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Contents

Federal Register

Vol. 87, No. 229

Wednesday, November 30, 2022

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

To subscribe to the Federal Register Table of Contents electronic mailing list, go to https://public.govdelivery.com/accounts/USGPOOFR/subscriber/new, enter your e-mail address, then follow the instructions to join, leave, or manage your subscription.

CFR PARTS AFFECTED IN THIS ISSUE

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

3 CFR

Proclamations:

10500.....73431

7 CFR

1710.....73433
1714.....73433
1717.....73433
1724.....73433
1730.....73433
1738.....73443
1739.....73443

9 CFR

Proposed Rules:

201.....73507

14 CFR

39 (4 documents) 73446, 73448, 73452, 73456

Proposed Rules:

39.....73507

26 CFR

1.....73458

39 CFR

111.....73459
121.....73468

Proposed Rules:

111.....73510

40 CFR

52.....73469
180.....73471
372.....73475

42 CFR

Proposed Rules:

10.....73516

43 CFR

Proposed Rules:

3160.....73588
3170.....73588

49 CFR

Proposed Rules:

Ch. XII.....73527

50 CFR

17.....73488
635.....73504

Federal Register
Vol. 87, No. 229
Wednesday, November 30, 2022

Presidential Documents

Title 3—

The President

Proclamation 10500 of November 23, 2022

Thanksgiving Day, 2022

By the President of the United States of America

A Proclamation

This Thanksgiving, as homes across America fill with laughter, favorite family foods, and the joy of friends and relatives reuniting, we give thanks for everything that is good in our lives and reflect on the many blessings of our Nation.

This American spirit of gratitude dates back to our earliest days, when the Pilgrims celebrated a successful first harvest, thanks to the generosity and support of the Wampanoag people. It inspired George Washington to give his troops a day of prayer and thanks amid fierce fighting for American independence. It also moved Abraham Lincoln to proclaim Thanksgiving a national holiday, honoring America's bounty and asking God to bring us together to care for one another and heal our Nation.

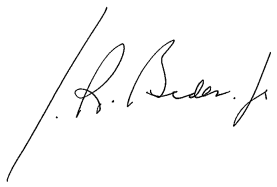
Today, Jill and I share that same gratitude for America's promise and for the millions of heroes across our country whose selflessness and care for their communities represent the best of who we are.

We are grateful for our family and friends and for all of our fellow Americans, even those whom we may never meet but rely upon nonetheless. We are thankful for the scientists, researchers, doctors, and nurses who have kept us safe through a pandemic, and for the frontline workers who have kept essential services going by growing and providing food for our tables. We are grateful to faith leaders for their counsel, comfort, and support. We thank our brave service members and veterans who sacrifice so much for our freedom, and the first responders who put so much on the line to keep us all safe.

As Scripture says: ''let us rejoice always, pray continually, and give thanks in all circumstances.'' This is a special time in the greatest country on Earth, so let us be grateful. America is a great Nation because we are a good people. This holiday, we celebrate all that brings us together, grounded in history and our shared hopes for the future.

NOW, THEREFORE, I, JOSEPH R. BIDEN JR., President of the United States of America, by virtue of the authority vested in me by the Constitution and the laws of the United States, do hereby proclaim Thursday, November 24, 2022, as a National Day of Thanksgiving. I encourage the people of the United States of America to join together and give thanks for the friends, neighbors, family members, and strangers who have supported each other over the past year in a reflection of goodwill and unity.

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



[FR Doc. 2022–26158
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Rules and Regulations

Federal Register
Vol. 87, No. 229
Wednesday, November 30, 2022

DEPARTMENT OF AGRICULTURE

Rural Utilities Service

7 CFR Parts 1710, 1714, 1717, 1724, and 1730

[Docket No. RUS–22–ELECTRIC–0031]

RIN 0572–AC57

Electric Program Streamlining and Improvement

AGENCY: Rural Utilities Service, U.S. Department of Agriculture (USDA).

ACTION: Final rule; request for comments.

SUMMARY: The Rural Utilities Service (RUS or Agency), a Rural Development agency of the United States Department of Agriculture (USDA), is issuing a final rule with comment. The intent of this rule is to revise several regulations to streamline procedures for Electric Program borrowers, including its loan application requirements, approval of work plans and load forecasts, use of approved contracts and system design procedures and reporting requirements.

DATES: This final rule with comment is effective February 28, 2023. Comments are due on or before January 30, 2023.

ADDRESSES: You may submit comments, identified by docket number RUS–22–ELECTRIC–0031 and Regulatory Information Number (RIN) number 0572–AC57 through *https://www.regulations.gov.*

Instructions: All submissions received must include the Agency name and docket number or RIN for this rulemaking. All comments received will be posted without change to *https://www.regulations.gov,* including any personal information provided.

Docket: For access to the docket to read background documents or comments received, go to *https://www.regulations.gov.*

FOR FURTHER INFORMATION CONTACT: Robert Coates, Branch Chief, Policy and Outreach Branch, Office of Customer Service and Technical Assistance, Rural Utilities Service, U.S. Department of Agriculture, STOP 1569, 1400 Independence Ave. SW, Washington, DC 20250–0787, telephone: (202) 720–1900. Email: *RUSElectric@usda.gov*.

SUPPLEMENTARY INFORMATION:

I. Background

Rural Development is a mission area within the U.S. Department of Agriculture (USDA) comprising the Rural Utilities Service, Rural Housing Service, and Rural Business-Cooperative Service. Rural Development's mission is to increase economic opportunity and improve the quality of life for all rural Americans. Rural Development meets its mission by providing loans, loan guarantees, grants, and technical assistance through numerous programs aimed at creating and improving housing, business, and infrastructure throughout rural America. The Rural Utilities Service (RUS) loan, loan guarantee, and grant programs act as a catalyst for economic and community development. By financing improvements to rural electric, water and waste, and telecommunications and broadband infrastructure, RUS also plays a significant role in improving other measures of quality of life in rural America, including public health and safety, environmental protection and culture and historic preservation.

RUS Electric Program loans, loan guarantees and grants finance the construction and improvement of rural electric infrastructure. In an effort by the RUS Electric Program to administer its program in an efficient and effective manner while improving its customer service and experience, and in response to requests from the RUS Electric Program borrowers, the Electric Program undertook a systematic review of regulations and procedures in place to administer its program. The Electric Program has completed two streamlining efforts to date:

(a) On July 9, 2019, Streamlining Electric Program Procedures (84 FR 32607) was published in the **Federal Register**. That regulation streamlined some pre- and post-loan procedures to adopt efficiencies and to reduce regulatory burden on Electric Program borrowers while still ensuring RUS loans remained adequately secured and ensuring that loan funds would be repaid in the time agreed upon.

(b) On July 9, 2021, Streamlining Electric Program Procedures (86 FR 24857) was published in the **Federal Register**. That regulation streamlined its procedures for borrowers, including its loan application requirements, approval of construction work plans, contract bidding procedures, contact approval procedures, system operation and maintenance reviews, long-range engineering plans and system design procedures. It also removed unnecessary sections from the regulations.

This rulemaking is part of the Electric Program's continuing effort to improve customer service for its borrowers and to create a more efficient work process for its staff. This rulemaking will continue to streamline Electric Program procedures and revise regulations, including removing unnecessary and outdated regulations and simplifying other policies and procedures that impose burdensome requirements on borrowers and applicants.

To implement this change, the Agency will publish this as a final rule with comment. The Administrative Procedure Act exempts from prior notice rules, any actions, ''relating to agency management or personnel or to public property, loans, grants, benefits, or contracts'' (5 U.S.C. 553(b)(A)).

II. Summary of Changes to Rule

Part 1710—General and Pre-Loan Policies and Procedures Common to Electric Loans and Guarantees

(a) Section 1710.1 was modified to remove outdated references and bulletins.

(b) Section 1710.2 was modified to delete the definitions for approved load forecast workplan, load forecast workplan, and PRS workplan. The requirement for borrowers to maintain a load forecast workplan has been eliminated. This reduces the number of documents that must be submitted by the applicants/borrowers and reviewed by Agency employees. In addition, §§ 1710.200; 1710.202(a) and (b); 1710.203(a), (b), and (e); 1710.205; and 1710.209 have been revised to remove the references to load forecast workplans.

(c) Section 1710.101(a) and (b) were updated to include Tribes as eligible entities to receive RUS funding and added Tribes to the list of entities that receive preference from RUS in making loans. These changes were made for

clarification and to codify current practices.

(d) Section 1710.105 was updated to include Tribal areas as places where borrowers may need to obtain Tribal approval prior to loans being approved or funds advanced. It was also updated to include reaffirmation of the project and its financing from Tribal authorities prior to additional loan funds being advanced when the borrower has failed to proceed with the project in a timely manner. These changes will help ensure that projects are feasible, as without the commitment of support from the Tribal entity, the viability of those projects could be in question. These changes are also aligned with the Administration's priorities.

(e) Section 1710.106(a)(3) was modified to include headquarters office and other headquarters facilities which reflects RUS's current acceptance of financing headquarters office and other headquarters facilities. This update codifies the Agency's current practice of funding headquarters buildings as a typical project instead of only in cases of financial hardship. Thus, the provisions of § 1710.106(b)(1) was moved to a new § 1710.106(a)(3). Paragraphs (c)(2) and (3) were updated to correct punctuation.

(f) Sections 1710.202(a) and 1710.203(a) through (e) were modified to define a current load forecast as having been prepared within the last 2 years. The 2 years is being added to provide clarity and consistency. A load forecast is a primary support document for developing construction workplans and should be current.

(g) Section 1710.205 was modified to include information that is required to be included in the load forecast. It is being included in this section due to §§ 1710.206 and 1710.209 being deleted as the requirement for borrowers to maintain a load forecast workplan has been eliminated. These deleted sections will be reserved.

(h) Sections 1710.400(b)(2), 1710.404, 1710.408(h) and 1710.500(a) were modified to address spelling, punctuation errors, and formatting and to correct an email address.

(i) Section 1710.501(a)(1)(v) was updated to replace DUNS number with Unique Entity Identifier. Paragraphs (a)(1)(viii), (x), (xiii), and (xvi), and (a)(2) and (8) were updated to require that borrowers indicate if Tribal approval is needed and to provide Tribal resolutions when needed. These changes help ensure compliance with Tribal law when doing business on Tribal land and help develop strong working partnerships with Tribes. These changes are also in line with the Administration's priorities. Paragraph (a)(4) was deleted due to being outdated and no longer relevant. The RUS Form 740g is no longer being required because it duplicates information provided in the Construction Workplan (CWP) or CWP Amendment and on the RUS Form 740c. This change reduces the number of forms submitted by applicants/borrowers and reviewed by Agency staff. The references to Form 740g are being removed from 7 CFR 1717.855(g) and 1724.54(f)(2).

(j) In 7 CFR 1714, subpart B was removed in its entirety and incorporated into 7 CFR 1710 as subpart J. The word ''Insured'' was removed from the titles of the Subpart and of 7 CFR 1714.55 (now § 1710.601). Outdated language from 7 CFR 1714.58 (now § 1710.604) was removed and the rules on principal deferment were revised. The outdated language that was removed referred to loans approved before and after February 21, 1995. Principal deferment was revised to include a written request from the borrower to the Administrator to defer amortization of the principal. Additionally, 7 CFR 1714.59(a) (now § 1710.605(a)) was revised to allow the borrower to request a rescission of a loan without the additional requirement of a formal Board Resolution. 7 CFR part 1714, subpart B referred only to insured loans but these processes are related to all loans and were added to 7 CFR part 1710, subpart J. These changes will help to eliminate possible confusion and conflicts in the regulations. Removing the requirement for a formal Board Resolution permits the General Manager, Board President or other individual authorized by the Board of Directors to request such rescission without having to have a formal resolution prepared.

(k) Section 1717.616 was revised to include language from Bulletin 1717 M–2, Sale or Transfer of Capital Assets by Electric Borrowers. This language was removed from the bulletin because the purpose of bulletins is to provide additional guidance, not requirements. Therefore, the Agency made these changes to codify the requirements in the regulation.

(l) Section 1717.855(g) was updated to remove reference to the Form 740g as referenced in (i) above.

(m) Section 1724.9 was updated to add ''or any successor regulations that implement the provisions of the National Environmental Policy Act''. This update was made to provide flexibility should 7 CFR part 1970 change.

(n) Section 1724.40 was updated to include a web page for copies of the bulletins in lieu of a physical mailing address.

(o) Section 1724.51(f)(1) was updated to clarify that the provision does not apply to cybersecurity projects.

(p) Section 1724.54(d)(1)(ii) was updated to provide an additional option for the required notification. Paragraphs (e)(2) and (g)(2) were updated to provide clarification that this provision may have been waived for those borrowers who have indentures or other specialized loan security documents. Paragraph (f)(2) was updated to remove the reference to RUS Form 740g which will no longer be used. Paragraph (g)(1) was updated to clarify that the provision does not apply to cybersecurity projects.

(q) Section 1724.70(b) was updated to incorporate the program's streamlining measures that a borrower may deviate from the standard RUS contract without RUS approval provided that essential terms remain in the contract.

(r) Section 1724.71(a), (b), and (c) was updated to clarify that a borrower that is subject to an indenture is not subject to the provisions in the standard RUS loan contract. These changes are related to those made in § 1724.70(b).

(s) Sections 1730.27 and 1730.28 were updated to remove obsolete dates and outdated language. These changes were made to help alleviate confusion for borrowers.

(t) Section 1730.63(a)(5) was modified to change the update period of Interconnection of Distributed Resources (IDR) policy compliance from five years to as needed. The IDR policy generally does not change once implemented. This change will provide the borrower with more flexibility. Paragraph (b)(2) was deleted in order to remove outdated IDR language.

(u) Section 1730.65 was modified to eliminate obsolete compliance dates. This change will help alleviate confusion for applicants and borrowers as it will now be clear that the letter of certification is required for everyone.

III. Executive Orders and Acts

Executive Order 12866

This final rule has been determined to be non-significant for purposes of Executive Order (E.O.) 12866 and therefore has not been reviewed by the Office of Management and Budget (OMB).

Congressional Review Act

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

Assistance Listing Number (Formally Known as the Catalog of Federal Domestic Assistance)

The Assistance Listing Number assigned to the Rural Electrification Loans and Loan Guarantees Program is 10.850. The Assistance Listings are available on the internet at *https://sam.gov/.*

Executive Order 12372, Intergovernmental Review of Federal Programs

This rule is excluded from the scope of E.O. 12372, Intergovernmental Consultation, which may require a consultation with State and local officials. See the final rule related notice entitled, ''Department Programs and Activities Excluded from E.O. 12372'' (50 FR 47034) advising that RUS loans and loan guarantees were not covered by E.O. 12372.

Executive Order 13175, Consultation and Coordination With Indian Tribal Governments

The Agency has determined that this final rule has a substantial direct effect on one or more Indian tribe(s) or on either the relationship or the distribution of powers and responsibilities between the Federal Government and Indian Tribes. Thus, this final rule is subject to the requirements of E.O. 13175. Tribal specific amendments in §§ 1710.101(a) and (b), 1710.105(a) and (b), and 1710.501 were based on feedback from Tribal Leaders heard during virtual Tribal Consultation events hosted by USDA in March of 2021 and April of 2022. For additional information Tribes can contact USDA's Office of Tribal Relations or USDA Rural Development's Tribal Coordinator at (720) 544–2911 or *AIAN@usda.gov.* If Tribes request consultation on provisions not required by law, Rural Development will collaborate with the Office of Tribal Relations to ensure that meaningful consultation occurs.

Executive Order 12988, Civil Justice Reform

This final rule has been reviewed under E.O. 12988, Civil Justice Reform. In accordance with this final rule: (1) All State and local laws and regulations that are in conflict with this rule will be preempted; (2) No retroactive effect will be given to this rule; and (3) Administrative proceedings of the National Appeals Division (7 CFR part 11) must be exhausted before bringing suit in court challenging action taken under this rule.

National Environmental Policy Act

In accordance with the National Environmental Policy Act of 1969, Public Law 91–190, this final rule has been reviewed in accordance with 7 CFR part 1970 (''Environmental Policies and Procedures''). The Agency has determined that (i) this action meets the criteria established in 7 CFR 1970.53(f); (ii) no extraordinary circumstances exist; and (iii) the action is not ''connected'' to other actions with potentially significant impacts, is not considered a ''cumulative action'' and is not precluded by 40 CFR 1506.1. Therefore, the Agency has determined that the action does not have a significant effect on the human environment, and therefore neither an Environmental Assessment nor an Environmental Impact Statement is required.

Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), Public Law 104–4, establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local, and Tribal governments and the private sector. Under section 202 of the UMRA, RUS generally must prepare a written statement, including a cost-benefit analysis, for proposed and final rules with Federal mandates that may result in expenditures to State, local, or Tribal governments, in the aggregate, or to the private sector, of $100 million or more in any one year. When such a statement is needed for a rule, section 205 of the UMRA generally requires RUS to identify and consider a reasonable number of regulatory alternatives and adopt the least costly, most cost-effective, or least burdensome alternative that achieves the objectives of the rule.

This final rule contains no Federal mandates (under the regulatory provisions of title II of the UMRA) for State, local, and Tribal governments or the private sector. Therefore, this final rule is not subject to the requirements of sections 202 and 205 of the UMRA.

Regulatory Flexibility Act

The Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) generally requires an agency to prepare a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements under the Administrative Procedure Act (APA) or any other statute. This final rule; however, is not subject to the APA under 5 U.S.C. 553(a)(2) and 5 U.S.C. 553(b)(3)(A) nor any other statute.

Executive Order 13132, Federalism

It has been determined, under E.O. 13132, Federalism, that the policies contained in this final rule do not have any 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. Nor does this final rule impose substantial direct compliance costs on State and local governments. Therefore, consultation with the States is not required.

E-Government Act Compliance

The Agency is committed to complying with the E-Government Act of 2002, Public Law 107–347, which requires Government agencies in general to provide the public the option of submitting information or transacting business electronically to the maximum extent possible and to promote the use of the internet and other information technologies to provide increased opportunities for citizen access to Government information and services, and for other purposes.

Information Collection and Recordkeeping Requirements

The information collection and record-keeping requirements contained in this rule are approved by the Office of Management and Budget (OMB) under OMB Control Numbers 0572–0032, 0572–0089, 0572–0100, 0572–0118, 0572–0140, and 0572–0141.

Civil Rights Impact Analysis

Rural Development, a mission area for which RUS is an agency, has reviewed this rule in accordance with USDA Regulation 4300–4, Civil Rights Impact Analysis,'' to identify any major civil rights impacts the rule might have on program participants on the basis of age, race, color, national origin, sex, or disability. After review and analysis of the rule and available data, it has been determined that based on the analysis of the program purpose, application submission and eligibility criteria, issuance of this final rule is not likely to negatively impact very low, low and moderate-income populations, minority populations, women, Indian Tribes or persons with disability, by virtue of their race, color, national origin, sex, age, disability, or marital or familial status. No major civil rights impact is likely to result from this rule.

USDA Non-Discrimination Statement

In accordance with Federal civil rights laws and U.S. Department of Agriculture (USDA) civil rights regulations and policies, the USDA, its

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

Program information may be made available in languages other than English. Persons with disabilities who require alternative means of communication to obtain program information (*e.g.,* Braille, large print, audiotape, American Sign Language) should contact the responsible Mission Area, agency, or staff office; the USDA TARGET Center at (202) 720–2600 (voice and TTY); or the 711 Relay Service.

To file a program discrimination complaint, a complainant should complete a Form AD–3027, *https://www.usda.gov/sites/default/files/documents/usda-program-discrimination-complaint-form.pdf,* which can be obtained online at *https://www.usda.gov/sites/default/files/documents/usda-program-discrimination-complaint-form.pdf,* from any USDA office, by calling (866) 632–9992, or by writing a letter addressed to USDA. The letter must contain the complainant's name, address, telephone number, and a written description of the alleged discriminatory action in sufficient detail to inform the Assistant Secretary for Civil Rights (ASCR) about the nature and date of an alleged civil rights violation. The completed AD–3027 form or letter must be submitted to USDA by:

(1) *Mail:* U.S. Department of Agriculture, Office of the Assistant Secretary for Civil Rights, 1400 Independence Avenue SW, Washington, DC 20250–9410; or

(2) *Fax:* (833) 256–1665 or (202) 690–7442; or

(3) *Email: program.intake@usda.gov.*

List of Subjects

7 CFR Part 1710

Electric power, Grant programs-energy, Loan programs-energy, Reporting and recordkeeping requirements, Rural areas.

7 CFR Part 1714

Electric power, Loan programs-energy, Rural areas.

7 CFR Part 1717

Administrative practice and procedure, Electric power, Electric power rates, Electric utilities, Intergovernmental relations, Investments, Loan programs-energy, Reporting and recordkeeping requirements, Rural areas.

7 CFR Part 1724 and 1730

Electric power, Loan programs-energy, Reporting and recordkeeping requirements, Rural areas.

For the reasons set forth in the preamble, RUS amends 7 CFR parts 1710, 1714, 1717, 1724, and 1730 as follows:

PART 1710—GENERAL AND PRE-LOAN POLICIES AND PROCEDURES COMMON TO ELECTRIC LOANS AND GUARANTEES

■ 1. The authority citation for part 1710 continues to read as follows:

Authority: 7 U.S.C. 901 *et seq.,* 1921 *et seq.,* 6941 *et seq.*

Subpart A—General

■ 2. Revise § 1710.1 to read as follows:

§ 1710.1 General statement.

This part establishes general and pre-loan policies and requirements that apply to both insured and guaranteed loans to finance the construction and improvement of electric facilities in rural areas, including generation, transmission, and distribution facilities.

§ 1710.2 [Amended]

■ 3. Amend § 1710.2 by removing the definitions for ''Approved load forecast work plan'', ''Load forecast work plan'', and ''PRS work plan''.

Subpart C—Loan Purposes and Basic Policies

■ 4. Amend § 1710.101 by revising paragraphs (a) introductory text and (b) to read as follows:

§ 1710.101 Types of eligible borrowers.

(a) RUS makes loans to corporations, States, Tribes, territories, and subdivisions and agencies thereof; municipalities; people's utility districts; and cooperative, nonprofit, limited-dividend, or mutual associations that provide or propose to provide:

* * * * *

(b) In making loans, RUS gives preference to States, Tribes, territories, and subdivisions and agencies thereof; municipalities; people's utility districts; and cooperative, nonprofit, or limited-dividend associations. RUS does not make direct loans to individual consumers.

* * * * *

■ 5. Revise § 1710.105 to read as follows:

§ 1710.105 State and Tribal regulatory approvals.

(a) In States or in Tribal areas where a borrower is required to obtain approval of a project or its financing from a State or Tribal regulatory authority, RUS requires that such approvals be obtained before the following types of loans are approved by RUS:

(1) Loans requiring an Environmental Impact Statement;

(2) Loans to finance generation and transmission facilities, when the loan request for such facilities is $25 million or more; and

(3) Loans for the purpose of assisting borrowers to implement demand side management and energy conservation programs and on and off grid renewable energy systems.

(b) In Tribal areas all borrowers are required to obtain approval of the project from the Tribal government or relevant Tribal regulatory body, before any loan is approved by RUS.

(c) At minimum, in the case of all loans in States or Tribal areas where State regulatory approval is required of the project or its financing, such State or Tribal approvals will be required before loan funds are advanced.

(d) In cases where State regulatory authority or Tribal government or relevant Tribal regulatory body approval has been obtained, but the borrower has failed to proceed with the project in a timely manner according to the schedule contained in the borrower's project design manual, or if there are cost overruns or other developments that threaten loan feasibility or security, RUS may require the borrower to obtain a reaffirmation of the project and its financing from the State or Tribal authority before any additional loan funds are advanced.

■ 6. Amend § 1710.106 by:
■ a. Revising paragraph (a)(3);
■ b. Removing paragraph (b)(1);
■ c. Redesignating paragraphs (b)(2) and (3) as paragraphs (b)(1) and (2); and
■ d. Revising paragraphs (c)(2) and (3).

The revisions read as follows:

§ 1710.106 Uses of loan funds.

(a) * * *

(3) *Headquarters Offices, Warehouse, and garage facilities.* The purchase,

remodeling, or construction of headquarters office, other headquarters facilities, warehouse, and garage facilities required for the operation of a borrower's system. *See* paragraph (b) of this section.

* * * * *

(c) * * *

(2) Facilities to serve consumers who are not RE Act beneficiaries unless those facilities are necessary and incidental to providing or improving electric service in rural areas (*See §* 1710.104).

(3) Any facilities or other purposes that a State regulatory authority having jurisdiction will not approve for inclusion in the borrower's rate base or will not otherwise allow rates sufficient to repay with interest the debt incurred for the facilities or other purposes.

* * * * *

Subpart E—Load Forecasts

■ 7. Amend § 1710.200 by revising the first sentence to read as follows:

§ 1710.200 Purpose

This subpart contains RUS policies for the preparation, review, approval and use of load forecasts. * * *

■ 8. Amend § 1710.202 by revising paragraphs (a) and (b) to read as follows:

§ 1710.202 Requirement to prepare a load forecast—power supply borrowers.

(a) A power supply borrower with a total utility plant of $500 million or more must maintain and provide a current (prepared within the last 2 years) load forecast in support of any request for RUS financial assistance.

(b) A power supply borrower that is a member of another power supply borrower that has a total utility plant of $500 million or more must provide an approved load forecast in support of any request for RUS financial assistance. The member power supply borrower may comply with this requirement by participation in and inclusion of its load forecasting information in the load forecast of its power supply borrower.

* * * * *

■ 9. Revise § 1710.203 to read as follows:

§ 1710.203 Requirement to prepare a load forecast—distribution borrowers.

(a) A distribution borrower that is a member of a power supply borrower, with a total utility plant of $500 million or more must provide a current (prepared within the last 2 years) load forecast in support of any request for RUS financial assistance. The distribution borrower may comply with this requirement by participation in and inclusion of its load forecasting information in the approved load forecast of its power supply borrower.

(b) A distribution borrower that is a member of a power supply borrower which is itself a member of another power supply borrower that has a total utility plant of $500 million or more must provide a current (prepared within the last 2 years) load forecast in support of any request for RUS financial assistance. The distribution borrower may comply with this requirement by participation in and inclusion of its load forecasting information in the load forecast of its power supply borrower.

(c) A distribution borrower that is a member of a power supply borrower with a total utility plant of less than $500 million must provide a current (prepared within the last 2 years) load forecast that meets the requirements of this subpart in support of an application for any RUS loan or loan guarantee that exceeds $3 million or 5 percent of total utility plant, whichever is greater. The distribution borrower may comply with this requirement by participation in and inclusion of its load forecasting information in the load forecast of its power supply borrower.

(d) A distribution borrower with a total utility plant of less than $500 million and that is unaffiliated with a power supply borrower must provide a current (prepared within the last 2 years) load forecast that meets the requirements of this subpart in support of an application for any RUS loan or loan guarantee which exceeds $3 million or 5 percent of total utility plant, whichever is greater.

(e) A distribution borrower with a total utility plant of $500 million or more must provide a current (prepared within the last 2 years) load forecast in support of any request for RUS financing assistance. The distribution borrower may comply with this requirement by participation in and inclusion of its load forecasting information in the load forecast of its power supply borrower.

■ 10. Amend § 1710.205 by revising paragraphs (a) and (c) to read as follows:

§ 1710.205 Minimum requirements for all load forecasts.

(a) *Contents of load forecast.* All load forecasts submitted by borrowers for approval must include:

(1) Scope of the load forecast. The narrative shall address the overall approach, time periods, and expected internal and external uses of the forecast. Examples of internal uses include providing information for developing or monitoring demand side management programs, supply resource planning, load flow studies, wholesale power marketing, retail marketing, cost of service studies, rate policy and development, financial planning, and evaluating the potential effects on electric revenues caused by competition from alternative energy sources or other electric suppliers. Examples of external uses include meeting State and Federal regulatory requirements, obtaining financial ratings, and participation in reliability council, power pool, regional transmission group, power supplier or member system forecasting and planning activities.

(2) Resources used to develop the load forecast. The discussion shall identify and discuss the borrower personnel, consultants, data processing, methods, and other resources used in the preparation of the load forecast. The borrower shall identify the borrower's members and, as applicable, member personnel that will serve as project leaders or liaisons with the authority to make decisions and commit resources within the scope of the current and future load forecasts.

(3) A comprehensive description of the database used in the study. The narrative shall describe the procedures used to collect, develop, verify, validate, update, and maintain the data. A data dictionary thoroughly defining the database shall be included. The borrower shall make all or parts of the database available or otherwise accessible to RUS in electronic format if requested.

(4) A narrative for each new load forecast or update of a load forecast. The narrative shall discuss the methods and procedures used in the analysis and modeling of the borrower's electric system loads. The narrative shall also describe the borrower's system, service territory, and consumers.

(5) A narrative discussing the borrower's past, existing, and forecast of future electric system loads. The narrative must identify and explain substantive assumptions and other pertinent information used to support the estimates presented in the load forecast.

(6) A narrative discussing load forecast uncertainty or alternative futures that may determine the borrower's actual loads. The narrative shall describe examples of uncertainties such as economic scenarios, weather conditions, and others that borrowers may decide to address in their analysis including:

(i) Most-probable assumptions, with normal weather;

(ii) Pessimistic assumptions, with normal weather;

(iii) Optimistic assumptions, with normal weather;

(iv) Most-probable assumptions, with severe weather;

(v) Most-probable assumptions, with mild weather;

(vi) Impacts of wholesale or retail competition; or

(vii) New environmental requirements.

(7) A summary of the forecast's results on an annual basis. Include alternative futures, as applicable: This summary shall be designed to accommodate the transfer of load forecast information to a borrower's other planning or loan support documents. Computer-generated forms or electronic submissions of data are acceptable. Graphs, tables, spreadsheets or other exhibits shall be included throughout the forecast as appropriate.

(8) A narrative discussing the coordination activities conducted between a power supply borrower and its members, as applicable, and between the borrower and RUS.

(9) Borrowers with a residential demand of 50 percent or more of total kWh should include in the Load Forecast a Residential Consumer Survey that is performed at least every 5 years to obtain data on appliance and equipment saturation and electricity demand. Any such borrower that is experiencing or anticipates changes in usage patterns shall consider surveys on a more frequent schedule. Power supply borrowers shall coordinate such surveys with their members.

(10) Residential consumer surveys may be based on the aggregation of member-based samples or on a system-wide sample, provided that the latter provides relevant regional breakdowns as appropriate.

(11) A load forecast for a power supply borrower and its members must cover all member systems, including those that are not borrowers. Each borrower is individually responsible for forecasting all its RE Act beneficiary and non-RE Act beneficiary loads.

(12) A narrative description of the borrower's load forecast including future load projections, forecast assumptions, and the methods and procedures used to develop the forecast.

(13) Projections of usage by consumer class, number of consumers by class, annual system peak demand, and season of peak demand for the number of years agreed upon by RUS and the borrower.

(14) A summary of the year-by-year results of the load forecast in a format that allows efficient transfer of the information to other borrower planning or loan support documents.

(15) The load impacts of a borrower's demand side management and energy efficiency and conservation program activities, if applicable.

(16) Graphic representations of the variables specifically identified by management as influencing a borrower's loads.

(17) A database that tracks all relevant variables that might influence a borrower's loads.

* * * * *

(c) *Documentation retention.* The borrower must retain its latest load forecasts and supporting documentation.

* * * * *

§ 1710.206 [Removed and Reserved]

■ 11. Remove and reserve § 1710.206.

§ 1710.209 [Removed and Reserved]

■ 12. Remove and Reserve § 1710.209.

Subpart H—Energy Efficiency and Conservation Loan Program

■ 13. Amend § 1710.400 by revising paragraph (b)(2) to read as follows:

§ 1710.400 Purpose.

* * * * *

(b) * * *

(2) Although not a goal, RUS recognizes that there will be a reduction of greenhouse gases with energy efficiency improvements.

■ 14. Amend § 1710.404 by:

■ a. Removing the definition for ''Certified energy auditor for commercial and industrial energy efficiency improvements''; and

■ b. Adding a definition for ''Certified energy auditor'' in alphabetical order.

The addition reads as follows:

§ 1710.404 Definitions.

* * * * *

Certified energy auditor means:

(1) A certified energy auditor for commercial and industrial energy efficiency improvements shall mean an energy auditor who meets at least one of the following criteria:

(i) An individual possessing a current commercial or industrial energy auditor certification from a national, industry-recognized organization;

(ii) A Licensed Professional Engineer in the State in which the audit is conducted with at least 1 year experience and who has completed at least two similar type Energy Audits;

(iii) An individual with a four-year engineering or architectural degree with at least 3 years experience and who has completed at least five similar type Energy Audits; or

(iv) Beginning in calendar year 2015, an energy auditor certification recognized by the Department of Energy through its Better Buildings Workforce Guidelines project.

(2) A certified energy auditor for residential energy efficiency improvements shall mean an energy auditor that meets one of the following criteria:

(i) The workforce qualification requirements of the Home Performance with Energy Star Program, as outlined in Section 3 of the Home Performance with Energy Star Sponsor Guide; or

(ii) An individual possessing a current residential energy auditor or building analyst certification from a national, industry-recognized organization.

* * * * *

■ 15. Amend § 1710.408 by revising the second sentence of paragraph (h) to read as follows:

§ 1710.408 Quality assurance plan.

* * * * *

(h) * * * In these cases, utilities shall monitor the work done by the contractors and confirm that the contractors are performing quality work.

* * *

* * * * *

Subpart I—Application Requirements and Procedures for Loans

■ 16. Amend § 1710.500 by revising the first sentence of paragraph (a) to read as follows:

§ 1710.500 Initial contact.

(a) Loan applicants that do not have outstanding loans from RUS should contact the Rural Utilities Service via Email at *RUSElectric@usda.gov,* call RUS at (202) 720–9545 or write to the Rural Utilities Service Administrator, United States Department of Agriculture, 1400 Independence Ave. SW, STOP 1560, Room 4121, Washington, DC 20250–1560. * * *

* * * * *

■ 17. Amend § 1710.501 by:

■ a. Revising paragraphs (a)(1)(v), (viii), (x), (xiii), and (xvi) and (a)(2) and (8);

■ b. Removing paragraph (a)(4): and

■ c. Redesignating paragraphs (a)(5) through (17) as paragraphs (a)(4) through (16).

The revisions read as follows:

§ 1710.501 Loan application documents.

(a) * * *

(1) * * *

(v) The Borrower's Unique Entity Identifier;

* * * * *

(viii) List of current counties and Tribal lands where real property is located;

* * * * *

(x) Identify any new counties and Tribal lands with property since last loan;

* * * * *

(xiii) Identify any State or Tribal regulatory approvals needed;

* * * * *

(xvi) Breakdown of loan funds by State and Tribal lands;

* * * * *

(2) *Special resolutions.* Included any special resolutions required by Federal, State, or Tribal Authorities and any others as identified and required by the RUS General Field Representative (for example, use of contractors, corrective action plans, etc.). Resolutions of support from Tribal government or Tribal regulatory authority are required by any non-Tribal applicant intending to serve Tribal areas before any loan is approved by RUS.

