material changes include, but are not limited to, a change in the firm's ownership, business structure, or control, filing of bankruptcy, or change in active duty status. The method for notifying SBA can be found on SBA's web page. A concern's failure to notify SBA of a material change may result in decertification, pursuant to § 128.310. In addition, SBA may seek the imposition of penalties under § 128.600.

§ 128.308 What is a program examination and what will SBA examine?

(a) *General.* A program examination is an investigation by SBA officials, which verifies the accuracy of any statement or information provided by a certified Participant. SBA may verify that the Participant currently meets the eligibility requirements of this part and that it met such requirements at the time of its application. An examination may be conducted on a random, unannounced basis, or upon receipt of specific and credible information alleging that a Participant did not meet the eligibility requirements in this part when it was certified or no longer meets all of those requirements.

(b) *Scope of examination.* SBA may review any information related to the concern's eligibility including, but not limited to, documentation related to the firm's legal structure, ownership, and control. Examiners may review any information previously provided to SBA and any additional information requested by SBA at the time of program examination. SBA may draw an adverse inference from a concern's failure to cooperate with a program examination or provide requested information and assume that the information that the concern failed to provide would demonstrate ineligibility, and decertify on this basis pursuant to § 128.310.

(c) *Outcome of examination.* Upon its completion of the examination, SBA will issue a written decision.

(1) If SBA finds that the Participant does not qualify as a VOSB or SDVOSB, the procedures at § 128.310 will apply, except as provided in § 128.201.

(2) If SBA finds that the Participant continues to qualify as a VOSB or SDVOSB, the original eligibility period remains in effect.

§ 128.309 What are the ways a Participant may exit the Veteran Small Business Certification Program?

(a) *Voluntary withdrawal.* A Participant may voluntarily withdraw from the Veteran Small Business Certification Program at any time. Once a concern notifies SBA that it seeks to voluntarily withdraw from the program, SBA will decertify the concern and remove its designation as a certified VOSB or SDVOSB in the certification database. The concern may reapply for SDVOSB or VOSB certification ninety (90) calendar days after the date of decertification. At reapplication, the concern must demonstrate that it meets all eligibility requirements.

(b) *Decertification by SBA.* SBA may decertify a Participant and remove its designation as a VOSB or SDVOSB in the certification database in accordance with § 128.310. The concern may reapply for certification ninety (90) calendar days after the date of decertification. At reapplication, the concern must demonstrate that it meets all eligibility requirements.

(c) *Decertification pursuant to a protest.* Any certified VOSB or SDVOSB that is found to be ineligible through a VOSB or SDVOSB status protest decision will be immediately removed from the certification database. The concern may reapply for certification ninety (90) calendar days after the date of decertification. At reapplication, the concern must demonstrate that it meets all eligibility requirements.

(d) *Decertification due to suspension or debarment.* SBA may decertify a Participant immediately upon notice that the Participant or any of its owners has an active exclusion in SAM, pursuant to § 128.201.

§ 128.310 What are the procedures for decertification?

(a) *Proposed decertification.* If SBA has information indicating that a Participant may not meet the eligibility requirements of this part, SBA may propose decertification of the concern. The notice of proposed decertification will notify the concern that it has 30

calendar days from the date it receives the letter to submit a written response to SBA explaining why the proposed ground(s) should not justify decertification. SBA will consider that written notice was provided if SBA sends the notice of proposed decertification to the concern at an email address in the Participant's certification database profile.

(b) *Response to proposed decertification.* The Participant must submit a written response to the notice of proposed decertification within the timeframe specified in the notice. In this response, the Participant must rebut each of the reasons set forth by SBA in the notice of proposed decertification, and where appropriate, the rebuttal must include documents showing that the concern is eligible as of the date specified in the notice. If a Participant fails to cooperate with SBA or fails to provide the information requested, SBA may draw an adverse inference and assume that the information that the concern failed to provide would demonstrate ineligibility.

(c) *Decision.* SBA will review the response and determine whether the Participant remains eligible. If SBA determines that the Participant is not eligible, the D/GC will issue a notice of decertification. The notice will set forth the specific facts and reasons for the decision, notify the concern of the right to appeal, and will advise the concern that it may re-apply after it has met all eligibility criteria in this part and completed the waiting period as set forth in § 128.305(a). If SBA finds that the concern is eligible, the Participant will continue to be designated as a VOSB or SDVOSB in the certification database.

(d) *Effect of decertification.* On the effective date of a concern's decertification, SBA will remove its designation as a certified VOSB or SDVOSB in the certification database. However, such concern is obligated to perform previously awarded contracts to the completion of their existing term of performance.

(e) *Appeals.* A concern that has been decertified pursuant to this section may file an appeal with OHA in accordance with part 134 of this chapter. The decision on the appeal shall be final. If no appeal is filed, the D/GC's decision is the final agency decision.

Subpart D—Federal Contract Assistance

§ 128.400 What are VOSB and SDVOSB contracts?

(a) VOSB contracts are exclusively VA procurements, including prime contracts and subcontracts for which the VA is the procuring agency. For VA procurements, the VAAR (48 CFR chapter 8) specifically governs requirements exclusive to VA prime and subcontracting actions. The VAAR supplements the Federal Acquisition Regulation (FAR), which contains guidance applicable to most Federal agencies.

(b) SDVOSB contracts, including Multiple Award Contracts (see § 125.1 of this chapter), are contracts available to an SDVOSB through any of the following procurement methods:

(1) Sole source awards to an SDVOSB;

(2) Set-aside awards, including partial set-asides, based on competition restricted to SDVOSBs;

(3) Awards based on a reserve for SDVOSBs in a solicitation for a Multiple Award Contract (*see* § 125.1 of this chapter); or

(4) Orders set aside for SDVOSBs against a Multiple Award Contract, which had been awarded in full and open competition or as a small business set-aside.

§ 128.401 What requirements must a VOSB or SDVOSB meet to submit an offer on a contract?

(a) *Certification requirement.* In order for a concern to submit an offer and be eligible for the award of a VOSB or SDVOSB set-aside or sole source contract, the concern must qualify as a small business concern under the size standard corresponding to the NAICS code assigned to the contract and be a certified VOSB or SDVOSB. Any small business concern that submits a complete certification application with to SBA on or before December 31, 2023, shall be eligible to self-certify for SDVOSB sole source or set-aside contracts (other than VA contracts) until SBA declines or approves the concern's application. Any small business concern that does not submit to SBA a complete SDVOSB certification application to SBA on or before December 31, 2023, will no longer be eligible to self-certify for SDVOSB sole source or set-aside contracts effective January 1, 2024.

(b) *Joint ventures.* A joint venture may submit an offer for a VOSB or SDVOSB contract if the joint venture meets the requirements set forth in § 128.402.

(c) *Non-manufacturers.* A certified VOSB or SDVOSB that is a non-manufacturer may submit an offer on a VOSB or SDVOSB contract for supplies if it meets the requirements of the non-manufacturer rule set forth at § 121.406(b)(1) of this chapter.

(d) *Multiple Award Contracts*—(1) *VOSB or SDVOSB status.* With respect to Multiple Award Contracts, orders issued against a Multiple Award Contract, and Blanket Purchase Agreements issued against a Multiple Award Contract:

(i) SBA determines a VOSB or SDVOSB's eligibility for the underlying Multiple Award Contract as of the date a business concern certifies its status as a certified VOSB or SDVOSB as part of its initial offer or response which includes price, unless the firm was required to recertify under paragraph (e) of this section.

(A) *Unrestricted Multiple Award Contracts or set-aside Multiple Award Contracts for other than VOSB or SDVOSB.* For an unrestricted Multiple Award Contract or other Multiple Award Contract not specifically set aside for VOSBs or SDVOSBs, if a business concern is a certified VOSB or SDVOSB at the time of offer and contract-level recertification for the Multiple Award Contract, it is a VOSB or SDVOSB for goaling purposes for each order issued against the contract, unless a contracting officer requests recertification as a VOSB or SDVOSB for a specific order or Blanket Purchase Agreement or a contracting officer sets aside an order exclusively for VOSBs or SDVOSBs. Except for orders and Blanket Purchase Agreements issued under any Federal Supply Schedule contract, if an order or a Blanket Purchase Agreement under an unrestricted Multiple Award Contract is set aside exclusively for VOSBs or SDVOSBs, a concern must be a certified VOSB or SDVOSB at the time it submits its initial offer or response which includes price, for the particular order or Blanket Purchase Agreement. However, where the underlying Multiple Award Contract has been awarded to a pool of concerns for which certified VOSB or SDVOSB status is required, if an order or a Blanket Purchase Agreement under that Multiple Award Contract is set aside exclusively for concerns in the certified VOSB or SDVOSB pool, concerns need not recertify their status as VOSBs or SDVOSBs (unless a contracting officer requests size certifications with respect to a specific order or Blanket Purchase Agreement).