* * * * *

(8) *Rate disparity and consumer income data.* If the borrower is applying under the rate disparity and consumer income tests for either a municipal rate loan subject to the interest rate cap or a hardship rate loan, the application must provide a breakdown of residential consumers either by county, Tribal land, or by census tract. In addition, if the borrower serves in 2 or more States, the application must include a breakdown of all ultimate consumers by State. This breakdown may be a copy of Form EIA 861 submitted by the Borrower to the Department of Energy or in a similar form. *See* 7 CFR 1714.7(b) and 1714.8(a). To expedite the processing of loan applications, RUS strongly encourages distribution borrowers to provide this information to the GFR prior to submitting the application.

* * * * *

■ 18. Add subpart J to read as follows:

Subpart J—Terms of Loans Common to Electric Loans and Guarantees

Sec.

Subpart J—Terms of Loans Common to Electric Loans and Guarantees

§ 1710.601 Advance of funds from loans.

The borrower shall request advances of funds as needed. Advances are subject to RUS approval and must be requested in writing on RUS Form 595 or an RUS approved equivalent form. Funds will not be advanced until the Administrator has received satisfactory evidence that the borrower has met all applicable conditions precedent to the advance of funds, including evidence that the supplemental financing required under this part concurrent loan guaranteed by RUS is available to the borrower under terms and conditions satisfactory to RUS.

§ 1710.602 Fund advance period.

(a) The fund advance period begins on the date of the loan note and will last no longer than five years, after September 30 of the fifth year after the fiscal year of obligation. The fiscal year of obligation is identified in loan documentation associated with each loan. The Administrator may extend the fund advance period on any loan if the borrower meets the requirements of paragraph (b) of this section. However, under no circumstances shall RUS ever make or approve an advance, regardless of the last day for an advance on the loan note or any extension by the Administrator, later than September 30 of the fifth year after the fiscal year of obligation if such date would result in the RUS obligating or permitting advance of funds contrary to the Anti-Deficiency Act.

(b) The Administrator may agree to an extension of the fund advance period for loans if the borrower demonstrates, to the satisfaction of the Administrator, that the loan funds continue to be needed for approved loan purposes (*e.g.,* facilities included in a RUS approved construction work plan). Policies for extension of the fund advance period following certain mergers, consolidations, and transfers of systems substantially in their entirety are set forth in 7 CFR 1717.156.

(1) To apply for an extension, the borrower must make a request to RUS prior to the last date for advance as noted in the borrower's loan documents and provide, the following:

(i) A certified copy of a board resolution requesting an extension of the Government's obligation to advance loan funds;

(ii) Evidence that the unadvanced loan funds continue to be needed for approved loan purposes; and

(iii) Notice of the estimated date for completion of construction.

(2) If the Administrator approves a request for an extension, RUS will notify the borrower in writing of the extension and the terms and conditions thereof. An extension will be effective only if it is requested in writing prior to the last date for advance as provided in the borrower's loan documents.

(3) Any request received after the last date for advance shall be rejected.

(c) RUS will rescind the balance of any loan funds not advanced to a borrower as of the final date approved for advancing funds.

§ 1710.603 Sequence of advances.

(a) Except as set forth in paragraph (b) of this section, concurrent loan funds will be advanced in the following order:

(1) Fifty (50) percent of the RUS insured loan funds.

(2) One hundred (100) percent of the supplemental loan funds.

(3) The remaining amount of the RUS insured loan funds.

(b) At the borrower's request and with RUS approval, all or part of the supplemental loan funds may be advanced before funds in paragraph (a)(1) of this section.

§ 1710.604 Amortization of principal.

(a) Amortization of funds advanced during the first 2 years after the date of the note shall begin no later than 2 years from the date of the note. Except as set forth in paragraph (b) of this section, amortization of funds advanced 2 years or more after the date of the note shall begin with the scheduled loan payment billed in the month following the month of the advance.

(b) For advances made 2 years or more after the date of the note, the Administrator may, upon written request from the borrower, authorize deferral of amortization of principal for a period of up to 2 years from the date of the advance if the Administrator determines that failure to authorize such deferral would adversely affect either the Government's financial interest or the achievement of the purposes of the Rural Electrification Act. Such deferral shall not extend the loan maturity period.

§ 1710.605 Rescission of loans.

(a) A borrower may request rescission of a loan with respect to any funds unadvanced by submitting a letter signed by the General Manager, Board President or other individual authorized by the Board of Directors to request such rescission.

(b) RUS may rescind loans pursuant to § 1710.602(c).

(c) Borrowers who prepay RUS loans at a discounted present value pursuant to subpart F of 7 CFR part 1786 are required to rescind the unadvanced balance of all outstanding electric notes pursuant to 7 CFR 1786.158(j).

PART 1714—PRE-LOAN POLICIES AND PROCEDURES FOR INSURED ELECTRIC LOANS

■ 19. The authority citation for part 1714 continues to read as follows:

Authority: 7 U.S.C. 901 *et seq.;* 1921 *et seq.;* and 6941 *et seq.*

Subpart B [Removed and Reserved]

■ 20. Remove and reserve subpart B, consisting of §§ 1714.50 through 1714.59.

PART 1717—POST-LOAN POLICIES AND PROCEDURES COMMON TO INSURED AND GUARANTEED ELECTRIC LOANS

■ 21. The authority citation for part 1717 continues to read as follows:

Authority: 7 U.S.C. 901 *et seq.,* 1921 *et seq.,* 6941 *et seq.*

Subpart M—Operational Controls

■ 22. Revise § 1717.616 to read as follows:

§ 1717.616 Sale, lease, or transfer of capital assets.

(a) The term ''disposition'' in this part shall mean any sale, lease, or any other transaction in which the borrower transfers an interest in a capital asset to another entity or person.

(b) A borrower may, without the prior approval of RUS, sell, lease, transfer, or otherwise dispose of any capital asset if the following conditions are met:

(1) The borrower is not in default on any of its obligations to RUS;

(2) In the most recent year for which data is available, the borrower has met its coverage ratios as set forth in 7 CFR 1710.114(b) or other financial requirements as established by their mortgages, loan contracts, or other security agreements;

(3) The sale, lease, transfer, or disposition of assets will not reduce the borrower's existing or future requirements for energy or capacity being furnished to the borrower under any wholesale power contract which has been pledged as security to the government;

(4) Fair market value is obtained for the assets;

(5) No employee or board member of the organization has a direct personal financial interest in the disposition of the capital assets;

(6) The aggregate value of assets sold, leased, transferred, or disposed of in any 12-month period is less than 10 percent of the borrower's net utility plant prior to the disposition, not to exceed $10,000,000.00; and

(7) If the disposition of the capital asset:

(i) Results in the borrower not retaining an interest in the asset; or

(ii) Constitutes a ''capital lease'' under 7 CFR 1767.15(s)(1) and the borrower does not retain the right to utilize the asset during the term of the lease, and the borrower disposes of the proceeds, less ordinary and reasonable expenses incident to such disposition, in a manner consistent with paragraph (e) of this section.

(c) The requirements for all dispositions include:

(1) The borrower shall receive fair market value for the disposition of capital assets;

(2) The sale shall be in the best interests of the creditors;

(3) All approvals required by law, by the articles of incorporation, by the bylaws of the seller, or by all the creditors, shall be obtained prior to delivery of the assets;

(4) In the case of dispositions involving exchanges or trades of a plant in place between an RUS borrower and a non-RUS borrower, the borrower must provide evidence, satisfactory to RUS, that the exchange or trade is equitable to the RUS borrower and that the plant acquired in the exchange or trade can be economically integrated into the borrower's system; and

(5) Unless the seller, as an existing RUS borrower is dissolved, its electric system after the disposition will constitute a satisfactory operating unit and the disposition of the asset will not jeopardize the repayment of the seller's RUS loan and other loans or impair the collateral serving as security for all RUS loans. If the purchaser is a RUS borrower, the same determinations shall also be made with respect to the purchaser's operations and loan repayment.

(d) The methods of handling disposition include:

(1) Dispositions of capital assets generally shall be for cash except as otherwise approved by RUS in writing.

(2) If the disposition of the assets is not subject to RUS approval as provided in paragraph (b) of this section but the purchaser requires the government to release its lien on the assets subject to the disposition, the following shall apply:

(i) The borrower shall prepare either:

(A) A transmittal letter to RUS requesting a partial release of the lien with respect to the assets to be disposed; or

(B) RUS Form 369, Request for Approval to Sell Capital Assets, or its successor.

(ii) The partial release of lien should be prepared by the attorney for the borrower or the purchaser. It is the borrower's responsibility to assure the accuracy and legal effectiveness of a proposed release. When a partial release of lien requires execution and acknowledgement by a creditor, such execution and acknowledgment by the other creditor should be obtained by the borrower.

(iii) If the borrower elects to submit a transmittal letter to request the release of lien, the letter should contain the following information:

(A) Insert address of property or assets being sold;

(B) Name and address of purchaser;

(C) Approximate original cost or book value;

(D) The consideration the borrower is receiving in exchange for the disposition of the assets' prices;

(E) A statement that the borrower received fair market value for the property being disposed;

(F) A statement from the borrower that the net proceeds have been or will be deposited into the Construction Fund Trustee Account or will be applied as a prepayment on all debt secured under the mortgage or other security agreement applicable to the assets being disposed, equally and proportionally,

(iv) A statement from the borrower's manager stating that there was no distribution of funds to any employees and/or board members. If any amount of funds arising from the disposition have been distributed to employees and/or board members, specific identification of the employees and/or board members, and reasons why funds were provided to those persons (if applicable) must be stated in the transmittal letter. Include borrower contact information, including email address, for questions.

(v) A statement of how or if the disposition will affect the borrower's existing customers.

(3) If the disposition does not fall within the ambit of paragraph (b) of this section so that RUS Approval is required, the following then apply:

(i) If the Federal Government is the sole lien holder of the borrower's capital assets, approval of the disposition by the Federal Government will be indicated on RUS Form 369, when returned to the seller.

(ii) If the Federal Government holds a lien jointly with supplemental lenders, joint approval for the disposition will be necessary and the borrower will forward the following:

(A) Information should be forwarded directly to RUS and one copy to all supplemental lenders;

(B) When approved by RUS, the information will be forwarded by RUS to the supplemental lenders (and a notice letter advising that RUS has forwarded this information to supplemental lenders will be issued by RUS to the borrower); and

(C) The supplemental lenders will be instructed, in the RUS transmittal memorandum, to execute the

documents and return them to the seller. The supplemental lenders will also be instructed to notify RUS when the completed documents are returned to the seller.

(e) The disposition of proceeds will be handled as follows:

(1) The disposition of proceeds from the disposition of a capital asset shall be the same regardless of whether or not RUS approval of the sale is required.

(2) If the gross proceeds from the disposition of the assets total less than $50,000 the borrower shall deposit the proceeds in its general fund account and are to be used for purposes related to the utility business as determined by the management of the borrower.

(3) Proceeds from individual dispositions of property where the gross proceeds total $50,000 or more, should be distributed and accounted for as follows:

(i) Deposited into the Construction Fund Trustee Account. When funds are deposited into the Construction Fund Trustee Account, the borrower shall notify RUS in writing so that the budget records can be adjusted. The funds are to be used for the construction or acquisition of the borrower's utility system;

(ii) Paid to RUS and any secured supplemental lenders if the borrower has concurrent loans outstanding, by application of such funds as a prepayment on the notes of all lenders pro-rata according to the aggregate unpaid principal amount of the notes then outstanding, as designated by the noteholders, and in accordance with the borrower's loan documents;

(iii) If the borrower has no concurrent supplemental loans outstanding, applied to RUS as a payment to be applied to the note or notes issued with respect to loans made or guaranteed by RUS, or any portion of a note with respect to a loan made by RUS, and designated by the borrower or RUS; or

(iv) In the case of dispositions of SO_2 allowances, the funds from the sale of allowances should be deposited into the Construction Fund Trustee Account. If any entity prefers to deposit the funds into the General Fund Account, specific RUS approval will be given on a case-by-case basis. Accompanying any request for approval to deposit the funds into the General Fund Account should be a completed RUS Form 369 along with a summary of the anticipated disposition of funds from the General Fund Account;

(v) In the case of dispositions of equipment, materials, or scrap, all proceeds (regardless of the amount) from the sale should be deposited into the General Fund Account to be used for the purchase of other property useful in the mortgagor's utility business, not necessarily of the same kind as the property disposed, which is subject to the lien of the mortgage;

(vi) The Administrator may allow a borrower to deposit the proceeds of the disposition of the asset directly into the General Funds Account instead of the Construction Fund Trustee Account if the borrower has no 'Balance in Reserve' on its most recent loan advances 605 report and does not anticipate submitting any new loan applications to RUS. The borrower must receive written approval from RUS before it deposits any proceeds into its General Funds Account.

(f) The borrower must provide the following to RUS for any disposition of a capital asset that does not fall within the scope of paragraph (b) of this section and requires RUS approval:

(1) RUS Form 369 with original signature;

(2) If the disposition involves a condemnation, the borrower must attach a copy of the petition or complaint in the condemnation suit to the RUS Form 369. Items 10, 11, and 12 of the RUS Form 369 may be completed by referring to the attachment. Item 14 need not be completed. The RUS Form 369 and a copy of the petition or complaint in condemnation cases should be submitted to RUS promptly after the petition or complaint has been received by the borrower;

(3) If the purchaser will require the disposition of the asset be free and clear of liens, the partial release of the lien should be prepared by the attorney for the seller or purchaser. It will be the responsibility of the borrower and the borrower's attorney to ensure the accuracy and legal effectiveness of a proposed partial release of the lien;

(4) If the disposition involves real estate or plant in place, in addition to the information required for all dispositions, the seller will provide a brief description of the property being disposed and a statement explaining why the asset is no longer needed for the borrower's system. The borrower shall also provide the following information to RUS for the disposition of real estate and plant in place:

(i) Except in condemnation cases, a statement of agreement between the seller and the purchaser on the proposed selling price. When applicable, include adjustments such as capital additions and retirements, depreciation, taxes, distribution of membership fees, deposits and contributions, prepaid and delinquent bills and accounts, insurance, assignment of easements, the proposed closing date, and other pertinent information. Generally, the closing date selected should not be less than 90 days after the date the required information is forwarded to RUS;

(ii) A complete legal description or real property supported by key and detail maps showing the location of lines or other capital assets to be disposed;

(iii) A breakdown of consumers by classification showing number, mileage, average kWh usage, and revenues for the portion of lines being disposed;

(iv) An inventory of lines on a priced assembly or record unit basis, or, in the case of facilities other than lines, a detailed breakdown of separable units and their costs;

(v) Description and estimated costs of changes, if any, which must be made in the seller's system in order to maintain satisfactory operations after the sale has been completed;

(vi) Other pertinent data such as the physical condition of the property to be disposed, a copy of the lease if facilities to be disposed of are on leased land, and the approval of applicable regulatory bodies where required;

(vii) The retail rates to be applied to the consumers on the lines being disposed (comparative rate schedules); and

(viii) If the purchaser is another RUS borrower or a borrower from a supplemental lender, a description and the estimated costs of the changes, if any, necessary to integrate the properties being acquired with the purchaser's existing system for satisfactory operations.

(5) If the purchaser is to pay the seller in installments, such information should be noted on Item 9 of the RUS Form 369. A sales agreement between the seller and the purchaser, a note or other debt instrument in favor of the seller, and a security agreement in favor of the seller should be executed and collaterally assigned by the seller to the U.S. Government and the supplemental lenders, if applicable. The partial release of the lien will not be executed by RUS, if applicable, until the final installment payment has been received by the seller. The disposition of the proceeds from installment sales will be the same as from cash dispositions);

(6) Dispositions involving exchanges or trades of real estate or plant in place between a borrower and a non-RUS borrower will be considered on an individual case-by-case basis.

(g) Expenditures by the seller in conjunction with the dispositions of capital assets will be properly accounted for and all associated documents shall be retained for review

when RUS conducts its next Loan Fund and Accounting Review.

Subpart R—Lien Accommodations and Subordinations for 100 Percent Private Financing

■ 23. Amend § 1717.855 by revising paragraph (g) to read as follows:

§ 1717.855 Application contents: Advance approval—100 percent private financing of distribution, subtransmission and headquarters facilities, and certain other community infrastructure.

* * * * *

(g) RUS Form 740c, Cost Estimates and Loan Budget for Electric Borrowers;

* * * * *

PART 1724—ELECTRIC ENGINEERING, ARCHITECTURAL SERVICES AND DESIGN POLICIES AND PROCEDURES

■ 24. The authority citation for part 1724 continues to read as follows:

Authority: 7 U.S.C. 901 *et seq.,* 1921 *et seq.,* 6941 *et seq.*

Subpart A—General

■ 25. Revise § 1724.9 to read as follows:

§ 1724.9 Environmental review requirements.

Borrowers must comply with the environmental review requirements in accordance with 7 CFR part 1970. or any successor regulations that implement the provisions of the National Environmental Policy Act.

Subpart D—Electric System Planning

■ 26. Amend § 1724.40 by revising the last sentence to read as follows:

§ 1724.40 General.

* * * These bulletins are available at *https://www.rd.usda.gov/resources/regulations/bulletins.*

Subpart E—Electric System Design

■ 27. Amend § 1724.51 by revising paragraph (f)(1) to read as follows:

§ 1724.51 Design requirements

* * * * *

(f) * * *

(1) This section covers microwave and powerline carrier communications systems, load control, and supervisory control and data acquisition (SCADA) systems but does not include cybersecurity measures.

* * * * *

■ 28. Amend § 1724.54 by revising paragraphs (d)(1)(ii), (e)(2), (f)(2), and (g)(1) and (2) to read as follows:

§ 1724.54 Requirements for RUS approval of plans and specifications.

* * * * *

(d) * * *

(1) * * *

(ii) The borrower shall notify RUS in writing, which may include the Construction Work Plan or amendment thereto that contains the proposed new substation, that a previously approved design will be used, including identification of the previously approved design.

* * * * *

(e) * * *

(2) The borrower shall obtain RUS approval, prior to issuing invitations to bid, of the terms and conditions for all generating plant equipment or construction contracts which will cost $5,000,000 or more, provided however that the terms of any indenture or other agreement between RUS and the borrower supersede the requirement of RUS approval contained herein. Unless RUS approval is required by paragraph (a) of this section, plans and specifications for generating plant equipment and construction do not require RUS approval.

(f) * * *

(2) Unless RUS approval is required by paragraph (a) of this section, plans and specifications for headquarters buildings do not require RUS approval. The application must show floor area and estimated cost breakdown between office building space and space for equipment warehousing and service facilities, and include a one line drawing (floor plan and elevation view), to scale, of the proposed building with overall dimensions shown. The information concerning the planned building may be included in the borrower's construction work plan in lieu of submitting it with the application. (*See* 7 CFR part 1710, subpart F.) Prior to issuing the plans and specifications for bid, the borrower shall also submit to RUS a statement, signed by the architect or engineer, that the building design meets the Uniform Federal Accessibility Standards (*See* § 1724.51(e)(1)(i)).

(g) * * *

(1) This paragraph (g) covers microwave and powerline carrier communications systems, load control, and supervisory control and data acquisition (SCADA) systems, but does not include cybersecurity systems.

(2) The borrower shall obtain RUS approval, prior to issuing invitations to bid, of the terms and conditions for communications and control facilities contracts which will cost $1,500,000 or more; provided however that the terms of any indenture or other agreement between RUS and the borrower supersede the requirement of RUS approval contained herein. Unless RUS approval is required by paragraph (a) of this section, plans and specifications for communications and control facilities do not require RUS approval.

* * * * *

Subpart F—RUS Contract Forms

■ 29. Amend § 1724.70 by revising paragraph (b) to read as follows:

§ 1724.70 Standard forms of contracts for borrowers.

* * * * *

(b) *Contract forms.* RUS promulgates standard contract forms, identified in the List of Required Contract Forms, § 1724.74(c), that borrowers are required to use in accordance with the provisions of this part. A borrower may deviate from the Required Contract Form provided the borrower certifies to RUS that the non-standard form incorporates the provisions of the Required Contract Form that are contained in the RUS Certification Form found at *https://www.rd.usda.gov/resources/directives/electric-sample-documents.* Further, a borrower may utilize a contract other than a Required Contract Form if it is allowed to do so by an indenture or any other agreement between the borrower and RUS. In addition, RUS promulgates standard contract forms identified in the List of Guidance Contract Forms contained in § 1724.74(c) that the borrowers may but are not required to use in the planning, design, and construction of their electric systems. Borrowers are not required to use these guidance contract forms in the absence of an agreement to do so.

■ 30. Amend § 1724.71 by revising paragraph (a), the first sentence of paragraph (b), and paragraph (c) to read as follows;

§ 1724.71 Borrower contractual obligations.

(a) *Loan agreement.* As a condition of a loan or loan guarantee under the RE Act, distribution borrowers are normally required to enter into RUS loan agreements pursuant to which the borrower agrees to use RUS standard forms of contracts for construction, procurement, engineering services and architectural services financed in whole or in part by the RUS loan. Normally, this obligation is contained in section 5.16 of the standard distribution loan contract. To comply with the provisions of the loan agreements as implemented by this part, borrowers must use those forms of contract (hereinafter sometimes

called ''listed contract forms'') identified in the List of Required Standard Contract Forms contained in § 1724.74(c), except as provided in § 1724.70(b). Power Supply borrowers typically execute an indenture and loan contract as well. The terms and conditions of any indenture and loan contract executed by a Power Supply borrower shall govern its obligations with respect to the use of contract forms.

(b) * * * If a borrower is required by this part or by its loan agreement with RUS to use a listed standard form of contract, the borrower shall use the listed contract form in the format available from RUS, either paper or electronic format, except as provided in § 1724.70(bc). * * *

(c) *Amendment.* Where a borrower has entered into a contract in the form required by this part, no change may be made in the terms of the contract, by amendment, waiver or otherwise, without the prior written approval of RUS except as provided in § 1724.70(b).

* * * * *

PART 1730—ELECTRIC SYSTEM OPERATIONS AND MAINTENANCE

■ 31. The authority citation for part 1730 continues to read as follows:

Authority: 7 U.S.C. 901 *et seq.,* 1921 *et seq.,* 6941 *et seq.*

Subpart B—Operations and Maintenance Requirements

■ 32. Amend § 1730.27 by:
■ a. Revising the first sentence of paragraph (a);
■ b. Removing paragraphs (b) and (c);
■ c. Redesignating paragraphs (d) and (e) as paragraphs (b) and (c)
■ d. Revising the first sentence of newly redesignated paragraph (b); and
■ e. Revising newly redesignated paragraph (c)(5); and

The revisions read as follows:

§ 1730.27 Vulnerability and Risk Assessment (VRA).

(a) Each borrower with an approved RUS electric program loan shall perform an initial VRA of its electric system.

* * *

(b) Each applicant that submits an application for an RUS electric program loan or grant shall include with its application package a letter certification that such applicant has performed an initial VRA of its electric system. * * *

(c) * * *

(5) Threats to facilities and assets identified in paragraphs (c)(1) through (4) of this section;

* * * * *

■ 33. Amend § 1730.28 by:
■ a. Revising the first and last sentences of paragraph (a);
■ b. Removing paragraphs (b) and (c);
■ c. Redesignating paragraphs (d) through (j) as paragraphs (b) through (h);
■ d. Revising newly redesignated paragraph (b);
■ e. Removing the last sentence of newly redesignated paragraph (f); and
■ f. Revising newly redesignated paragraph (g)(1).

The revisions read as follows:

§ 1730.28 Emergency Restoration Plan (ERP).

(a) Each borrower shall have a written ERP. * * * If a joint electric utility ERP is developed, each RUS borrower shall prepare an addendum to meet the requirements of paragraphs (c) *through* (e) of this section as it relates to its system.

* * * * *

(b) Each applicant that submits an application for an RUS electric program loan or grant shall include with its application package a letter certification that such applicant has a written ERP.

* * * * *

(g) * * *

(1) The modified ERP must be prepared in compliance with the provisions of paragraphs (c) through (e) of this section; and

* * * * *

Subpart C—Interconnection of Distributed Resources.

■ 34. Amend § 1730.63 by:
■ a. Revising paragraph (a)(5);
■ b. Removing paragraph (b)(2); and
■ c. Redesignating paragraphs (b)(3) and (4) as paragraphs (b)(2) and (3).

The revision reads as follows:

§ 1730.63 IDR policy criteria.

(a) * * *

(5) IDR policies should be reconsidered and updated periodically in a manner that is consistent with prudent utility practice.

* * * * *

■ 35. Revise § 1730.65 to read as follows:

§ 1730.65 Effective dates.

All electric program applicants shall provide a letter of certification executed by the General Manager stating that the borrower meets the requirements of this subpart before such loan may be approved.

Andrew Berke,

Administrator, Rural Utilities Service.

[FR Doc. 2022–25554 Filed 11–29–22; 8:45 am]

BILLING CODE 3410–15–P

DEPARTMENT OF AGRICULTURE

Rural Utilities Service

7 CFR Parts 1738 and 1739

[Docket No. RUS–19–Telecom–0003]

RIN 0572–AC46

Rural Broadband Loans, Loan/Grant Combinations, and Loan Guarantees

AGENCY: Rural Utilities, USDA.

ACTION: Final rule; confirmation and response to comments.

SUMMARY: The Rural Utilities Service (RUS or Agency), an agency in the United States Department of Agriculture (USDA) Rural Development Mission area, published an interim rule with comment in the **Federal Register** on March 12, 2020, to amend its regulation for the Rural Broadband Program, previously referred to as the Rural Broadband Access Loan and Loan Guarantee Program, to implement the Agricultural Act of 2018 (the 2018 Farm Bill). Through this action, RUS is adopting the interim rule as it was published and providing responses to the public comments received.

DATES: Effective November 30, 2022.

FOR FURTHER INFORMATION CONTACT: Laurel Leverrier, Assistant Administrator; Telecommunication Program; Rural Development; U.S. Department of Agriculture; 1400 Independence Avenue SW; Room 4121–S; Washington, DC 20250; telephone 202–720–3416, email *laurel.leverrier@usda.gov.* Persons with disabilities or who require alternative means for communication should contact the USDA Target Center at 202–720–2600.

SUPPLEMENTARY INFORMATION: On December 20, 2018, under the Agricultural Improvement Act of 2018, Public Law 115–334 (2018 Farm Bill), Congress made significant improvements to the program, most notably by furnishing grant assistance to reach the most underserved rural areas lacking broadband access. The Agency published an interim rule with comment on March 12, 2020 (85 FR 14393), to implement those required statutory changes.

The 60-day comment period ended on May 11, 2020. Comments were received from 16 respondents. Respondents included a funding institution, telecommunications and satellite associations and providers, businesses, and a private citizen. Four of the 16 respondents did not offer comments that were responsive or conducive to improving the interim rulemaking. Below are the comments received from

the 12 remaining respondents and the Agency's responses:

Respondent 1: ''The respondent is a longtime supporter of government programs that bring better broadband access to all Americans. Our members support closing the digital divide through reduced regulatory barriers and opening additional government funding opportunities for companies to invest in wireless and wireline deployments of broadband infrastructure. Therefore, the respondent encourages RUS to consider all forms of broadband deployment (both wireless and wireline) when evaluating applications for the Rural Broadband Program funding. By expanding the scope of RUS's program funding it will allow for the economy to continue to grow, provide a technology neutral environment to identify the best solutions to have broadband access to rural communities, and follow Congressional intent to expand the RUS program to utilize technology that incorporates television white spaces (TVWS). Therefore, it is important that RUS activate TVWS in addition to wireline broadband for the United States to support the present and future of Internet of Things (IoT) services.''

Agency response: We appreciate your concern. The broadband program is a technology neutral program and wireless technology along with wireline technology is eligible for funding consideration as long as the overall application meets the eligibility requirements of the program.

Respondent 2: The interim rule should be modified to clarify that the ''associated loan'' component of the grant could be provided by a private funding source. Regardless of whether the loan portion of the grant/loan combination comes from RUS or a private lender, RUS should consider adding alternative forms of credit support. Since the statutory and regulatory framework allows RUS the discretion to determine appropriate security arrangements, respondent believes that a letter of credit alternative should be permitted for those systems that have repaid and no longer borrow from the Government (''Non-Government Borrowers''). The published interim final rule does not explain how RUS would calculate the fees, and respondent encourages the agency to elaborate on the expected method of calculating the fees in the final rule.

Agency response: The requirement to apply for an RUS loan in order to receive associated grant funding is a statutory requirement and cannot be modified at this time. Concerning the security arrangements for an RUS loan, applicants may propose alternate forms of collateral but should be prepared to enter into security arrangements as detailed in the regulation.

Respondent 3: ''Please do not forget the micro deserts. Broadband is available two houses from me but they will not extend to me on my farm. I rely on a hotspot that doesn't always work, and never gets more then about 4m BPS download and less than one upload and that's with an expensive booster. I have to go to town to update my computer. Our cell signal is not good.''

Agency response: The Agency understands your situation. Applicants determine the service areas that they are requesting financing for and the Agency requires that all premises in the proposed funded service must be capable of receiving the proposed broadband service.

Respondent 4: Programs can only reach their highest potential if they adhere to the principles for which the respondent has consistently advocated: a focus on dedicating funding to bring broadband to truly unserved areas in the most cost-effective way possible, and a commitment to ensuring a fully transparent process so that all providers can ensure that scarce funding is not allocated to already served areas.

Agency response: The Agency will analyze industry trends and set the broadband eligibility speeds accordingly to ensure that areas with inadequate broadband service can receive improved broadband service comparable to broadband service that is being provided in non-rural areas.

Respondent 5: ''Significantly reduce the environmental reporting requirements in the application. Remove location and network specifics regarding Non-funded Service Areas (NFSA) and Unadvanced Prior Loan Fund (UPLF) areas. Allow non-contiguous boundaries for NFSAs. Points associated with schools and libraries should be handled differently. The requirement that 100% of location in PFSA [proposed funded service area] be unserved should be relaxed when applying for 100% grants. Requiring a blanket first lien on all assets (when a loan component was included) eliminated many potential applicants who use other lending sources. Do not require applicant to provide subscriber penetrations per serving area. Calculation of depreciation expense on grant funded assets should be eliminated or should have the ability to be manually adjusted. Environmental questionnaire (EQ) should be similar to EQ for RUS Infrastructure loans. Allow adequate time for application preparation. Definition of Unserved should match the FCC [Federal Communications Commission] definition. Eliminate requirement to list fiber sizing on network diagrams. There are also several enhancements we would like to see with the application portal.''

Agency response: The application process and system have been designed to ensure that all regulatory/statutory requirements are met and that the proposed system is both financially and technically feasible. The information requested is essential in making these determinations.

Respondent 6: ''Consistent with the intent of the 2018 Farm Bill, section 1738.101(a)(1) should make it clear that applicants are eligible for grant funding if they are pairing the grant with a loan from a third-party, not just a loan from RUS. Similarly, the discussion of grants for development costs in section 1738.101(d) should include broadband loans from third parties, not just RUS broadband loans.

- The definition and discussion of the ''Broadband lending speed'' should be modified to clarify that the initial Broadband lending speed under these programs is ''25/3 Mbps fixed terrestrial'' and clarify the discussion of eligible service area to make it clear that initially any area with anything less than ''25/3 Mbps fixed terrestrial'' is eligible while prioritizing areas that lack access to at least 10/1.
- RUS should emphasize that mobile and satellite service will not be considered in determining eligibility, that RUS funding will not be provided to mobile service, but rather for high-capacity backbone to connect households and premises, and also to support wireless sites.
- RUS should clarify that, if there are applications for low density areas, RUS will exercise its discretion in determining the mix of grants and loans by using more of the designated funds in the form of grants and targeting such grant funding to lower density areas.
- The standards set forth in section 1738.101(b) for determining density should be based upon household density, not population density.
- RUS should allow matching funding, whether in the form of cash or loan funds, to be spread over the built-out period, rather than fully expended upfront before grant funding can be used. And loan/grant combo awardees should be allowed to draw equally from loan and grant funds rather that expend loan funds before accessing grant funds.
- For these programs, RUS should continue with the competitive market analysis used in ReConnect program,

rather than the heightened requirements contained in the IFR [interim final rule].

• RUS should modify the treatment of challenges to applications by providing the applicant with access to the challenge and given a chance to respond within 30 days.

• In cases where issues raised in a challenge can be addressed by minor modifications to the application, RUS should allow applicants to do so.

• We encourage RUS to clearly state in the Application what the applicant must report and provide regarding its structure to increase its flexibility regarding partnerships (for example, not requiring one partner to be designated ''lead applicant'').

• Regarding fidelity bond coverage of 15% of the loan or loan/grant amount, RUS should permit a letter of credit in lieu of a fidelity bond and should allow either mechanism to be reduced as the awardee meets or exceeds build-out milestones or obligations.

• We also ask RUS to clarify the effective date of IFR and clarify that the RUS letter to the applicant on fund availability is the event that marks the beginning of the five-year build-out period.

• Finally, we ask RUS to explain how lender fees for loan guarantees would be calculated and how RUS would use the proceeds from those fees.''

Agency response: Pairing grant funding with an RUS loan is a statutory requirement and cannot be modified at this time.

The broadband lending speed is designed to change with the ever-increasing bandwidth requirements that the public requires. The Agency will evaluate the broadband lending spend each time that a funding announcement is published and set this requirement accordingly.

The broadband program is technology neutral and any technology that can meet the broadband lending speed is eligible for consideration.

The amount of grant funds and the associated density calculations that can be applied for are statutory requirements and cannot be changed at this time.

The agency will consider the recommendation to spread out matching requirements over the construction period but at this time, the requirement will remain that matching funds be expended first.

Through the Public Notice Response process, the Agency will conduct on-site review of the proposed service area to determine if adequate broadband exists. If an area of the proposed funded service area is found to be ineligible, the Agency will work with applicants to modify the proposed service area accordingly.

Once an offer of an award is extended to an applicant, the 5-year construction period starts once all closing conditions are satisfied and funds become available to the awardee.

At this time, the Agency has not determined how fees associated with a loan guarantee will be calculated. Once this process has been fully determined, the Agency will conduct outreach explaining the process.

Respondent 7: As demonstrated by respondent's successful deployments in rural America and around the world, excluding satellite from the definition of broadband is arbitrary and would unjustly penalize operators that use satellite in whole or in part to provide the same services as exclusively terrestrial operators, with no perceivable difference in customers' experiences. In contrast, enabling the inclusion of satellite connectivity in RUS's rural broadband funding programs would empower applicants to bring service to the most rural areas of the United States using a combination of satellite and terrestrial deployments. Respondent urges RUS to adopt technology-neutral standards without an arbitrary definition of broadband to ensure that applicants for RUS funding have the option to integrate cost-effective and high-performance satellite broadband technologies into their networks. At the very least, RUS should clarify that its definition of broadband only applies to last mile connectivity and does not seek to limit other non-terrestrial network components used to reach remote rural areas.

Agency response: To ensure that all rural areas have sufficient bandwidth, the Agency will evaluate the eligibility and construction requirements every time a funding announcement is published. The bandwidth for both eligibility and construction will be set to ensure that all rural Americans have access to sufficient bandwidth. Applicants must ensure that all households in the proposed funded service area can receive the minimum bandwidth requirements at the same time.