(B) *VOSB or SDVOSB set-aside Multiple Award Contracts.* For a Multiple Award Contract that is specifically set aside for VOSBs or SDVOSBs, if a business concern is a certified VOSB or SDVOSB at the time of offer and contract-level recertification for the Multiple Award Contract, it is a VOSB or SDVOSB for each order issued against the contract, unless a contracting officer requests recertification as a

VOSB or SDVOSB for a specific order or Blanket Purchase Agreement.

(ii) SBA will determine VOSB or SDVOSB status at the time of initial offer or response which includes price, for an order or an Agreement issued against a Multiple Award Contract, if the contracting officer requests a new VOSB or SDVOSB certification for the order or Agreement.

(iii) For an indefinite delivery, indefinite quantity (IDIQ), Multiple Award Contract, where concerns are not required to submit price as part of the offer for the IDIQ contract, size will be determined as of the date of initial offer, which may not include price.

(2) *Total set-aside contracts.* The certified VOSB or SDVOSB must comply with the applicable limitations on subcontracting provisions (*see* § 125.6 of this chapter) and the nonmanufacturer rule (*see* § 121.406(b) of this chapter), if applicable, in the performance of a contract totally set aside for VOSBs or SDVOSBs. However, contracting officers, in their discretion, may require a concern to perform the applicable amount of work or comply with the nonmanufacturer rule for each order awarded under the contract.

(3) *Partial set-aside contracts.* For orders awarded under a partial set-aside contract, the certified VOSB or SDVOSB must comply with the applicable limitations on subcontracting provisions (*see* § 125.6 of this chapter) and the nonmanufacturer rule (*see* § 121.406(b) of this chapter), if applicable, during each performance period of the contract (*e.g.,* during the base term and then during each option period thereafter). For orders awarded under the non-set-aside portion, the VOSB or SDVOSB need not comply with any limitations on subcontracting or nonmanufacturer rule requirements. However, contracting officers, in their discretion, may require a concern to perform the applicable amount of work or comply with the nonmanufacturer rule for each order awarded under the contract.

(4) *Orders.* The certified VOSB or SDVOSB must comply with the applicable limitations on subcontracting provisions (*see* § 125.6 of this chapter) and the nonmanufacturer rule (*see* § 121.406(b) of this chapter), if applicable, in the performance of each individual order that has been set aside for VOSBs or SDVOSBs.

(5) *Reserves.* The certified VOSB or SDVOSB must comply with the applicable limitations on subcontracting provisions (*see* § 125.6 of this chapter) and the nonmanufacturer rule (*see* § 121.406(b) of this chapter), if applicable, in the performance of an order that is set aside for VOSBs or SDVOSBs. However, the VOSB or SDVOSB will not have to comply with the limitations on subcontracting provisions and the nonmanufacturer rule for any order issued against the Multiple Award Contract if the order is competed among VOSBs or SDVOSBs, and other-than-small business concerns.

(e) *Recertification.* (1) A Participant that qualifies as a VOSB or SDVOSB at the time of initial offer response which includes price, including a Multiple Award Contract, is generally considered to be a VOSB or SDVOSB throughout the life of that contract. This means that if a VOSB or SDVOSB is certified at the time of initial offer for a Multiple Award Contract, then it will be considered a VOSB or SDVOSB for each order issued against the contract, unless a contracting officer requests a new VOSB or SDVOSB eligibility review in connection with a specific order. Where a concern is later decertified from the Veteran-Owned Small Business Contracting Program, the procuring agency may exercise options and still count the award as an award to a VOSB or SDVOSB. For a Multiple Award Contract, a concern that has been decertified from the Veteran-Owned Small Business Contracting Program may still be issued orders as a VOSB or SDVOSB unless the contracting officer requests recertification of VOSB or SDVOSB status in connection with the order. However, the following exceptions apply to this paragraph (e)(1):

(i) Where a contract is novated to another business concern, the concern that will continue performance on the contract must recertify its status as a VOSB or SDVOSB to the procuring agency or inform the procuring agency that it does not qualify as a VOSB or SDVOSB within 30 calendar days of the novation approval. If the concern is not a VOSB or SDVOSB, the agency can no longer count the options or orders issued pursuant to the contract from that point forward towards its VOSB or SDVOSB goals.

(ii) Where a concern that is performing a contract acquires, is acquired by, or merges with another concern and contract novation is not required, the concern must, within 30 days of the transaction becoming final, recertify its VOSB or SDVOSB status to the procuring agency or inform the procuring agency that it no longer qualifies as a VOSB or SDVOSB. If the contractor is not a VOSB or SDVOSB, the agency can no longer count the options or orders issued pursuant to the contract from that point forward towards its VOSB or SDVOSB goals. The agency and the contractor must immediately revise all applicable Federal contract databases to reflect the new status.

(iii) Where there has been a VOSB or SDVOSB status protest on the solicitation or contract, part 134 of this chapter describes the effect of the status determination on the contract award.

(2) For the purposes of VOSB or SDVOSB contracts (including Multiple Award Contracts) with durations of more than five years (including options), a contracting officer must request that a business concern recertify its VOSB or SDVOSB status no more than 120 calendar days prior to the end of the fifth year of the contract, and no more than 120 calendar days prior to exercising any option. If the business is unable to recertify its status as a certified VOSB or SDVOSB, the procuring agency may no longer be able to count the options or orders issued pursuant to the contract, from that point forward, towards its VOSB or SDVOSB goals.

(i) A business concern that did not certify itself as a VOSB or SDVOSB, either initially or prior to an option being exercised, may recertify itself as a VOSB or SDVOSB for a subsequent option period if it meets the eligibility requirements in this part at that time.

(ii) Recertification does not change the terms and conditions of the contract. The limitations on subcontracting (*see* § 125.6 of this chapter), nonmanufacturer (*see* § 121.406(b) of this chapter), and subcontracting plan requirements (*see* § 125.3(a) of this chapter) in effect at the time of contract award remain in effect throughout the life of the contract. However, a concern that initially self-certified as an SDVOSB for the award of an SDVOSB contract may recertify as an SDVOSB only if it is currently a certified SDVOSB.

(iii) Where the contracting officer explicitly requires concerns to recertify their status in response to a solicitation for an order, SBA will determine eligibility as of the date the concern submits its response to the solicitation for the order.

(iv) A concern's status may be determined at the time of a response to a solicitation for an Agreement and each order issued pursuant to the Agreement.

(f) *Limitations on subcontracting.* A business concern seeking a VOSB or SDVOSB contract must meet the applicable limitations on subcontracting requirements set forth in § 125.6 of this chapter.

(g) *Ostensible subcontractor.* Where a subcontractor that is not a certified VOSB or SDVOSB will perform the primary and vital requirements of a VOSB or SDVOSB contract, or where a

VOSB or SDVOSB prime contractor is unduly reliant on one or more small businesses that are not certified VOSBs or SDVOSBs to perform the VOSB or SDVOSB contract, the prime contractor is not eligible for award of that VOSB or SDVOSB contract.

(1) When the subcontractor qualifies as small for the size standard assigned to the procurement, this issue may be grounds for a VOSB or SDVOSB status protest, as described in § 134.1003(c) of this chapter. When the subcontractor is alleged to be other than small for the size standard assigned to the procurement, this issue may be grounds for a size protest under the ostensible subcontractor rule, as described at § 121.103(h)(2) of this chapter.

(2) SBA will find that a prime VOSB or SDVOSB contractor is performing the primary and vital requirements of a contract or order, and is not unduly reliant on one or more subcontractors that are not certified VOSBs or SDVOSBs, where the prime contractor can demonstrate that it, together with any subcontractors that are certified VOSBs or SDVOSBs, will meet the limitations on subcontracting provisions set forth in § 125.6 of this chapter.

(h) *Two-step procurements.* For purposes of architect-engineering, design-build or two-step sealed bidding procurements, a concern must be certified as a VOSB or SDVOSB as of the date that it submits its initial bid or proposal (which may or may not include price) during phase one.

§ 128.402 When may a joint venture submit an offer on a VOSB or SDVOSB contract?

(a) *General.* A certified VOSB or SDVOSB may enter into a joint venture agreement with one or more other small business concerns, or with an approved mentor authorized by § 125.9 of this chapter, for the purpose of submitting an offer for a VOSB or SDVOSB contract. The joint venture itself need not be a certified VOSB or SDVOSB. Where this section references the requirements of a VOSB or SDVOSB joint venture partner, the VOSB or SDVOSB status of that joint venture partner must correspond with the type of award (*e.g.,* to be eligible for a SDVOSB contract, a SDVOSB joint venture partner must be the managing venturer of the joint venture).

(1) The VOSB or SDVOSB joint venture partner must be certified in accordance with this part;

(2) The joint venture agreement must comply with the requirements set forth in this part; and

(3) A VOSB or SDVOSB cannot be a joint venture partner on more than one joint venture that submits an offer for a specific contract set-aside or reserved for VOSBs or SDVOSBs.

(b) *Size.* (1) A joint venture of at least one certified VOSB or SDVOSB and one or more other business concerns may submit an offer as a small business for a competitive VOSB or SDVOSB procurement or sale, or be awarded a sole source VOSB or SDVOSB contract, so long as each concern is small under the size standard corresponding to the NAICS code assigned to the procurement or sale.

(2) A joint venture between a protégé firm certified as a VOSB or SDVOSB and its SBA-approved mentor (*see* § 125.9 of this chapter) will be deemed small provided the protégé qualifies as small for the size standard corresponding to the NAICS code assigned to the VOSB or SDVOSB procurement or sale.

(c) *Contents of joint venture agreement.* Every joint venture agreement to perform a VOSB or SDVOSB contract, including those between a protégé firm certified as a VOSB or SDVOSB and its SBA-approved mentor authorized by § 125.9 of this chapter, must contain a provision:

(1) Setting forth the purpose of the joint venture;

(2) Designating a certified VOSB or SDVOSB as the managing venturer of the joint venture and designating a named employee of the certified VOSB or SDVOSB managing venturer as the manager with ultimate responsibility for performance of the contract (the ''Responsible Manager'');

(i) The managing venturer is responsible for controlling the day-to-day management and administration of the contractual performance of the joint venture, but other partners to the joint venture may participate in all corporate governance activities and decisions of the joint venture as is commercially customary;

(ii) The individual identified as the Responsible Manager of the joint venture need not be an employee of the certified VOSB or SDVOSB at the time the joint venture submits an offer, but, if he or she is not, there must be a signed letter of intent that the individual commits to be employed by the certified VOSB or SDVOSB if the joint venture is the successful offeror. The individual identified as the Responsible Manager cannot be employed by the mentor and become an employee of the certified VOSB or SDVOSB for purposes of performance under the joint venture; and

(iii) Although the joint venture managers responsible for orders issued under an indefinite delivery/indefinite quantity contract need not be employees of the protégé, those managers must report to and be supervised by the joint venture's Responsible Manager;

(3) Stating that with respect to a separate legal entity joint venture, the certified VOSB or SDVOSB must own at least 51% of the joint venture entity;

(4) Stating that the certified VOSB or SDVOSB must receive profits from the joint venture commensurate with the work performed by the certified VOSB or SDVOSB, or a percentage agreed to by the parties to the joint venture whereby the certified VOSB or SDVOSB receives profits from the joint venture that exceed the percentage commensurate with the work performed by the certified VOSB or SDVOSB;

(5) Providing for the establishment and administration of a special bank account in the name of the joint venture. This account must require the signature or consent of all parties to the joint venture for any payments made by the joint venture to its members for services performed. All payments due the joint venture for performance on a VOSB or SDVOSB contract will be deposited in the special account; all expenses incurred under the contract will be paid from the account as well;

(6) Itemizing all major equipment, facilities, and other resources to be furnished by each party to the joint venture, with a detailed schedule of cost or value of each, where practical. If a contract is indefinite in nature, such as an indefinite quantity contract or a multiple award contract where the level of effort or scope of work is not known, the joint venture must provide a general description of the anticipated major equipment, facilities, and other resources to be furnished by each party to the joint venture, without a detailed schedule of cost or value of each, or in the alternative, specify how the parties to the joint venture will furnish such resources to the joint venture once a definite scope of work is made publicly available;

(7) Specifying the responsibilities of the parties with regard to negotiation of the contract, source of labor, and contract performance, including ways that the parties to the joint venture will ensure that the joint venture and the certified VOSB or SDVOSB partner(s) to the joint venture will meet the limitations on subcontracting requirements set forth in paragraph (b)(3) of this section, where practical. If a contract is indefinite in nature, such as an indefinite quantity contract or a multiple award contract where the level of effort or scope of work is not known, the joint venture must provide a general description of the anticipated

responsibilities of the parties with regard to negotiation of the contract, source of labor, and contract performance, not including the ways that the parties to the joint venture will ensure that the joint venture and the certified VOSB or SDVOSB partner(s) to the joint venture will meet the limitations on subcontracting requirements set forth in paragraph (d) of this section, or in the alternative, specify how the parties to the joint venture will define such responsibilities once a definite scope of work is made publicly available;

(8) Obligating all parties to the joint venture to ensure performance of the VOSB or SDVOSB contract and to complete performance despite the withdrawal of any member;

(9) Designating that accounting and other administrative records relating to the joint venture be kept in the office of the certified VOSB or SDVOSB managing venturer, unless approval to keep them elsewhere is granted by the District Director (or designee) upon written request;

(10) Requiring that the final original records be retained by the certified VOSB or SDVOSB managing venturer upon completion of the VOSB or SDVOSB contract performed by the joint venture;

(11) Stating that quarterly financial statements showing cumulative contract receipts and expenditures (including salaries of the joint venture's principals) must be submitted to SBA not later than 45 days after each operating quarter of the joint venture; and

(12) Stating that a project-end profit and loss statement, including a statement of final profit distribution, must be submitted to SBA no later than 90 calendar days after completion of the contract.

(d) *Limitations on subcontracting.* (1) For any VOSB or SDVOSB contract, including those between a protégé and a mentor authorized by § 125.9 of this chapter, the joint venture must perform the applicable percentage of work required by § 125.6 of this chapter.

(2) The certified VOSB or SDVOSB partner(s) to the joint venture must perform at least 40% of the work performed by the joint venture, except that in the context of a joint venture between a prote´g´ VOSB or SDVOSB and its SBA-approved mentor the VOSB or SDVOSB protégé must individually perform at least 40% of the work performed by the joint venture.

(i) The work performed by the certified VOSB or SDVOSB partner(s) to a joint venture must be more than administrative or ministerial functions so that they gain substantive experience.

(ii) The amount of work done by the partners will be aggregated and the work done by the certified VOSB or SDVOSB partners must be at least 40% of the total done by all partners. In determining the amount of work done by a non-VOSB or SDVOSB partner, all work done by the non-VOSB or SDVOSB partner and any of its affiliates at any subcontracting tier will be counted.

(e) *Certification of compliance*—(1) *At time of offer.* If submitting an offer as a joint venture for a VOSB or SDVOSB contract, at the time of initial offer (and if applicable, final offer), each certified VOSB or SDVOSB joint venture partner must make the following certifications to the contracting officer separately under its own name:

(i) It is a certified VOSB or SDVOSB;

(ii) It, together with its affiliates, is small under the size standard corresponding to the NAICS code assigned to the procurement;

(iii) It will comply with the applicable limitations on subcontracting during performance of the contract, as set forth in § 125.6 of this chapter.

(2) *Prior to identification as apparent successful offeror.* (i) Prior to being identified as an apparent successful offeror for a VOSB or SDVOSB contract, the certified VOSB or SDVOSB partner to the joint venture must submit a certification to the contracting officer and SBA, signed by an authorized official of each partner to the joint venture, stating as follows:

(A) The parties have entered into a joint venture agreement that fully complies with paragraph (c) of this section;

(B) The parties will perform the contract in compliance with the joint venture agreement and with the limitations on subcontracting requirements set forth in paragraph (e)(2)(i)(A) of this section.

(ii) Although the managing venturer must be a certified VOSB or SDVOSB as of the date of the joint venture's initial offer which includes price in order for the joint venture to qualify as an eligible VOSB or SDVOSB, the joint venture must meet the joint venture agreement requirements set forth in paragraph (c) of this section at the time the joint venture is identified as an apparent successful offeror.

(f) *Capabilities, past performance, and experience.* When evaluating the capabilities, past performance, experience, business systems, and certifications of an entity submitting an offer for a VOSB or SDVOSB contract as a joint venture established pursuant to this section, a procuring activity must consider work done and qualifications held individually by each partner to the joint venture as well as any work done by the joint venture itself previously. A procuring activity may not require the certified VOSB or SDVOSB to individually meet the same evaluation or responsibility criteria as that required of other offerors generally. The partners to the joint venture in the aggregate must demonstrate the past performance, experience, business systems, and certifications necessary to perform the contract.

(g) *Contract execution.* The procuring activity will execute a VOSB or SDVOSB contract in the name of the joint venture entity or the certified VOSB or SDVOSB, but in either case will identify the award as one to a VOSB or SDVOSB joint venture or a VOSB or SDVOSB mentor-protégé joint venture, as appropriate.

(h) *Inspection of records.* The joint venture partners must allow SBA's authorized representatives, including representatives authorized by the SBA Inspector General, during normal business hours, access to its files to inspect and copy all records and documents relating to the joint venture.

(i) *Performance of work reports.* A certified VOSB or SDVOSB partner to a joint venture must describe how it is meeting or has met the applicable performance of work requirements for each VOSB or SDVOSB contract it performs as a joint venture.