Respondent 8: The rule proposed by RUS excludes satellite Broadband from aspects of its grant programs, while the 2018 Farm Bill did not exclude satellite operators who otherwise meet the requirements of RUS' assistance programs from participating in these programs. Satellite broadband services should not be excluded from the determination of whether proposed project areas are already served. Accordingly, RUS should clarify that satellite providers are eligible to participate in these important programs and adopt technology neutral criteria. Wrongly excluding satellite—or even failing to remove this ambiguity—will greatly undermine RUS's ability to achieve its goals of increasing economic opportunity in rural America by supporting broadband infrastructure deployments that will provide affordable, high-quality connectivity to rural communities.

Agency response: To ensure that that all rural areas have sufficient bandwidth, the Agency will evaluate the eligibility and construction requirements every time a funding announcement is published. The bandwidth for both eligibility and construction will be set to ensure that all rural Americans have access to sufficient bandwidth. Applicants must ensure that all households in the proposed funded service area can receive the minimum bandwidth requirements at the same time.

Respondent 9: With its Starlink satellite system, respondent seeks to provide high-speed broadband worldwide, and specifically to remote and rural areas that are the most unserved. Although respondent has made no decision to participate in any program administered by RUS or any other Federal or state broadband program, respondent opposes any proposals that would arbitrarily exclude next-generation satellite systems from the definition of broadband. Broadband should be defined by the quality of service provided, not by the mechanism which provides it.

Agency response: The Agency will continue to monitor the developments in satellite technology and may consider modifying the restrictions on satellite provided broadband for future funding rounds.

Respondent 10: Respondent unequivocally supports the position stated in respondent 7's letter against the proposed rule changing the definition of broadband to exclude satellite. In a state where zero school districts have the FCC recommended 1 Mbps per student capacity and 20% of Alaska residents have no broadband access other than satellite, Alaska would be irreparably harmed if the Department were to adopt the proposed rules that exclude satellite.

Agency response: To ensure that that all rural areas have sufficient bandwidth, the Agency will evaluate the eligibility and construction requirements every time a funding announcement is published. The bandwidth for both eligibility and construction will be set to ensure that

all rural Americans have access to sufficient bandwidth. Applicants must ensure that all households in the proposed funded service area can receive the minimum bandwidth requirements at the same time.

Respondent 11: Respondent supports the interim funding rule and provides the following comments to improve upon the rules, as summarized below:

- Applicants should be allowed to pair their grants with loans from third parties, not just loans from RUS.
- ''Broadband lending speed'' should be modified to clarify that the initial broadband lending speed under these programs is ''25/3 Mbps fixed terrestrial'' and clarify the discussion of ''eligible service area'' to make it clear that initially any area with anything less than ''25/3 Mbps fixed terrestrial'' is eligible while prioritizing areas that lack access to at least 10/1.
- Mobile and satellite services should not be considered for purposes of determining eligible areas, nor should mobile broadband be included for purposes of ''Broadband lending speeds'' that may receive RUS funding.
- RUS should allow matching funding, whether in the form of cash or loan funds, to spread over the built-out period, rather than fully expended upfront before grant funding can be used.
- RUS should not require applicants to provide a competitive analysis of the market, because such analysis is not provided within the statute nor is such analysis necessary for purposes of carrying out the other provisions in the statute.
- RUS should allow applicants an opportunity to respond to challenges from existing service providers claiming to serve areas within the applicants' proposed funded service area; and should permit applicants to modify their application to respond to challenges. In any event, RUS should not exempt from disclosure the information that is presented in support of an existing service provider's claim. This one-way, opaque process invites abuse by existing service providers and prevents applicants from defending their proposals.

Agency response: Pairing grant funding with an RUS loan is a statutory requirement and cannot be modified at this time.

The broadband lending speed is designed to change with the ever-increasing bandwidth requirements that the public requires. The Agency will evaluate the broadband lending speed each time that a funding announcement is published and set this requirement accordingly.

The broadband program is technology neutral and any technology that can meet the broadband lending speed is eligible for consideration.

The amount of grant funds and the associated density calculations that can be applied for are statutory requirements and cannot be changed at this time.

The Agency will consider the recommendation to spread out matching requirements over the construction period but at this time, the requirement will remain that matching funds be expended first.

Through the Public Notice Response process, the Agency will conduct on-site review of the proposed service area to determine if adequate broadband exists. If an area of the proposed funded service area is found to be ineligible, the Agency will work with applicants to modify the proposed service area accordingly.

Once an offer of an award is extended to an applicant, the 5-year construction period starts once all closing conditions are satisfied and funds become available to the awardee.

Respondent 12: ''Regardless of the specific needs of a locality, strong last-mile wireless broadband connectivity is a necessity for countless internet of things use cases the RUS seeks to advance, such as smart agriculture deployments, and should be prioritized in Rural Broadband Program awards. RUS Enabled by new rules adopted by the Federal Communications Commission, new wireless technology that utilizes television white spaces (TVWS) has the demonstrated ability to exceed Rural Broadband Program thresholds in RUS' interim final rule, providing extended last-mile wireless connectivity that supports higher throughput. We strongly encourage RUS to ensure that the updated Rural Broadband Program's rules support applications utilizing TVWS technology deployments that will increase and improve broadband access to rural communities, consistent with Congress' intent in the Agricultural Act of 2018.''

Agency response: Fixed wireless broadband is an eligible technology as long as it can deliver the required broadband service to every household in the proposed service area at the same time.

The Agency evaluated the responsive comments and based on analysis and response to comments, we are adopting the interim rule without change.

List of Subjects

7 CFR Part 1738

Loan programs—communications, Rural areas, Telecommunications, Telephone.

7 CFR Part 1739

Grant programs—communications, Rural areas, Telecommunications, Telephone.

PART 1738—RURAL BROADBAND LOANS, LOAN/GRANT COMBINATIONS, AND LOAN GUARANTEES

PART 1739—BROADBAND GRANT PROGRAM

■ Accordingly, the interim rule amending 7 CFR parts 1738 and 1739, which was published at 85 FR 14393 on March 12, 2020, is adopted as final without change.

Andrew Berke,

Administrator, Rural Utilities Service.

[FR Doc. 2022–25856 Filed 11–29–22; 8:45 am]

BILLING CODE 3410–15–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2022–1053; Project Identifier MCAI–2022–00200–T; Amendment 39–22234; AD 2022–23–07]

RIN 2120–AA64

Airworthiness Directives; BAE Systems (Operations) Limited Airplanes

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

ACTION: Final rule.

SUMMARY: The FAA is adopting a new airworthiness directive (AD) for all BAE Systems (Operations) Limited Model BAe 146 series airplanes. This AD was prompted by a finding that when the autopilot is engaged, the architecture of the autopilot system does not automatically disconnect the autopilot in response to pilot application of a pitch input or when the electric pitch trim switch on either pilot control wheel is operated. This AD requires modifying the autopilot engagement circuit. The FAA is issuing this AD to address the unsafe condition on these products.

DATES: This AD is effective January 4, 2023.

The Director of the Federal Register approved the incorporation by reference of a certain publication listed in this AD as of January 4, 2023.

ADDRESSES:

AD Docket: You may examine the AD docket at regulations.gov under Docket No. FAA–2022–1053; or in person at Docket Operations between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this final rule, the mandatory continuing airworthiness information (MCAI), any comments received, and other information. The address for Docket Operations is U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE, Washington, DC 20590.

Material Incorporated by Reference:

- For service information identified in this final rule, contact BAE Systems (Operations) Limited, Customer Information Department, Prestwick International Airport, Ayrshire, KA9 2RW, Scotland, United Kingdom; telephone +44 1292 675207; fax +44 1292 675704; email *RApublications@baesystems.com;* website *baesystems.com/Businesses/RegionalAircraft/index.htm.*
- You may view this service information at the FAA, Airworthiness Products Section, Operational Safety Branch, 2200 South 216th St., Des Moines, WA. For information on the availability of this material at the FAA, call 206–231–3195. It is also available at *regulations.gov* under Docket No. FAA–2022–1053.

FOR FURTHER INFORMATION CONTACT:

Todd Thompson, Aerospace Engineer, Large Aircraft Section, FAA, International Validation Branch, 2200 South 216th St., Des Moines, WA 98198; telephone 206–231–3228; email *todd.thompson@faa.gov.*

SUPPLEMENTARY INFORMATION:

Background

The FAA issued a notice of proposed rulemaking (NPRM) to amend 14 CFR part 39 by adding an AD that would apply to all BAE Systems (Operations) Limited Model BAe 146 series airplanes. The NPRM published in the **Federal Register** on August 22, 2022 (87 FR 51271). The NPRM was prompted by AD G–2022–0002, dated February 11, 2022, issued by United Kingdom Civil Aviation Authority (U.K. CAA), which is the aviation authority for the United Kingdom (referred to after this as the MCAI). The MCAI states that when the autopilot is engaged, the architecture of the autopilot system does not automatically disconnect the autopilot in response to pilot application of a pitch input or when the electric pitch trim switch on either pilot control wheel is operated.

In the NPRM, the FAA proposed to require modifying the autopilot engagement circuit. The FAA is issuing this AD to address continued autopilot engagement after flightcrew input to disengage the autopilot, which could lead to reduced controllability of the airplane.

You may examine the MCAI in the AD docket at regulations.gov under Docket No. FAA–2022–1053.

Discussion of Final Airworthiness Directive

Comments

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

Conclusion

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

Related Service Information Under 1 CFR Part 51

BAE Systems (Operations) Limited has issued Modification Service Bulletin SB.22–072–36262A, dated September 14, 2021. This service information describes procedures for modifying the autopilot engagement circuit, including the wiring, relay, and certain module blocks. This service information is reasonably available because the interested parties have access to it through their normal course of business or by the means identified in the **ADDRESSES** section.

Costs of Compliance

The FAA estimates that this AD affects 20 airplanes of U.S. registry. The FAA estimates the following costs to comply with this AD:

ESTIMATED COSTS FOR REQUIRED ACTIONS

Labor cost	Parts cost	Cost per product	Cost on U.S. operators
130 work-hours × $85 per hour = $11,050	$2,124	$13,174	$263,480

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:

2022–23–07 BAE Systems (Operations) Limited Amendment 39–22234; Docket No. FAA–2022–1053; Project Identifier MCAI–2022–00200–T.

(a) Effective Date

This airworthiness directive (AD) is effective January 4, 2023.

(b) Affected ADs

None.

(c) Applicability

This AD applies to all BAE Systems (Operations) Limited Model BAe 146–100A, –200A, and –300A airplanes, certificated in any category.

(d) Subject

Air Transport Association (ATA) of America Code 22, Auto-Flight.

(e) Unsafe Condition

This AD was prompted by a finding that when the autopilot is engaged, the architecture of the autopilot system does not automatically disconnect the autopilot in response to pilot application of a pitch input or when the electric pitch trim switch on either pilot control wheel is operated. The FAA is issuing this AD to address continued autopilot engagement after flightcrew input to disengage the autopilot, which could lead to reduced controllability of the airplane.

(f) Compliance

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

(g) Modification

Within 12 months after the effective date of this AD, modify the autopilot engagement circuit in accordance with the Accomplishment Instructions of BAE Systems (Operations) Limited Modification Service Bulletin SB.22–072–36262A, dated September 14, 2021.

(h) No Reporting Requirement

Although BAE Systems (Operations) Limited Modification Service Bulletin SB.22–072–36262A, dated September 14, 2021, specifies to submit certain information to the manufacturer, this AD does not include that requirement.

(i) Other AD Provisions

The following provisions also apply to this AD:

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

(2) *Contacting the Manufacturer:* For any requirement in this AD to obtain instructions from a manufacturer, the instructions must be accomplished using a method approved by the Manager, International Validation Branch, FAA; or the United Kingdom Civil Aviation Authority (U.K. CAA); or BAE Systems (Operations) Limited's U.K. CAA Design Organization Approval (DOA). If approved by the DOA, the approval must include the DOA-authorized signature.

(j) Additional Information

(1) Refer to U.K. CAA AD G–2022–0002, dated February 11, 2022, for related information. This U.K. CAA AD may be found in the AD docket at *regulations.gov* under Docket No. FAA–2022–1053.

(2) For more information about this AD, contact Todd Thompson, Aerospace Engineer, Large Aircraft Section, FAA, International Validation Branch, 2200 South 216th St., Des Moines, WA 98198; telephone 206–231–3228; email *todd.thompson@faa.gov.*

(k) Material Incorporated by Reference

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

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

(i) BAE Systems (Operations) Limited Modification Service Bulletin SB.22–072–36262A, dated September 14, 2021.

(ii) [Reserved]

(3) For service information identified in this AD, contact BAE Systems (Operations) Limited, Customer Information Department, Prestwick International Airport, Ayrshire, KA9 2RW, Scotland, United Kingdom; telephone +44 1292 675207; fax +44 1292 675704; email *RApublications@baesystems.com;* website *baesystems.com/Businesses/RegionalAircraft/index.htm.*

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

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

Issued on November 1, 2022.

Christina Underwood,

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

[FR Doc. 2022–26083 Filed 11–29–22; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2022–0156; Project Identifier AD–2021–01474–T; Amendment 39–22237; AD 2022–23–10]

RIN 2120–AA64

Airworthiness Directives; The Boeing Company Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: The FAA is superseding Airworthiness Directive (AD) 2021–06–03, which applied to all The Boeing Company Model 777F series airplanes. AD 2021–06–03 required deactivating the potable water system. This AD was prompted by a report of a water supply line that detached at a certain joint located above an electronic equipment (EE) cooling filter, leading to water intrusion into the forward EE bay. This AD retains the actions required by AD 2021–06–03 and requires installing a shroud to the water supply line in the forward cargo compartment, and performing a leak test of the potable water system. For certain airplanes, this AD also requires replacing tubes and hoses from the water supply line and installing a shroud to the water return line. The FAA is issuing this AD to address the unsafe condition on these products.

DATES: This AD is effective January 4, 2023.

The Director of the Federal Register approved the incorporation by reference of certain publications listed in this AD as of January 4, 2023.

The Director of the Federal Register approved the incorporation by reference

of a certain other publication listed in this AD as of March 5, 2021 (86 FR 12809, March 5, 2021).

ADDRESSES:

AD Docket: You may examine the AD docket at *regulations.gov* under Docket No. FAA–2022–0156; 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 Boeing Commercial Airplanes, Attention: Contractual & Data Services (C&DS), 2600 Westminster Blvd., MC 110 SK57, Seal Beach, CA 90740–5600; telephone 562 797 1717; website *myboeingfleet.com*.
- You may view this service information at the FAA, Airworthiness Products Section, Operational Safety Branch, 2200 South 216th St., Des Moines, WA. For information on the availability of this material at the FAA, call 206–231–3195. It is also available at *regulations.gov* under Docket No. FAA–2022–0156.

Examining the AD Docket

You may examine the AD docket at *regulations.gov* by searching for and locating Docket No. FAA–2022–0156; or in person at Docket Operations between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this final rule, any comments received, and other information. The address for Docket Operations is U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE, Washington, DC 20590.

FOR FURTHER INFORMATION CONTACT:

Courtney Tuck, Aerospace Engineer, Cabin Safety and Environmental Systems Section, FAA, Seattle ACO Branch, 2200 South 216th St., Des Moines, WA 98198; phone and fax: 206–231–3986; email: *Courtney.K.Tuck@faa.gov.*

SUPPLEMENTARY INFORMATION:

Background

The FAA issued a notice of proposed rulemaking (NPRM) to amend 14 CFR part 39 to supersede AD 2021–06–03, Amendment 39–21469 (86 FR 12809, March 5, 2021) (AD 2021–06–03). AD 2021–06–03 applied to all The Boeing Company Model 777F series airplanes. The NPRM published in the **Federal Register** on March 25, 2022 (87 FR 17035). The NPRM was prompted by the development of new actions that result in a need to modify AD 2021–06–03. AD 2021–06–03 was issued because of a report of a water supply line that detached at a certain joint located above an EE cooling filter, leading to water intrusion into the forward EE bay. In the NPRM, the FAA proposed to continue to require deactivating the potable water system. The NPRM also proposed to require installing a shroud to the water supply line in the forward cargo compartment, and performing a leak test of the potable water system. For certain airplanes, the NPRM also proposed to require replacing tubes and hoses from the water supply line and installing a shroud to the water return line. The FAA is issuing this AD to address water entering the EE cooling system via the cooling filter, which can affect multiple EE bay racks and line replaceable units (LRUs), resulting in loss of functionality or inaccurate output of critical electrical systems and possible loss of control of the airplane.

Discussion of Final Airworthiness Directive

Comments

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

The FAA received additional comments from three commenters, including Boeing, FedEx, and All Nippon Airways. The following presents the comments received on the NPRM and the FAA's response to each comment.

Request To Change the Affected Airplanes for Certain Requirements

FedEx and Boeing requested that the FAA change the affected airplanes in paragraph (g)(2) of the proposed AD from ''L/Ns [line numbers] 960 and subsequent.'' to ''L/N 960 through L/N 1689.'' FedEx noted that the airplanes affected by paragraph (g)(2) of the proposed AD should reflect the effectivity of Boeing Alert Requirements Bulletin 777–38A0048 RB, dated October 18, 2021. FedEx stated that if the affected airplanes are not revised, then the final rule will require Boeing Alert Requirements Bulletin 777–38A0048 RB, dated October 18, 2021, to be accomplished on aircraft to which it is not effective. Boeing pointed out that the FAA has previously accepted this alternative method of compliance (AMOC) to AD 2021–06–03 for L/N(s) 1692 and on, which have incorporated Type Design Change PRR 62701 Part B.

The FAA agrees with the request for the reasons stated above. The FAA has changed paragraph (g)(2) of this AD from ''L/Ns 960 and subsequent'' to ''L/N 960 through L/N 1689 inclusive.''

Request To Change the Compliance Time of an Approved AMOC

FedEx requested that the FAA allow the AMOC to AD 2021–06–03 that included Boeing Alert Service Bulletin 777–38A0047, dated March 30, 2021, to remain valid for 24 months from the published date of Boeing Alert Service Bulletin 777–38A0047, dated March 30, 2021, in this AD. FedEx reasoned that the AMOC to AD 2021–06–03 will expire earlier than actions specified in Boeing Alert Requirements Bulletin 777–38A0048 RB, dated October 18, 2021, can reasonably be accomplished. All Nippon Airways requested that the AMOC to AD 2021–06–03 for Boeing Alert Service Bulletin 777–38A0047, dated March 30, 2021, remain valid for 24 months from the effective date of this AD. All Nippon Airways contended that if this AD does not allow Boeing Alert Service Bulletin 777–38A0047, dated March 30, 2021, to remain valid, certain airplanes will be grounded. All Nippon Airways also noted that if this AD continues to allow Boeing Alert Service Bulletin 777–38A0047, dated March 30, 2021, as an AMOC to this AD, but without extending the compliance time, certain airplanes may be grounded due to the time needed to submit and validate the AMOC Notice to its local authority.

Alternatively, All Nippon Airways requested that this AD be issued after the expiration of the interim action of the AMOC to AD 2021–06–03 that includes Boeing Alert Service Bulletin 777–38A0047, dated March 30, 2021. All Nippon Airways contended that if this AD does not allow the AMOC that specifies Boeing Alert Service Bulletin 777–38A0047, dated March 30, 2021, to remain valid, certain airplanes will be grounded for the reasons described above.

The FAA agrees with the intent behind the requests but cannot change the existing AMOC to provide this relief to operators. However, the FAA is considering issuing an amended AMOC that would extend the compliance time of Boeing Alert Service Bulletin 777–38A0047, dated March 30, 2021. If this amended AMOC is issued, then it may extend the 24-month compliance time to align with the compliance time of Boeing Alert Requirements Bulletin

777–38A0048 RB, dated October 18, 2021. The FAA has added paragraph (n)(4) of this AD to state that ''AMOCs approved for AD 2021–06–03 are approved as AMOCs for the corresponding provisions of this AD.''

Additionally, the FAA does not agree to delay the issuance of this AD until after the expiration of the interim action of the AMOC to AD 2021–06–03 that includes Boeing Alert Service Bulletin 777–38A0047, dated March 30, 2021. An AD is issued to correct an unsafe condition. The unsafe condition will be corrected using Boeing Alert Requirements Bulletin 777–38A0048 RB, dated October 18, 2021. The FAA has not changed the AD in this regard.

Request To Reference the Optional Interim Action of AD 2021–06–03

FedEx and Boeing requested that the FAA include a paragraph in this AD that allows for an optional interim action in accordance with Boeing Alert Service Bulletin 777–38A0047, dated March 30, 2021. FedEx and Boeing maintained that this AD should reference Boeing Alert Service Bulletin 777–38A0047, dated March 30, 2021, which was included in an AMOC to AD 2021–06–03. FedEx noted that by including the interim action of Boeing Alert Service Bulletin 777–38A0047, dated March 30, 2021, in this final rule, the information will provide a more complete picture of the entire timeline for future reference.

The FAA agrees for the reasons provided. The FAA has previously approved the AMOC to AD 2021–06–03 regarding the installation of a temporary water line shroud in accordance with Boeing Alert Service Bulletin 777–38A0047, dated March 30, 2021. As a result, the FAA has added paragraph (l) of this AD, which allows the activation of the potable water system provided that installation of a shroud around the water supply line and gray water line, installation of a shroud around the water return line, and post-installation inspections and applicable corrective actions are done in accordance with Boeing Alert Service Bulletin 777–38A0047, dated March 30, 2021; and provided that the potable water system is deactivated within a certain compliance time. The FAA has also redesignated subsequent paragraphs accordingly. The FAA has also revised the Costs of Compliance section to include the cost estimates for this optional action.

Conclusion

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

Related Service Information Under 1 CFR Part 51

The FAA reviewed Boeing Alert Requirements Bulletin 777–38A0048 RB, dated October 18, 2021. This service information specifies procedures for replacing tubes and hoses from the water supply line and installing a shroud to the water supply and return lines in the forward cargo compartment and performing a leak test of the potable water system.

The FAA also reviewed Boeing Alert Service Bulletin 777–38A0047, dated March 30, 2021. This service information describes procedures for installing a shroud around the water supply line and gray water line at station (STA) 529 to STA 634 in the forward cargo compartment, installing a shroud around the water return line at STA 550 to STA 620 in the forward cargo compartment, post-installation inspection requirements (which, depending on the shroud location, include a detailed inspection for any evidence of a water leak and a general visual inspection to determine if the shroud is in serviceable condition), and corrective actions (which include doing applicable corrective actions and a leak test until no leak is detected, and doing applicable corrective actions to put the shroud back to serviceable condition).

This AD also requires Boeing Multi Operator Message MOM–MOM–21–0089–01B, dated February 26, 2021, which the Director of the Federal Register approved for incorporation by reference as of March 5, 2021 (86 FR 12809, March 5, 2021).

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

Costs of Compliance

The FAA estimates that this AD affects 58 airplanes of U.S. registry. The FAA estimates the following costs to comply with this AD:

ESTIMATED COSTS

Action	Labor cost	Parts cost	Cost per product	Cost on U.S. operators
Deactivation of potable water system (retained actions from AD 2021–06–03).	2 work-hours × $85 per hour = $170	$0	$170	$9,860.
Replace tubes and hoses, and install shroud (new action).	Up to 12 work-hours × $85 per hour = Up to $1,020	Up to $1,850	Up to $2,870	Up to $166,460.
Potable water system leak test (new action).	2 work-hours × $85 per hour = $170	$0	$170	$9,860.

ESTIMATED COSTS FOR OPTIONAL ACTIONS

Action	Labor cost	Parts cost	Cost per product
Install shrouds	Up to 2 work-hours × $85 per hour = $170	Up to $1,380	Up to $1,550.
Post installation inspections	Up to 3 work-hours × $85 per hour = $255 per inspection cycle	$0	Up to $255 per inspection cycle.
On-condition actions	Up to 11 work-hours × $85 per hour = $935	$0	Up to $935.

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

Authority for This Rulemaking

Title 49 of the United States Code specifies the FAA's authority to issue rules on aviation safety. Subtitle I, section 106, describes the authority of

the FAA Administrator. Subtitle VII: Aviation Programs, describes in more detail the scope of the Agency's authority.

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

Regulatory Findings

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

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

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

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

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

List of Subjects in 14 CFR Part 39

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

The Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

■ 2. The FAA amends § 39.13 by:

■ a. Removing Airworthiness Directive (AD) 2021–06–03, Amendment 39–21469 (86 FR 12809, March 5, 2021); and

■ b. Adding the following new AD:

2022–23–10 The Boeing Company: Amendment 39–22237; Docket No. FAA–2022–0156; Project Identifier AD–2021–01474–T.

(a) Effective Date

This airworthiness directive (AD) is effective January 4, 2023.

(b) Affected ADs

This AD replaces AD 2021–06–03, Amendment 39–21469 (86 FR 12809, March 5, 2021) (AD 2021–06–03).

(c) Applicability

This AD applies to all The Boeing Company Model 777F series airplanes, certificated in any category.

(d) Subject

Air Transport Association (ATA) of America Code 38, Water/waste.

(e) Unsafe Condition

This AD was prompted by a report of a water supply line that detached at a certain joint located above an electronic equipment (EE) cooling filter, leading to water intrusion into the forward EE bay. This AD was also prompted by the development of new actions to address the unsafe condition. The FAA is issuing this AD to address water entering the EE cooling system via the cooling filter, which can affect multiple EE bay racks and line replaceable units (LRUs), resulting in loss of functionality or inaccurate output of critical electrical systems and possible loss of control of the airplane.

(f) Compliance

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

(g) Retained Deactivation of Potable Water System, With No Changes

This paragraph restates the requirements of paragraph (g) of AD 2021–06–03, with no changes. For the airplanes identified in paragraphs (g)(1) and (2) of this AD: Within 5 days after March 5, 2021 (the effective date of AD 2021–06–03), deactivate the potable water system, in accordance with Boeing Multi Operator Message MOM–MOM–21–0089–01B, dated February 26, 2021 (Boeing MOM–MOM–21–0089–01B).

(1) Line numbers (L/Ns) 959 and earlier on which the actions specified in Boeing Service Bulletin 777–38–0042 have been accomplished.

(2) L/Ns 960 through L/N 1689 inclusive.

Note 1 to paragraph (g): Guidance on deactivating the potable water system can be found in Boeing 777 Aircraft Maintenance Manual (AMM) Task 38–10–00–040–801.

(h) Retained Installation Prohibition, With No Changes

This paragraph restates the requirements of paragraph (h) of AD 2021–06–03, with no changes. For airplanes not identified in paragraph (g) of this AD: As of March 5, 2021 (the effective date of AD 2021–06–03), accomplishment of the actions specified in Boeing Service Bulletin 777–38–0042 is prohibited.

(i) Retained Reporting Provisions, With No Changes

This paragraph restates the requirements of paragraph (i) of AD 2021–06–03, with no changes. Although Boeing MOM–MOM–21–0089–01B specifies to report inspection findings, this AD does not require any report.

(j) New Required Actions

Except as specified by paragraph (k) of this AD: At the applicable times specified in the ''Compliance'' paragraph of Boeing Alert Requirements Bulletin 777–38A0048 RB, dated October 18, 2021, do all applicable actions identified in, and in accordance with, the Accomplishment Instructions of Boeing Alert Requirements Bulletin 777–38A0048 RB, dated October 18, 2021.

Note 1 to paragraph (j): Guidance for accomplishing the actions required by this AD can be found in Boeing Alert Service Bulletin 777–38A0048, dated October 18, 2021, which is referred to in Boeing Alert Requirements Bulletin 777–38A0048 RB, dated October 18, 2021.

(k) Exceptions to Service Information Specifications

Where the Compliance Time columns of the tables in the ''Compliance'' paragraph of Boeing Alert Requirements Bulletin 777–38A0048 RB, dated October 18, 2021, use the phrase ''the Original Issue date of Requirements Bulletin 777–38A0048 RB,'' this AD requires using ''the effective date of this AD.''

(l) Optional Action for Deactivation of Potable Water System

Accomplishment of the installation of a shroud around the water supply line and gray water line at station (STA) 529 to STA 634 in the forward cargo compartment, and a shroud around the water return line at STA 550 to STA 620 in the forward cargo compartment, as specified in the Accomplishment Instructions of Boeing Alert Service Bulletin 777–38A0047, dated March 30, 2021, terminates the potable water system deactivation required by paragraph (g) of this AD, provided the conditions specified in paragraphs (l)(1) and (2) of this AD are met.

(1) Repetitive inspections and applicable corrective actions are done at the applicable times specified in Table 1 and Table 2 of paragraph 1.E, ''Compliance,'' of Boeing Alert Service Bulletin 777–38A0047, dated March 30, 2021, and in accordance with the Accomplishment Instructions of Boeing Alert Service Bulletin 777–38A0047, dated March 30, 2021.

(2) The potable water system is deactivated in accordance with Boeing MOM–MOM–21–0089–01B, within 42 months after March 30, 2021 (the issue date of Boeing Alert Service Bulletin 777–38A0047, dated March 30, 2021).

(m) Terminating Action for Deactivation of Potable Water System

Accomplishment of the required actions specified in the Accomplishment Instructions of Boeing Alert Requirements Bulletin 777–38A0048 RB, dated October 18, 2021, terminates the potable water system deactivation required by paragraph (g) of this AD.

(n) Alternative Methods of Compliance (AMOCs)

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

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

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

(4) AMOCs approved for AD 2021–06–03 are approved as AMOCs for the corresponding provisions of this AD.

(o) Related Information

For more information about this AD, contact Courtney Tuck, Aerospace Engineer, Cabin Safety and Environmental Systems Section, FAA, Seattle ACO Branch, 2200 South 216th St., Des Moines, WA 98198; phone and fax: 206–231–3986; email: *Courtney.K.Tuck@faa.gov.*

(p) Material Incorporated by Reference

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

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

(3) The following service information was approved for IBR on January 4, 2023.

(i) Boeing Alert Service Bulletin 777–38A0047, dated March 30, 2021.

(ii) Boeing Alert Requirements Bulletin 777–38A0048 RB, dated October 18, 2021.

(4) The following service information was approved for IBR on March 5, 2021 (86 FR 12809, March 5, 2021).

(i) Boeing Multi Operator Message MOM–MOM–21–0089–01B, dated February 26, 2021.

(ii) [Reserved]

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

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

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

Issued on November 1, 2022.

Christina Underwood,

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

[FR Doc. 2022–26080 Filed 11–29–22; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2022–0103; Project Identifier AD–2021–00977–T; Amendment 39–22238; AD 2022–23–11]

RIN 2120–AA64

Airworthiness Directives; The Boeing Company Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: The FAA is adopting a new airworthiness directive (AD) for certain The Boeing Company Model 777 airplanes. This AD was prompted by reports of discrepancies between the center wing tank (CWT) fuel quantity, as indicated by the fuel quantity indicating system (FQIS), and the refueling truck uploaded fuel amount, followed by certain engine-indicating and crew-alerting system (EICAS) messages. This AD requires installing new software in the fuel quantity processor unit (FQPU), or replacing the FQPU with one that includes new software, depending on airplane configuration; doing a software version check; and doing a FQPU operational check, depending on airplane configuration. This AD also prohibits the installation of certain FQPUs on certain airplanes. The FAA is issuing this AD to address the unsafe condition on these products.

DATES: This AD is effective January 4, 2023.

The Director of the Federal Register approved the incorporation by reference of a certain publication listed in this AD as of January 4, 2023.

ADDRESSES:

AD Docket: You may examine the AD docket at *regulations.gov* under Docket No. FAA–2022–0103; 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 Kevin Nguyen, Aerospace Engineer, Propulsion Section, FAA, Seattle ACO Branch, 2200 South 216th St., Des Moines, WA 98198; phone and fax: 206–231–3555; email: *kevin.nguyen@faa.gov.*
- You may view this service information at the FAA, Airworthiness Products Section, Operational Safety Branch, 2200 South 216th St., Des Moines, WA. For information on the availability of this material at the FAA, call 206–231–3195. It is also available at *regulations.gov* under Docket No. FAA–2022–0103.

FOR FURTHER INFORMATION CONTACT: Kevin Nguyen, Aerospace Engineer, Propulsion Section, FAA, Seattle ACO Branch, 2200 South 216th St., Des Moines, WA 98198; phone and fax: 206–231–3555; email: *kevin.nguyen@faa.gov.*

SUPPLEMENTARY INFORMATION:

Background

The FAA issued a notice of proposed rulemaking (NPRM) to amend 14 CFR part 39 by adding an AD that would apply to certain The Boeing Company Model 777 airplanes. The NPRM published in the **Federal Register** on March 21, 2022 (87 FR 15902). The NPRM was prompted by reports of discrepancies between the CWT fuel quantity, as indicated by the FQIS, and the refueling truck uploaded fuel amount, followed by certain EICAS messages. In the NPRM, the FAA proposed to require installing new software in the FQPU, or replacing the FQPU with one that includes new software, depending on airplane configuration; doing a software version check; and doing a FQPU operational check, depending on airplane configuration. In the NPRM, the FAA also proposed to prohibit the installation of certain FQPUs on certain airplanes. The FAA is issuing this AD to address discrepancies in the CWT FQIS, which can result in an airplane being dispatched with insufficient fuel in the CWT and with the flight crew unaware of the insufficient fuel prior to departure. This condition, coupled with continued flight to the destination airport after receiving EICAS messages

while in route to the destination, could result in fuel exhaustion and subsequent power loss to all engines, thereby resulting in the inability to land at the destination airport or at a diversion airport, possibly leading to flight into terrain.

Discussion of Final Airworthiness Directive

Comments

The FAA received comments from Air Line Pilots Association, International (ALPA), FedEx Express, and United Airlines (UAL), who supported the NPRM without change.

The FAA received additional comments from seven commenters, including Cathay Pacific Airways (Cathay), Air France (AFA), Korean Air (KAL), Boeing, British Airways (BAB), Ontic, and American Airlines (AAL). The following presents the comments received on the NPRM and the FAA's response to each comment.

Request To Remove or Modify Paragraph (j) Parts Installation Prohibition

Boeing requested that the FAA remove the parts installation prohibition specified in paragraph (j) of the proposed AD. Boeing stated that the safety rationale for immediate prohibition of installation of FQIS–1 FQPU P/N 0320KPU01 is unclear, and that the actions and compliance times outlined in paragraph (g) of the proposed AD are sufficient without the additional prohibitions identified in paragraph (j) of the proposed AD. Boeing stated that operators have indicated a need to continue installing FQIS–1 FQPU part number (P/N) 0320KPU01 within the compliance period prior to availability of replacement FQIS–2 FQPUs P/Ns 0335KPU01, 0335KPU02, and 0335KPU03; and that prohibiting the installation of a FQIS–1 FQPU would present an unnecessary hardship due to insufficient availability of FQIS–2 FQPU. Boeing added that the statement ''This proposed AD would also prohibit the installation of certain FQPUs on certain airplanes'' in the Summary of the NPRM should also be removed.