(1) The certified VOSB or SDVOSB partner to the joint venture must annually submit a report to the relevant contracting officer and to SBA, signed by an authorized official of each partner to the joint venture, explaining how and certifying that the performance of work requirements are being met.

(2) At the completion of every VOSB or SDVOSB contract awarded to a joint venture, the certified VOSB or SDVOSB partner to the joint venture must submit a report to the relevant contracting officer and to SBA, signed by an authorized official of each partner to the joint venture, explaining how and certifying that the performance of work requirements were met for the contract, and further certifying that the contract was performed in accordance with the provisions of the joint venture agreement that are required under paragraph (b)(2) of this section.

(3) Any person with information concerning a joint venture's compliance with the performance of work requirements may report that information to SBA and/or the SBA Office of Inspector General.

(j) *Basis for suspension or debarment.* The Government may consider the following as a ground for suspension or

debarment as a willful violation of a regulatory provision or requirement applicable to a public agreement or transaction:

(1) Failure to enter a joint venture agreement that complies with paragraph (b)(2) of this section;

(2) Failure to perform a contract in accordance with the joint venture agreement or limitations on subcontracting requirements in paragraph (b)(3) of this section; or

(3) Failure to submit the certification required by paragraph (b)(4) of this section or comply with paragraph (b)(7) of this section.

§ 128.403 What requirements are not available for VOSB or SDVOSB contracts?

For VA procurements, a contracting officer may award a VOSB or SDVOSB contract as set forth in the VAAR. For non-VA SDVOSB contracts, a contracting activity may not make a requirement available for a SDVOSB contract if:

(a) The contracting activity otherwise would fulfill that requirement through award to Federal Prison Industries, Inc. under 18 U.S.C. 4124 or 4125, or to Javits-Wagner-O'Day Act participating non-profit agencies for the blind and severely disabled, under 41 U.S.C. 8501 *et seq.,* as amended; or

(b) An 8(a) BD program participant currently is performing that requirement or SBA has accepted that requirement for performance under the authority of the section 8(a) BD program, unless SBA has consented to release of the requirement from the section 8(a) BD program.

§ 128.404 When may a contracting officer set aside a procurement for VOSBs or SDVOSBs?

(a) *VA procurements.* For VA procurements, a contracting officer may set aside a contract for a VOSB or SDVOSB as set forth in the VAAR. For non-VA procurements, the contracting officer first must review a requirement to determine whether it is excluded from SDVOSB contracting pursuant to § 128.403.

(b) *Contracting among small business programs*—(1) *Acquisitions valued at or below the simplified acquisition threshold.* For VA procurements, a contracting officer may award at or below the simplified acquisition threshold as set forth in the VAAR. For non-VA procurements, the contracting officer shall set aside any acquisition with an anticipated dollar value exceeding the micro-purchase threshold but not exceeding the simplified acquisition threshold (defined in the FAR at 48 CFR 2.101) for small business concerns, regardless of the place of performance, when there is a reasonable expectation that offers will be obtained from at least two small business concerns that are competitive in terms of quality and delivery and award will be made at fair market prices. The requirement in this paragraph (b)(1) does not preclude a contracting officer from making an award to a small business under the 8(a) BD, Historically Underutilized Business Zone (HUBZone), SDVOSB, or WOSB Programs.

(2) *Acquisitions valued above the simplified acquisition threshold.* (i) For VA procurements, a contracting officer may award above the simplified acquisition threshold as set forth in the VAAR. For non-VA procurements, the contracting officer shall set aside any acquisition with an anticipated dollar value exceeding the simplified acquisition threshold (defined in the FAR at 48 CFR 2.101) for small business concerns, regardless of the place of performance, when there is a reasonable expectation that offers will be obtained from at least two small business concerns that are competitive in terms of quality and delivery and award will be made at fair market prices. However, after conducting market research, the contracting officer shall first consider a set-aside or sole source award (if the sole source award is permitted by statute or regulation) under the 8(a) BD, HUBZone, SDVOSB, or WOSB programs before setting aside the requirement as a small business set-aside. There is no order of precedence among the 8(a) BD, HUBZone, SDVOSB, or WOSB programs. The contracting officer must document the contract file with the rationale used to support the specific set-aside, including the type and extent of market research conducted. In addition, the contracting officer must document the contract file showing that the apparent successful offeror's certifications in the System for Award Management (SAM) (or any successor system) and associated representations were reviewed.

(ii) SBA believes that progress in fulfilling the various small business goals, as well as other factors such as the results of market research, programmatic needs specific to the procuring agency, anticipated award price, and the acquisition history, will be considered in making a decision as to which program to use for the acquisition.

(c) *SDVOSB set-asides.* If the contracting officer decides to set aside the requirement for competition restricted to SDVOSBs, the contracting officer must:

(1) Have a reasonable expectation that at least two responsible SDVOSBs will submit offers; and

(2) Determine that the award can be made at fair market price.

(d) *Prohibition on combined set-asides.* A procuring activity cannot restrict an SDVOSB competition (for either a contract or order) to require certifications other than SDVOSB certification (*i.e.,* a competition cannot be limited only to business concerns that are both SDVOSB and 8(a), SDVOSB and HUBZone, or SDVOSB and WOSB).

§ 128.405 When may a contracting officer award a sole source contract to a VOSBs or SDVOSB?

For VA procurements, a contracting officer may award a sole source contract to a VOSB or SDVOSB as set forth in the VAAR. A contracting officer may award a sole source contract to an SDVOSB for non-VA procurements only when the contracting officer determines that:

(a) None of the provisions of § 128.403 or § 128.404 apply;

(b) The anticipated award price of the contract, including options, will not exceed:

(1) $7,000,000 for a contract assigned a manufacturing NAICS code; or

(2) $4,000,000 for all other contracts;

(c) A SDVOSB is a responsible contractor able to perform the contract; and

(d) Contract award can be made at a fair and reasonable price.

§ 128.406 Are there VOSB or SDVOSB contracting opportunities at or below the simplified acquisition threshold?

(a) For VA procurements, a contracting officer may award at or below the simplified acquisition threshold as set forth in the VAAR.

(b) For non-VA procurements, if a SDVOSB requirement is at or below the simplified acquisition threshold, the contracting officer may set aside the requirement for consideration among SDVOSBs using simplified acquisition procedures or may award a sole source contract to an SDVOSB.

§ 128.407 May SBA appeal a contracting officer's decision not to make a procurement available for award as a SDVOSB contract?

The SBA Administrator may appeal a contracting officer's decision not to make a particular requirement available for award as an SDVOSB sole source or a SDVOSB set-aside contract at or above the simplified acquisition threshold.

§ 128.408 What is the process for such an appeal?

(a) *Notice of appeal.* When the contracting officer rejects a

recommendation by SBA's Procurement Center Representative to make a requirement available for award as an SDVOSB contract, the contracting officer must notify the Procurement Center Representative as soon as practicable. If the SBA Administrator intends to appeal the decision, SBA must notify the contracting officer no later than five business days after receiving notice of the contracting officer's decision.

(b) *Suspension of action.* Upon receipt of notice of SBA's intent to appeal, the contracting officer must suspend further action regarding the procurement until the Secretary of the department or head of the agency issues a written decision on the appeal, unless the Secretary of the department or head of the agency makes a written determination that urgent and compelling circumstances which significantly affect the interests of the United States compel award of the contract.

(c) *Deadline for appeal.* Within 15 business days of SBA's notification to the contracting officer, SBA must file its formal appeal with the Secretary of the department or head of the agency, or the appeal will be deemed withdrawn.

(d) *Decision.* The Secretary of the department or head of the agency must specify in writing the reasons for a denial of an appeal brought under this section.

Subpart E—Protests Concerning VOSBs and SDVOSBs

§ 128.500 What are the requirements for filing a VOSB or SDVOSB status protest?

(a) All challenges to the inclusion in the certification database of a VOSB or SDVOSB based on the status of the concern as a small business concern or the ownership or control of the concern, shall be heard by the Office of Hearings and Appeals of the Small Business Administration in accordance with part 134 of this chapter. The decision of the Office of Hearings and Appeals shall be considered final agency action.

(b) The protest procedures described in part 134 of this chapter are separate from those governing size protests and appeals. All protests relating to whether an eligible VOSB or SDVOSB is a small business for purposes of any Federal program are subject to part 121 of this chapter and must be filed in accordance with that part. If a protester protests both the size of the VOSB or SDVOSB and whether the concern meets the VOSB or SDVOSB requirements set forth in § 128.200, SBA will process each protest concurrently under the procedures set forth in parts 121 and 134 of this chapter. SBA does not review issues concerning the administration of a VOSB or SDVOSB contract.

(c) When challenging the SDVOSB status of a joint venture, the managing SDVOSB party to the joint venture must be a certified SDVOSB as of the date of the joint venture's initial offer, including price, for the SDVOSB contract and compliance with the joint venture agreement requirements set forth in § 128.402(c) is determined as of the date of the final proposal revision for negotiated acquisitions and final bid for sealed bidding.

Subpart F—Penalties and Retention of Records

§ 128.600 What are the requirements for representing VOSB or SDVOSB status, and what are the penalties for misrepresentation?

(a) *Presumption of loss based on the total amount expended.* In every contract, subcontract, cooperative agreement, cooperative research and development agreement, or grant which is set aside, reserved, or otherwise classified as intended for award to VOSBs or SDVOSBs, there shall be a presumption of loss to the United States based on the total amount expended on the contract, subcontract, cooperative agreement, cooperative research and development agreement, or grant whenever it is established that a business concern other than a VOSB or SDVOSB willfully sought and received the award by misrepresentation.

(b) *Deemed certifications.* The following actions shall be deemed affirmative, willful, and intentional certifications of VOSB or SDVOSB status:

(1) Submission of a bid, proposal, application or offer for a Federal grant, contract, subcontract, cooperative agreement, or cooperative research and development agreement reserved, set aside, or otherwise classified as intended for award to VOSBs or SDVOSBs.

(2) Submission of a bid, proposal, application or offer for a Federal grant, contract, subcontract, cooperative agreement or cooperative research and development agreement which in any way encourages a Federal agency to classify the bid or proposal, if awarded, as an award to a VOSB or SDVOSB.

(3) Registration on any Federal electronic database for the purpose of being considered for award of a Federal grant, contract, subcontract, cooperative agreement, or cooperative research and development agreement, as a VOSB or SDVOSB.

(c) *Signature requirement.* Each offer, proposal, bid, or application for a Federal contract, subcontract, or grant shall contain a certification concerning the VOSB or, in the case of an SDVOSB, SDVOSB status of a business concern seeking the Federal contract, subcontract, or grant. An authorized official must sign the certification on the same page containing the SDVOSB status claimed by the concern.

(d) *Limitation of liability.* Paragraphs (a) through (c) of this section may be determined not to apply in the case of unintentional errors, technical malfunctions, and other similar situations that demonstrate that a misrepresentation of VOSB or SDVOSB status was not affirmative, intentional, willful, or actionable under the False Claims Act, 31 U.S.C. 3729, *et seq.* A prime contractor acting in good faith should not be held liable for misrepresentations made by its subcontractors regarding the subcontractors' VOSB or SDVOSB status. Relevant factors to consider in making this determination may include the firm's internal management procedures governing VOSB or SDVOSB status representations or certifications, the clarity or ambiguity of the representation or certification requirement, and the efforts made to correct an incorrect or invalid representation or certification in a timely manner. An individual or firm may not be held liable where Government personnel have erroneously identified a concern as a VOSB or SDVOSB without any representation or certification having been made by the concern and where such identification is made without the knowledge of the individual or firm.

(e) *Penalties for misrepresentation*—(1) *Suspension or debarment.* The SBA suspension and debarment official or the agency suspension and debarment official may suspend or debar a person or concern for misrepresenting a firm's status as a VOSB or SDVOSB pursuant to the procedures set forth in 48 CFR part 9, subpart 9.4.

(2) *Civil penalties.* Persons or concerns are subject to severe penalties under the False Claims Act, 31 U.S.C. 3729–3733, the Program Fraud Civil Remedies Act, 31 U.S.C. 3801–3812, and any other applicable laws or regulations, including part 142 of this chapter.

(3) *Criminal penalties.* Persons or concerns are subject to severe criminal penalties for knowingly misrepresenting the VOSB or SDVOSB status of a concern in connection with procurement programs pursuant to section 16(d) of the Small Business Act, 15 U.S.C. 645(d), as amended, 18 U.S.C. 1001, 18 U.S.C. 287, and any other

applicable laws. Persons or concerns are subject to criminal penalties for knowingly making false statements or misrepresentations to SBA for the purpose of influencing any actions of SBA pursuant to section 16(a) of the Small Business Act, 15 U.S.C. 645(a), as amended, including failure to correct ''continuing representations'' that are no longer true.

Subpart G—Surplus Personal Property for Veteran-Owned Small Business Programs

§ 128.700 How does a VOSB obtain Federal surplus personal property?

(a) *General.* (1) Pursuant to 15 U.S.C. 657b(g), eligible small business concerns owned and controlled by veterans may receive surplus Federal Government property from State Agencies for Surplus Property (SASPs). The procedures set forth in 41 CFR part 102–37 and this section will be used to transfer surplus personal property to such concerns.

(2) The surplus personal property which may be transferred to SASPs for further transfer to eligible small business concerns owned and controlled by veterans includes all surplus personal property which has become available for donation pursuant to 41 CFR 102–37.30.

(b) *Eligibility to receive Federal surplus personal property.* To be eligible to receive Federal surplus personal property, on the date of transfer a concern must:

(1) Be a small business concern owned and controlled by veterans, that has been certified by SBA under this part;

(2) Not be debarred, suspended, or declared ineligible under title 2 or title 48 of the CFR; and

(3) Be engaged or expect to be engaged in business activities making the item useful to it.

(c) *Use of acquired surplus personal property.* (1) Eligible concerns may acquire Federal surplus personal property from the SASP in the state(s) where the concern is located and operates, provided the concern represents and agrees in writing:

(i) As to what the intended use of the surplus personal property is to be;

(ii) That it will use the surplus personal property to be acquired in the normal conduct of its business activities or be liable for the fair rental value from the date of its receipt;

(iii) That it will not sell or transfer the surplus personal property to be acquired to any party other than the Federal Government as required by General Services Administration (GSA) and SASP requirements and guidelines;

(iv) That, at its own expense, it will return the surplus personal property to a SASP if directed to do so by SBA, including where the concern has not used the property as intended within one year of receipt;

(v) That, should it breach its agreement not to sell or transfer the surplus personal property, it will be liable to the Federal Government for the established fair market value or the sale price, whichever is greater, of the property sold or transferred; and

(vi) That it will give GSA and the SASP access to inspect the surplus personal property and all records pertaining to it.

(2) A concern receiving surplus personal property pursuant to this section assumes all liability associated with or stemming from the use of the property, and all costs associated with the use and maintenance of the property.

(d) *Costs.* Concerns acquiring surplus personal property from a SASP may be required to pay a service fee to the SASP in accordance with 41 CFR 102–37.280. In no instance will any SASP charge a concern more for any service than their established fees charged to other transferees.

(e) *Title.* Upon execution of the SASP distribution document, the firm receiving the property has only conditional title to the property during the applicable period of restriction. Full title to the property will vest in the recipient concern only after the recipient concern has met all of the requirements of this part and the requirements of GSA and the SASP that it received the property from.

PART 134—RULES OF PROCEDURE GOVERNING CASES BEFORE THE OFFICE OF HEARINGS AND APPEALS

■ 9. The authority citation for part 134 is revised to read as follows:

Authority: 5 U.S.C. 504; 15 U.S.C. 632, 634(b)(6), 634(i), 637(a), 648(l), 656(i), 657t and 687(c); E.O. 12549, 51 FR 6370, 3 CFR, 1986 Comp., p. 189.

Subpart J issued under 15 U.S.C. 657f.
Subpart K issued under 15 U.S.C. 657f.
Subpart L issued under 15 U.S.C. 636(a)(36); 15 U.S.C. 636(a)(37); 15 U.S.C. 636m.

■ 10. Amend § 134.102 by removing and reserving paragraph (q) and revising paragraphs (u) and (v).

The revisions read as follows:

§ 134.102 Jurisdiction of OHA.

* * * * *

(u) Protests of eligibility for inclusion in the Veteran Small Business Certification Program;

(v) Appeals of denials of certification in and decertification from the Veteran Small Business Certification Program; and

* * * * *

■ 11. Amend § 134.201 by removing and reserving paragraph (b)(3) and revising paragraphs (b)(8) and (9).

The revisions read as follows:

§ 134.201 Scope of the rules in this subpart.

* * * * *

(b) * * *

(8) For protests of eligibility for inclusion in the Veteran Small Business Certification Program, in subpart J of this part;

(9) For appeals of denials of certification and decertification in the Veteran Small Business Certification Program, in subpart K of this part; and

* * * * *

Subpart E—[Removed and Reserved]

■ 12. Remove and reserve subpart E, consisting of §§ 134.501 through 134.515.

■ 13. Revise subparts J and K to read as follows:

Subpart J—Rules of Practice for Protests of Eligibility for Inclusion in the SBA Veteran Small Business Certification Program Database (VOSB or SDVOSB Status Protests)

Sec.

Subpart J—Rules of Practice for Protests of Eligibility for Inclusion in the SBA Veteran Small Business Certification Program Database (VOSB or SDVOSB Status Protests)

§ 134.1001 Scope of rules.