AFA requested that the FAA modify the parts prohibition specified in paragraph (j) of the proposed AD in order to give more flexibility and allow installation of FQIS–1 FQPU P/N 0320KPU01 on airplanes that have not yet been retrofitted in accordance with Boeing Alert Requirements Bulletin 777–28A0090 RB, dated March 30, 2021. AFA explained that unplanned removal (*e.g.,* due to failure or troubleshooting) of FQIS–1 FQPU would necessitate replacement with FQIS–2 FQPU, but demand for that cannot be met by the manufacturer. AFA stated that if the installation prohibition per paragraph (j) of the proposed AD is adopted as is, airplanes would be grounded because of the lack of required serviceable spares. AFA asserted that the safety risk is already addressed by AD 2020–11–11, Amendment 39–19915 (85 FR 34090, June 3, 2020) (AD 2020–11–11).

KAL requested that the FAA consider removing the parts installation prohibition specified in paragraph (j) of this proposed AD, or clarify and mitigate the parts installation prohibition conditions. KAL said the vendor was not able to provide the FQIS–2 FQPU until December 2023.

BAB proposed removing paragraph (j) of the proposed AD (the ''Parts Installation Prohibition,'' requirement) because the forecast supply of upgraded FQPUs (FQIS–2 FQPUs P/Ns 0335KPU01, 0335KPU02, and 0335KPU03) does not support the requirement, and the resulting cost of aircraft grounding is disproportionate to the fleet safety risk mitigation provided to the fleet by the proposed AD. BAB said the action is not justified; is not required for fleet safety; and was not required, recommended, or communicated to operators in the Boeing Alert Requirements Bulletin 777–28A0090 RB, dated March 30, 2021, which the FAA has previously approved.

BAB explained that due to material shortages, the manufacturer is forecasting that deliveries of the new FQPUs will not commence until the second quarter of 2023. Should the AD be published with the prohibition specified in paragraph (j) of the proposed AD, BAB asserted that there will be a significant risk of grounding aircraft due to lack of availability of FQIS–2 FQPU P/N 0335KPU03. BAB also said the mandated integrated refuel panel (IRP) door cycling procedure required by AD 2020–11–11 is performed for all fuel uplifts regardless of whether the CWT is being utilized, and will continue until Boeing Alert Requirements Bulletin 777–28A0090 RB, dated March 30, 2021, has been accomplished on the entire fleet. BAB concluded that the risk of departing with less than the minimum fuel for the mission has been effectively mitigated since 2020 with this mandated IRP door cycling procedure.

AAL requested that the FAA allow replacement of FQIS–1 FQPU P/N 0320KPU01 with the same FQPU while the fleet is being upgraded to the FQIS–2 FQPU (*e.g.,* P/N 0335KPU03), as specified in Boeing Alert Requirements Bulletin 777–28A0090 RB, dated March 30, 2021. AAL noted that the parts installation prohibition specified in paragraph (j) of the proposed AD specifies that, for certain airplanes, ''as of the effective date of the AD,'' FQIS–1 FQPU P/N 0320KPU01 may not be installed. AAL said that the manufacturer is unable to meet delivery schedules. AAL noted it will likely not have the spare FQIS–2 FQPU P/N 0335KPU03 necessary for out-of-service events caused by failure of FQIS–1 FQPU P/N 0320KPU01, potentially causing extended down time. AAL explained that the fuel cycling procedure required by AD 2020–11–11 will continue while the upgrade is in progress, eliminating fuel drop events potentially caused by the FQIS–1 FQPU.

The FAA partially agrees with the request to modify paragraph (j) of this AD because, as the commenters explained, there is a limited availability of FQIS–2 FQPU, and AD 2020–11–11 is still in effect for airplanes with FQIS–1 FQPU installed. The FAA agrees to provide relief to the parts installation prohibition specified in paragraph (j) of this AD by allowing airplanes identified in Group 1 of Boeing Alert Requirements Bulletin 777–28A0090 RB, dated March 30, 2021, that still have FQIS–1 FQPU installed to continue installing FQIS–1 FQPU P/N 0320KPU01 within the 30-month compliance time. For those airplanes, FQIS–1 FQPU must be replaced by FQIS–2 FQPU by the end of the compliance time as required by paragraph (g) of this AD, which mandates Boeing Alert Requirements Bulletin 777–28A0090 RB, dated March 30, 2021. Note that paragraph (h) of this AD (''Exceptions to Service Information Specifications'') defines the compliance time as 30 months after ''the effective date of this AD'' rather than after ''the original issue date of Requirements Bulletin 777–28A0090 RB.''

The FAA disagrees with removing paragraph (j) of this AD completely because the installation of FQIS–1 FQPU onto Group 1 airplanes that already have the FQIS–2 FQPU installed must be prevented, even when there is an unplanned removal of the FQPU.

Paragraph (j) of this AD has been revised to read ''For Group 1 airplanes identified in Boeing Alert Requirements Bulletin 777–28A0090 RB, dated March 30, 2021, that have a FQIS–2 fuel quantity processor unit (FQPU) part number (P/N) 0335KPU01, 0335KPU02, or 0335KPU03 installed: As of the effective date of this AD, no person may install a FQIS–1 FQPU P/N 0320KPU01

(Boeing P/N S345W001–010), on any airplane.''

Request To Extend Compliance Time

AFA requested a reasonable timescale for replacement of FQIS–1 FQPU P/N 0320KPU01 due to the shortage of FQIS–2 FQPU replacement units.

KAL also requested that the FAA provide a compliance time long enough (*e.g.,* a compliance time extension) to support the shortage of FQPU (the FAA infers the commenter is referring to FQIS–2 FQPU) because of lack of availability of replacement units. KAL said the vendor was not able to provide the FQIS–2 FQPU until December 2023, and they are unable to meet the compliance deadline of ''September 2023.'' The FAA infers that KAL is measuring the 30-month compliance time from March 30, 2021, the publication date of Boeing Alert Requirements Bulletin 777–28A0090 RB, dated March 30, 2021.

Ontic stated that the limited availability of FQIS–2 FQPU could not support the fleet of aircraft still in operation within the 30 months compliance time specified in Boeing Alert Requirements Bulletin 777–28A0090 RB, dated March 30, 2021. Ontic further stated that it understands the 30-month compliance time typically commences on the release of the AD, and not the service information. The FAA infers a request by Ontic to extend the compliance time if it commences on the publication date of Boeing Alert Requirements Bulletin 777–28A0090 RB, dated March 30, 2021.

The FAA disagrees with the request to change the compliance time of 30 months to accomplish Boeing Alert Requirements Bulletin 777–28A0090 RB, dated March 30, 2021. The FAA has confirmed with the manufacturers that a sufficient supply of FQIS–2 FQPU would be available to meet the compliance time if replacement of a FQIS–1 FQPU with a serviceable FQIS–1 FQPU is done within that time. As stated previously, the 30-month compliance time commences on the effective date of this AD, as specified in paragraph (h) of this AD. If operators encounter difficulty with accomplishing the actions required by this AD within the compliance time, they may request an alternative method of compliance (AMOC) in accordance with paragraph (k) of this AD. This AD has not been changed regarding this request.

AMOC Guidance From Boeing

Boeing offered to provide guidance for operators who request continued use of AD 2020–11–11 as an AMOC to this AD. Boeing said that individual airlines operate Model 777 airplanes differently, therefore a global AMOC is not practical for this AD. Boeing advised that considerations for requesting an AMOC would include frequency and quantity of center tank fuel loaded for mission profiles, planned end-of-life retirement of the airplane, and other factors impacting individual airline operations.

The FAA supports the manufacturer's offer of guidance. Operators may request AMOCs under the provisions of paragraph (k) of this AD. This AD has not been changed regarding this request.

Request To Revise the Summary Section

Boeing requested that the Summary section of the NPRM be revised for clarity. Boeing stated that the Summary description is inconsistent with the service bulletin regarding the operational check and the software version check. Boeing explained that the software version check should be accomplished when the software is downloaded to the FQPU onboard, and when a new FQPU is installed on the airplane. Boeing added that the operational check is only required when installing a new or updated FQPU on the airplane.

The FAA agrees to the request to revise the Summary section of this AD for the reason provided by the commenter. The third sentence of the Summary has been changed by adding '', depending on airplane configuration'' to the end of the sentence.

Recommendation To Modify Background Paragraphs

Boeing recommended that the technical description of the design flaw in the Background paragraphs be refined for clarity and reduce the possibility of reader misperception. Boeing provided revised language for the paragraph discussing the design flaw. Boeing also asked that the paragraph discussing the events where there was incorrect fuel quantity information be removed; that paragraph includes a description of the situation where the FQIS could indicate less than the actual fuel quantity in the CWT.

The FAA disagrees with this recommendation because the referenced information provided in the Background paragraphs of the NPRM is not repeated in the final rule. Furthermore, the information given adequately describes the design flaw in the FQIS, including the one in-service event where more fuel was added to the center tank than required for the mission. This AD has not been changed with regard to this request.

Request for Further Information About Software Loading and the AMOC Process

Cathay asked for the lead time for an AMOC to retain the door cycling procedure of AD 2020–11–11. Cathay also asked whether a certain Boeing information notice will be part of the AD requirement because of difficulties encountered with software loading.

The FAA advises that the standard response time for an AMOC application is 30 days. AMOC requests may be submitted as indicated in paragraph (k) of this AD. This AD requires only that FQPU software be upgraded or the FQPU replaced. There is no requirement regarding how the software upgrade is to be accomplished. Operators may refer to the Boeing information notice without requesting an AMOC. This AD has not been revised in this regard.

Conclusion

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

Related Service Information Under 1 CFR Part 51

The FAA reviewed Boeing Alert Requirements Bulletin 777–28A0090 RB, dated March 30, 2021. This service information specifies procedures for a check of maintenance or delivery records or an inspection to determine the part number of the FQPU for Group 1 airplanes. For Group 1 airplanes with a FQIS–1 FQPU, this service information specifies procedures for removing the existing FQPU; installing certain FQIS–2 FQPU with upgraded software; and doing a software version check and FQPU operational check. For Group 1 airplanes with a FQIS–2 FQPU and Group 2 airplanes, this service information specifies procedures for upgrading the FQPU software, and doing a software version check.

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

Costs of Compliance

The FAA estimates that this AD affects 257 airplanes of U.S. registry. The FAA estimates the following costs to comply with this AD:

ESTIMATED COSTS

Action	Labor cost	Parts cost	Cost per product	Cost on U.S. operators
Records review or inspection of FQPU part number for Group 1 airplanes (143 airplanes).	1 work-hour × $85 per hour = $85	$0	$85	$12,155
Group 1 with FQIS–1 FQPU (125 airplanes): Replace FQPU with FQIS–2 FQPU, and do software and FQPU checks.	1 work-hour × $85 per hour = $85	48,300	48,385	6,048,125
Group 1 with FQIS–2 FQPU and Group 2 (132 airplanes): Upgrade software and do software check.	1 work-hour × $85 per hour = $85	0	85	11,220

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

Authority for This Rulemaking

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

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

Regulatory Findings

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

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

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

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

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

List of Subjects in 14 CFR Part 39

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

The Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

2022–23–11 The Boeing Company: Amendment 39–22238; Docket No. FAA–2022–0103; Project Identifier AD–2021–00977–T.

(a) Effective Date

This airworthiness directive (AD) is effective January 4, 2023

(b) Affected ADs

This AD affects AD 2020–11–11, Amendment 39–19915 (85 FR 34090, June 3, 2020) (AD 2020–11–11).

(c) Applicability

This AD applies to The Boeing Company Model 777–200, –200LR, –300, –300ER, and 777F series airplanes, certificated in any category, Group 1 and Group 2 as identified in Boeing Alert Requirements Bulletin 777–28A0090 RB, dated March 30, 2021.

(d) Subject

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

(e) Unsafe Condition

This AD was prompted by reports of discrepancies between the center wing tank (CWT) fuel quantity, as indicated by the fuel quantity indicating system (FQIS), and the actual amount uploaded from the refueling truck. The FAA is issuing this AD to address discrepancies in the CWT FQIS, which can result in an airplane being dispatched with insufficient fuel in the CWT and with the flight crew unaware of the insufficient fuel prior to departure. This condition, coupled with continued flight to the destination airport after receiving engine-indicating and crew-alerting system (EICAS) messages while in route to the destination, could result in fuel exhaustion and subsequent power loss to all engines, thereby resulting in the inability to land at the destination airport or at a diversion airport, possibly leading to flight into terrain.

(f) Compliance

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

(g) Required Actions

Except as specified by paragraph (h) of this AD: At the applicable times specified in the ''Compliance'' paragraph of Boeing Alert Requirements Bulletin 777–28A0090 RB, dated March 30, 2021, do all applicable actions identified in, and in accordance with, the Accomplishment Instructions of Boeing Alert Requirements Bulletin 777–28A0090 RB, dated March 30, 2021.

Note 1 to paragraph (g): Guidance for accomplishing the actions required by this AD can be found in Boeing Alert Service Bulletin 777–28A0090, dated March 30, 2021, which is referred to in Boeing Alert Requirements Bulletin 777–28A0090 RB, dated March 30, 2021.

(h) Exceptions to Service Information Specifications

Where the Compliance Time column of the tables in the ''Compliance'' paragraph of Boeing Alert Requirements Bulletin 777–28A0090 RB, dated March 30, 2021, uses the phrase ''the original issue date of Requirements Bulletin 777–28A0090 RB,'' this AD requires using ''the effective date of this AD.''

(i) Terminating Action for AD 2020–11–11

Accomplishing the actions required by this AD on all affected airplanes in an operator's fleet terminates the requirements of AD 2020–11–11 for that fleet.

(j) Parts Installation Prohibition

For Group 1 airplanes identified in Boeing Alert Requirements Bulletin 777–28A0090 RB, dated March 30, 2021, that have a FQIS–2 fuel quantity processor unit (FQPU) part number (P/N) 0335KPU01, 0335KPU02, or 0335KPU03 installed: As of the effective date of this AD, no person may install a FQIS–1 FQPU P/N 0320KPU01 (Boeing P/N S345W001–010) on any airplane.

(k) Alternative Methods of Compliance (AMOCs)

(1) The Manager, Seattle ACO Branch, FAA, has the authority to approve AMOCs

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

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

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

(l) Related Information

(1) For more information about this AD, contact Kevin Nguyen, Aerospace Engineer, Propulsion Section, FAA, Seattle ACO Branch, 2200 South 216th St., Des Moines, WA 98198; phone and fax: 206–231–3555; email: *kevin.nguyen@faa.gov.*

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

(m) Material Incorporated by Reference

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

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

(i) Boeing Alert Requirements Bulletin 777–28A0090 RB, dated March 30, 2021.

(ii) [Reserved]

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

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

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

Issued on November 1, 2022.

Christina Underwood,

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

[FR Doc. 2022–26079 Filed 11–29–22; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2022–1059; Project Identifier AD–2022–00204–T; Amendment 39–22239; AD 2022–23–12]

RIN 2120–AA64

Airworthiness Directives; The Boeing Company Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: The FAA is adopting a new airworthiness directive (AD) for all The Boeing Company Model 747–100, 747–100B, 747–100B SUD, 747–200B, 747–200C, 747–200F, 747–300, 747–400, 747–400D, 747–400F, 747SR, and 747SP series airplanes. This AD was prompted by reports that high temperature composite trim air diffuser ducts (TADD) showed composite degradation and signs of hot air leakage. This AD requires a one-time low frequency eddy current (LFEC) inspection of certain center tank upper skin panels on the right and left side for any structural damage due to heat exposure, and repair if necessary. The FAA is issuing this AD to address the unsafe condition on these products.

DATES: This AD is effective January 4, 2023.

The Director of the Federal Register approved the incorporation by reference of a certain publication listed in this AD as of January 4, 2023.

ADDRESSES:

AD Docket: You may examine the AD docket at regulations.gov under Docket No. FAA–2022–1059; 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 Boeing Commercial Airplanes, Attention: Contractual & Data Services (C&DS), 2600 Westminster Blvd., MC 110–SK57, Seal Beach, CA 90740–5600; telephone 562–797–1717; internet *myboeingfleet.com.*

• You may view this service information at the FAA, Airworthiness Products Section, Operational Safety Branch, 2200 South 216th St., Des Moines, WA. For information on the availability of this material at the FAA, call 206–231–3195. It is also available at *regulations.gov* under Docket No. FAA–2022–1059.

FOR FURTHER INFORMATION CONTACT: Nicole Tsang, Aerospace Engineer, Cabin Safety and Environmental Systems Section, FAA, Seattle ACO Branch, 2200 South 216th St., Des Moines, WA 98198; phone and fax: 206–231–3959; email: *nicole.s.tsang@faa.gov.*

SUPPLEMENTARY INFORMATION:

Background

The FAA issued a notice of proposed rulemaking (NPRM) to amend 14 CFR part 39 by adding an AD that would apply to all The Boeing Company Model 747–100, 747–100B, 747–100B SUD, 747–200B, 747–200C, 747–200F, 747–300, 747–400, 747–400D, 747–400F, 747SR, and 747SP series airplanes. The NPRM published in the **Federal Register** on September 8, 2022 (87 FR 54927). The NPRM was prompted by reports that high temperature composite TADD showed composite degradation and signs of hot air leakage. In the NPRM, the FAA proposed to require a one-time LFEC inspection of certain center tank upper skin panels on the right and left side for any structural damage due to heat exposure, and repair if necessary. The FAA is issuing this AD to address possible sustained hot air leakage from damaged TADDs, which could result in undetected damage to adjacent airframe structure. This condition, if not addressed, could lead to heat damage to the wing center section and adjacent structure and adversely affect the structural integrity of the airplane, resulting in the inability of the structure to carry limit load and the possible loss of continued safe flight and landing.

Discussion of Final Airworthiness Directive

Comments

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

Conclusion

The FAA reviewed the relevant data, considered any comments 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 products. Except for minor editorial changes, this AD is adopted as proposed in the NPRM. None of the changes will increase the economic burden on any operator.

Related Service Information Under 1 CFR Part 51

The FAA reviewed Boeing Alert Requirements Bulletin 747–57A2370 RB, dated March 2, 2022. This service information specifies procedures for a one-time LFEC inspection for any structural damage due to heat exposure of the center tank upper skin panels on the right and left side between station (STA) 1100–1120, 1140–1160, and 1180–1200 bays outboard of left buttock line (LBL) 98 and right buttock line (RBL) 98 seat tracks, and repair. This service information is reasonably available because the interested parties have access to it through their normal course of business or by the means identified in **ADDRESSES**.

Costs of Compliance

The FAA estimates that this AD affects 104 airplanes of U.S. registry. The FAA estimates the following costs to comply with this AD:

ESTIMATED COSTS

Action	Labor cost	Parts cost	Cost per product	Cost on U.S. operators
LFEC inspection	101 work-hours × $85 per hour = $8,585	$0	$8,585	$892,840

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

Authority for This Rulemaking

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

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

Regulatory Findings

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:

2022–23–12 The Boeing Company: Amendment 39–22239; Docket No. FAA–2022–1059; Project Identifier AD–2022–00204–T.

(a) Effective Date

This airworthiness directive (AD) is effective January 4, 2023.

(b) Affected ADs

None.

(c) Applicability

This AD applies to all The Boeing Company Model 747–100, 747–100B, 747–100B SUD, 747–200B, 747–200C, 747–200F, 747–300, 747–400, 747–400D, 747–400F, 747SR, and 747SP series airplanes, certificated in any category.

(d) Subject

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

(e) Unsafe Condition

This AD was prompted by reports that high temperature composite trim air diffuser ducts (TADD) showed composite degradation and signs of hot air leakage. The FAA is issuing this AD to address sustained hot air leakage from damaged TADDs that could result in undetected damage to adjacent airframe structure. This condition, if not addressed, could lead to heat damage to the wing center section and adjacent structure and adversely affect the structural integrity of the airplane, resulting in the inability of the structure to carry limit load and the possible loss of continued safe flight and landing.

(f) Compliance

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

(g) Required Actions

Except as specified by paragraph (h) of this AD: At the applicable times specified in the ''Compliance'' paragraph of Boeing Alert Requirements Bulletin 747–57A2370 RB, dated March 2, 2022, do all applicable actions identified in, and in accordance with, the Accomplishment Instructions of Boeing Alert Requirements Bulletin 747–57A2370 RB, dated March 2, 2022.

Note 1 to paragraph (g): Guidance for accomplishing the actions required by this AD can be found in Boeing Alert Service Bulletin 747–57A2370, dated March 2, 2022, which is referred to in Boeing Alert Requirements Bulletin 747–57A2370 RB, dated March 2, 2022.

(h) Exceptions To Service Information Specifications

(1) Where the Compliance Time column of the table in the ''Compliance'' paragraph of Boeing Alert Requirements Bulletin 747–57A2370 RB, dated March 2, 2022, uses the phrase ''the original issue date of Requirements Bulletin 747–57A2370 RB,'' this AD requires using ''the effective date of this AD.''

(2) Where Boeing Alert Requirements Bulletin 747–57A2370 RB, dated March 2, 2022, specifies contacting Boeing for repair instructions: This AD requires doing the repair before further flight using a method approved in accordance with the procedures specified in paragraph (i) of this AD.

(i) Alternative Methods of Compliance (AMOCs)

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

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

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

(j) Related Information

For more information about this AD, contact Nicole Tsang, Aerospace Engineer, Cabin Safety and Environmental Systems, FAA, Seattle ACO Branch, 2200 South 216th St., Des Moines, WA 98198; phone and fax: 206–231–3959; email: *nicole.s.tsang@faa.gov.*

(k) Material Incorporated by Reference

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

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

(i) Boeing Alert Requirements Bulletin 747–57A2370 RB, dated March 2, 2022.

(ii) [Reserved]

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

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

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

Issued on November 3, 2022.

Christina Underwood,

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

[FR Doc. 2022–26082 Filed 11–29–22; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[TD 9967]

RIN 1545–BO92

Section 42, Low-Income Housing Credit Average Income Test Regulations; Correction

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Correcting amendments.

SUMMARY: This document contains a correction to the final regulations (Treasury Decision 9967) published in the **Federal Register** on Wednesday, October 12, 2022. This correction includes final and temporary regulations setting forth guidance on the average income test for purposes of the low-income housing credit.

DATES: These corrections are effective on *November 30, 2022* and applicable on or after October 12, 2022.

FOR FURTHER INFORMATION CONTACT: Concerning the regulations, Dillon Taylor at (202) 317–4137.

SUPPLEMENTARY INFORMATION:

Background

The final regulations (TD 9967) subject to this correction are issued under section 42 of the Internal Revenue Code.

List of Subjects in 26 CFR Part 1

Income taxes, Reporting and recordkeeping requirements.

Correction of Publication

Accordingly, 26 CFR part 1 is corrected by making the following correcting amendment:

PART 1—INCOME TAXES

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

Authority: 26 U.S.C. 7805 * * *

■ **Par. 2.** Section 1.42–19 is amended by revising table 2 to paragraph (e)(3)(i) to read as follows:

§ 1.42–19 Average income test.

* * * * *

(e) * * *

(3) * * *

(i) * * *

BILLING CODE 4830–01–P

Table 2 to Paragraph (e)(3)(i)

Unit Number	Imputed Income Limitation of the Unit
1	80 percent of AMGI
2	80 percent of AMGI
3	80 percent of AMGI
4	80 percent of AMGI
5	60 percent of AMGI
6	40 percent of AMGI
7	40 percent of AMGI
8	40 percent of AMGI
9	40 percent of AMGI
10	40 percent of AMGI

* * * * *

Oluwafunmilayo A. Taylor,

Branch Chief, Legal Processing Division, Associate Chief Counsel, (Procedure and Administration).

[FR Doc. 2022–26073 Filed 11–29–22; 8:45 am]

BILLING CODE 4830–01–C

POSTAL SERVICE

39 CFR Part 111

New Mailing Standards for the Separation of Hazardous Materials

AGENCY: Postal Service™.

ACTION: Final rule.

SUMMARY: The Postal Service is amending Publication 52, *Hazardous, Restricted, and Perishable Mail* (Pub 52), to incorporate new requirements for mailers to separate, into identifiable containers, all hazardous material (HAZMAT) requiring hazardous marks or labels from other mail when tendering to the Postal Service. The Postal Service is also adopting related standard operating procedures to ensure the proper handling and routing of identified HAZMAT products. Additionally, the Postal Service will now require used, damaged, or defective electronic devices (excluding devices that are new in original packaging, and manufacturer certified new/refurbished) containing or packed with lithium batteries to be mailed only via surface transportation and to bear specified markings.

DATES: *Effective date:* This rule is effective December 1, 2022.

FOR FURTHER INFORMATION CONTACT: Dale Kennedy, (202) 268–6592, or Jennifer Cox, (202) 268–2108.

SUPPLEMENTARY INFORMATION:

Background

The Postal Service hereby amends Publication 52, *Hazardous, Restricted, and Perishable Mail,* with the provisions set forth herein. While not codified in Title 39, Code of Federal Regulations (CFR), Publication 52 is a regulation of the Postal Service, and changes to it may be published in the **Federal Register**. 39 CFR 211.2(a)(2). Moreover, Publication 52 is incorporated by reference into *Mailing Standards of the United States Postal Service,* Domestic Mail Manual (DMM) section 601.8.1, which is incorporated by reference, in turn, into the Code of Federal Regulations. 39 CFR 111.1, 111.3. Publication 52 is publicly available, in a read-only format, via the Postal Explorer® website at *https://pe.usps.com.* In addition, links to Postal Explorer are provided on the landing page of *USPS.com,* the Postal Service's primary customer-facing website, and on *Postal Pro,* an online informational source available to postal customers.

On June 6, 2022, the Postal Service published an interim final rule (IFR) (87 FR 34197) requiring mailers to separate HAZMAT requiring marks or labels from non-hazmat and tender it to the Postal Service in containers labeled ''HAZMAT.''

Undeclared, unidentified, mislabeled, and misrouted HAZMAT can and does cause fires, spills, corrosion, and other dangers to personnel and equipment of the Postal Service, air carriers, and surface transportation providers, as well as to mailers' property and to aircraft passengers.

In particular, the increasing consumer use of lithium metal and lithium-ion batteries has brought a concomitant rise in fires and other dangerous incidents related to such batteries. The Federal Aviation Administration (FAA) has publicly reported 398 aviation incidents involving lithium batteries between March 3, 2006, and July 22, 2022, including a substantial number in just the most recent twelve months. FAA, Events with Smoke, Fire, Extreme Heat,

or Explosion Involving Lithium Batteries, May 1, 2022, *https://go.usa.gov/xusNT.*[1]

The Pipeline and Hazardous Materials Safety Administration (PHMSA) has similarly reported a number of incidents involving mail between 2014 and 2021. See PHMSA, Incident Statistics, last updated March 9, 2022, *https://go.usa.gov/xJrSS.* One-third of the PHMSA-reported mail incidents occurred on passenger aircraft; approximately half were discovered because of a thermal or release event; and more than half were discovered only after flight. A plurality of such items were Class 9 items such as lithium batteries, and many were ineligible for air transportation. Moreover, in recent compliance inspections, PHMSA investigators ''routinely saw shippers and carriers improperly package and ship lithium batteries for disposal or recycling,'' including ''packaging lithium batteries in a way that did not prevent short circuits, mixing damaged lithium batteries with other batteries in the same packaging within shipments for disposal or recycling, and shipping pallet loads of batteries in boxes and drums with inappropriate identification of the packages' contents.'' PHMSA, Safety Advisory Notice for the Disposal and Recycling of Lithium Batteries in Commercial Transportation 1–2, May 17, 2022, *https://go.usa.gov/xJY3J.*

Internal Postal Inspection Service data and anecdotal reports from commercial air-carrier partners over the last few years likewise indicate a consistent and alarming rise in incidents involving mailed packages of both lithium batteries and other HAZMAT, including flammable liquids, aerosols, and strike-anywhere matches. Incidents include unlabeled or improperly labeled air-ineligible HAZMAT being accepted for air transportation, as well as properly prepared air-ineligible HAZMAT that was improperly routed to air transportation because it was commingled with other mail and insufficiently visible to Postal Service personnel.

The FAA and PHMSA have issued standards for safe carriage of lithium batteries, including a prohibition on air transportation of damaged, defective, or recalled lithium batteries. See, *e.g.,* 49 CFR 173.185. However, the determinants of hazard risk, such as damage, defects, state of charge, or packaging of batteries, are not outwardly apparent to Postal Service and other personnel handling packages. In other respects, as well, safety depends on a shipper's awareness of and compliance with packaging, labeling, marking, and other HAZMAT shipping requirements. If a shipper does not make HAZMAT adequately visible to Postal Service personnel responsible for acceptance and sortation, then there is an unacceptably high risk that postal and air-carrier personnel will not know that the item warrants special handling and routing.

While many incidents involving HAZMAT in the mail are minor and controllable, the risk of a major threat to an aircraft—including, in particular, passenger aircraft—and other infrastructure and personnel is real, severe, and growing with the rise in lithium-battery and other hazardous shipments. By way of illustration, the U.S. Coast Guard (USCG) recently reported that on August 19, 2021, a shipping container loaded with discarded lithium batteries caught fire, with heat intense enough not only to destroy much of the cargo, but also to burn a hole in the container's structure itself. USCG, Marine Safety Alert: Lithium Battery Fire, March 10, 2022, *https://go.usa.gov/xJYxu.* USCG noted that the incident would have been ''catastrophic'' if it had occurred after loading onto the container ship. The same could be said if a similar fire arose from discarded lithium batteries aboard passenger aircraft. It is imperative that the Postal Service undertake measures to reduce the risk to its operations and aviation safety.

On August 3, 2020, the Postal Service published a notice of proposed rulemaking regarding a proposed requirement to separate air-eligible HAZMAT from all other matter in a mailing. 85 FR 46575. The Postal Service received several comments on that notice, and it appreciates the valuable public input. In particular, multiple commenters expressed support for the proposition of separating HAZMAT from non-HAZMAT matter and for further improving the Postal Service's ability to ensure that air-ineligible HAZMAT is not inadvertently loaded onto air transportation. Further study and intervening events have made clear that the August 3, 2020 proposal would not be sufficiently effective to mitigate the risk that HAZMAT poses to other mail, postal and air-carrier equipment and personnel, commercial air passengers, and the public at large. In lieu of the earlier proposal, therefore, the Postal Service adopted the three measures described in the June 6, 2022, IFR. 87 FR 34197. While the IFR was made immediately effective, the Postal Service nonetheless invited public comments on the new measures. The Postal Service now restates those measures herein, with slight modifications, as part of this final rule, and responds to the public comments received.

Summary of New Measures

In addition to preexisting packaging, labeling, and marking requirements and other conditions for mailability, two conditions are necessary to ensure the proper handling and routing of HAZMAT.

The first condition is *visibility:* the Postal Service must be aware of HAZMAT shipments in order to accord them appropriate attention. A HAZMAT package can easily evade postal HAZMAT processing if it is nestled beneath non-HAZMAT packages in a bulk mail receptacle. Moreover, the Postal Service is obligated to separate HAZMAT from non-HAZMAT when presenting items to certain suppliers, an obligation which the Postal Service cannot adequately fulfill under current circumstances. To address this problem, the final rule requires mailers tendering a mix of HAZMAT and non-HAZMAT items to present them separately, including in separate mail receptacles except for destination entered mail entered at a Destination Delivery Unit (DDU), Destination Sectional Center Facility (DSCF), or Destination Network Distribution Center (DNDC). In contrast with the 2020 proposed rule, customers are required to separate *all* HAZMAT from non-HAZMAT, rather than only air-eligible HAZMAT, from other mail. While visibility is important for air-eligible HAZMAT to ensure proper handling, it is also important that surface-only HAZMAT not be erroneously routed to air transportation due to commingling with non-HAZMAT. Separating all HAZMAT from non-HAZMAT will reduce the likelihood of commingling and increase the opportunity for Postal Service personnel to determine the proper procedures for any HAZMAT items presented.

The second condition is *separation integrity:* once recognized, the Postal Service must ensure that HAZMAT is identifiable from non-HAZMAT, lest it be improperly handled or routed.

This final rule also maintains the specific labeling requirements contained in the IFR for packages containing used, damaged, or defective electronic devices containing or packed with lithium batteries and prohibits them from eligibility for any Postal Service product that makes routine use of air transportation. However, the final rule now specifically excludes devices that

[1] The FAA notes that the publicly reported incidents do not represent all incidents reported to the FAA, let alone all such incidents at large.

are new in original packaging, and manufacturer certified new/refurbished.

Among other things, mailings covered by the new requirements include used items sent pursuant to e-commerce or private sales transactions; lost items being returned to the owner; and items sent for repair, replacement, upgrade, warranty service, diagnostics, recycling, or insurance claims. Again, for clarity, the term used electronic devices excludes those that are new in original unopened manufacturer packaging or manufacturer certified new/refurbished devices.

The Postal Service and its partner air carriers have identified used, damaged, and defective electronic devices containing or packed with lithium batteries as a particular and growing cause of lithium-battery incidents. Indeed, damaged, defective, and recalled lithium cells and batteries are already ineligible for air transportation. 49 CFR 173.185(f). Beyond devices with damage or defects to batteries themselves, such devices may also have other damage or defects that increase the chances of exposure and ignition of even an intact battery. Moreover, such devices are highly likely to be packaged without original packaging and have batteries in various conditions and varying states of charge. In contrast with new electronic devices in manufacturers' original packaging or manufacturer certified new/refurbished devices, consumers sending used, damaged, and defective electronic devices are less likely to be aware of HAZMAT requirements, let alone to comply with them.

As a result of these factors, lithium batteries in used, damaged, and defective electronic devices pose a particular hazard, as demonstrated by numerous incidents reported to the Postal Service as involving such items. To reduce the risk of such incidents occurring on air transportation, the Postal Service will restrict used, damaged, and defective electronic devices containing or packaged with lithium batteries to surface transportation. Consequently, such items will be prohibited in inbound and outbound international mail; mail to, from, and between overseas military and diplomatic addresses; and mail to, from, and within certain domestic locations for which the Postal Service lacks surface transportation. Moreover, to ensure adequate visibility, the Postal Service will require that packages containing used, damaged, and defective electronic devices (excluding devices that are new in original packaging, and manufacturer certified new/refurbished) containing or packaged with lithium batteries be marked ''Restricted Electronic Device'' and ''Surface Transportation Only,'' in addition to any other applicable markings.

The Postal Service determined that, due to the urgency of the danger to personnel, property, passengers, and the public, it was necessary to implement the IFR immediately. Nonetheless, the Postal Service provided the public with a 30-day public comment period. The Postal Service received submissions from 17 commenters. As explained in the next section, the Postal Service has reviewed and considered these comments. As a result, the Postal Service has adopted one minor change to exclude from requirements for use of surface transportation products only those devices that are new, manufacturer certified as new or refurbished, and devices contained in new unopened packaging. For the reasons articulated below, the remainder of the IFR remains largely unchanged.

Comments Regarding Restrictions on Electronic Devices and Batteries

The Postal Service received several comments relating to the rule's restrictions on shipping electronic devices and cell phones with lithium batteries.