(a) The rules of practice in this subpart apply to VOSB or SDVOSB status protests. A VOSB or SDVOSB status protest is the process by which an interested party (*see* § 134.1002(b)) may challenge a concern's inclusion in the SBA Veteran Small Business

Certification Program database or the VOSB or SDVOSB status of an apparent successful offeror on a VOSB or SDVOSB contract, including a joint venture submitting an offer under § 128.402 of this chapter. OHA will also consider a protest challenging whether a prime contractor is unduly reliant on a small, non-similarly situated entity subcontractor or if such subcontractor performs the primary and vital requirements of the contract.

(b) Except where inconsistent with this subpart, the provisions of subparts A and B of this part apply to protests listed in paragraph (a) of this section.

(c) The protest procedures described in this subpart are separate from those governing size protests and size appeals. All protests relating to whether a VOSB or SDVOSB is a ''small'' business for purposes of any Federal program are subject to part 121 of this chapter and must be filed in accordance with that part. If a protester protests both the size of a VOSB or SDVOSB and the concern's eligibility for the SBA Veteran Small Business Certification Program, SBA will process each protest concurrently, under the procedures set forth in part 121 of this chapter and this part. SBA does not review issues concerning the administration of a VOSB or SDVOSB contract.

(d) Appeals of denials and cancellations of certification for inclusion in the Veteran Small Business Certification Program are governed by subpart K of this part.

§ 134.1002 Who may file a VOSB or SDVOSB status protest?

(a) For sole source procurements, SBA, VA, or the contracting officer may protest the proposed awardee's VOSB or SDVOSB status.

(b) For all other procurements, any interested party may protest the apparent successful offeror's VOSB or SDVOSB status. An interested party means the contracting officer, SBA, VA, any concern that submits an offer for a specific set-aside VOSB or SDVOSB contract (including Multiple Award Contracts) or order, or any concern that submitted an offer in full and open competition and its opportunity for award will be affected by a reserve of an award given to a VOSB or SDVOSB.

(c) SBA and VA may file a VOSB or SDVOSB status protest at any time.

§ 134.1003 Grounds for filing a VOSB or SDVOSB status protest.

(a) *Veteran status.* In cases where the protest is based on service-connected disability, permanent and severe disability, or veteran status, the Judge will only consider a protest that presents specific allegations supporting the contention that the owner(s) cannot provide documentation from the VA, Department of Defense, or the U.S. National Archives and Records Administration to show that they meet the definition of veteran, service-disabled veteran, or service-disabled veteran with a permanent and severe disability.

(b) *Ownership and control.* In cases where the protest is based on ownership and/or control, the Judge will consider a protest only if the protester presents credible evidence that the concern is not 51% owned and controlled by one or more veterans or service-disabled veterans.

(c) *Ostensible subcontractor.* In cases where the protest is based on an allegation that the prime contractor appears unduly reliant on one or more, non-VOSB or non-SDVOSB subcontractors, or the non-VOSB or non-SDVOSB subcontractor is performing the primary and vital requirements of the contract, OHA will consider a protest only if the protester presents credible evidence of the alleged undue reliance or credible evidence that the primary and vital requirements will be performed by the subcontractor(s).

(d) *Joint ventures.* A VOSB or SDVOSB joint venture may be protested regarding the status of the managing VOSB or SDVOSB joint venture partner or for failure to meet the requirements of § 128.402 of this chapter. If the joint venture is found to be ineligible solely based on failure to meet the requirements of that section, the joint venture will be ineligible for the contract at issue. The finding of ineligibility is limited to that contract and will not affect the underlying eligibility of the VOSB or SDVOSB joint venture partner.

(e) *Date for determining eligibility.* (1) If the VOSB or SDVOSB status protest pertains to a procurement, the Judge will determine a protested concern's eligibility as a VOSB or SDVOSB as of the date of its initial offer or response which includes price. For a protest challenging an ostensible subcontractor or a joint venture's compliance with the joint venture agreement requirements set forth in § 128.402(c), the Judge will determine eligibility as of the date of the final proposal revision for negotiated acquisitions or as of final bid for sealed bidding.

(2) If the VOSB or SDVOSB status protest does not pertain to a procurement, the Judge will determine a protested concern's eligibility as a VOSB or SDVOSB as of the date the VOSB or SDVOSB status protest was filed.

§ 134.1004 Commencement of VOSB or SDVOSB status protests.

(a) *Timeliness.* (1) The Secretary of the VA (or designee) or SBA may file a VOSB or SDVOSB status protest at any time.

(2) The contracting officer, SBA, or VA may file a VOSB or SDVOSB status protest at any time after the apparent awardee has been identified or after bid opening, whichever applies.

(3) For negotiated acquisitions, an interested party (*see* § 134.1002(b)) must submit its protest by close of business on the fifth business day after notification by the contracting officer of the apparent successful offeror.

(i) Except for an order or Blanket Purchase Agreement issued under a Federal Supply Schedule contract, for an order or Agreement that is set-aside for VOSBs or SDVOSBs under a multiple award contract that was not itself set aside or reserved for VOSBs or SDVOSBs, an interested party must submit its protest by close of business on the fifth business day after notification by the contracting officer of the intended awardee of the order or Agreement.

(ii) Where a contracting officer has required offerors for a specific order under a multiple award VOSB or SDVOSB contract to recertify their VOSB or SDVOSB status, an interested party must submit its protest by close of business on the fifth business day after notification by the contracting officer of the intended awardee of the order.

(4) For sealed bid acquisitions, a protest from an interested party (*see* § 134.1002(b)) must be received by close of business on the fifth business day after bid opening. Where the identified low bidder is determined to be ineligible for award, a protest of any other identified low bidder must be received prior to the close of business on the 5th business day after the contracting officer has notified interested parties of the identity of that low bidder.

(5) The rule for counting days is in § 134.202(d).

(6) Any protest received after the time limit is untimely, unless it is from SBA, VA, or the contracting officer. An untimely protest will be dismissed.

(b) *Filing.* (1) An interested party, other than SBA, VA, or the contracting officer, must deliver a VOSB or SDVOSB status protest to the contracting officer in person, by email, facsimile, by express delivery service, or by U.S. mail (postmarked within the applicable time period) to the contracting officer.

(2) VA, SBA, or the contracting officer must submit a VOSB or SDVOSB status

protest directly to OHA in accordance with the procedures in § 134.204. The protest should include in the referral letter the information set forth in paragraph (c) of this section.

(3) SBA must submit a VOSB or SDVOSB status protest directly to OHA in accordance with the procedures in § 134.204.

(c) *Referral to OHA.* The contracting officer must forward to OHA any VOSB or SDVOSB status protest received, notwithstanding whether the contracting officer believes it is premature, sufficiently specific, or timely. The contracting officer must send all VOSB or SDVOSB status protests, along with a referral letter, directly to OHA, addressed to Office of Hearings and Appeals, U.S. Small Business Administration, 409 Third Street SW, Washington, DC 20416, or by email at *OHAfilings@sba.gov,* marked ''Attn: VOSB Status Protest'' or ''Attn: SDVOSB Status Protest''. The referral letter must include information pertaining to the solicitation that may be necessary for OHA to determine timeliness and standing, including:

(1) The solicitation number;

(2) The name, address, telephone number, and email address of the contracting officer;

(3) Whether the contract was a sole source or set-aside VOSB or SDVOSB procurement;

(4) Whether the protester submitted an offer;

(5) Whether the protested concern was the apparent successful offeror;

(6) Whether the procurement was conducted using sealed bid or negotiated procedures;

(7) The bid opening date, if applicable;

(8) When the protested concern submitted its initial offer which included price;

(9) When the protest was submitted to the contracting officer;

(10) When the protester received notification of the apparent successful offeror, if applicable; and

(11) Whether a contract has been awarded.

§ 134.1005 Contents of the VOSB or SDVOSB status protest.

(a) VOSB and SDVOSB status protests must be in writing. There is no required format for a VOSB or SDVOSB status protest, but it must include the following:

(1) The solicitation or contract number, if applicable;

(2) Specific allegations supported by credible evidence that the concern (or joint venture) does not meet the VOSB or SDVOSB eligibility requirements listed in part 128 of this chapter;

(3) Any other pertinent information the Judge should consider; and

(4) The name, address, telephone number, and email address, if available, and signature of the protester or its attorney.

(b) If the protester intends to seek access to the SBA case file under § 134.205, the protester should include in its protest a request for a protective order. Unless good cause is shown, a protester must request a protective order within five days of filing the protest.

§ 134.1006 Service and filing requirements.

The provisions of § 134.204 apply to the service and filing of all pleadings and other submissions permitted under this subpart.

§ 134.1007 Processing a VOSB or SDVOSB status protest.

(a) *Notice and order.* If the Judge determines that the protest is timely, sufficiently specific, and based upon protestable allegations, the Judge will issue a notice and order, notifying the protester, the protested concern, the Director, Office of Government Contracting (D/GC), SBA Counsel, and, if applicable, the contracting officer of the date OHA received the protest, and order a due date for responses.