Several commenters voiced concern regarding the definition of a ''used, damaged, or defective electronic device,'' claiming the definition is unclear and overly restrictive. One commenter recommended changing the definition to ''is not new and some form of battery damage or defect'' and excluding ''refurbished to fully functioning and non-defective state.'' Another noted that the inability to ship individual used phones via the Postal Service will cause significant upheaval in the electronics and e-commerce industries and observed the importance of distinguishing bulk shipments from the shipment of individual devices. Additionally, a cruise line company noted that it frequently ships such lost and found devices that customers leave on board its vessels back to customers.

The Postal Service has considered the impact of its rule regarding used electronic devices containing or packed with lithium batteries and recognizes the importance of narrowly tailoring the scope of devices included to address the risk posed by lithium batteries without imposing undue burden on customers shipping devices which pose a diminished risk. To that end, the Postal Service has revised its definition to explicitly exclude from requirements for use of surface transportation products only those devices that are new, manufacturer certified as new or refurbished in new, unopened packaging from these requirements. While the Postal Service recognizes that this may not be as expansive as suggested by some of the commenters, the revised definition narrows the devices covered by the rule to exclude those that pose a diminished risk, while continuing to limit shipments of devices more prone to causing dangerous and potentially catastrophic events.

Comments Regarding Impact on Rural Customers and Areas Without Access to Surface Transportation

The Postal Service received several comments regarding the impact of the final rule on rural and otherwise hard to reach communities. One commenter broadly noted that rural and hard to reach communities would be particularly disadvantaged by the new rules. One Alaskan native village noted that air transportation is the only available means of delivery to their respective locations and the rule's restrictions would essentially cut off their communities. An air carrier serving Alaska made similar observations.

The Postal Service recognizes the importance of serving rural and hard to reach communities which depend on air transportation because surface transportation is otherwise unavailable. For those ZIP Codes that are air transportation only, an air transportation solution may be utilized to transport used, damaged, or defective electronic devices containing or packed with lithium batteries due to the absence of ground transportation. In these rare cases, this allowance is deemed to be a lower level of risk based on the design of the aircraft used, how the cargo is stored, limited passenger capacity, flight duration, and other considerations. The final rule includes a list of 5-digit ZIP Codes where this exception applies, to be found in Appendix F of Publication 52.

Comments Regarding Training, Education, and Timing

The Postal Service received several comments regarding the need for additional training, education, and messaging to ensure understanding of and compliance with the new rules. Relatedly, several commenters noted the burden that the immediate effectiveness of the IFR placed on mailers.

A commercial passenger airline broadly supported the enhancements to the Postal Service's existing rules but noted the importance of the Postal Service taking steps to further educate

shippers on the hazards posed to air carriers by dangerous goods and equipping them with the tools needed to ensure compliance in both their operations and their engagement with customers. One commenter noted the need for additional employee training, including increased efforts to identify and hold accountable those companies which fail to comply with the new rule. A few industry groups commented that additional time is needed to train employees and update training materials to ensure compliance. One commented that the rule offered too little notice to comply, suggesting a 6–12-month grace period for compliance. Another likewise noted that companies did not have sufficient time to incorporate the new rules and restrictions, requesting an extended compliance deadline or an enforcement grace period of at least 90 days. One commented that the immediate effective date of the rule changes is impractical, requesting a 1-year grace period. Another commented that the prescribed timeframe is impossible for companies to comply with, requesting the rule's effective date be delayed while the new policies are implemented in the field. In addition, other individual customers expressed similar concerns regarding the general burdens placed on mailers and the need for increased communication about the new requirements.

The Postal Service understands and shares the view that additional training and education is necessary to effectively implement these rules and assist customers, partners, and employees to comply therewith. To that end, the Postal Service has initiated numerous initiatives to increase, enhance, and amplify educational and instructional materials, both internally and externally. These new resources will continue to be rolled out and improved upon to seek out additional opportunities to inform and educate internal and external stakeholders about these changes.

Regarding timing, while the IFR was made effective immediately, the Postal Service has not to this point initiated any compliance enforcement actions in order to give mailers an extended timeframe to bring their operations into compliance with the new rule. The Postal Service is dedicated to further working with mailers to help them understand and implement these requirements. Nonetheless, the immediacy of the dangers involved necessitates prompt action to assuage the dangers posed to the public. To delay the implementation of these requirements poses unacceptable risks. Given these considerations, the Postal Service has determined that the public interest requires immediate action and compliance is expected upon the publication of this final rule.

Comments Regarding Divergence From International Standards

An industry association questions whether certain provisions of the interim final rule (''New Mailing Standards for the Separation of Hazardous Materials'') relating to marking requirements are ''inconsistent with a number of provisions'' in the World Trade Organization's (WTO's) Agreement on Technical Barriers to Trade (''TBT Agreement''). Upon further analysis, the Postal Service is confident that the measures in question are consistent with the TBT Agreement. Further inquiries about the TBT Agreement are best addressed to the Office of the United States Trade Representative, which is responsible for representation of the United States in the WTO.

Comments Regarding a Known-Shipper Program

The Postal Service received comments from several companies and industry groups recommending a known or trusted shipper program, allowing businesses with extensive backgrounds in and a proven history of properly shipping HAZMAT to avail themselves of less stringent requirements. The Postal Service finds merit in these suggestions and is open to developing such options, so long as the program does not unacceptably increase the risk of mishandled, misrouted, or improperly intermingled HAZMAT. To that end, the Postal Service is currently exploring similar programs to ease some of the burdens this final rule may place on mailers. However, development of such programs will take time to ensure they are both comprehensive and effective. The Postal Service's preeminent concern remains public safety, and any such program would likewise prioritize those objectives. Moreover, given the grave risks currently at stake, implementation of the final rule will not be delayed until such programs can be established. Instead, the new requirements must remain in immediate effect while the Postal Service works with its customers and partners to determine the future state of any such program.

Administrative Procedure Act

The Administrative Procedure Act (APA) does not ordinarily apply to Postal Service rulemakings. 39 U.S.C. 410(a). As a rare exception to that general rule, ''proceedings concerning the mailability of matter under this chapter and chapters 71 and 83 of title 18'' are extraordinarily subject to the APA. 39 U.S.C. 3001(m). Because the measures herein merely concern acceptance requirements, available services, and conditions of mailing for mailable matter, and do not concern the mailability of matter itself, they do not trigger the narrow exception for APA applicability.

Even if the IFR were deemed to be subject to the APA, good cause existed, under 5 U.S.C. 553(b)(B), to issue the measures therein, under 5 U.S.C. 553(d)(3), to dispense with the delayed effective date ordinarily prescribed by the APA. The Postal Service was justified in making the IFR effective immediately in order to take quick and targeted action to mitigate the potential of dangerous incidents involving HAZMAT such as lithium batteries which can cause smoke, fire, extreme heat, or explosion caused by thermal runaway, impairing the safe operation of aircraft and exceeding the capabilities of an aircraft's fire suppression system. Further delay would have increased the risk of an adverse event, potentially resulting in the catastrophic loss of life or property. Such a narrowly tailored rule with specific measures that can immediately respond to the imminent risks presented by HAZMAT corresponds with a proportionately diminished public interest in an opportunity to comment compared to a more far-reaching rule. While there is a public interest in having an opportunity for the public to comment on agency action, it was critical that the Postal Service responded to this hazardous trend as soon as possible to mitigate potential dangers that could have contributed to an incident resulting in loss of life or aircraft. Further delay would have increased the risk of harm and the likelihood of a catastrophic incident.

Moreover, pursuant to section 553(b)(B) of the APA, general notice and the opportunity for public comment are not required with respect to a rulemaking when an ''agency for good cause finds (and incorporates the finding and a brief statement of reasons therefor in the rules issued) that notice and public procedure thereon are impracticable, unnecessary, or contrary to the public interest.'' Nonetheless, although the IFR was effective immediately, the Postal Service has now provided an opportunity for public comment, considered the arguments raised therein, made minor refinements to the rules, and responded to those

comments in the final rule promulgated here.

The Postal Service still finds that it would be impracticable and contrary to the public interest to delay issuance of this final rule because there is an immediate and pressing need to reduce the risks that HAZMAT poses to postal operations, supplier equipment and personnel, commercial air passengers, and the public. Thus, delaying the implementation of the risk-mitigation measures in this final rule in order to receive and consider further public comment beyond what the Postal Service has already allowed would be impracticable, contrary to the public interest,[2] and given that the public has now had adequate opportunity to comment since the issuance of the IFR, not required by the APA. As with the IFR, immediate mitigation of these urgent safety risks also constitutes good cause for this final rule to be effective immediately upon publication.

Sarah Sullivan,

Attorney, Ethics & Legal Compliance.

The Postal Service adopts the following changes to Publication 52, *Hazardous, Restricted, and Perishable Mail,* incorporated by reference into Mailing Standards of the United States Postal Service, Domestic Mail Manual (DMM), section 601.8.1, which is further incorporated by reference in the Code of Federal Regulations. 39 CFR 111.1, 111.3. Publication 52 is also a regulation of the Postal Service, changes to which may be published in the **Federal Register**. 39 CFR 211.2(a). Accordingly, for the reasons stated in the preamble, the Postal Service amends Publication 52 as follows:

Publication 52, Hazardous, Restricted and Perishable Mail

* * * * *

2 General Guidelines

* * * * *

[Revise the title of subchapter 25 to read as follows:]

25 Basic Guidelines for Postal Service Personnel

* * * * *

251 Guidelines for Acceptance Personnel

[Revise section by adding new items c, e, f and g; renumber current item c as d, to read as follows:]

c. With the exception of destination entered mail entered at a Destination Delivery Unit (DDU), Destination Sectional Center Facility (DSCF), or Destination Network Distribution Center (DNDC) verify that all mailpieces containing mailable hazardous materials are presented separately from mailpieces not containing hazardous materials.

d. Refuse (as permitted in POM 139) to accept any material that does not meet the applicable requirements for mailing and refer the circumstances to your local Postmaster or PCSC for a mailability ruling under 213 or 215, as appropriate.

e. If a mailpiece containing a diagnostic (clinical) specimen is in a sack or tub, PS Tag 44 must be attached to ensure that the sack will be emptied at the processing point.

f. With the exception of destination entered mail entered at a DDU, DSCF, or DNDC, ensure mailpieces containing hazardous materials remain separated from other mailpieces and are placed into labeled containers further separated by transportation type. See 327.1a and 327.1b.

g. See 253 for guidance regarding hazardous materials found in lobby drops or retail collection boxes.

* * * * *

252 Guidelines for Dispatch Personnel

[Insert new item b as follows, and renumber current item b as item c:]

b. Ensure that all mailpieces with a hazardous-materials mark or label are separated from all other mail and are placed into labeled containers further separated by transportation type. See 327.1a and 327.1b.

* * * * *

[Revise item 5 in item c (as renumbered) to read as follows:]

5. If the mailpiece contains a material believed to be nonmailable, remove it from the mailstream and treat it in accordance with POM 139.117–118, as appropriate.

* * * * *

[Add new section 253 to read as follows:]

253 Guidelines for Delivery and Collection Personnel

Delivery and collection personnel must follow these procedures when delivering and collecting mail:

a. Conduct a thorough examination of all sides of the mailpiece for hazardous material labels and markings or any nonmailable hazardous characteristics (*e.g.,* prohibited marks or labels). If the mailpiece is nonmailable, leaking, or stained, do not collect it; notify the customer if present, and contact your supervisor. Ensure that mailable hazardous materials are separated from all other mail.

* * * * *

3 Hazardous Materials

* * * * *

32 General

* * * * *

327 Transportation Requirements

* * * * *

327.1 General

[Revise item a to read as follows:]

Air Transportation. When eligibility for air transportation is sought, mailable hazardous materials eligible for air transportation per chapter 34, must be sent as Priority Mail Express, Priority Mail, or First-Class Mail. Mailpieces must be prepared to meet all requirements that apply to air transportation. Mailpieces must be properly packaged and labeled within DMM requirements and the operator variations of the air carrier. When required, a shipper's declaration for dangerous goods must be affixed to the outside of the mailpiece. *Note:* Mailable hazardous materials that are prohibited from air transportation may not be sent as Priority Mail Express, Priority Mail, or First-Class Mail.

[Revise item b to read as follows:]

b. *Surface Transportation.* All mailable hazardous materials eligible to be sent as First-Class Package Service, USPS Marketing Mail, USPS Retail Ground, Parcel Select, or Parcel Return Service must be prepared under the requirements that apply to surface transportation. A mailpiece containing mailable hazardous material with postage paid at First-Class Package Service, USPS Marketing Mail, USPS Retail Ground, Parcel Select, or Package Return Service prices must not, under any circumstance, be transported on air transportation except for 5-digit air only destinations identified in 327.2 g.

* * * * *

327.2 Air Transportation Prohibitions

[Revise opening paragraph to read as follows:]

All mailable hazardous materials sent as Priority Mail Express, Priority Mail, or First-Class Mail, must meet the requirements for air transportation. The following types of hazardous materials are always prohibited on air

[2] See *Jifry* v. *FAA,* 370 F.3d 1174, 1179 (D.C. Cir. 2004) (upholding waiver of 5 U.S.C. 553(b)(B) based on Transportation Security Administration's determination that it was ''necessary to prevent a possible imminent hazard to aircraft, persons, and property within the United States''); *Hawaii Helicopter Operators Ass'n* v. *FAA,* 51 F.3d 212, 214 (9th Cir. 1995) (same, where interim final rule was aimed at immediately mitigating ''the threat to public safety reflected in an increasing number of helicopter accidents'').

transportation regardless of class of mail:

[Add new item g as follows, and renumber current item g as item h:]

g. Used, damaged, or defective electronic devices (excluding devices that are new in original packaging, and manufacturer certified new/refurbished) containing or packaged with lithium batteries (see 349.12e). For those ZIP Codes that are air transportation only, a multimodal transportation solution may be used to transport used, damaged, or defective electronic devices containing or packed with lithium batteries due to the absence of ground transportation. A list of 5-digit ZIP Codes where this exception applies appears in Appendix F.

* * * * *

[Add new section 329 to read as follows:]

329 Presentation of Hazardous-Materials Mailings

With the exception of destination entered mail entered at a DDU, DSCF, or DNDC each mailer of mailable hazardous materials requiring a label or marking must:

a. Present mailpieces containing hazardous materials separately from any mailpieces not containing hazardous materials. Where mailpieces are tendered in containers, pallets, or other mail transport equipment (see Handbook PO–502, *Mail Transport Equipment*), hazardous-materials mailpieces must be presented in a separate receptacle from non-hazardous-materials mailpieces.

b. Clearly mark an exterior side of all receptacles containing hazardous materials mailpieces as ''HAZMAT''.

* * * * *

34 Mailability by Hazard Class

* * * * *

349 Miscellaneous Hazardous Materials (Hazard Class 9)

* * * * *

349.1 Definition

* * * * *

349.12 Lithium Battery—Definitions

[Add new item e as follows:]

e. *Used, damaged, or defective electronic device* means an electronic device containing or packaged with one or more lithium cells or batteries and where the electronic device (1) is not new in original packaging, manufacturer certified new/refurbished, and/or (2) has some form of damage or defect.

* * * * *

349.2 Mailability

* * * * *

349.21 Nonmailable Class 9 Materials

[Add new item g and h to read as follows:]

g. Damaged, defective, or recalled batteries unless approved by the director, Product Classification (see 214 for address).

h. All used, damaged, or defective electronic devices in international mail or domestic air transportation. This excludes devices that are new in original packaging, and manufacturer certified new/refurbished.

* * * * *

349.221 Lithium Metal (Nonrechargeable) Cells and Batteries—Domestic

[Add new item 8 to read as follows:]

8. All used, damaged, or defective lithium metal cells or batteries or electronic devices contained in or packed with lithium metal cells or batteries (excluding new, in original packaging, and manufacturer certified new/refurbished) must be marked with the text ''Restricted Electronic Device'' and ''Surface Transportation Only'' on the address side of the mailpiece.

* * * * *

349.222 Lithium-ion (Rechargeable) Cells and Batteries—Domestic

[Add new item 8 to read as follows:]

8. All used, damaged, or defective lithium-ion cells or batteries or electronic devices contained in or packed with lithium-ion cells or batteries (excluding new, in original packaging, and manufacturer certified new/refurbished) must be marked with the text ''Restricted Electronic Device'' and ''Surface Transportation Only'' on the address side of the mailpiece.

* * * * *

Exhibit 349.222 Domestic Lithium Battery Mailability

[Add new footnote 1 reference to Air Transportation title and new footnote 7 reference in Air Transportation column of row 9, create new footnote text, delete row 10; revise manager title to director in last row; and renumber footnotes accordingly]

	Surface transportation	Air transportation [1]	Mailpiece limitations [2]
Lithium Metal or Lithium Alloy Batteries [3 4] *Small, non-rechargeable, consumer-type batteries*			
Contained in (properly installed in equipment)	Mailable	Mailable	8 cells or 2 batteries, 11 lbs.
Packed with equipment, but not installed in the equipment.	Mailable	Mailable	8 cells or 2 batteries, 11 lbs.
Without the equipment they operate (individual batteries in originally sealed packaging).	Mailable	Prohibited	5 lbs.
Lithium-ion or Lithium Polymer Batteries [5 6] *Small, rechargeable, consumer-type batteries*			
Contained in (properly installed in equipment)	Mailable	Mailable	8 cells or 2 batteries.
Packed with equipment, but not installed in the equipment.	Mailable	Mailable	8 cells or 2 batteries.
Without the equipment they operate (individual batteries in originally sealed packaging).	Mailable	Prohibited [7]	5 lbs.
Very Small Lithium Metal or Lithium-ion Batteries [8 9] *Exception for very small consumer-type batteries in USPS air transportation*			
Contained in (properly installed in equipment)	Mailable	Mailable	No limit on cells/batteries, 5.5 pounds.

	Surface transportation	Air transportation [1]	Mailpiece limitations [2]
Packed with equipment, but not installed in the equipment.	Mailable	Mailable	No limit on cells/batteries, 5.5 pounds.
Damaged, Defective, or Recalled Batteries	Prohibited, unless approved by the director, Product Classification.		

[1] Used, damaged, or defective electronic devices are prohibited from air transportation. This excludes devices that are new in original packaging, and manufacturer certified new/refurbished.
[2] When a mailpiece limitation of 8 cells or 2 batteries is applicable, a mailpiece may contain either 8 cells or 2 batteries, not both.
[3] Each cell must not contain more than 1g lithium content.
[4] Each battery must not contain more than 2g aggregate lithium content.
[5] Each cell must not exceed more than 20 Wh (watt-hour rating).
[6] Each battery must not exceed 100 Wh.
[7] Mailable intra-Alaska via air transportation with a limitation of 8 cells or 2 batteries.
[8] Each lithium metal or lithium alloy cell or battery must not exceed 0.3 gram of lithium content.
[9] Each lithium-ion or lithium polymer cell or battery must not exceed 2.7 Wh.

* * * * *

6 International Mail

* * * * *

62 Hazardous Materials: International Mail

* * * * *

622 Mailable Hazardous Materials

* * * * *

622.5 Lithium and Lithium-ion Cells and Batteries—General

[Revise the first paragraph to read as follows:]

Only lithium batteries under 622.51 and 622.52 that are properly installed in the equipment they operate may be sent internationally or to, from, or between APO, FPO, or DPO locations (subject to the conditions prescribed by the Department of Defense listed in *Overseas Military/Diplomatic Mail* in the *Postal Bulletin*). Used, damaged, defective, or recalled lithium batteries and used, damaged, or defective electronic devices (excluding devices that are new in original packaging, and manufacturer certified new/refurbished) containing or packaged with lithium batteries are prohibited and may not be mailed internationally or to, from, or between APO, FPO, or DPO locations under any circumstances. See 349.21.

* * * * *

Exhibit 622.5 International Lithium Battery Mailability

[Add new footnote 2 to International APO/FPO/DPO column, create new footnote 2 text, and renumber existing references previously numbered as 2 through 8 to 3 through 9]

	International APO/FPO/DPO [1] [2]	Mailpiece battery limit [3]
Lithium Metal or Lithium Alloy Batteries [4] [5] *Small, non-rechargeable, consumer-type batteries*		
Contained in (properly installed in equipment)	Mailable	Maximum of 4 cells or 2 batteries.
Packed with equipment, but not installed in the equipment	Prohibited.	
Without the equipment they operate (individual batteries in originally sealed packaging).	Prohibited.	
Lithium-ion or Lithium Polymer Batteries [6] [7] *Small, rechargeable, consumer-type batteries*		
Contained in (properly installed in equipment)	Mailable	Maximum of 4 cells or 2 batteries.
Packed with equipment, but not installed in the equipment	Prohibited.	
Without the equipment they operate (individual batteries in originally sealed packaging),.	Prohibited.	
Very Small Lithium Metal or Lithium-ion Batteries [8] [9] *Exception for very small consumer-type batteries in international transportation*		
Contained in (properly installed in equipment)	Mailable	Maximum of 4 cells or 2 batteries.
Packed with equipment, but not installed in the equipment	Prohibited.	
Without the equipment they operate (individual batteries in originally sealed packaging).	Prohibited.	

[1] Unless otherwise prohibited by the international destination country or specific APO/FPO/DPO ZIP Code location.
[2] Used, damaged, defective, or recalled lithium batteries and used, damaged, or defective electronic devices containing or packaged with lithium batteries are prohibited and may not be mailed internationally or to, from or between APO, FPO, or DPO locations under any circumstances. This excludes devices that are new in original packaging, and manufacturer certified new/refurbished.
[3] When a mailpiece limitation of 4 cells or 2 batteries is applicable, a mailpiece may contain either 4 cells or 2 batteries, not both.
[4] Each lithium metal or lithium alloy cell must not contain more than 1g lithium content.
[5] Each lithium metal or lithium alloy battery must not contain more than 2g of aggregate lithium content.
[6] Each lithium-ion or lithium polymer cell must not exceed more than 20 Wh (watt-hour rating).
[7] Each lithium-ion or lithium polymer battery must not exceed 100 Wh.
[8] Each lithium metal or lithium alloy cell or battery must not exceed 0.3 gram of lithium content.
[9] Each lithium-ion or lithium polymer cell or battery must not exceed a watt-hour rating of 2.7 Wh.

* * * * *

623 Nonmailable Hazardous Materials

[Revise items j and l; and add new items m and n as follows:]

j. Class 9, miscellaneous hazardous materials (349), except as permitted in 622.4 and 622.5.

k. Dry ice (carbon dioxide solid) (349.23).

l. Magnetized materials capable of causing a compass deviation at a distance of 7 feet or more (349.24).

m. All damaged, defective, or recalled lithium batteries (see 349.21).

n. All used, damaged, or defective electronic devices containing or packaged with lithium batteries (see 349.21). This excludes devices that are new in original packaging, and manufacturer certified new/refurbished.

* * * * *

Appendix C

* * * * *

USPS Packaging Instruction 9D

Lithium Metal and Lithium-Ion Cells and Batteries—Domestic

[Revise the first paragraph to read as follows:]

Except pursuant to 349.21, lithium metal (non-rechargeable) cells and batteries and lithium-ion (rechargeable) cells and batteries are mailable in limited quantities domestically via air or surface transportation when they are installed in or packed with the equipment they are intended to operate. Unless otherwise excepted, lithium metal and lithium-ion batteries (without equipment) are mailable in limited quantities domestically via surface transportation only. Lithium metal and lithium-ion batteries installed in or packed with used, damaged, or defective electronic devices (excluding devices that are new in original packaging, and manufacturer certified new/refurbished) meeting all mailability requirements in 349 are mailable via surface transportation only.

* * * * *

Mailability

[Revise the first bullet as follows:]

Lithium metal and lithium-ion cells and batteries *installed in or packed with* equipment may be mailable via air or surface transportation.

* * * * *

[Add new fourth bullet to read as follows:]

Used, damaged, or defective electronic devices (excluding devices that are new in original packaging, manufacturer certified new/refurbished) containing or packaged with lithium batteries (see 349.12e) must be mailed via domestic surface transportation only, provided they meet eligibility requirements in accordance with 349.

* * * * *

Markings

[Add new item 5 under the Lithium metal batteries properly installed bullet to read as follows:]

Lithium metal batteries properly *installed in* the equipment they are intended to operate.

5. Used, damaged, or defective electronic devices (excluding devices that are new in original packaging, and manufacturer certified new/refurbished) must include the text ''Restricted Electronic Device'' and ''Surface Transportation Only'' on the address side of the mailpiece.

* * * * *

[Add new item 4 under the Lithium metal batteries packed with bullet to read as follows:]

Lithium metal batteries *packed with* the equipment they are intended to operate 4. Used, damaged, or defective electronic devices (excluding devices that are new in original packaging, and manufacturer certified new/refurbished) must include the text ''Restricted Electronic Device'' and ''Surface Mail Only'' on the address side on the mailpiece.

* * * * *

[Add new item 4 under the Lithium-ion batteries properly installed bullet to read as follows:]

Lithium-ion batteries properly *installed in* the equipment they are intended to operate.

4. Used, damaged, or defective electronic devices (excluding devices that are new in original packaging, and manufacturer certified new/refurbished) must include the text ''Restricted Electronic Device'' and ''Surface Mail Only'' on the address side on the mailpiece.

* * * * *

[Add new item 5 under the Lithium-ion batteries packed with bullet to read as follows:]

Lithium-ion batteries *packed with* the equipment they are intended to operate.

5. Used, damaged, or defective electronic devices (excluding devices that are new in original packaging, and manufacturer certified new/refurbished) must include the text ''Restricted Electronic Device'' and ''Surface Mail Only'' on the address side on the mailpiece.

* * * * *

[Add new bullet at end of Marking section to read as follows:]

Used, damaged, or defective electronic devices: In addition to any other applicable marking requirements listed above, packages containing used, damaged, or defective electronic devices (excluding devices that are new in original packaging, and manufacturer certified new/refurbished) containing or packaged with lithium batteries must be marked with the text ''Restricted Electronic Device'' and ''Surface Transportation Only'' on the address side of the package. See 221.1 and 325.1. Products being returned via Parcel Return Service (PRS), Return Delivery Unit (RDU) or Return Sectional Center Facility (RSCF) are exempt from this marking requirement.

* * * * *

Domestic Lithium Battery Mailability Exhibit

[Add new footnote 1 reference to Air Transportation title and new footnote 7 reference in Air Transportation column of row 9, create new footnote text, delete row 10; revise manager title to director in last row; and renumber footnotes accordingly]

	Surface transportation	Air transportation [1]	Mailpiece limitations [2]
Lithium Metal or Lithium Alloy Batteries [3 4] *Small, non-rechargeable, consumer-type batteries*			
Contained in (properly installed in equipment)	Mailable	Mailable	8 cells or 2 batteries, 11 lbs.
Packed with equipment, but not installed in the equipment.	Mailable	Mailable	8 cells or 2 batteries, 11 lbs.
Without the equipment they operate (individual batteries in originally sealed packaging).	Mailable	Prohibited	5 lbs.
Lithium-ion or Lithium Polymer Batteries [5 6]			

	Surface transportation	Air transportation [1]	Mailpiece limitations [2]
Small, rechargeable, consumer-type batteries			
Contained in (properly installed in equipment)	Mailable	Mailable	8 cells or 2 batteries
Packed with equipment, but not installed in the equipment.	Mailable	Mailable	8 cells or 2 batteries
Without the equipment they operate (individual batteries in originally sealed packaging).	Mailable	Prohibited [7]	5 lbs.
Very Small Lithium Metal or Lithium-ion Batteries [8 9] *Exception for very small consumer-type batteries in USPS air transportation*			
Contained in (properly installed in equipment)	Mailable	Mailable	No limit on cells/batteries, 5.5 pounds.
Packed with equipment, but not installed in the equipment.	Mailable	Mailable	No limit on cells/batteries, 5.5 pounds.
Damaged, Defective, or Recalled Batteries	Prohibited, unless approved by the director, Product Classification.		

[1] Used, damaged, or defective electronic devices are prohibited from air transportation. This excludes devices that are new in original packaging, and manufacturer certified new/refurbished.
[2] When a mailpiece limitation of 8 cells or 2 batteries is applicable, a mailpiece may contain either 8 cells or 2 batteries, not both.
[3] Each cell must not contain more than 1g lithium content.
[4] Each battery must not contain more than 2g aggregate lithium content.
[5] Each cell must not exceed more than 20 Wh (watt-hour rating).
[6] Each battery must not exceed 100 Wh.
[7] Mailable intra-Alaska via air transportation with a limitation of 8 cells or 2 batteries.
[8] Each lithium metal or lithium alloy cell or battery must not exceed 0.3 gram of lithium content.
[9] Each lithium-ion or lithium polymer cell or battery must not exceed 2.7 Wh.

* * * * *

USPS Packaging Instruction 9E

Lithium Metal and Lithium-ion Cells and Batteries—International and APO/FPO/DPO

* * * * *

Mailability

[Revise second bullet and add new third bullet to read as follows:]

Lithium metal and lithium-ion cells and batteries not packed in equipment (*i.e.,* batteries packed with equipment or batteries sent separately from equipment) are prohibited.

Used, damaged, and defective electronic devices (excluding devices that are new in original packaging, and manufacturer certified new/refurbished) containing lithium batteries are prohibited (see 623).

* * * * *

International Lithium Battery Mailability Exhibit

[Add new footnote 2 to International APO/FPO/DPO column, create new footnote 2 text, and renumber existing references previously numbered as 2 through 8 to 3 through 9]

	International APO/FPO/DPO [1 2]	Mailpiece battery limit [3]
Lithium Metal or Lithium Alloy Batteries [4 5] *Small, non-rechargeable, consumer-type batteries*		
Contained in (properly installed in equipment)	Mailable	Maximum of 4 cells or 2 batteries.
Packed with equipment, but not installed in the equipment	Prohibited.	
Without the equipment they operate (individual batteries in originally sealed packaging).	Prohibited.	
Lithium-ion or Lithium Polymer Batteries [6 7] *Small, rechargeable, consumer-type batteries*		
Contained in (properly installed in equipment)	Mailable	Maximum of 4 cells or 2 batteries.
Packed with equipment, but not installed in the equipment	Prohibited.	
Without the equipment they operate (individual batteries in originally sealed packaging).	Prohibited.	
Very Small Lithium Metal or Lithium-ion Batteries [8 9] *Exception for very small consumer-type batteries in international transportation*		
Contained in (properly installed in equipment)	Mailable	Maximum of 4 cells or 2 batteries.
Packed with equipment, but not installed in the equipment	Prohibited.	
Without the equipment they operate (individual batteries in originally sealed packaging).	Prohibited.	

[1] Unless otherwise prohibited by the international destination country or specific APO/FPO/DPO ZIP Code location.
[2] Used, damaged, defective, or recalled lithium batteries and used damaged, or defective electronic devices containing lithium batteries are prohibited and may not be mailed internationally or to, from or between APO, FPO, or DPO locations under any circumstances. This excludes new in original packaging and manufacturer certified new/refurbished devices.
[3] When a mailpiece limitation of 4 cells or 2 batteries is applicable, a mailpiece may contain either 4 cells or 2 batteries, not both.
[4] Each lithium metal or lithium alloy cell must not contain more than 1g lithium content.

[5] Each lithium metal or lithium alloy battery must not contain more than 2g of aggregate lithium content.
[6] Each lithium-ion or lithium polymer cell must not exceed more than 20 Wh (watt-hour rating).
[7] Each lithium-ion or lithium polymer battery must not exceed 100 Wh.
[8] Each lithium metal or lithium alloy cell or battery must not exceed 0.3 gram of lithium content.
[9] Each lithium-ion or lithium polymer cell or battery must not exceed a watt-hour rating of 2.7 Wh.

* * * * *

[Add new Appendix F to read as follows:]

Appendix F

Alaska Routes Serviced by Air Transportation Only

The following zip codes in Alaska are only serviced by air transportation and have no surface transportation available.

99545, 99546, 99547, 99548, 99549, 99550, 99551, 99552, 99553, 99554, 99555, 99557, 99558, 99559, 99561, 99563, 99564, 99565, 99569, 99571, 99574, 99575, 99576, 99578, 99579, 99580, 99581, 99583, 99585, 99589, 99590, 99591, 99602, 99604, 99606, 99607, 99608, 99609, 99612, 99613, 99614, 99615, 99619, 99620, 99621, 99622, 99624, 99625, 99626, 99627, 99628, 99630, 99632, 99633, 99634, 99636, 99637, 99638, 99640, 99641, 99643, 99644, 99647, 99648, 99649, 99650, 99651, 99653, 99655, 99656, 99657, 99658, 99659, 99660, 99661, 99662, 99663, 99665, 99666, 99667, 99668, 99670, 99671, 99675, 99677, 99678, 99679, 99680, 99681, 99682, 99684, 99685, 99689, 99690, 99691, 99692, 99695, 99697, 99720, 99721, 99722, 99723, 99724, 99726, 99727, 99730, 99732, 99733, 99734, 99736, 99738, 99739, 99740, 99741, 99742, 99745, 99746, 99747, 99748, 99749, 99750, 99751, 99752, 99753, 99754, 99756, 99757, 99758, 99759, 99761, 99762, 99763, 99765, 99766, 99767, 99768, 99769, 99770, 99771, 99772, 99773, 99774, 99777, 99778, 99781, 99782, 99783, 99784, 99785, 99786, 99788, 99789, 99790, 99791, 99801, 99802, 99803, 99811, 99812, 99820, 99821, 99824, 99825, 99826, 99827, 99829, 99830, 99832, 99833, 99835, 99836, 99840, 99841, 99850, 99901, 99903, 99918, 99919, 99921, 99922, 99923, 99925, 99926, 99927, 99928, 99929, 99950.

* * * * *

[FR Doc. 2022–26069 Filed 11–25–22; 11:15 am]
BILLING CODE 7710–12–P

POSTAL SERVICE

39 CFR Part 121

Service Standards for Market-Dominant Mail Products

AGENCY: Postal Service™.

ACTION: Final rule.

SUMMARY: This final rule adds a service standard for Connect™ Local Mail to the set of service standards for First-Class Mail set forth in our regulations.

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

FOR FURTHER INFORMATION CONTACT: Andrew Pigott, 202–268–4031.

SUPPLEMENTARY INFORMATION:

I. Introduction

On November 10, 2021, the Postal Service filed a notice in Docket No. MT2022–1 announcing its intent to conduct a market test of an experimental product denominated as USPS Connect™ Local Mail and demonstrated that the market test would comply with applicable legal requirements. The Postal Regulatory Commission found that the market test met the requirements of 39 U.S.C. 3641 and 39 CFR part 3045 and authorized the market test to proceed in Order No. 6080 on January 4, 2022.

The Postal Service initially introduced its test of USPS Connect™ Local Mail in Texas to align with its nationwide rollout of the corresponding packages product, USPS Connect™ Local. By the end of the second quarter, which ended March 31, 2022, USPS Connect™ Local Mail was offered as a market test product in 11 states. Another 16 states were added in the third quarter; 23 more were added in the fourth quarter. Once the initial phased national rollout was complete, USPS Connect™ Local Mail was offered in all 50 states and the District of Columbia.

The Postal Service is now seeking to classify USPS Connect™ Local Mail as a permanent classification in the Mail Classification Schedule (MCS). The Postal Service has thus requested that the service be listed in the MCS under the First-Class Mail class in Postal Regulatory Commission Docket No. MC2023–12. Assuming the changes are adopted in accordance with the expected date of implementation of January 22, 2023, the Postal Service plans to add USPS Connect™ Local Mail as a price category within First-Class Mail Flats. USPS Connect™ Local Mail will provide customers same-day or next-day options for local delivery of documents. USPS Connect™ Local Mail requires local induction through dropoff at a participating Destination Delivery Unit (DDU), or carrier pick-up in line-of-travel to a participating DDU. Documents accepted by the Postal Service at a participating DDU by 7 a.m. will receive a same day service standard, while mailpieces received after 7 a.m. at a participating DDU or by carrier pick-up will receive a one day service standard (*i.e.,* they will be eligible for delivery the following delivery day).

II. Explanation of Final Rule

The Postal Service's market-dominant service standards are contained in 39 CFR part 121. The revisions to 39 CFR part 121 appear at the end of this document. The following is a summary of the revisions.

A. Service Standards Generally

Service standards contain two components: (1) a delivery day range within which mail in a given product is expected to be delivered; and (2) business rules that determine, within a product's applicable day range, the specific number of delivery days after acceptance of a mail piece by which a customer can expect that piece to be delivered, based on the piece's point of entry into the mail stream and its delivery address.

Business rules are based on critical entry times (CETs). The CET is the latest time on a particular day that a mail piece can be entered into the postal network and still have its service standard calculated based on that day (this day is termed ''day-zero''). In other words, if a piece is entered before the CET, its service standard is calculated from the day of entry, whereas if it is entered after the CET, its service standard is calculated from the following day. (If the following day is a Sunday or holiday, then the service standard is calculated from the next Postal Service delivery day.) For example, if the applicable CET is 5:00 p.m., and a letter is entered at 4:00 p.m. on a Tuesday, its service standard will be calculated from Tuesday, whereas if the letter is entered at 6:00 p.m. on a Tuesday, its service standard will be calculated from Wednesday. CETs are not contained in 39 CFR part 121, because they vary based on where mail is entered, the mail's level of preparation, and other factors.

B. USPS Connect™ Local Mail

USPS Connect™ Local Mail will be offered as a price category under First-Class Mail Flats. It is intended for local document delivery. Customers will be

able to deposit USPS Connect™ Local Mail items at participating destination delivery units (DDUs) or present them to mail carriers along their lines of travel to participating DDUs.

USPS Connect™ Local Mail will receive either a same-day or a 1-day (*i.e.,* next-delivery day) service standard, depending on whether it is accepted at a participating DDU by the CET of 7:00 a.m. USPS Connect™ Local Mail accepted by the Postal Service at a participating DDU by the applicable CET will receive a same day service standard, while mailpieces received after applicable CET at a participating DDU or by carrier pick-up will receive a one day service standard.

Payment for USPS Connect™ Local Mail will be offered via Click N Ship and by USPS API as well. Tracking will be offered to USPS Connect™ Local Mail customers using IMpb barcodes.

List of Subjects in 39 CFR Part 121

Administrative practice and procedure, Postal Service.

Accordingly, for the reasons stated, the Postal Service adopts the following amendment to 39 CFR part 121:

PART 121—SERVICE STANDARDS FOR MARKET-DOMINANT MAIL PRODUCTS

■ 1. The authority citation for part 121 is revised to read as follows:

Authority: 39 U.S.C. 101, 401, 403, 404, 1001, 3691.

■ 2. Section 121.1 is amended by redesignating paragraphs (a) through (g) as paragraphs (b) through (h), respectively, and adding a new paragraph (a) to read as follows:

§ 121.1 First-Class Mail.

(a) A same day service standard is applied to USPS Connect™ Local Mail pieces properly accepted at participating Destination Delivery Units before the day-zero Critical Entry Time (CET); a one day service standard is applied to USPS Connect™ Local Mail pieces accepted via carrier pick-up or properly accepted at participating Destination Delivery Units after the day-zero CET.

* * * * *

■ 3. Appendix A to part 121 is revised to read as follows:

Appendix A to Part 121—Tables Depicting Service Standard Day Ranges

The following tables reflect the service standard day ranges resulting from the application of the business rules applicable to the market-dominant mail products referenced in §§ 121.1 through 121.4 (for purposes of this part, references to the contiguous states also include the District of Columbia):

Table 1. End-to-end service standard day ranges for mail originating and destinating within the contiguous 48 states and the District of Columbia.

TABLE 1—CONTIGUOUS UNITED STATES

Mail class	End-to-end range (days)
First-Class Mail *	1–5
Periodicals	3–9
USPS Marketing Mail	3–10
Package Services	2–8

* Excluding USPS Connect™ Local Mail.

Table 2. End-to-end service standard day ranges for mail originating and/or destinating in non-contiguous states and territories.

TABLE 2—NON-CONTIGUOUS STATES AND TERRITORIES

Mail class	End-to-end								
	Intra state/territory			To/from contiguous 48 states			To/from states of Alaska and Hawaii, and the territories of Guam, Puerto Rico (PR), American Samoa (AS), Northern Mariana Islands (MP), and U.S. Virgin Islands (USVI)		
	Alaska	Hawaii, Guam, MP, & AS	PR & USVI	Alaska	Hawaii, Guam, MP, & AS	PR & USVI	Alaska	Hawaii, Guam, MP, & AS	PR & USVI
First-Class Mail *	1–4	1–4	1–2	4–5	4–5	4–5	5	5	5
Periodicals	3–5	3–5	3	13–19	12–22	11–16	21–25	21–26	23–26
USPS Marketing Mail	3–5	3–5	3–4	14–20	13–23	12–17	23–26	23–27	24–27
Package Services	** 2–4	2–4	2–3	12–18	11–21	10–15	21–26	20–26	20–24

* Excluding USPS Connect™ Local Mail.
** Excluding bypass mail.

Sarah Sullivan,

Attorney, Ethics and Legal Compliance.

[FR Doc. 2022–26075 Filed 11–29–22; 8:45 am]

BILLING CODE 7710–12–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R01–OAR–2016–0168; FRL–10414–02–R1]

Air Plan Approval; Connecticut; Plan Submittals for the 2008 Ozone National Ambient Air Quality Standard

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule; correcting amendment.

SUMMARY: The Environmental Protection Agency (EPA) is amending approved State Implementation Plan (SIP) revisions submitted by the State of Connecticut to address SIP revisions submitted to meet moderate area nonattainment requirements for the 2008 ozone standard. The SIP revisions are for the Greater Connecticut and the Connecticut portion of the New York-Northern New Jersey-Long Island, NY-NJ-CT moderate ozone nonattainment areas, and include these areas 2011 base year emissions inventories, an emissions statement certification, reasonable further progress (RFP) demonstrations, reasonably available control measures (RACM) analyses, motor vehicle emissions budgets, and contingency measures. This rule does not change any final action taken by EPA in an earlier final rule published on October 1, 2018; this action merely corrects the Clean Air Act (CAA) citation for moderate area contingency measures.

DATES: This rule is effective on November 30, 2022.

ADDRESSES: EPA has established a docket for this action under Docket Identification No. EPA–R01–OAR–2016–0168. All documents in the docket are listed on the *https://www.regulations.gov* website. Although listed in the index, some information is not publicly available, *i.e.,* CBI or other

information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the internet and will be publicly available only in hard copy form. Publicly available docket materials are available at *https://www.regulations.gov* or at the U.S. Environmental Protection Agency, EPA Region 1 Regional Office, Air and Radiation Division, 5 Post Office Square—Suite 100, Boston, MA. EPA requests that if at all possible, you contact the contact listed in the **FOR FURTHER INFORMATION CONTACT** section to schedule your inspection. The Regional Office's official hours of business are Monday through Friday, 8:30 a.m. to 4:30 p.m., excluding legal holidays and facility closures due to COVID–19.

FOR FURTHER INFORMATION CONTACT: Bob McConnell, Environmental Engineer, Air Quality Planning Unit, Air Programs Branch (Mail Code OEP05–02), U.S. Environmental Protection Agency, Region 1, 5 Post Office Square, Suite 100, Boston, Massachusetts, 02109–3912; (617) 918–1046; *mcconnell.robert@epa.gov.*

SUPPLEMENTARY INFORMATION: Throughout this document whenever ''we,'' ''us,'' or ''our'' is used, we mean EPA.

Table of Contents

I. Background and Purpose

On October 1, 2018, a Final Rule published at 83 FR 49297 (FR doc. 2018–21150). EPA has identified the need for a typographical correction to the regulatory text approved into the Code of Federal Regulations by FR Rule Doc. 2018–21150. The typographical error appears on page 49298, in the second column, in § 52.377, in amendment 2, within the added paragraph (t).

II. Final Action

The EPA is revising a final rule that was published in the **Federal Register** on October 1, 2018, which became effective on October 31, 2018, correcting a typographical error to 40 CFR 52.377(t). The final rule approved SIP revisions submitted by the State of Connecticut to address SIP revisions submitted to meet moderate area nonattainment requirements for the 2008 ozone standard. The SIP revisions are for the Greater Connecticut and the Connecticut portion of the New York-Northern New Jersey-Long Island, NY-NJ-CT moderate ozone nonattainment areas, and include these areas 2011 base year emissions inventories, an emissions statement certification, RFP demonstrations, RACM analyses, motor vehicle emissions budgets, and contingency measures. This revision does not change any final action taken by EPA on October 1, 2018; this action merely corrects the CAA citation for moderate area contingency measures. We have determined that there is good cause for making this rule final without prior proposal and opportunity for comment because we are merely correcting an incorrect citation in a previous action. Thus, notice and public procedure are unnecessary. We find that this constitutes good cause under 5 U.S.C. 553(b)(B).

III. Statutory and Executive Order Reviews

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

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

In addition, the SIP is not approved to apply on any Indian reservation land or in any other area where EPA or an Indian tribe has demonstrated that a tribe has jurisdiction. In those areas of Indian country, the rule does not have tribal implications and will not impose substantial direct costs on tribal governments or preempt tribal law as specified by Executive Order 13175 (65 FR 67249, November 9, 2000).

The Congressional Review Act, 5 U.S.C. 801 *et seq.,* as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this action and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a ''major rule'' as defined by 5 U.S.C. 804(2).

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Carbon monoxide, Incorporation by reference, Intergovernmental relations, Lead, Nitrogen dioxide, Ozone, Particulate matter, Reporting and recordkeeping requirements, Sulfur oxides, Volatile organic compounds.

Dated: November 22, 2022.

David Cash,

Regional Administrator, EPA Region 1.

Part 52 of chapter I, title 40 of the Code of Federal Regulations is amended as follows:

PART 52—APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS

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

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

Subpart H—Connecticut

■ 2. Section 52.377 is amended by revising paragraph (t) to read as follows:

§ 52.377 Control strategy: Ozone.

* * * * *

(t) *Approval.* Revisions to the State Implementation Plan submitted by the Connecticut Department of Energy and Environmental Protection on January 17, 2017, September 5, 2017, and August 8, 2017, to meet, in part, requirements of the 2008 ozone NAAQS. These revisions satisfy the rate of progress requirement of section 182(b) through 2017, the contingency measure requirements of section 172(c)(9), the emission statement requirements of section 182(a)(3)(B), and the reasonably available control measure requirement of section 172(c)(1) for the Connecticut portion of the New York-Northern New Jersey-Long Island, NY-NJ-CT area, and the Greater Connecticut moderate ozone nonattainment areas. The January 17, 2017 revision establishes motor vehicle emissions budgets for 2017 of 15.9 tons per day of VOC and 22.2 tons per day of NO_X to be used in transportation conformity in the Greater Connecticut moderate ozone nonattainment area. The August 8, 2017 revision establishes motor vehicle emissions budgets for 2017 of 17.6 tons per day of VOC and 24.6 tons per day of NO_X to be used in transportation conformity in the Connecticut portion of the New York-Northern New Jersey-Long Island, NY-NJ-CT moderate ozone nonattainment area.

* * * * *

[FR Doc. 2022–26016 Filed 11–29–22; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[EPA–HQ–OPP–2018–0191; FRL–10423–01–OCSPP]

N,N-Dimethylnonanamide; Tolerance Exemption

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This regulation establishes an exemption from the requirement of a tolerance for residues of N,N-dimethylnonanamide (CAS Reg. No. 6225–08–7) when used as an inert ingredient (solvent, co-solvent, and adjuvant) not to exceed 20% by weight in pesticide formulations applied to growing crops and raw agricultural commodities pre- and post-harvest, and applied to animals. Spring Trading Company, on behalf of Clariant Corporation, submitted a petition (IN–11126) to EPA under the Federal Food, Drug, and Cosmetic Act (FFDCA), requesting establishment of an exemption from the requirement of a tolerance. This regulation eliminates the need to establish a maximum permissible level for residues of N,N-dimethylnonanamide, when used in accordance with the terms of these exemptions.

DATES: This regulation is effective November 30, 2022. Objections and requests for hearings must be received on or before January 30, 2023 and must be filed in accordance with the instructions provided in 40 CFR part 178 (see also Unit I.C. of the **SUPPLEMENTARY INFORMATION**).

ADDRESSES: The docket for this action, identified by docket identification (ID) number EPA–HQ–OPP–2018–0191, is available at *https://www.regulations.gov* or at the Office of Pesticide Programs Regulatory Public Docket (OPP Docket) in the Environmental Protection Agency Docket Center (EPA/DC), West William Jefferson Clinton Bldg., Rm. 3334, 1301 Constitution Ave. NW, Washington, DC 20460–0001. The Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room and the OPP docket is (202) 566–1744. For the latest status information on EPA/DC services, docket access, visit *https://www.epa.gov/dockets.*

FOR FURTHER INFORMATION CONTACT: Daniel Rosenblatt, Registration Division (7505T), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave. NW, Washington, DC 20460–0001; main telephone number: (202) 566–1030; email address: *RDFRNotices@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this action apply to me?

You may be potentially affected by this action if you are an agricultural producer, food manufacturer, or pesticide manufacturer. The following list of North American Industrial Classification System (NAICS) codes is not intended to be exhaustive, but rather provides a guide to help readers determine whether this document applies to them. Potentially affected entities may include:

- Crop production (NAICS code 111).
- Animal production (NAICS code 112).
- Food manufacturing (NAICS code 311).
- Pesticide manufacturing (NAICS code 32532).

B. How can I get electronic access to other related information?

You may access a frequently updated electronic version of 40 CFR part 180 through the Office of the Federal Register's e-CFR site at *https://www.ecfr.gov/current/title-40.*

C. How can I file an objection or hearing request?

Under FFDCA section 408(g), 21 U.S.C. 346a(g), any person may file an objection to any aspect of this regulation and may also request a hearing on those objections. You must file your objection or request a hearing on this regulation in accordance with the instructions provided in 40 CFR part 178. To ensure proper receipt by EPA, you must identify docket ID number EPA–HQ–OPP–2018–0191 in the subject line on the first page of your submission. All objections and requests for a hearing must be in writing and must be received by the Hearing Clerk on or before January 30, 2023. Addresses for mail and hand delivery of objections and hearing requests are provided in 40 CFR 178.25(b).

In addition to filing an objection or hearing request with the Hearing Clerk as described in 40 CFR part 178, please submit a copy of the filing (excluding any Confidential Business Information (CBI)) for inclusion in the public docket. Information not marked confidential pursuant to 40 CFR part 2 may be disclosed publicly by EPA without prior notice. Submit the non-CBI copy of your objection or hearing request, identified by docket ID number EPA–HQ–OPP–2018–0191, by one of the following methods:

- *Federal eRulemaking Portal: https://www.regulations.gov.* Follow the online instructions for submitting comments. Do not submit electronically any information you consider to be CBI or other information whose disclosure is restricted by statute.
- *Mail:* OPP Docket, Environmental Protection Agency Docket Center (EPA/DC), (28221T), 1200 Pennsylvania Ave. NW, Washington, DC 20460–0001.
- *Hand Delivery:* To make special arrangements for hand delivery or delivery of boxed information, please follow the instructions at *https://www.epa.gov//send-comments-epa-dockets.*

Additional instructions on commenting or visiting the docket,

along with more information about dockets generally, is available at *https://www.epa.gov/dockets*.

II. Petition for Exemption

In the **Federal Register** of October 18, 2018 (83 FR 52787) (FRL–9984–21), EPA issued a document pursuant to FFDCA section 408, 21 U.S.C. 346a, announcing the filing of a pesticide petition (IN–11126) by Spring Trading Company, on behalf of Clariant Corporation, 4000 Monroe Rd., Charlotte, NC 28205. The petition requested that 40 CFR be amended by establishing an exemption from the requirement of a tolerance for residues of N,N-dimethylnonanamide (CAS Reg. No. 6225–08–7) when used as an inert ingredient (solvent, co-solvent, and adjuvant) in pesticide formulations applied to growing crops or raw agricultural commodities pre- and post-harvest under 40 CFR 180.910 and applied to animals under 40 CFR 180.930. That document referenced a summary of the petition prepared by Spring Trading Company, on behalf of Clariant Corporation, the petitioner, which is available in the docket, *https://www.regulations.gov*. Subsequently, the petitioner requested that N,N-dimethylnonanamide be limited to no more than 20% in pesticide formulations. There were no relevant comments received in response to the notice of filing.

III. Inert Ingredient Definition

Inert ingredients are all ingredients that are not active ingredients as defined in 40 CFR 153.125 and include, but are not limited to, the following types of ingredients (except when they have a pesticidal efficacy of their own): Solvents such as alcohols and hydrocarbons; surfactants such as polyoxyethylene polymers and fatty acids; carriers such as clay and diatomaceous earth; thickeners such as carrageenan and modified cellulose; wetting, spreading, and dispersing agents; propellants in aerosol dispensers; microencapsulating agents; and emulsifiers. The term ''inert'' is not intended to imply nontoxicity; the ingredient may or may not be chemically active. Generally, EPA has exempted inert ingredients from the requirement of a tolerance based on the low toxicity of the individual inert ingredients.

IV. Aggregate Risk Assessment and Determination of Safety

Section 408(c)(2)(A)(i) of FFDCA allows EPA to establish an exemption from the requirement for a tolerance (the legal limit for a pesticide chemical residue in or on a food) only if EPA determines that the tolerance is ''safe.'' Section 408(c)(2)(A)(ii) of FFDCA defines ''safe'' to mean that ''there is a reasonable certainty that no harm will result from aggregate exposure to the pesticide chemical residue, including all anticipated dietary exposures and all other exposures for which there is reliable information.'' This includes exposure through drinking water and in residential settings but does not include occupational exposure. When making a safety determination for an exemption for the requirement of a tolerance FFDCA section 408(c)(2)(B) directs EPA to consider the considerations in section 408(b)(2)(C) and (D). Section 408(b)(2)(C) of FFDCA requires EPA to give special consideration to exposure of infants and children to the pesticide chemical residue in establishing a tolerance and to ''ensure that there is a reasonable certainty that no harm will result to infants and children from aggregate exposure to the pesticide chemical residue. . . .'' Section 408(b)(2)(D) lists other factors for EPA consideration making safety determinations, *e.g.,* the validity, completeness, and reliability of available data, nature of toxic effects, available information concerning the cumulative effects of the pesticide chemical and other substances with a common mechanism of toxicity, and available information concerning aggregate exposure levels to the pesticide chemical and other related substances, among others.

EPA establishes exemptions from the requirement of a tolerance only in those cases where it can be clearly demonstrated that the risks from aggregate exposure to pesticide chemical residues under reasonably foreseeable circumstances will pose no harm to human health. In order to determine the risks from aggregate exposure to pesticide inert ingredients, the Agency considers the toxicity of the inert in conjunction with possible exposure to residues of the inert ingredient through food, drinking water, and through other exposures that occur as a result of pesticide use in residential settings. If EPA is able to determine that a finite tolerance is not necessary to ensure that there is a reasonable certainty that no harm will result from aggregate exposure to the inert ingredient, an exemption from the requirement of a tolerance may be established.

Consistent with FFDCA section 408(c)(2)(A), and the factors specified in FFDCA section 408(c)(2)(B), EPA has reviewed the available scientific data and other relevant information in support of this action. EPA has sufficient data to assess the hazards of and to make a determination on aggregate exposure for N,N-dimethylnonanamide, including exposure resulting from the exemption established by this action. EPA's assessment of exposures and risks associated with N,N-dimethylnonanamide follows.

A. Toxicological Profile

EPA has evaluated the available toxicity data and considered their validity, completeness, and reliability as well as the relationship of the results of the studies to human risk. EPA has also considered available information concerning the variability of the sensitivities of major identifiable subgroups of consumers, including infants and children. Specific information on the studies received and the nature of the adverse effects caused by N,N-dimethylnonanamide as well as the no-observed-adverse-effect-level (NOAEL) and the lowest-observed-adverse-effect-level (LOAEL) from the toxicity studies are discussed in this unit.

The toxicological database of N,N-dimethylnonanamide is supported by data regarding N,N-dimethyldecanamide and N,N-dimethyloctanamide. EPA has determined that it is appropriate to bridge N,N-dimethyldecanamide and N,N-dimethyloctanamide data to assess N,N-dimethylnonanamide due to similarities in functional groups/structure.

The available toxicity studies indicate that N,N-dimethylnonanamide has low overall toxicity. N,N-dimethylnonanamide exhibits low levels of acute toxicity via the oral and dermal routes of exposure and it is anticipated to have low potential for inhalation toxicity, based on an inhalation toxicity study with surrogate chemicals. N,N-dimethylnonanamide is not a skin sensitizer, but it is irritating to the eyes and skin. No adverse effects were reported in the 28-day study in rats. This study also performed neurotoxicity screening and no adverse effects were reported. No adverse parental, reproductive, or developmental effects were found in the reproductive/developmental toxicity screening study in rats. Furthermore, concern for carcinogenicity is low, based on negative results in mutagenicity studies, and the lack of structural alerts for carcinogenicity using the Organization for Economic Co-operation and Development (OECD) QSAR Toolbox. There is no evidence of

neurotoxicity or immunotoxicity in the available studies.

B. Toxicological Points of Departure/ Levels of Concern

Once a pesticide's toxicological profile is determined, EPA identifies toxicological points of departure (POD) and levels of concern to use in evaluating the risk posed by human exposure to the pesticide. For hazards that have a threshold below which there is no appreciable risk, the toxicological POD is used as the basis for derivation of reference values for risk assessment. PODs are developed based on a careful analysis of the doses in each toxicological study to determine the dose at which no adverse effects are observed (the NOAEL) and the lowest dose at which adverse effects of concern are identified (the LOAEL). Uncertainty/ safety factors are used in conjunction with the POD to calculate a safe exposure level—generally referred to as a population-adjusted dose (PAD) or a reference dose (RfD)—and a safe margin of exposure (MOE). For non-threshold risks, the Agency assumes that any amount of exposure will lead to some degree of risk. Thus, the Agency estimates risk in terms of the probability of an occurrence of the adverse effect expected in a lifetime. For more information on the general principles EPA uses in risk characterization and a complete description of the risk assessment process, see *https://www.epa.gov/pesticide-science-and-assessing-pesticide-risks/overview-risk-assessment-pesticide-program*.

The hazard profile of N,N-dimethylnonanamide is adequately defined. Overall, N,N-dimethylnonanamide is of low acute, subchronic, and reproductive/ developmental toxicity. No systemic toxicity is observed up to 1,000 mg/kg/ day. Since signs of toxicity were not observed, no toxicological endpoints of concern or PODs were identified. Therefore, a qualitative risk assessment for N,N-dimethylnonanamide can be performed.

C. Exposure Assessment

1. *Dietary exposure from food and feed uses.* In evaluating dietary exposure to N,N-dimethylnonanamide, EPA considered exposure under the proposed exemption from the requirement of a tolerance. EPA assessed dietary exposures from N,N-dimethylnonanamide in food as follows:

Dietary exposure (food and drinking water) to N,N-dimethylnonanamide may occur following ingestion of foods with residues from their use in accordance with this exemption. However, a quantitative dietary exposure assessment was not conducted since a toxicological endpoint for risk assessment was not identified.

2. *From non-dietary exposure.* The term ''residential exposure'' is used in this document to refer to non-occupational, non-dietary exposure (*e.g.,* textiles (clothing and diapers), carpets, swimming pools, and hard surface disinfection on walls, floors, tables).

N,N-dimethylnonanamide may be present in pesticide and non-pesticide products that may be used in and around the home. However, a quantitative residential exposure assessment was not conducted since a toxicological endpoint for risk assessment was not identified.

3. *Cumulative effects from substances with a common mechanism of toxicity.* Section 408(b)(2)(D)(v) of FFDCA requires that, when considering whether to establish, modify, or revoke a tolerance, the Agency consider ''available information'' concerning the cumulative effects of a particular pesticide's residues and ''other substances that have a common mechanism of toxicity.''

Based on the lack of toxicity in the available database, EPA has not found N,N-dimethylnonanamide to share a common mechanism of toxicity with any other substances, and N,N-dimethylnonanamide does not appear to produce a toxic metabolite produced by other substances. For the purposes of this tolerance exemption, therefore, EPA has assumed that N,N-dimethylnonanamide does not have a common mechanism of toxicity with other substances. For information regarding EPA's efforts to determine which chemicals have a common mechanism of toxicity and to evaluate the cumulative effects of such chemicals, see EPA's website at *https://www.epa.gov/pesticide-science-and-assessing-pesticide-risks/cumulative-assessment-risk-pesticides*.

D. Additional Safety Factor for the Protection of Infants and Children

Section 408(b)(2)(C) of FFDCA provides that EPA shall apply an additional tenfold (10X) margin of safety for infants and children in the case of threshold effects to account for prenatal and postnatal toxicity and the completeness of the database on toxicity and exposure unless EPA determines based on reliable data that a different margin of safety will be safe for infants and children. This additional margin of safety is commonly referred to as the Food Quality Protection Act Safety Factor. In applying this provision, EPA either retains the default value of 10X, or uses a different additional safety factor when reliable data available to EPA support the choice of a different factor.

Based on an assessment of N,N-dimethylnonanamide EPA has concluded that there are no toxicological endpoints of concern for the U.S. population, including infants and children. Because there are no threshold effects associated with N,N-dimethylnonanamide, EPA conducted a qualitative assessment. As part of that assessment, the Agency did not use safety factors for assessing risk, and no additional safety factor is needed for assessing risk to infants and children.

E. Aggregate Risks and Determination of Safety

Because no toxicological endpoints of concern were identified, EPA concludes that there is a reasonable certainty that no harm will result to the general population, or to infants and children, from aggregate exposure to N,N-dimethylnonanamide residues.

V. Other Considerations

Analytical Enforcement Methodology

An analytical method is not required for enforcement purposes since the Agency is not establishing a numerical tolerance for residues of N,N-dimethylnonanamide in or on any food commodities. EPA is establishing a limitation on the amount of N,N-dimethylnonanamide that may be used as an inert ingredient in pesticide formulations applied to growing crops and raw agricultural commodities pre- and post-harvest and to animals. This limitation will be enforced through the pesticide registration process under the Federal Insecticide, Fungicide, and Rodenticide Act (''FIFRA''), 7 U.S.C. 136 *et seq*. EPA will not register any pesticide formulation for food use that exceeds 20% N,N-dimethylnonanamide by weight in the final pesticide formulation.

VI. Conclusions

Therefore, an exemption from the requirement of a tolerance is established for residues of N,N-dimethylnonanamide (CAS Reg. No. 6225–08–7) when used as an inert ingredient (solvent, co-solvent, and adjuvant) not to exceed 20% by weight in pesticide formulations applied to growing crops and raw agricultural commodities pre- and post-harvest under 40 CFR 180.910 and applied to animals under 40 CFR 180.930.

VII. Statutory and Executive Order Reviews

This action establishes exemptions from the requirement of a tolerance under FFDCA section 408(d) in response to a petition submitted to the Agency. The Office of Management and Budget (OMB) has exempted these types of actions from review under Executive Order 12866, entitled ''Regulatory Planning and Review'' (58 FR 51735, October 4, 1993). Because this action has been exempted from review under Executive Order 12866, this action is not subject to Executive Order 13211, entitled ''Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use'' (66 FR 28355, May 22, 2001), or Executive Order 13045, entitled ''Protection of Children from Environmental Health Risks and Safety Risks'' (62 FR 19885, April 23, 1997). This action does not contain any information collections subject to OMB approval under the Paperwork Reduction Act (PRA) (44 U.S.C. 3501 *et seq.*), nor does it require any special considerations under Executive Order 12898, entitled ''Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations'' (59 FR 7629, February 16, 1994).

Since tolerances and exemptions that are established on the basis of a petition under FFDCA section 408(d), such as the exemptions in this final rule, do not require the issuance of a proposed rule, the requirements of the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*), do not apply.

This action directly regulates growers, food processors, food handlers, and food retailers, not States or Tribes, nor does this action alter the relationships or distribution of power and responsibilities established by Congress in the preemption provisions of FFDCA section 408(n)(4). As such, the Agency has determined that this action will not have a substantial direct effect on States or Tribal Governments, on the relationship between the National Government and the States or Tribal Governments, or on the distribution of power and responsibilities among the various levels of government or between the Federal Government and Indian Tribes. Thus, the Agency has determined that Executive Order 13132, entitled ''Federalism'' (64 FR 43255, August 10, 1999), and Executive Order 13175, entitled ''Consultation and Coordination with Indian Tribal Governments'' (65 FR 67249, November 9, 2000), do not apply to this action. In addition, this action does not impose any enforceable duty or contain any unfunded mandate as described under Title II of the Unfunded Mandates Reform Act (UMRA) (2 U.S.C. 1501 *et seq.*).

This action does not involve any technical standards that would require Agency consideration of voluntary consensus standards pursuant to section 12(d) of the National Technology Transfer and Advancement Act (NTTAA) (15 U.S.C. 272 note).

VIII. Congressional Review Act

Pursuant to the Congressional Review Act (5 U.S.C. 801 *et seq.*), EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. This action is not a ''major rule'' as defined by 5 U.S.C. 804(2).

List of Subjects in 40 CFR Part 180

Environmental protection, Administrative practice and procedure, Agricultural commodities, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: November 22, 2022.

Daniel Rosenblatt,

Acting Director, Registration Division, Office of Pesticide Programs.

Therefore, for the reasons stated in the preamble, EPA is amending 40 CFR chapter I as follows:

PART 180—TOLERANCES AND EXEMPTIONS FOR PESTICIDE CHEMICAL RESIDUES IN FOOD

■ 1. The authority citation for part 180 continues to read as follows:

Authority: 21 U.S.C. 321(q), 346a and 371.

■ 2. In § 180.910, amend Table 1 to 180.910 by adding, in alphabetical order, an entry for ''N,N-Dimethylnonanamide (CAS Reg. No. 6225–08–7)'' to read as follows:

§ 180.910 Inert ingredients used pre- and post-harvest; exemptions from the requirement of a tolerance.

* * * * *

TABLE 1 TO 180.910

Inert ingredients	Limits	Uses
* *	* * *	* *
N,N-Dimethylnonanamide (CAS Reg. No. 6225–08–7).	Not to exceed 20% by weight of pesticide formulation.	Solvent, co-solvent, and adjuvant.
* *	* * *	* *

■ 3. In § 180.930, amend Table 1 to 180.930 by adding, in alphabetical order, an entry for ''N,N-Dimethylnonanamide (CAS Reg. No. 6225–08–7)'' to read as follows:

§ 180.930 Inert ingredients applied to animals; exemptions from the requirement of a tolerance.

* * * * *

TABLE 1 TO 180.930

Inert ingredients	Limits	Uses
* *	* * *	* *
N,N-Dimethylnonanamide (CAS Reg. No. 6225–08–7).	Not to exceed 20% by weight of pesticide formulation.	Solvent, co-solvent, and adjuvant.
* *	* * *	* *

[FR Doc. 2022–25979 Filed 11–29–22; 8:45 am]
BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 372

[EPA–HQ–TRI–2017–0434; FRL–5927–02–OCSPP]

RIN 2070–AK26

Addition of Certain Chemicals; Community Right-to-Know Toxic Chemical Release Reporting

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: In response to a petition filed under the Emergency Planning and Community Right-to-Know Act (EPCRA), the Environmental Protection Agency (EPA) is adding 12 chemicals to the list of toxic chemicals subject to the reporting requirements under EPCRA and the Pollution Prevention Act (PPA). EPA has determined that each of the 12 chemicals meets the EPCRA criteria. In addition, based on the available bioaccumulation and persistence data, EPA has determined that one chemical should be classified as a persistent, bioaccumulative, and toxic (PBT) chemical and designated as a chemical of special concern with a 100-pound reporting threshold.

DATES:

Effective date: November 30, 2022.

Applicability date: This final rule will apply for the reporting year beginning January 1, 2023 (reports are due July 1, 2024).

ADDRESSES: The docket for this action, identified under docket identification (ID) number EPA–HQ–TRI–2017–0434, is available online at *https://www.regulations.gov* or in person at the Office of Pollution Prevention and Toxics Docket (OPPT Docket) in the Environmental Protection Agency Docket Center (EPA/DC). All documents in the docket are listed on *https://www.regulations.gov.* Although listed in the index, some information is not publicly available, *e.g.,* Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the internet and will be publicly available only in hard copy form. Publicly available docket materials are available electronically through *https://www.regulations.gov.* Additional instructions on visiting the docket, along with more information about dockets generally, is available at *https://www.epa.gov/dockets.*

FOR FURTHER INFORMATION CONTACT:

For technical information contact: Daniel R. Bushman, Toxics Release Inventory Program Division (7406M), Office of Pollution Prevention and Toxics, Environmental Protection Agency, 1200 Pennsylvania Ave. NW, Washington, DC 20460–0001; telephone number: (202) 566–0743; email: *bushman.daniel@epa.gov.*

For general information contact: The Emergency Planning and Community Right-to-Know Hotline; telephone numbers: toll free at (800) 424–9346 (select menu option 3) or (703) 348–5070 in the Washington, DC Area and International, *https://www.epa.gov/home/epa-hotlines,* or go to the website: *https://www.epa.gov/aboutepa/epa-hotlines#epcraic.*

SUPPLEMENTARY INFORMATION:

I. Executive Summary

A. Does this action apply to me?

You may be potentially affected by this action if you own or operate a facility that manufactures, processes, or otherwise uses any of the 12 chemicals included in this final rule. The following list of North American Industrial Classification System (NAICS) codes is not intended to be exhaustive, but rather provides a guide to help readers determine whether this document applies to them. Potentially affected facilities may include:

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

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

- Facilities included in the following NAICS codes (corresponding to SIC codes other than SIC codes 20 through 39): 212111, 212112, 212113 (corresponds to SIC code 12, Coal Mining (except 1241)); or 212221, 212222, 212230, 212299 (corresponds to SIC code 10, Metal Mining (except 1011, 1081, and 1094)); or 221111, 221112, 221113, 221118, 221121, 221122, 221330 (limited to facilities that combust coal and/or oil for the purpose of generating power for distribution in commerce) (corresponds to SIC codes 4911, 4931, and 4939, Electric Utilities); or 424690, 425110, 425120 (limited to facilities previously classified in SIC code 5169, Chemicals and Allied Products, Not Elsewhere Classified); or 424710 (corresponds to SIC code 5171, Petroleum Bulk Terminals and Plants); or 562112 (limited to facilities primarily engaged in solvent recovery services on a contract or fee basis (previously classified under SIC code 7389, Business Services, NEC)); or 562211, 562212, 562213, 562219, 562920 (limited to facilities regulated under the Resource Conservation and Recovery Act, subtitle C, 42 U.S.C. 6921 *et seq.*) (corresponds to SIC code 4953, Refuse Systems).
- Federal facilities.
- Facilities that the EPA Administrator has specifically required to report to TRI pursuant to a determination under EPCRA section 313(b)(2).