(b) *Dismissal of protest.* If the Judge determines that the protest is premature, untimely, nonspecific, or is based on non-protestable allegations, the Judge will dismiss the protest and will send the contracting officer, D/GC, SBA's Associate General Counsel for Procurement Law, and the protester a notice of dismissal, citing the reason(s) for the dismissal. The dismissal is a final agency action.

(c) *Transmission of the case file.* Upon receipt of a notice and order, the D/GC must deliver to OHA the entire case file relating to the protested concern's inclusion in the certification database. The notice and order will establish the timetable for transmitting the case file to OHA. The D/GC must certify and authenticate that the case file, to the best of his/her knowledge, is a true and correct copy of the case file.

(d) *Protective order.* A protester seeking access to the SBA case file must file a timely request for a protective order under § 134.205. Except for good cause shown, a protester must request a protective order within five days of filing the protest. Even after issuance of a protective order, OHA will not disclose income tax returns or privileged information.

(e) *Supplemental allegations.* If, after viewing documents in the SBA case file for the first time under a protective order, a protester wishes to supplement its protest with additional argument, the protester may do so. Any such supplement is due at OHA no later than 15 days from the date the protester receives or reviews the SBA case file.

(f) *Response*—(1) *Timing.* The protested concern, the D/GC, the contracting officer, and any other interested party (*see* § 134.1002(b)) may respond to the protest and supplemental protest, if one is filed. The response is due no later than 15 days from the date the protest or supplemental protest was filed with OHA. The record closes the date the final response is due.

(2) *Service.* The respondent must serve its response upon the protester or its counsel and upon each of the persons identified in the certificate of service attached to the notice and order or, if a protective order is issued, in accordance with the terms of the protective order.

(3) *Reply to a response.* No reply to a response will be permitted unless the Judge directs otherwise.

(g) *Basis for decision.* The decision will be based primarily on the case file and information provided by the protester, the protested concern, and any other parties. However, the Judge may investigate issues beyond those raised in the protest and may use other information or make requests for additional information to the protester, the protested concern, or SBA.

(h) *Award of contract.* The contracting officer may award a contract before the Judge issues a decision only if the contracting officer determines that an award must be made to protect the public interest and notifies the Judge and D/GC in writing of such determination. Notwithstanding such a determination, the provisions of paragraph (j) of this section shall apply to the procurement in question.

(i) *Decision.* OHA will serve a copy of the written decision on each party, or, if represented by counsel, on its counsel. The decision is considered the final agency action, and it becomes effective upon issuance.

(j) *Effect of decision.* (1) A contracting officer may award a contract to a protested concern after the Judge has sustained the protest and determined either that the protested concern is an eligible VOSB or SDVOSB, and no OHA appeal has been filed, or has dismissed all protests against it.

(2) A contracting officer shall not award a contract to a protested concern that the Judge has determined is not an eligible VOSB or SDVOSB. If the contract has already been awarded, then the awarded contract shall be deemed void *ab initio* (invalid from the outset),

and the contracting officer shall rescind the contract and award the contract to the next eligible concern in line for the award.

(3) The contracting officer must update the Federal Procurement Data System (or successor system) and other procurement reporting databases to reflect the Judge's decision.

(4) If the Judge finds the protested concern is not an eligible VOSB or SDVOSB, the D/GC must immediately remove the protested concern from the certification database.

(5) A concern found to be ineligible may not submit an offer on a future VOSB or SDVOSB procurement until the protested concern reapplies to the Veteran Small Business Certification Program and has been designated by SBA as a VOSB or SDVOSB into the certification database.

§ 134.1008 Discovery.

Discovery will not be permitted in SBA VOSB or SDVOSB status protest proceedings.

§ 134.1009 Oral hearings.

Oral hearings will be held in VOSB or SDVOSB status protest proceedings only upon a finding by the Judge of extraordinary circumstances. If such an oral hearing is ordered, the proceeding shall be conducted in accordance with those rules of subpart B of this part as the Judge deems appropriate.

§ 134.1010 Standard of review and burden of proof.

The protested concern has the burden of proving its eligibility, by a preponderance of the evidence.

§ 134.1011 Weight of evidence.

The Judge will give greater weight to specific, signed, factual evidence than to general, unsupported allegations or opinions. In the case of refusal or failure to furnish requested information within a required time period, the Judge may assume that disclosure would be contrary to the interests of the party failing to make disclosure.

§ 134.1012 The record.

Where relevant, the provisions of § 134.225 apply. In a protest under this subpart, the contents of the record also include the case file or solicitation submitted to OHA in accordance with § 134.1007.

§ 134.1013 Request for reconsideration.

The decision on a VOSB or SDVOSB status protest may not be appealed. However:

(a) The Judge may reconsider a VOSB or SDVOSB status protest decision. Any party that has appeared in the proceeding, or the SBA, may request reconsideration by filing with OHA and serving a petition for reconsideration on all the parties to the VOSB or SDVOSB status protest within twenty (20) calendar days after service of the written decision. The request for reconsideration must clearly show an error of fact or law material to the decision. The Judge may also reconsider a decision on his or her own initiative.

(b) If the Judge reverses his or her initial decision on reconsideration, the contracting officer must follow § 134.1007(j) in applying the new decision's results.

Subpart K—Rules of Practice for Appeals of Denials of Certification and Decertification in the SBA Veteran Small Business Certification Program (VOSB or SDVOSB Appeals)

Sec.

Subpart K—Rules of Practice for Appeals of Denials of Certification and Decertification in the SBA Veteran Small Business Certification Program (VOSB or SDVOSB Appeals)

§ 134.1101 Scope of rules.

(a) The rules of practice in this subpart apply to appeals of denial of certification and decertification for inclusion in the SBA Veteran Small Business Certification Program certification database (VOSB or SDVOSB Appeals).

(b) Except where inconsistent with this subpart, the provisions of subparts A and B of this part apply to appeals listed in paragraph (a) of this section.

(c) Protests of a concern's eligibility for inclusion in the SBA Veteran Small Business Certification Program Database (VOSB or SDVOSB Status Protests) are governed by subpart J of this part.

§ 134.1102 Who may file a VOSB or SDVOSB Appeal?

A concern that has been denied certification as a VOSB or SDVOSB or has had its VOSB or SDVOSB status decertified may appeal the decision to OHA.

§ 134.1103 Grounds for filing a VOSB or SDVOSB Appeal.

Denial of certification and decertification of VOSB or SDVOSB status may be appealed to OHA. A denial or decertification based on the failure to provide sufficient evidence of the qualifying individual's status as a veteran or a service-disabled veteran are final VA decisions and not subject to appeal to OHA.

§ 134.1104 Commencement of VOSB or SDVOSB Appeal.

(a) A concern whose application for VOSB or SDVOSB certification has been denied or whose status has been decertified must file its appeal within 10 business days of receipt of the denial or decertification.

(b) The rule for counting days is in § 134.202(d).

(c) OHA will dismiss an untimely appeal.

§ 134.1105 The appeal petition.

(a) *Format.* VOSB or SDVOSB appeals must be in writing. There is no required format for an appeal petition; however, it must include the following:

(1) A copy of the denial or decertification and the date the appellant received it;

(2) A statement of why the denial or decertification is in error;

(3) Any other pertinent information the Judge should consider; and

(4) The name, address, telephone number, and email address, if available, and signature of the appellant or its attorney.

(b) *Service.* The appellant must serve copies of the entire appeal petition upon the Director, Office of Government Contracting (D/GC) and SBA Counsel at *OPLservice@sba.gov.*

(c) *Certificate of service.* The appellant must attach to the appeal petition a signed certificate of service meeting the requirements of § 134.204(d).

(d) *Dismissal.* An appeal petition that does not meet all the requirements of this section may be dismissed by the Judge at his/her own initiative or upon motion of a respondent.

§ 134.1106 Service and filing requirements.

The provisions of § 134.204 apply to the service and filing of all pleadings and other submissions permitted under this subpart.

§ 134.1107 Transmission of the case file.

Once a VOSB or SDVOSB appeal is filed, the D/GC must deliver to OHA the entire case file relating to the denial or decertification. The Judge will issue a notice and order establishing the

timetable for transmitting the case file to OHA. The D/GC must certify and authenticate that the case file, to the best of his/her knowledge, is a true and correct copy of the case file.

§ 134.1108 Response to an appeal petition.

(a) *Who may respond.* The D/GC (or designee) or counsel for SBA may respond to the VOSB or SDVOSB appeal. The response should present arguments to the issues presented on appeal.

(b) *Time limits.* The notice and order will inform the parties of the filing of the appeal petition, establish the close of record as 15 days after service of the notice and order, and inform the parties that OHA must receive any responses to the appeal petition no later than the close of record.