To determine whether your facility would be affected by this action, you should carefully examine the applicability criteria in part 372, subpart B of Title 40 of the Code of Federal Regulations. If you have questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT**.

B. What action is the Agency taking?

In response to a petition submitted by the Toxics Use Reduction Institute (TURI) that requested the addition of 25 chemicals to the EPCRA section 313 toxic chemicals list (Ref. 1), EPA is adding 12 chemicals to the EPCRA section 313 toxic chemical list. EPA has determined that each of the 12 chemicals meets the EPCRA section 313(d)(2)(B) and/or (C) criteria for listing. EPA is also classifying one chemical as a PBT chemical and adding it to the list of chemicals of special concern with a 100-pound reporting threshold.

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

This action is issued under EPCRA sections 313(d), 313(e)(1) and 328, 42 U.S.C. 11023(d), 11023(e)(1) and 11048. EPCRA is also referred to as Title III of the Superfund Amendments and Reauthorization Act of 1986.

Section 313 of EPCRA, 42 U.S.C. 11023 (also known as the Toxics Release Inventory (TRI)), requires owners/operators of certain facilities that manufacture, process, or otherwise use listed toxic chemicals in amounts above reporting threshold levels to report their facilities' environmental releases and other waste management information on such chemicals annually. These facility

owners/operators must also report pollution prevention and recycling data for such chemicals, pursuant to section 6607 of the PPA, 42 U.S.C. 13106.

Under EPCRA section 313(c), Congress established an initial list of toxic chemicals subject to EPCRA toxic chemical reporting requirements that was comprised of 308 individually listed chemicals and 20 chemical categories.

EPCRA section 313(d) authorizes EPA to add or delete chemicals from the list and sets criteria for these actions. EPCRA section 313(d)(2) states that EPA may add a chemical to the list if any of the listing criteria in EPCRA section 313(d)(2) are met. Therefore, to add a chemical, EPA must determine that at least one criterion is met, but need not determine whether any other criterion is met. Conversely, to remove a chemical from the list, EPCRA section 313(d)(3) dictates that EPA must determine that none of the criteria in EPCRA section 313(d)(2) are met. The listing criteria in EPCRA section 313(d)(2)(A)–(C) are as follows:

- The chemical is known to cause or can reasonably be anticipated to cause significant adverse acute human health effects at concentration levels that are reasonably likely to exist beyond facility site boundaries as a result of continuous, or frequently recurring, releases.
- The chemical is known to cause or can reasonably be anticipated to cause in humans: cancer or teratogenic effects, or serious or irreversible reproductive dysfunctions, neurological disorders, heritable genetic mutations, or other chronic health effects.
- The chemical is known to cause or can be reasonably anticipated to cause, because of its toxicity (EPCRA section 313(d)(2)(C)(i)), its toxicity and persistence in the environment (EPCRA section 313(d)(2)(C)(ii)), or its toxicity and tendency to bioaccumulate in the environment (EPCRA section 313(d)(2)(C)(iii)), a significant adverse effect on the environment of sufficient seriousness, in the judgment of the Administrator, to warrant reporting under this section.

EPA often refers to the EPCRA section 313(d)(2)(A) criterion as the ''acute human health effects criterion;'' the EPCRA section 313(d)(2)(B) criterion as the ''chronic human health effects criterion;'' and the EPCRA section 313(d)(2)(C) criterion as the ''environmental effects criterion.''

Under EPCRA section 313(e)(1), any person may petition EPA to add chemicals to or delete chemicals from the list. EPA issued a statement of policy in the **Federal Register** of February 4, 1987 (52 FR 3479) providing guidance regarding the recommended content of and format for petitions. On May 23, 1991 (56 FR 23703), EPA issued guidance regarding the recommended content of petitions to delete individual members of the metal compounds categories reportable under EPCRA section 313. EPA published in the **Federal Register** of November 30, 1994 (59 FR 61432) (FRL–4922–2) (Ref. 2) a statement clarifying its interpretation of the EPCRA section 313(d)(2) and (d)(3) criteria for modifying the EPCRA section 313 list of toxic chemicals.

D. Why is the Agency's taking this action?

EPA is taking this action in response to a petition submitted under EPCRA section 313(e)(1). EPA is required to respond to petitions by ether initiating a rulemaking to grant the petition or publishing an explanation of why the petition is denied. In this case EPA is partially granting the petition to add 25 chemicals to the EPCRA section 313 toxic chemicals list.

E. What are the estimated incremental impacts of this action?

EPA prepared an addendum to its economic analysis for this action entitled, ''Economic Analysis Addendum for the Final Rule to Add Twelve Chemicals Identified in a Petition from the Toxics Use Reduction Institute to the EPCRA Section 313 List of Toxic Chemicals'' which presents an updated analysis of the costs of the addition of the twelve chemicals (Ref. 3). EPA estimates that this action would result in an additional 1,342 reports being filed annually. EPA estimates that the costs of this action will be approximately $6,660,633 in the first year of reporting and approximately $3,172,080 in the subsequent years. In addition, EPA has determined that of the 1,283 small businesses affected by this action, none are estimated to incur annualized cost impacts of more than 1%. Thus, this action is not expected to have a significant adverse economic impact on a substantial number of small entities.

II. Summary of Proposed Rule

A. Who submitted the petition and what was requested?

On May 6, 2014, EPA received a petition from the TURI requesting the addition of 25 chemicals to the EPCRA section 313 toxic chemicals list (Ref. 1). The petitioner believed that each of these 25 chemicals meets the EPCRA section 313(d)(2) listing criteria and that the 25 chemicals should be added to the EPCRA section 313 toxic chemical list so that releases can be monitored and reported. The 25 chemicals, listed by name and Chemical Abstracts Service Registry Number (CASRN), are shown here (note that some chemical names are different than those used in the petition because they are listed here using the EPA Registry Name):

- Azodicarbonamide; 123–77–3;
- 1-Bromopropane; 106–94–5;
- 4-Chlorobenzotrichloride; 5216–25–1;
- Cyclododecane; 294–62–2;
- Dibutyltin dichloride; 683–18–1;
- 1,3-Dichloro-2-propanol; 96–23–1;
- Dimethylacetamide; 127–19–5;
- 2,3-Dinitrotoluene; 602–01–7;
- 2,5-Dinitrotoluene; 619–15–8;
- Formamide; 75–12–7;
- 1,2,5,6,9,10-Hexabromocyclododecane; 3194–55–6;
- 1,3,4,6,7,8-Hexahydro-4,6,6,7,8,8-hexamethylcyclopenta[g]-2-benzopyran; 1222–05–5;
- Hexahydrophthalic anhydride; 85–42–7;
- N-Hydroxyethylethylenediamine; 111–41–1;
- N-Methylformamide; 123–39–7;
- Methylhexahydrophthalic anhydride; 25550–51–0;
- Nitrilotriacetic acid trisodium salt; 5064–31–3;
- Nonylphenol; 25154–52–3;
- Octabromodiphenyl ether; 32536–52–0;
- p-(1,1,3,3-Tetramethylbutyl)phenol; 140–66–9;
- 1,2,3-Trichlorobenzene; 87–61–6;
- Triglycidyl isocyanurate; 2451–62–9;
- Tris(2-chloroethyl) phosphate; 115–96–8;
- Tris(1,3-dichloro-2-propyl) phosphate; 13674–87–8; and
- Tris(dimethylphenol) phosphate; 25155–23–1.

B. How did EPA respond to the petition?

On October 18, 2021, EPA proposed to add 12 of the 25 chemicals included in the TURI petition to the EPCRA section 313 toxic chemicals list (Ref. 4). In separate, unrelated actions, three of the 25 chemicals (1-bromopropane (80 FR 72906, November 23, 2015 (FRL–9937–12–OEI)), nonylphenol (79 FR 58686, September 30, 2014 (FRL–9915–59–OEI)) and 1,2,5,6,9,10-hexabromocyclododecane (81 FR 85440, November 28, 2016 (FRL–9953–28)) have already been added to the EPCRA section 313 chemical list. Of the remaining 10 chemicals, EPA determined that the available data for nine chemicals was not sufficient for EPA to find that the chemicals meet the EPCRA section 313 listing criteria for human health or ecological effects (Refs.

5 and 6). Therefore, EPA did not propose to add the nine chemicals listed here:

- Azodicarbonamide; 123–77–3;
- 4-Chlorobenzotrichloride; 5216–25–1;
- Cyclododecane; 294–62–2;
- Dimethylacetamide; 127–19–5;
- 2,3-Dinitrotoluene; 602–01–7;
- 2,5-Dinitrotoluene; 619–15–8;
- Hexahydrophthalic anhydride; 85–42–7;
- Methylhexahydrophthalic anhydride; 25550–51–0; and
- N-Methylformamide; 123–39–7.

In addition, EPA did not propose to add octabromodiphenyl ether (OctaBDE) (32536–52–0) to the EPCRA section 313 toxic chemical list. EPA issued a significant new use rule (SNUR) that requires notification to EPA 90 days prior to the intended manufacture or import for any use of OctaBDE ether after January 1, 2005 (71 FR 34015, June 13, 2006 (FRL–7743–2); 40 CFR 721.10000). The lack of significant new use notices (SNUNs) under this SNUR indicates that there has been no non-exempt manufacture or import for any use of OctaBDE in the United States since January 1, 2005. In addition, there have been no submissions for OctaBDE under the Chemical Data Reporting (CDR) Rule (*https://www.epa.gov/chemical-data-reporting*) since 2006. In a 2008 evaluation, the United Nations noted that, as of 2005, the manufacture and import of OctaBDE had been phased out by industry and estimated that most of the remaining processing of OctaBDE in the United States was likely negligible and only occurring where remaining stockpiles were being used up or in waste processing facilities (*http://chm.pops.int/portals/0/repository/poprc4/unep-pops-poprc.4-6.english.pdf*). Given that the phase out occurred more than ten years ago, it is even more likely today that there is a negligible amount of OctaBDE remaining that is processed or otherwise used by facilities in the United States. Therefore, EPA did not propose to add OctaBDE to the EPCRA section 313 list since EPA expects that no TRI reports would be filed for this chemical. Section 313(d)(2) of EPCRA provides EPA the discretion to add chemicals to the TRI list when there is sufficient evidence to establish any of the listing criteria. EPA can add a chemical that meets one criterion regardless of its production volume. However, consistent with the Agency's previously articulated position on the use of manufacturing volume thresholds (*e.g.,* 58 FR 63500, December 1, 1993) and as in past chemical reviews (*e.g.,* 59 FR 61432, November 30, 1994) (Ref. 2), EPA adopted a production volume screen for the development of this rule to screen out those chemicals for which no reports are expected to be submitted. If chemicals that did not meet the production volume screen were listed, there would be an economic burden for firms that would have to determine that they did not exceed the reporting threshold. Since the production volume screen indicates that no reports would be filed for such chemicals, there would be no information provided to the public. EPA's position is that it is appropriate at this time to focus on chemicals for which reports are likely to be filed.

In addition to proposing to add HHCB to the EPCRA section 313 toxic chemical list, EPA proposed to add HHCB to the list of chemicals of special concern. There are several chemicals and chemical categories on the EPCRA section 313 chemical list that have been classified as chemicals of special concern because they are PBT chemicals (see 40 CFR 372.28(a)(2)). In a final rule published in the **Federal Register** of October 29, 1999 (64 FR 58666) (FRL–6389–11) (Ref. 7), EPA established the PBT classification criteria for chemicals on the EPCRA section 313 chemical list. For purposes of EPCRA section 313 reporting, EPA established persistence half-life criteria for PBT chemicals of 2 months in water, sediment and soil and 2 days in air, and established bioaccumulation criteria for PBT chemicals as a bioconcentration factor (BCF) or bioaccumulation factor (BAF) of 1,000 or higher. Most chemicals meeting the PBT criteria are assigned 100-pound reporting thresholds. EPA set lower reporting thresholds (10 pounds) for those PBT chemicals with persistence half-lives of 6 months or more in water, sediment, or soil and with BCF or BAF values of 5,000 or higher since these chemicals are considered highly PBT chemicals. The data presented in the hazard assessment for the proposed rule support classifying HHCB as a PBT chemical and designating it as a chemical of special concern with a 100-pound reporting threshold.

III. Summary of Comments Received and EPA Responses

EPA received 31 comments on the proposed rule. Twenty-one of the comments came from private citizens or anonymous commenters. Five comments were received from trade associations including, the American Chemistry Council (ACC) (Ref. 8), Alkylphenols & Ethoxylates Research Council (APERC) (Ref. 9), Fragrance Creators Association and American Cleaning Institute (Ref. 10), Fragrance Science & Advocacy Council (Ref. 11), and Household & Commercial Products Association (Ref. 12). Three comments were received from environmental/public interest groups including, CleanEarth4Kids.org (Ref. 13), Earthjustice (on behalf of Sierra Club, Toxic-Free Future, and Defend Our Health) (Ref. 14), and Silent Spring Institute (Ref. 15). Lastly, two comments were received from government organizations including, the Small Business Administration (Ref. 16) and TURI (Ref. 17). This unit provides summaries of some of the more significant comments and EPA's responses. A complete set of comments and EPA's detailed responses can be found in the Response to Comments (RTC) document that is available in the docket for this rulemaking (Ref. 18).

A. Comments Supporting EPA's Proposed Listing of 12 Chemicals

The 21 private citizens or anonymous commenters and the three commenters from environmental/public interest groups, CleanEarth4Kids.org (Ref. 13), Earthjustice (on behalf of Sierra Club, Toxic-Free Future, and Defend Our Health) (Ref. 14), and Silent Spring Institute (Ref. 15) all supported EPA's proposed addition of the 12 chemicals to the TRI list. Though, as discussed Unit III.E., certain commenters believe that EPA should have proposed the listing of some of the other chemicals included in the TURI petition.

B. Comments on Risk Evaluations Under TSCA Section 6

Comment: ACC (Ref. 8) and the Fragrance Creators Association and American Cleaning Institute (Ref. 10) commented that EPA should complete the risk evaluation being conducted for HHCB under TSCA section 6 before finalizing the proposed addition of HHCB to the TRI chemical list. ACC also stated that, as a matter of policy, EPA should defer from consideration the addition of any chemical to the TRI list that is undergoing a TSCA risk evaluation until that risk evaluation is completed.

EPA Response: TSCA section 6 (*i.e.,* the existing chemicals program) and EPCRA section 313 are two separate EPA programs operating under two separate statutory authorities with different purposes and criteria. EPA does not agree that it should wait until the TSCA section 6 risk evaluation has been completed for HHCB (or any other chemical) before adding HHCB (or any other chemical) to the TRI chemical list. The addition of chemicals to the TRI list is primarily based on an assessment of hazard (*i.e.,* not a risk assessment). The

TSCA section 6 risk evaluations go far beyond what is needed to list a chemical under EPCRA section 313(d)(2) and are for the purpose of determining if there is an unreasonable risk that needs to be mitigated. Moreover, under TSCA, EPA may take actions that could severely limit or even ban the use of a chemical because of unreasonable risk. In contrast, a decision to add a substance to TRI pursuant to EPCRA section 313 does not impose any restrictions on the use or manufacturing of that substance; it establishes requirements for the reporting of releases and other waste management information. In addition, information obtained through TRI can be very helpful to the risk evaluation process, as TRI data can provide information concerning releases and waste management activities.

C. Comments on p-(1,1,3,3-tetramethylbutyl)phenol (CASRN 140–66–9).

Comment: APERC (Ref. 9) commented that they support the addition of p-(1,1,3,3-tetramethylbutyl)phenol (TMBP) to the TRI list for the purpose of providing exposure data that could support future prioritization and risk evaluations of TMBP under TSCA. While supporting the addition of TMBP to the TRI list, APERC did object to some of the hazard characterizations that EPA presented in support of the listing of TMBP. APERC also stated that EPA proposed to list TMBP on the TRI based on it ecotoxicity and ''tendency to bioaccumulate.''

EPA Response: EPA has addressed in detail APERC's comments regarding bioaccumulation potential, toxicity data, and monitoring data in the RTC document (Ref. 18). However, EPA would like to clarify that TMBP meets the listing criteria based on ecological toxicity alone. As EPA stated in the proposed rule ''EPA believes that the evidence is sufficient to list p-(1,1,3,3-Tetramethylbutyl)phenol (TMBP) on the EPCRA section 313 toxic chemicals list pursuant to EPCRA section 313(d)(2)(C) based on the available ecotoxicity information for this chemical alone and also based on its toxicity and tendency to bioaccumulate'' (see 86 FR 57619) (Ref. 4). EPA clearly stated that TMBP meets the EPCRA section 313(d)(2)(C) criteria based on the ecotoxicity data alone (*i.e.,* ''. . . based on the available ecotoxicity information for this chemical alone . . .'') which is covered under section 313(d)(2)(C)(i). In addition, EPA stated that TMBP also meets the 313(d)(2)(C) criteria ''. . . based on ecotoxicity and bioaccumulation potential'' which is covered under section 313(d)(2)(C)(iii). EPA summarized the toxicity data as follows ''In summary, the available data demonstrate that TMBP can cause acute and chronic toxicity to aquatic organisms at low concentrations indicating that TMBP is highly toxic to aquatic organisms'' (see 86 FR 57619) (Ref. 4).

D. Comments on Data Supporting the Addition of HHCB and Its Addition to the List of Chemicals of Special Concern

Comment: The Fragrance Creators Association and American Cleaning Institute (Ref. 10), and the Fragrance Science & Advocacy Council (Ref. 11) provided comments on the toxicity, persistence, and bioaccumulation data for HHCB. The commenters contend that the data do not support classifying HHCB as a PBT chemical under the criteria established for EPCRA section 313. Both commenters provided or cited to additional information, some of it previously submitted for the TSCA risk evaluation process, that they said EPA should consider before finalizing the listing of HHCB.

EPA Response: As discussed in the RTC document (Ref. 18), EPA has reviewed the suggested information. Short summaries of some of their specific comments and EPA's responses are provided here, complete detailed comments and EPA responses can be found in the RTC document (Ref. 18).

E. Comments on HHCB Not Meeting the Persistence Criteria Established for EPCRA Section 313 for PBT Classification

Comment: The Fragrance Creators Association and American Cleaning Institute (Ref. 10) stated that in EPA's 2014 TSCA risk assessment (Ref. 19), EPA cited half-lives of HHCB in water for days to weeks which is below the TRI 2-month half-life criteria. The commenter noted that EPA cited half-lives for HHCB in sludge of 10–69 hours and that since the majority of release of HHCB are to wastewater treatment plants (WWTPs), removal during treatment and degradation in sludge is important. The commenter state that EPA cited a single study on the fate of HHCB in sediments that resulted in a half-life of 79 days (Ref. 20), which they contend may be artificially high due to the high concentration of the test material (Ref. 21). The commenter also cited sampling data that they said show low concentrations of HHCB in the environment (Ref. 22). The commenter stated that several studies found half-lives of HHCB in soils amended with biosolids (*i.e.,* sewage sludge) that ranged from 105 days to 144 days. The commenter stated that for at least one of the studies (Ref. 23), the soil was frozen for three months of the study and the concentrations of HHCB were stable (after one month, the concentrations of HHCB in the four soils were 30 to 90 percent of the initial concentration, and after 90 days, concentrations ranged from 8 to 60 percent of the initial concentration).

EPA Response: EPA's determination that HHCB meets the persistence portion of the PBT criteria and is thus a chemical of special concern was not based on half-lives of HHCB in water. The determination was based on the half-lives for HHCB in soil and sediment which are above the 60-day criteria. The International Flavors and Fragrances (IFF) has submitted a study from 1998 with CBI indicating that HHCB has a half-life of less than 1 year, but this study does not provide sufficient clarity to negate the 60-day window. Similarly, there is not sufficient evidence to support that the half-life of HHCB in river sediments is affected by concentration. Some researchers have published data depicting that the half-life may be impacted by sediment dwelling organisms (Refs. 24 and 25) as well sediment conditions (Ref. 26). However, more information is needed to understand how concentration might impact the half-life of HHCB in sediments. Regarding the data on environmental concentrations and treatment, these are not factors considered under the PBT criteria established for the TRI program (Refs. 7 and 27)). According to the commenter's reference 7 (Ref. 21) the European Union (EU) used a half-life of 79 days for sediment:

> Final conclusion for HHCB's fate in sediment: A limited documented study is present showing a DT50 of 79-days in a lab study at 22 °C but this is considered too high due to too high concentrations used (10 mg/kg soil). In addition, aquatic and soil studies indicate DT50s between 4 and 35-days and therefore this DT50 of 79-days is considered too conservative. In view of the too high concentration which will have limited the biodegradation and too high temperature which will have enhanced the biodegradation, the result of 79-days will be used for the risk assessment, without temperature correction: In conclusion:—The DT50 of 79 days at 12 °C will be used for the risk assessment. (Ref. 21)

EPA's 2014 risk assessment (Ref. 19) concluded the following regarding HHCB persistence in soil and sediment:

> Observed soil and sediment half-lives consistently exceeded 60 days (Table 2–6). Field measurements on biosolids-amended soil indicated that HHCB disappeared almost completely from soil within one year. The half-life based on unfrozen conditions in

biosolids-amended soil studies was around 140 to 144 days (DiFrancesco et al., 2004). The residues in soil after one year ranged from below 10 to 14 percent of the initial concentrations. In the EU RAR (EC, 2008), a half-life of 105 days in the biosolids-amended soil was deemed most relevant for modeling the fate of HHCB in soil using the European Union System for the Evaluation of Substances (EUSES) model, while 79 days was noted for the sediment (Envirogen, 1998; as cited in EC, 2008). EPA/OPPT agrees that these values are reasonable for modeling and assessment purposes. (Ref. 19, page 29)

EPA cited the same data in its assessment for listing under EPCRA section 313. These data exceed the persistence criteria of half-lives in soil or sediment of 60 days or longer under the PBT criteria established for the TRI program. Regarding biodegradation in sludge, in a wastewater environment, HHCB is expected to partition strongly to solid phases based on its high measured log K_{OW} (octanol-water partition coefficient) of 5.9 (see Rimkus, 1999 for a summary of values for musks (Ref. 28)) and the soil/sediment organic carbon partition coefficient (log Koc = 3.6–3.9; Ref. 29) which is supported by the estimated log K_{OC} of 4.1–4.3 (KOCWIN™ program v2.00; in EPI Suite™ v4.11, (Ref. 30)). In addition, Schaefer & Koper (2009) (Ref. 31) extrapolated an average Log Kow of 7.1 conferring more evidence for partitioning to solid phases. Values for both K_d (sorption coefficient) and K_{OC} (organic carbon-normalized sorption coefficient) are generally in the range of 3 to 4 on a logarithmic scale. This means that HHCB will be substantially removed by sorption to sludge in WWTPs; will have low mobility in soil; and will bind strongly to benthic and suspended sediment. In addition to this knowledge, the Office of Water has documented the presence of HHCB in sludge via the National Sewage Sludge Survey in 2005, 2007, 2009, and 2011 (Ref. 32).

The half-life of HHCB in activated sludge at concentrations of 5, 17.4, 25, 25 micrograms per liter (µg/L) has been reported as 69, 10–15, 21, 33 hours, respectively (Refs. 33, 34 and 35—33). HHCB disappearance with subsequent appearance of more polar entities was observed (Ref. 35). The geometric mean from these studies for activated sludge half-disappearance time was 22.5 hours. This corresponds to ''moderate-to-slow'' biodegradation in activated sludge; see guidance in the Estimation Programs Interface (EPI) Suite v4.11 (Ref. 30). Overall complete biodegradation rates have been reported as 15.39% ± 8.29% and a steady state average biodegradation of 12.74% ± 8.29% (Ref. 31); these rates also confer ''moderate-to-slow'' biodegradation rates.

Chen et al. (2014) (Ref. 36) evaluated the dissipation rate of HHCB among other personal care products in soils amended with biosolids (concentration = 2950 micrograms per kilogram (µg/kg)) after a single application and a repeated annual application at three different sites. The dissipation half-life was found to be 900 days for the single treatment and 83 days for an annual treatment. Yager et al. (2014) (Ref. 37) reported that HHCB had migrated down in soil profile and was still detectable 468 days after being amended with biosolids. Poulsen and Bester (2010) (Ref. 38) reported a shorter half-life ($t_{1/2}$ = 20 days) when HHCB was present at lower concentrations (1000 µg/kg) but in a high temperature compost environment with regular turning. As the commentor also notes: ''[. . . several studies found half-lives of HHCB in soils amended with biosolids (sewage sludge) ranging from 105 days to 144 days . . .].''

These results indicate that the half-life of HHCB in soil amended with biosolids or sludge is substantial and demonstrate the substance is persistent under these conditions.

The Fragrance Science & Advocacy Council (Ref. 11) also questioned the persistence data for HHCB and provided studies and references for EPA to consider.

Regarding the range of values identified for persistence in soils, EPA utilizes conservative values to account for a range of possible soil types and land management practices. As the commentor notes: FSAC has calculated half-lives from this study ranging 35–116 days depending on treatment and soil type, further supporting the USGS study.

Because the upper range of these half-lives exceeds the 60-day window, HHCB would still be considered persistent in this compartment. The commentors also note that the concentrations cited by EPA are too high and unrealistic pointing to a technical report submitted to EPA as CBI. Though the concentrations in the technical report are lower than those cited by EPA, the conclusions of that study do not negate that HHCB can persist in soils and biosolids amended soils for >60 days. The major conclusion of the report indicates that ''. . . HHCB has a half-life in soils and sediments significantly less than one year.'' This conclusion was determined by evaluating HHCB concentration in amended soils in microcosms after 365 days and does not provide any precision on the half-life of HHCB in a variety of soil conditions. Thus, the study does not refute the concentrations cited by EPA.

Regarding the review of studies presented in commenter's Appendix 2 of their comments, these studies are currently subject to OPPT's Systematic Review Protocol. The studies and their assigned Health and Environmental Research Online Identification numbers (HEROIDs) included: Litz et al. 2007: 100883141 (Ref. 39), DiFrancesco et al. 2004: 76939752 (Ref. 23), Yager et al. 2014: 23460273 (Ref. 37), Chen et al. 2014a: 54285094 (Ref. 40), Chen et al. 2014b: 54284935 (Ref. 36), and Yang & Metcalfe 2006: 54278926 (Ref. 41). Worth noting is that many of the values reported in these studies are considered high quality according to the commenter and these values also exceed the 60-day half-life criteria. EPA also notes that the DiFrancesco et al. study (Ref. 23) was cited in EPA's ecological hazard assessment for HHCB (Ref. 42).

EPA has concluded that none of the data provide by the commenters change EPA's determination that HHCB meets the persistence criteria established for evaluations under EPCRA section 313 (Refs. 7 and 27).

F. Comments on HHCB Not Meeting the Bioaccumulation Criteria Established for EPCRA Section 313 for PBT Classification

Comment: The Fragrance Creators Association and American Cleaning Institute (Ref. 10) stated that the proposed rule did not provide the complete story regarding the potential for HHCB to bioaccumulation. The commenters noted that in EPA's 2014 risk assessment (Ref. 19), EPA reported BCF and BAF data for several aquatic species that varied but were generally lower than the 1,000 bioaccumulation criteria. The commenters noted that EPA's assessment suggests that HHCB does not biomagnify. The commenters also stated that EPA's assessment notes that metabolism may account for the observation that measured BCFs and BAFs are lower than would be estimated based on the log K_{OW} of HHCB. The commenters cited data indicating that HHCB is metabolized and excreted without significant bioaccumulation. The commenters stated that as a result of this metabolism BCFs estimated using the EPA EPISuite model may not be accurate. The commenters cited EPA's 2014 risk assessment as evidence that EPA relied more on the available BAF values:

> HHCB is considered to be of low to moderate concern for bioaccumulation. BCF values of 1,584 for bluegills and 2,692 for Lumbriculus indicate moderate bioaccumulation potential. However, BAF

values are available for several aquatic organisms are in the range of 20 to 620, indicating low bioaccumulation. These studies, together with results of aquatic food-chain modeling (Arnot- Gobas model) and monitoring data for biota, suggest that HHCB is not subject to biomagnification.

EPA Response: The commenters provided no information or evidence that the BCF values greater than 1,000 reported in EPA's HHCB assessment (Ref. 42) are invalid. These reported values suggest significant bioaccumulation potential for at least some species and come from solid peer-reviewed studies (BCF: 2692, Artola-Garciano et al., 2003 (Ref. 43) and BCF: 1584, Balk & Ford, 1999b (Ref. 26)). Note: Both of these studies are cited in the OPPT 2014 risk assessment for HHCB (Ref. 19). HHCB meets the bioaccumulation criteria established for the TRI program (Refs. 7 and 27). In addition to studies reported in the 2014 Risk Evaluation (Ref. 19), numerous articles have been published by the science community demonstrating a substantially wider range of bioaccumulation values. Yao et al. 2018 (Ref. 44) reported bioaccumulation factors ranging from 52.5 to 46,773.5 for fish species exposed to 0–133 nanograms per liter (ng/L) of HHCB. Similarly, Reiner and Kannan (2011) (Ref. 45) reported BAF values for fish livers ranging from 261 to 2,897 when exposed to two different concentrations of HHCB in water and sediment. The upper range of these bioaccumulation factors further support that HHCB meets the bioaccumulation criteria.

As EPA has previously stated, in the October 29, 1999 **Federal Register** *Notice* biomagnification is not required to have a concern for biomagnification. (64 FR 58682–58683, October 29, 1999) (Ref. 7)

Comment: The Fragrance Science & Advocacy Council (Ref. 11) also questioned the bioaccumulation and biomagnification data for HHCB and provided studies and references for EPA to consider. The commenter contends that HHCB has low to moderate bioaccumulation potential, and low biomagnification potential. The commenter provided a report that they said they had submitted to EPA on behalf of the IFF as a member of the International Fragrance Association, entitled, ''Report on Bioaccumulation and Tropic Magnification Potential in the Aquatic Environment of 1,3,4,6,7,8-Hexahydro-4,6,6,7,8,8-hexamethylcyclopenta[g]-2-benzopyran (HHCB).'' The commenter stated that the report contains information on the bioaccumulation and biomagnification potential of HHCB.

EPA Response: EPA has received the report submitted by IFF and assigned it the HEROID 10365931 (Ref. 46). The report included bioaccumulation values above the 1,000 criteria. For example, there is a BCF value of ~1,550 for Rainbow Trout in Appendix III. In addition to the IFF report provided by the commenter, IFF has submitted another study (Accumulation and Elimination of 14C–HHCB by Blue Gill Sunfish in a Dynamic Flow-Through System, OECD 305E, 1996 (Ref. 47)) indicating a BCF of 1,635 for whole fish exposed to 1 µg/L and a BCF of 1,613 for whole fish exposed to 10 µg/L (mean: 1,624 ± 16). Because the studies cited in the two reports provide bioaccumulation values >1,000, they further support EPA's conclusion that HHCB meets the bioaccumulation criteria established for the TRI program (Refs. 7 and 27)).

The biomagnification information/comments do not impact the conclusion regarding PBT status since the BCFs exceed the bioaccumulation criteria for TRI and as noted above, biomagnification is not part of the PBT criteria established for evaluations under EPCRA section 313 (Refs. 7 and 27).

G. Comments on HHCB Not Being Particularly Toxic

Comment: The Fragrance Creators Association and American Cleaning Institute (Ref. 10) stated that HHCB is not particularly toxic and ''does not exhibit any specific toxic mode of action that contributes to excess ecotoxicity.'' The commenters also stated that ''Moreover, HHCB is typically not found in the aquatic environment above the detection limit (0.04 µg/L), and when it is detected, it is generally less than 1 ug/L,[11] well below the EPA chronic concentration of concern (COC) of 9.7 ug/L established in the 2014 risk assessment.''

EPA Response: EPA does not limit its ecological toxicity criterion to a specific mode of action. For TRI listing purposes, chemicals with acute aquatic toxicity values at or below 1 milligram per liter (mg/L) are considered highly toxic. As discussed in EPA hazard assessment for HHCB, there are numerous acute aquatic toxicity values below 1 mg/L, which show that HHCB is highly toxic to aquatic organisms (Ref. 42). There are also chronic aquatic toxicity values below 0.1 mg/L which EPA also considers highly toxic (Ref. 42). In addition, the studies submitted to EPA following the 2014 risk assessment support this determination. There are no separate toxicity criteria for PBT chemicals. Regarding the presence of HHCB in aquatic environments, EPA does not consider potential exposures or environmental concentrations for chemicals that are highly toxic to aquatic organisms when determining if they meet the EPCRA section 313(d)(2)(C) listing criteria. EPA has explained in detail how it evaluates chemicals under the EPCRA section 313(d)(2) criteria (see 59 FR 61432, November 30, 1994 (FRL–4922–2) (Ref. 2)).

H. Comments on Chemicals EPA Declined To List

Comment: The commenters CleanEarth4Kids.org (Ref. 13), Earthjustice (on behalf of Sierra Club, Toxic-Free Future, and Defend Our Health) (Ref. 14), Silent Spring Institute (Ref. 15), and TURI (Ref. 17) contend that up to eight of the chemicals that EPA determined do not meet the EPCRA section 313(d)(2) listing criteria actually have data that support their listing. The chemicals in question include azodicarbonamide (123–77–3), 4-chlorobenzotrichloride (5216–25–1), dimethylacetamide (127–19–5), 2,3-dinitrotoluene (602–01–7), 2,5-dinitrotoluene (619–15–8), hexahydrophthalic anhydride (85–42–7), methylhexahydrophthalic anhydride (25550–51–0), and N-methylformamide (123–39–7).

EPA Response: EPA has addressed the specific comments on the toxicity of these chemicals in the RTC document (Ref. 18), some of the more general comments are summarized and responded to here.

I. Comments on Chemicals Found on Lists Prepared by the European Union (EU)

Comment: CleanEarth4Kids.org (Ref. 13) cited information on seven of the chemicals that included the listing of the chemicals on various lists prepared by the EU and/or classifications on such lists.

EPA Response: The commenter did not provide specific studies for EPA to consider but rather cited most of the same organizational determinations cited in the TURI petition as evidence that these chemicals met the EPCRA section 313(d)(2) listing criteria which EPA has already considered.