(c) *Service.* The respondent must serve its response upon the appellant and upon each of the persons identified in the certificate of service attached to the appeal petition pursuant to § 134.1105.

(d) *Reply to a response.* No reply to a response will be permitted unless the Judge directs otherwise.

§ 134.1109 Discovery and oral hearings.

Discovery will not be permitted and oral hearings will not be held.

§ 134.1110 New evidence.

Except for good cause shown, evidence beyond the case file will not be admitted.

§ 134.1111 Standard of review and burden of proof.

The standard of review is whether the D/GC denial or decertification was based on clear error of fact or law. The appellant has the burden of proof, by a preponderance of the evidence.

§ 134.1112 The decision.

(a) *Timing.* The Judge shall decide a VOSB or SDVOSB Appeal, insofar as practicable, within 60 calendar days after close of the record.

(b) *Contents.* Following closure of the record, the Judge will issue a decision containing findings of fact and conclusions of law, reasons for such findings and conclusions, and any relief ordered.

(c) *Basis for decision.* Decisions under this subpart will be based primarily on the evidence in the SBA case file, arguments made on appeal, and any response(s) thereto. However, the Judge, in his/her sole discretion, may consider issues beyond those raised in the pleadings and the denial or cancellation letter.

(d) *Finality.* The decision is the final agency decision and becomes effective upon issuance. Where OHA dismisses an appeal of a D/GC denial or decertification, the D/GC determination remains in effect.

(e) *Service.* OHA will serve a copy of all written decisions on each party, or, if represented by counsel, on its counsel.

(f) *Effect.* If the Judge grants the appeal and finds the appellant eligible for inclusion in the SBA certification database, the D/GC must immediately include in the SBA certification database.

(g) *Reconsideration.* A decision of the Judge may be reconsidered. Any party that has appeared in the proceeding, or the SBA Administrator or his or her designee, may request reconsideration by filing with OHA and serving a petition for reconsideration on all parties to the VOSB or SDVOSB Appeal within twenty (20) calendar days after service of the written decision, upon a clear showing of an error of fact or law material to the decision. The Judge also may reconsider a decision on his or her own initiative.

Isabella Casillas Guzman,

Administrator.

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Vol. 87, No. 228

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FEDERAL REGISTER PAGES AND DATE, NOVEMBER

CFR PARTS AFFECTED DURING NOVEMBER

At the end of each month the Office of the Federal Register publishes separately a List of CFR Sections Affected (LSA), which lists parts and sections affected by documents published since the revision date of each title.

68 71218
71 ..... 65673, 65674, 65675, 65677, 65679, 65680, 66229, 66544, 66946, 66947, 67547, 68627, 69164, 71238, 72866, 72867, 72869, 72870, 72871
73 66978
91 70707
97 ..... 68628, 68630, 72381, 72383
111 70707
1212 71240

Proposed Rules:
21 67399
25 68942
39 ..... 65694, 66615, 66619, 66623, 66625, 66971, 67572, 67575, 67579, 67581, 67834, 67837, 67840, 67842, 67845, 67849, 68109, 68113, 68644, 69210, 69214, 69218, 69220, 69222, 69225, 69228, 69231, 71264, 72414, 72416, 72419, 72422, 72424, 72899, 72902
259 68944
260 68944
71 ..... 66627, 66629, 66630, 66632, 66633, 66634, 66636, 66974, 66975, 67584, 68116, 71266, 72426, 72904
399 68944

15 CFR

90 71240

Proposed Rules:
90 71269

16 CFR

314 71509
1112 ..... 72598, 73144
1120 72873
1216 73241
1239 68032
1260 73144
1261 72598
1460 71242

Proposed Rules:
437 72428
453 66096
464 67413
465 67424
1270 67586

17 CFR

200 72758
229 73076
230 72758
232 ..... 72758, 73076
239 72758
240 ..... 66412, 73076
249 ..... 72758, 73076
270 ..... 72758, 73076
274 ..... 72758, 73076

Proposed Rules:
275 68816
279 68816

18 CFR

154 71511
260 71511
284 71511

Proposed Rules:
153 72906
380 72906

19 CFR

102 68338

Proposed Rules:
351 ..... 69234, 72916

21 CFR

1 70910
73 67785
866 66545
1141 72384
1271 65861
1301 ..... 66954, 68036, 73246
1308 ..... 67548, 68895, 70715, 70717, 71247
1309 ..... 68036, 73246
1310 67550
1316 ..... 68036, 73246

Proposed Rules:
50 68118
56 68118
80 66116
101 73267
173 70752
812 68118

22 CFR

126 71250
212 70721

23 CFR

630 67553
635 67553

24 CFR

201 70733
203 70733
206 70733

25 CFR

537 68046
571 67363

Proposed Rules:
571 67430

26 CFR

1 ..... 68048, 68898

Proposed Rules:
1 71271
300 67611

27 CFR

Proposed Rules:
6 67612
8 67612
9 ..... 72927, 72932, 72937
10 67612
11 67612

28 CFR

2 66549
50 66239

29 CFR

1400 68357
1404 69165

Proposed Rules:
103 66890
1400 67852
2550 70753
2560 71164
2570 71164
4213 67853

33 CFR

100 ..... 66244, 70744, 71251, 72385, 73246, 73247
117 ..... 68049, 71517
165 ..... 66086, 66550, 66552, 66955, 68051, 68053, 68358, 69166, 71252, 71518, 72385, 72887, 72889, 73247, 73249, 73251, 73254, 73256

Proposed Rules:
203 68386
165 ..... 67430, 67433

34 CFR

600 ..... 65904, 68900
668 ..... 65904, 68900
674 65904
682 65904
685 65904
690 68900

36 CFR

1151 69168

37 CFR

1 68900
11 68054

Proposed Rules:
1 69235
210 71286
385 66976

38 CFR

3 ..... 68360, 68904
17 71254

Proposed Rules:
17 73268

39 CFR

3 68908
6 68908
20 71520
111 69171

Proposed Rules:
36 65700
111 67615
3030 69236

40 CFR

9 72312
52 ..... 67789, 68057, 68364, 68632, 68634, 69177, 71258
55 68364
60 67558
61 67558
63 ..... 67558, 67791
87 72312
131 69183
141 68060
152 67364
180 ..... 66554, 67371, 67375, 68909, 69201, 71523
372 72891
1030 72312
1031 72312

Proposed Rules:
2 68946
49 72432
51 68119
52 ..... 65714, 65719, 66086, 66091, 66985, 67617, 68119, 68410, 68413, 68414, 70758, 71286, 72434, 72941, 72946
81 65719
84 66372
180 68959
261 71532
700 68647
705 72439

42 CFR

400 66454
405 ..... 69404, 71748
406 66454
407 66454
408 66454
410 ..... 66454, 69404, 71748
411 ..... 69404, 71748
412 ..... 66558, 71748
413 ..... 66558, 67136, 71748
414 69404
415 69404
416 71748
419 71748
423 ..... 66454, 69404
424 ..... 69404, 71748
425 69404
431 66454
435 66454
455 69404
482 66558
484 66790
485 ..... 66558, 71748
489 71748
493 68912
495 66558
512 67136

Proposed Rules:
422 65723
423 65723
438 65723
498 65723
1001 72953

43 CFR

8360 69204

Proposed Rules:
2800 67306
2860 67306
2880 67306
2920 67306
8360 ..... 72954, 73275

44 CFR

296 68085

45 CFR

Proposed Rules:
162 67634

46 CFR

10 66575
11 66575
15 66575
121 68270
160 68270
169 68270
184 68270
199 68270

Proposed Rules:
541 ..... 68416, 73278

47 CFR

2 72388
11 67808
25 72388
64 ..... 67826, 69206, 72409
73 67827

Proposed Rules:
10 71539
11 71539
54 67660

64.....68416
73 .....68432, 68960, 70765

48 CFR

801.....70745
802.....70745
808.....70745
816.....70745
819.....71262
835.....70745
852.....70745, 71262

Proposed Rules:

1.....68312
4.....68312
9.....68312
23.....68312
52.....68312

49 CFR

223.....68913
365.....68367, 72898
371.....68635
387.....68367, 72898
390.....68367, 72898

Proposed Rules:

218.....66638
350.....68433

50 CFR

17 .....66093, 66591, 67380, 68381, 72674
21.....66094
622.....66608, 68382
635.....68104
648 .....66245, 67829, 67830, 68925, 70751, 71527
660.....66609, 71262
679 .....66611, 67832, 68383, 68384, 68640, 73257

Proposed Rules:

Ch. 1.....66255
13.....72957
17 .....66987, 68975, 71466, 71557, 72958
20.....66247
22.....72957
223.....67853
300.....70766
648.....66120, 68434
679 .....65724, 66125, 67665, 71559
680.....65724

LIST OF PUBLIC LAWS

Note: No public bills which have become law were received by the Office of the Federal Register for inclusion in today's **List of Public Laws**.

Last List October 20, 2022

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