The fact that an organization has placed a chemical on a list (such as the European Commission: Candidate List of Substances of Very High Concern for Authorization) or made some determination as to its toxicity under their regulations or criteria does not necessarily mean that the chemical meets the EPCRA section 313(d)(2) listing criteria. Classifications such as

''Presumed Human Reproductive Toxicant'' are made under the criteria of another regulatory program and do not necessarily mean that there are data sufficient to establish that a chemical meets the EPRCA section 313(d)(2) criteria. As discussed in the RTC document, to the extent possible, EPA has reviewed the available data for such classifications and did not find sufficient information to support listing any additional chemicals. Some of these lists cite concerns for skin, eye and respiratory dangers which may indicate a concern for acute human health effects. For a chemical to be listed under EPCRA section 313(d)(2)(A) based on its acute human health effects, EPA would need to determine that the chemical ''can reasonably be anticipated to cause significant adverse acute human health effects at concentration levels that are reasonably likely to exist beyond facility site boundaries as a result of continuous, or frequently recurring, releases.''

K. Comments on Misinterpreted or Inadequate Data

Comment: Earthjustice (Ref. 14) stated that EPA misinterpreted or ignored relevant health effects information, unlawfully concluded that there is inadequate evidence to support listing a chemical because of a lack of chronic animal toxicity studies and did not follow Congress's direction that EPA must also base its listing decisions on ''appropriately designed and conducted epidemiological or other population studies,'' ''laboratory tests'' and other analyses based on ''generally accepted scientific principles.'' The commenter stated that EPA cannot lawfully determine that inadequate evidence exists to support listing without rationally analyzing all of these sources for chemicals under review, including available case studies and analogue data, and utilizing read-across methodologies. The commenter stated that EPA failed to provide an adequate explanation of its proposed decision to deny part of the TURI Petition, as EPCRA requires. The commenter stated that the proposed rule includes only the conclusory assertion that ''EPA has determined that the available data for nine chemicals'' addressed in the TURI Petition ''are not sufficient for EPA to find that the chemicals meet the EPCRA section 313 listing criteria for human health or ecological effects.'' The commenter stated that the references cited in support of EPA's conclusions are technical summaries of the human and ecological toxicity studies reviewed by EPA staff, but that neither the memos nor the proposed rule explain why the evidence for each chemical is inadequate to establish that the chemical ''is known to cause or can reasonably be anticipated to cause'' chronic adverse health effects in humans or significant adverse effects on the environment.

EPA Response: EPA disagrees with the commenters assertions that EPA did not conduct an appropriate review of the toxicity for those chemicals that EPA did not propose to list or explain why the data were insufficient to support any of the EPCRA section 313(d)(2) criteria. Section 313(d)(2) of EPCRA provides that a chemical may be added [to the TRI] if the Administrator determines, in his judgment, that there is sufficient evidence to establish that the chemical is know to cause or can reasonably be anticipated to cause significant adverse acute human health effects or reasonably anticipated to cause adverse effects such as cancer, reproductive effects, neurological disorders, mutagenic effects, and other chronic illnesses EPA included memos (Refs. 5 and 6) in the docket for this rulemaking that addressed these chemicals and provided a summary of the available relevant toxicity data and a conclusion that such data were not sufficient to support listing the chemical under any of the EPCRA section 313(d)(2) criteria. In responding to the TURI petition, EPA conducted a thorough literature search for data relevant to the chemicals named in the petition and the criteria described in EPCRA section 313(d)(2).

In preparing its hazard assessment, EPA conducts a broad review of available data and determines which studies should be included in the assessment. For example, when reviewing the available toxicity data, EPA does not include in its hazard assessment studies that do not provide sufficient information to determine whether a chemical causes a toxic effect that meets the EPCRA section 313(d)(2) criteria. For example, occupational studies and case reports often do not provide sufficient data to determine the doses causing adverse effects, or whether other factors contributed to the observed effects. If available, epidemiological or other population studies can be considered, but often they may not contain sufficient information to determine whether a chemical meets the listing criteria.

In addition, for EPA to be able to rely on a given study, EPA must be able to determine whether the toxic effects observed in are acute or chronic health effects, as this distinction has a significant impact on the information required to support the addition of a chemical to the TRI. The EPCRA section 313(d)(2)(A) listing criteria for acute human health effects contains a requirement that potential exposures must be considered.

In order to list under the acute human health effects criteria, EPA must determine that the effects are significant adverse acute human health effects, the concentration levels that would be of concern, and releases are reasonably likely to exist beyond facility site boundaries that would result in concentration levels of concern. If it is unclear from the available data whether the observed effects are acute or chronic (*e.g.,* epidemiological or occupational studies that lack sufficient details), then EPA may not be able to use the data to support listing.

EPCRA section 313(d) provides that the Administrator may add a chemical to the subsection (c) list at any time if the Administrator determines, in their judgment, that there is sufficient evidence to establish the criteria in EPCRA section 313(d)(2)(A), (B), or (C). The statute thus gives the Administrator discretion to determine what constitutes sufficient evidence to demonstrate these criteria have been met. It further states that such determinations shall be based on ''generally accepted scientific principles or laboratory tests, or appropriately designed and conducted epidemiological or other population studies available to the Administrator'' (emphasis added). The use of the word ''or'' in section 313(d)(2) establishes that a determination could be made on just one of the identified types of data/information. Moreover, the fact that a study on a particular chemical exists, does not mean that it contains information relevant to a listing determination. To list a chemical under the criteria of EPCRA section 313(d)(2)(A) or (B) for human health effects the statutory language requires that EPA be able to support a conclusion that ''The chemical is known to cause or can reasonably be anticipated to cause in humans'' significant adverse acute human health effects or at least one of the listed chronic human health effects. The Agency must determine which studies and data are relevant and evaluate their scientific merits. If EPA determines that a given study does not include sufficient information, for example on whether the effects considered are chronic or acute, the doses causing the effects, the severity of the effects or whether other chemicals were also present, it may determine that further evaluation of the study is not warranted.

EPCRA section 313(e), in turn, governs the scope of the Agency's

obligation to respond to petitions to add or delete a chemical from the TRI. Specifically, it provides that the Administrator shall take one of the following actions in response to a petition to add or delete a chemical from the list: (A) Initiate a rulemaking to add or delete the chemical to the list, in accordance with subsection (d)(2) or (d)(3); or (B) Publish an explanation of why the petition is denied.

EPA stated in the proposed rule that the available data for the chemicals not being listed was not sufficient for EPA to find that the chemicals met the EPCRA section 313 listing criteria for human health or ecological effects. It further stated that it was therefore not proposing to add those chemicals to the TRI. EPA also added two memos (Refs. 5 and 6) to the docket providing additional information regarding its review of the chemicals identified in the TURI petition that EPA was not proposing to add to the TRI. Those memos supported EPA's decision not to propose adding 9 of the chemicals to the TRI. Further support and rationale for EPA's decision is provided the RTC document (Ref. 18).

It is important to note that the petitioner requested the addition of 6 chemicals based on the EPCRA section 313(d)(2)(C) criteria. However, the explicit language of EPCRA section 313(e)(1) only allows any person to ''petition the Administrator to add or delete a chemical from [the TRI] on the basis of the criteria in subparagraph (A) or (B) of subsection (d)(2).'' In other words, it allows any person to request that a chemical be added or deleted from the TRI list only on the basis of the human health criteria in EPCRA section 313(d)(2)(A) and (B). EPCRA does not provide an avenue for petitions to add chemicals to TRI based on the criteria in subsection (d)(2)(C). The petitioners' request to add certain chemicals to the TRI list based on them meeting the criteria in paragraph (d)(2)(C) was an impermissible request. Nevertheless, to thoroughly assess the overall merits of listing these chemicals, EPA conducted an analysis of the available toxicity data and proposed to add four of the chemicals to the TRI. EPA determined that it was not appropriate to propose adding the other two of these chemicals cyclododecane and 2,3-dinitrotoluene to the TRI.

EPA has reviewed the information provided by the commenters with regard to the five specific chemicals for which commenters assert EPA ignored evidence regarding chronic human health effects that would justify their addition to TRI and with regard to the three chemicals for which commenters assert EPA ignored evidence of mutagenic effects. As discussed in detail in the RTC document (Ref. 18), EPA concludes that based on currently available data none of the eight chemicals addressed by the commenter meet the EPCRA section 313(d)(2) listing criteria.

L. Comments on Other Factors To Consider for Listing Decisions

In addition to Earthjustice (Ref. 14), TURI (Ref. 17) suggested that other factors or criteria may be useful and appropriate to consider for listing decisions. The commenter suggested that while toxicity data are lacking for certain chemicals, substantial information can be gained by considering analogs and that using read-across data may be an appropriate approach in these cases. The commenter stated that in addition, it essential to take account of information available from case reports, epidemiological studies, and mechanistic data, even when chronic animal studies are unavailable.

EPA Response: EPA agrees that using analogs and read-across data can be useful but in order to do that information about what structural features are important to the toxicity need to be understood. Just because two chemicals have similar structures does not always mean they will have similar toxic endpoints at similar doses. EPA also agrees that case reports, epidemiological studies, and mechanistic data can provide useful information about potential toxicity, however, under the EPCRA section 313(d)(2)(B) listing criteria that data must be sufficient to conclude that ''The chemical is known to cause or can reasonably be anticipated to cause in humans'' chronic human health effects. In addition, as EPA has previously explained and cited in the proposed rule (Ref. 2), in making determinations under EPCRA section 313(d)(2) EPA considers the severity of the effects and the dose/concentration at which the effects occur. Case reports, epidemiological studies, and mechanistic data don't always provide sufficient information to reach a conclusion about a chemical's acute or chronic human health effects.

M. Comments on EPA's Economic Analysis

The commenters Household & Commercial Products Association (Ref. 12); Fragrance Creators Association and American Cleaning Institute (Ref. 10); and U.S. Small Business Administration Office of Advocacy (Ref. 16) provided comments on EPA's economic analysis for the proposed rule. The commenters suggested that EPA's economic analysis for the proposed rule underestimated the impacts that would result from lowering the reporting threshold for HHCB. These commenters requested that EPA revise its economic analysis based on more recent data including the 2020 Chemical Data Reporting (CDR) rule (Ref. 48), the Final Lists of Manufacturers Subject to Fees for the 20 High Priority Substances Undergoing TSCA Risk Evaluations (Ref. 49) and the Site Emission Survey of Fragrance Formulation Compounders and Product Manufacturers Using HHCB Information to Support the TSCA Risk Evaluation (Ref. 50).

EPA Response: When developing the economic analysis for this final rule (Ref. 3), EPA reviewed currently available data on HHCB manufacture and import, including the sources identified by the commenters, to determine if and how to update the economic analysis to provide the best estimates of reporters and reporting burden for HHCB. Specifically, EPA reviewed the 2020 CDR data (Ref. 48), the Final Lists of Manufacturers Subject to Fees for the 20 High Priority Substances Undergoing TSCA Risk Evaluations (Ref. 49) and the Site Emission Survey of Fragrance Formulation Compounders and Product Manufacturers Using HHCB Information to Support the TSCA Risk Evaluation (Ref. 50). In addition, EPA updated wage rates to 2021 dollars to better estimate costs of reporting.

With respect to the CDR data, EPA did not find that the data were significantly different from the previous 2016 CDR data to warrant any update as the impact on the estimates made by EPA would be inconsequential. Overall production of HHCB remained the same and most of the importers (no companies reported domestic production of HHCB under either the 2016 or 2020 CDR reporting) remained the same. In fact, fewer importers reported to CDR in 2020 than did in 2016. Similarly, numbers of downstream processers and users, which form the basis for EPA's estimates of numbers of reporters and reports for the final rule, were largely the same although the identity of some importers differed.

EPA also reviewed information from the final list of HHCB manufacturers (including importers) responsible for payment of fees under TSCA and included additional HHCB facilities in its estimates of facilities that would report under this final rule as a result. This resulted in six additional reporters because the companies had either been

previously identified by the economic analysis for the proposed rule (Ref. 51) or are operating in NAICS codes that are not subject to TRI reporting.

Finally, EPA also reviewed the Site Emission Survey of Fragrance Formulation Compounders and Product Manufacturers Using HHCB Information to Support the TSCA Risk Evaluation prepared for the Fragrance Creators' Association. As the commenter notes, one of the respondents to the survey indicated that downstream processors and users was in excess of 500. EPA did not find that the results of the survey itself were useful in estimating exact numbers of downstream users and formulators. Many respondents failed to provide an estimate of downstream users and processors, and it is not possible to determine if the respondents also reported under CDR, which is the main data source for the economic analysis. However, EPA did interpret the data as indicative of more potential reporters of HHCB than estimated in the economic analysis for the proposed rule and made adjustments in the economic analysis for the final rule to increase the estimated number of reporters of HHCB from 237 facilities to 1,072 (Ref. 3).

IV. Summary of the Final Rule

EPA is finalizing the addition of 12 chemicals to the EPCRA section 313 list of toxic chemicals. Based on EPA's review of the available toxicity data, EPA has determined that the 12 chemicals can reasonably be anticipated to cause either adverse chronic human health effects at moderately low to low doses and/or environmental effects at low concentrations. EPA has determined that the data show that these 12 chemicals have moderately high to high human health toxicity and/or are highly toxic to aquatic organisms. Therefore, EPA has determined that the evidence is sufficient for listing the 12 chemicals on the EPCRA section 313 toxic chemicals list pursuant to EPCRA section 313(d)(2)(B) and/or (C). The 12 chemicals EPA is adding to the EPCRA section 313 chemical list are listed here by name and CASRN.

- Dibutyltin dichloride; 683–18–1;
- 1,3-Dichloro-2-propanol; 96–23–1;
- Formamide; 75–12–7;
- 1,3,4,6,7,8-Hexahydro-4,6,6,7,8,8-hexamethylcyclopenta[g]-2-benzopyran; 1222–05–5;
- N-Hydroxyethylethylenediamine; 111–41–1;
- Nitrilotriacetic acid trisodium salt; 5064–31–3;
- p-(1,1,3,3-Tetramethylbutyl)phenol; 140–66–9;
- 1,2,3-Trichlorobenzene; 87–61–6;
- Triglycidyl isocyanurate; 2451–62–9;
- Tris(2-chloroethyl) phosphate; 115–96–8;
- Tris(1,3-dichloro-2-propyl) phosphate; 13674–87–8; and
- Tris(dimethylphenol) phosphate; 25155–23–1.

In addition, EPA has determined that the available bioaccumulation and persistence data for HHCB support a classification of HHCB as a PBT chemical. Therefore, consistent with EPA's established policy for PBT chemicals (see Ref. 7), EPA is establishing a 100-pound reporting threshold for HHCB and including it under 40 CFR 372.28 Lower thresholds for chemicals of special concern.

V. References

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

1. Petition from the Massachusetts Toxics Use Reduction Institute (TURI), University of Massachusetts Lowell, 600 Suffolk St., Suite 501, Lowell, MA 01854, May 6, 2014.
2. UESPA. Addition of Certain Chemicals; Toxic Chemical Release Reporting; Community Right-to-Know. **Federal Register**. 59 FR 61432, November 30, 1994 (FRL–4922–2).
3. USEPA. 2022. Economic Analysis Addendum for the Final Rule to Add Twelve Chemicals Identified in a Petition from the Toxics Use Reduction Institute to the EPCRA Section 313 List of Toxic Chemicals. August 19.
4. USEPA. Addition of Certain Chemicals; Community Right-to-Know Toxic Chemical Release Reporting. **Federal Register**. 86 FR 57614, October 18, 2021 (FRL–5927–03–OCSPP).
5. USEPA, OPPT. Memorandum from Jocelyn Hospital, Toxicologist, Regulatory Development Branch to David Turk, Chief, Regulatory Development Branch. Subject: Review of Toxics Use Reduction Institute (TURI) Petition Chemicals. December 8, 2016.
6. USEPA, OPPT. Memorandum from Kara Koehrn and Thomas Forbes, Regulatory Development Branch, to David Turk, Chief, Regulatory Development Branch. Subject: Review of Toxics Use Reduction Institute (TURI) Petition Chemicals. February 16, 2017.
7. UESPA. Persistent Bioaccumulative Toxic (PBT) Chemicals; Lowering of Reporting Thresholds for Certain PBT Chemicals; Addition of Certain PBT Chemicals; Community Right-to-Know Toxic Chemical Reporting. **Federal Register**. 64 FR 58666, October 29, 1999 (FRL–6389–11).
8. American Chemistry Council. Comments on Proposed Rule: Addition of Certain Chemicals; Community Right-to-Know Toxic Chemical Release Reporting (Docket ID EPA–HQ–TRI–2017–0434). December 17, 2021.
9. Alkylphenols & Ethoxylates Research Council. Comments on US EPA Proposed Rule for Addition of Certain Chemicals To Community Right-to-Know Toxic Chemical Release Reporting List under Section 313 of the Emergency Planning and Community Right-to-Know Act Submitted to Docket ID No. EP–HQ–TRI–2017–0434. December 17, 2021.
10. Fragrance Creators Association and the American Cleaning Institute. Comments on the Proposed Addition of HHCB to the Toxics Release Inventory, EPA–HQ–TRI–2017–0434. December 17, 2021.
11. Fragrance Science & Advocacy Council. Comments on the classification of 1,3,4,6,7,8-Hexahydro-4,6,6,7,8,8-hexamethylcyclopenta[g]-2-benzopyran (HHCB) as a persistent, bioaccumulative, and toxic (PBT) chemical and as a chemical of special concern. December 17, 2021.
12. Household & Commercial Products Association. Comments on the Designation of HHCB as a Chemical of Special Concern as part of Addition of Certain Chemicals; Community Right-to-Know Toxic Chemical Release Reporting (EPA–HQ–TRI–2017–0434). December 17, 2021.
13. CleanEarth4Kids.org. Comments on EPA Toxics Release Inventory Program. December 16, 2021.
14. Earthjustice on behalf of the Sierra Club, Toxic-Free Future, and Defend Our Health. Comments on Proposed Rule, Addition of Certain Chemicals; Community Right-to-Know Toxic Chemical Release Reporting, 86, Fed. Reg 57,614 (Oct 18, 2021), EPA–HQ–TRI–2017–0434. December 17, 2021.
15. Silent Spring Institute. Comments on the Community Right-to-Know Toxic Chemical Release Reporting: Addition of Certain Chemicals as Proposed by the EPA on October 18th, 2021. December 15, 2021.
16. U.S. Small Business Administration, Office of Advocacy. Comments on Addition of Certain Chemicals; Community Right-to-Know Toxic Chemical Release Reporting (Docket ID No. EPA–HQ–TRI–2017–0434). December 17, 2021.
17. Massachusetts Toxics Use Reduction Institute. Comments in response to EPA's proposed rule to add 12 of the 25 chemicals that TURI earlier petitioned the EPA to add to EPCRA section 313. University of Massachusetts Lowell. The Offices at Boott Mills West 126 John Street, Suite 14, Lowell, MA 01852. December 17, 2021.
18. USEPA, OPPT. 2022. Response to Comments Received on the October 18, 2021, Proposed Rule (86 FR 57614): Addition of Certain Chemicals;

Community Right-to-Know Toxic Chemical Release Reporting (*i.e.,* EPA's Response to the Toxics Use Reduction Institute (TURI) Petition). November 2022.
19. USEPA. TSCA Work Plan Chemical Risk Assessment, HHCB, 1,3,4,6,7,8-Hexahydro-4,6,6,7,8,8-hexamethylcyclopenta-g-2-Benzopyran, CASRN: 1222–05–5. 2014.
20. Envirogen. 1998. Fate of HHCB in Soil Microcosms. Envirogen, Inc. Princeton Research Centre, report submitted to International Flavors and Fragrances, Lawrenceville, NJ (as cited in Ref. 25).
21. European Chemical Agency. 2022. Biodegradation in water and sediment: simulation tests. Registration Dossier for 1,3,4,6,7,8-hexahydro-4,6,6,7,8,8-hexamethylindeno[5,6-c]pyran EC number: 214–946–9, CAS number: 1222–05–5. Available at: *https://echa.europa.eu/registration-dossier/-/registered-dossier/14504/5/3/3.*
22. Integral Consulting Inc. Analysis of Monitoring Data for HHCB in Sediment of the United States from 2006 to 2019. December 6, 2021. Available at: *https://www.regulations.gov/comment/EPA-HQ-OPPT-2018-0430-0047*.
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VI. Statutory and Executive Orders Reviews

Additional information about these statutes and Executive Orders can be found at *https://www.epa.gov/laws-*

regulations/laws-and-executive-orders#influence.

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

This action is not a significant regulatory action and was therefore not submitted to the Office of Management and Budget (OMB) for review under Executive Orders 12866 (58 FR 51735, October 4, 1993) and 13563 (76 FR 3821, January 21, 2011).

B. Paperwork Reduction Act (PRA)

This action does not contain any new information collection requirements that require additional approval by OMB under the PRA, 44 U.S.C. 3501 *et seq.* OMB has previously approved the information collection activities contained in the existing regulations and has assigned OMB control numbers 2070–0212 and 2050–0078.

Currently, the facilities subject to the reporting requirements under EPCRA section 313 and PPA section 6607 may use either EPA Toxic Chemicals Release Inventory Form R (EPA Form 9350–1), or EPA Toxic Chemicals Release Inventory Form A (EPA Form 9350–2), as appropriate under 40 CFR part 372. OMB has approved the reporting and recordkeeping requirements related to Forms A and R, supplier notification, and petitions under OMB Control No. 2070–0212 (EPA Information Collection Request (ICR) No. 2613), which includes an estimated burden of 35.7 hours for submitters of Form R and 21.9 hours for submitters of Form A, and those related to trade secret designations under OMB Control No. 2050–0078 (EPA ICR No. 1428), which includes an estimated average burden of 9.7 hours per response. EPA estimates that this action would result in an additional 1,342 reports being filed annually, and that the costs of this action will be approximately $6,660,633 in the first year of reporting and approximately $3,172,080 in the subsequent years. See Unit I.E. and Ref. 3.

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

C. Regulatory Flexibility Act (RFA)

I certify that this action will not have a significant economic impact on a substantial number of small entities under the RFA, 5 U.S.C. 601 *et seq.* The small entities subject to the requirements of this action are small businesses (*i.e.,* manufacturing facilities); no small governments or small organizations are expected to be affected by this action. The Agency has determined that of the 1,322 entities estimated to be impacted by this action, 1,283 are small entities. All 1,283 small entities affected by this action are estimated to incur annualized cost impacts of less than 1%. Thus, this action is not expected to have a significant adverse economic impact on a substantial number of small entities. A more detailed analysis of the impacts on small entities is located in EPA's economic analysis (Ref. 3).

D. Unfunded Mandates Reform Act (UMRA)

This action does not contain an unfunded mandate of $100 million or more as described in UMRA, 2 U.S.C. 1531–1538, and does not significantly or uniquely affect small governments. This action is not subject to the requirements of UMRA because it contains no regulatory requirements that might significantly or uniquely affect small governments. EPA did not identify any small governments that would be impacted by this action. EPA's economic analysis indicates that the total cost of this action is estimated to be $6,660,633 in the first year of reporting (Ref. 3).

E. Executive Order 13132: Federalism

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

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

This action does not have tribal implications as specified in Executive Order 13175 (65 FR 67249, November 9, 2000) because it will not have substantial direct effects on tribal governments, on the relationship between the Federal government and the Indian tribes, or on the distribution of power and responsibilities between the Federal government and Indian tribes. Thus, Executive Order 13175 does not apply to this action.

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

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

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

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

I. National Technology Transfer and Advancement Act (NTTAA)

This rulemaking does not involve technical standards under the NTTAA section 12(d), 15 U.S.C. 272.

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

Executive Order 12898 (59 FR 7629, February 16, 1994) directs federal agencies, to the greatest extent practicable and permitted by law, to make environmental justice part of their mission by identifying and addressing, as appropriate, disproportionately high and adverse human health or environmental effects of their programs, policies, and activities on minority populations (people of color) and low-income populations.

Though this action does not address human health or environmental conditions, it does increase access to information available to the public (including to minority and low-income populations) and improves transparency of how certain facilities are managing EPCRA section 313 toxic chemicals. Reporting forms submitted pursuant to TRI reporting requirements provide information on releases and other waste management activities conducted by the reporting facilities. By requiring

reporting on these additional chemicals, this action will be providing communities across the U.S. (including minority and low-income populations) with access to data which they may use to assess potential exposure to these additional chemicals and seek to lower exposures and consequently reductions in potential chemical risks. This information can also be used by government agencies and others to identify potential risks, set priorities, and take appropriate steps to reduce potential risks to human health and the environment. Therefore, EPA believes that this action will have not have a disproportionately high and adverse human health or environmental effect on minority populations, low-income populations, and indigenous peoples. To the contrary, EPA believes that this action will provide utility in the assessment of potential impacts on minority populations (people of color) and low-income populations.

K. Congressional Review Act (CRA)

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

List of Subjects in 40 CFR Part 372

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

Dated: November 22, 2022.

Michal Freedhoff,

Assistant Administrator, Office of Chemical Safety and Pollution Prevention.

Therefore, for the reasons stated in the preamble, EPA is amending 40 CFR chapter I as follows:

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

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

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

■ 2. In § 372.28, amend the table in paragraph (a)(1) by revising the column headings and adding, in alphabetical oder, the chemical ''1,3,4,6,7,8-Hexahydro-4,6,6,7,8,8-hexamethylcyclopenta[g]-2-benzopyran'' to read as follows:

§ 372.28 Lower thresholds for chemicals of special concern.

(a) * * *

(1) * * *

TABLE 1 TO PARAGRAPH (a)(1)

Chemical name	CAS No.	Reporting threshold (in pounds)
* * * * * * *		
1,3,4,6,7,8-Hexahydro-4,6,6,7,8,8-hexamethylcyclopenta[g]-2-benzopyran	1222–05–5	100
* * * * * * *		

* * * * *

■ 3. Amend § 372.65 by:

■ a. In paragraph (a), in table 1, adding in alphabetical order entries for ''Dibutyltin dichloride,'' ''1,3-Dichloro-2-propanol,'' ''Formamide,'' ''1,3,4,6,7,8-Hexahydro-4,6,6,7,8,8-hexamethylcyclopenta[g]-2-benzopyran,'' ''N-Hydroxyethylethylenediamine,'' ''Nitrilotriacetic acid trisodium salt,'' ''p-(1,1,3,3-Tetramethylbutyl)phenol,'' ''1,2,3-Trichlorobenzene,'' ''Triglycidyl isocyanurate,'' ''Tris(2-chloroethyl) phosphate,'' ''Tris(1,3-dichloro-2-propyl) phosphate,'' and ''Tris(dimethylphenol) phosphate''; and

■ b. In paragraph (b), in table 2, adding in numerical order entries for ''75–12–7,'' ''87–61–6,'' ''96–23–1,'' ''111–41–1,'' ''115–96–8,'' ''140–66–9,'' ''683–18–1,'' ''1222–05–5,'' ''2451–62–9,'' ''5064–31–3,'' ''13674–87–8,'' and ''25155–23–1''.

The additions read as follows:

§ 372.65 Chemicals and chemical categories to which this part applies.

* * * * *

(a) * * *

TABLE 1 TO PARAGRAPH (a)

Chemical name	CAS No.	Effective date
* * * * * * *		
Dibutyltin dichloride	683–18–1	1/1/23
* * * * * * *		
1,3-Dichloro-2-propanol	96–23–1	1/1/23
* * * * * * *		
Formamide	75–12–7	1/1/23
* * * * * * *		
1,3,4,6,7,8-Hexahydro-4,6,6,7,8,8-hexamethylcyclopenta[g]-2-benzopyran	1222–05–5	1/1/23
* * * * * * *		
N-Hydroxyethylethylenediamine	111–41–1	1/1/23
* * * * * * *		
Nitrilotriacetic acid trisodium salt	5064–31–3	1/1/23

TABLE 1 TO PARAGRAPH (a)—Continued

Chemical name	CAS No.	Effective date
* * * * * * *		
p-(1,1,3,3-Tetramethylbutyl)phenol	140–66–9	1/1/23
* * * * * * *		
1,2,3-Trichlorobenzene	87–61–6	1/1/23
* * * * * * *		
Triglycidyl isocyanurate	2451–62–9	1/1/23
* * * * * * *		
Tris(2-chloroethyl) phosphate	115–96–8	1/1/23
* * * * * * *		
Tris(1,3-dichloro-2-propyl) phosphate	13674–87–8	1/1/23
* * * * * * *		
Tris(dimethylphenol) phosphate	25155–23–1	1/1/23
* * * * * * *		

(b) * * *

TABLE 2 TO PARAGRAPH (b)

CAS No.	Chemical name	Effective date
* * * * * * *		
75–12–7	Formamide	1/1/23
* * * * * * *		
87–61–6	1,2,3-Trichlorobenzene	1/1/23
* * * * * * *		
96–23–1	1,3-Dichloro-2-propanol	1/1/23
* * * * * * *		
111–41–1	N-Hydroxyethylethylenediamine	1/1/23
* * * * * * *		
115–96–8	Tris(2-chloroethyl) phosphate	1/1/23
* * * * * * *		
140–66–9	p-(1,1,3,3-Tetramethylbutyl)phenol	1/1/23
* * * * * * *		
683–18–1	Dibutyltin dichloride	1/1/23
* * * * * * *		
1222–05–5	1,3,4,6,7,8-Hexahydro-4,6,6,7,8,8-hexamethylcyclopenta[g]-2-benzopyran	1/1/23
* * * * * * *		
2451–62–9	Triglycidyl isocyanurate	1/1/23
* * * * * * *		
5064–31–3	Nitrilotriacetic acid trisodium salt	1/1/23
* * * * * * *		
13674–87–8	Tris(1,3-dichloro-2-propyl) phosphate	1/1/23
* * * * * * *		
25155–23–1	Tris(dimethylphenol) phosphate	1/1/23
* * * * * * *		

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BILLING CODE 6560–50–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

[Docket No. FWS–R3–ES–2021–0140; FF09E21000 FXES1111090FEDR 234]

RIN 1018–BG14

Endangered and Threatened Wildlife and Plants; Endangered Species Status for Northern Long-Eared Bat

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Final rule.

SUMMARY: We, the U.S. Fish and Wildlife Service (Service), reclassify the northern long-eared bat (*Myotis septentrionalis*), a bat species found in all or portions of 37 U.S. States, the District of Columbia, and much of Canada, as an endangered species under the Endangered Species Act of 1973, as amended (Act). Our review of the best available scientific and commercial information indicates that the northern long-eared bat meets the Act's definition of an endangered species. Because we are reclassifying the northern long-eared bat from a threatened to an endangered species, we are amending this species' listing on the List of Endangered and Threatened Wildlife to reflect its endangered species status and removing its species-specific rule issued under section 4(d) of the Act.

DATES: This rule is effective January 30, 2023.

ADDRESSES: This final rule is available on the internet at *https://www.regulations.gov.* Comments and materials we received, as well as supporting documentation we used in preparing this rule, are available for public inspection at *https://www.regulations.gov* at Docket No. FWS–R3–ES–2021–0140.

FOR FURTHER INFORMATION CONTACT: Shauna Marquardt, Field Supervisor, U.S. Fish and Wildlife Service, Minnesota Wisconsin Ecological Services Field Office, 4101 American Boulevard East, Bloomington, MN 55425; telephone 952–252–0092. 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:

Executive Summary

Why we need to publish a rule. Under the Act, a species warrants listing if it meets the definition of an endangered species (in danger of extinction throughout all or a significant portion of its range) or a threatened species (likely to become endangered within the foreseeable future throughout all or a significant portion of its range). If we determine that a species warrants listing, we must list the species promptly and designate the species' critical habitat to the maximum extent prudent and determinable. In 2015, we listed the northern long-eared bat as a threatened species under the Act, but we have since determined that the northern long-eared bat meets the Act's definition of an endangered species; therefore, we are reclassifying the species as an endangered species. We published a not-prudent determination for critical habitat for the northern long-eared bat on April 27, 2016 (81 FR 24707). Listing a species as an endangered or threatened species can be completed only by issuing a rule through the Administrative Procedure Act rulemaking process (5 U.S.C. 551 *et seq.*).

What this document does. This rule reclassifies the northern long-eared bat (*Myotis septentrionalis*) from a threatened species to an endangered species under the Endangered Species Act (Act). It also removes the northern long-eared bat's species-specific rule issued under section 4(d) of the Act, because such rules apply only to species listed as threatened species under the Act.

The basis for our action. Under the Act, we may determine that a species is an endangered or threatened species because of any of five factors: (A) The present or threatened destruction, modification, or curtailment of its habitat or range; (B) overutilization for commercial, recreational, scientific, or educational purposes; (C) disease or predation; (D) the inadequacy of existing regulatory mechanisms; or (E) other natural or manmade factors affecting its continued existence. We have determined that the foremost stressor impacting the northern long-eared bat is white nose syndrome (WNS; Factor C).

Previous Federal Actions

Please refer to the proposed rule to reclassify the northern long-eared bat as an endangered species (87 FR 16442; March 23, 2022) for a detailed description of previous Federal actions concerning this species.

Peer Review

A species status assessment (SSA) team prepared an SSA report for the northern long-eared bat. The SSA team was composed of Service biologists, in consultation with other species experts. The SSA report represents a compilation of the best scientific and commercial data available concerning the status of the species, including the impacts of past, present, and future factors (both negative and beneficial) affecting the species.

In accordance with our joint policy on peer review published in the **Federal Register** on July 1, 1994 (59 FR 34270), and our August 22, 2016, memorandum updating and clarifying the role of peer review of listing actions under the Act, we solicited independent scientific review of the information contained in the SSA report. As discussed in the proposed rule, we sent the SSA report to five independent peer reviewers and received three responses. The peer reviews can be found at *https://regulations.gov* Docket No. FWS–R3–ES–2021–0140. In preparing the proposed rule, we incorporated the results of these reviews, as appropriate, into the SSA report, which was the foundation for the proposed rule and this final rule.

Summary of Changes From the Proposed Rule

To comply with the January 4, 2012, Office of Management and Budget (OMB) memo title, *Clarifying Regulatory Requirements: Executive Summaries* and the Department of the Interior's Departmental Handbook on Preparing **Federal Register** Documents, we added an executive summary to this rule.

During the public comment period, we received comments from several public commenters and one State commenter expressing concerns that the Service was not able to identify actions that would not likely result in a violation of section 9 of the Act (16 U.S.C. 1531 *et seq.*). After evaluating all the information we received during the public comment period and other available information, we created a list of actions that are not likely to result in a violation of section 9 of the Act, if these activities are carried out in accordance with existing regulations and permit requirements. The provided list is not comprehensive and does not absolve any individual or organization from legal liability if a northern long-eared bat is taken. Although we have determined take is unlikely, any take resulting from the actions listed below

under Available Conservation Measures will still result in a violation of section 9 of the Act.

We updated the number of States and Canadian provinces with confirmed or suspected presence of *Pseudogymnoascus destructans* (*Pd*) to 43 States and 8 provinces (including States in the range of the northern long-eared bat) in the Summary of Biological Status and Threats section. The presence of *Pd* has expanded further into these areas since the March 23, 2022 proposed rule for the northern long-eared bat published.

Summary of Comments and Recommendations

In our March 23, 2022, proposed rule (87 FR 16442), we requested that all interested parties submit written comments on the proposal by May 23, 2022. We also contacted appropriate Federal and State agencies, scientific experts and organizations, and other interested parties and invited them to comment on the proposal. A newspaper notice inviting general public comment was published in the USA Today. We conducted a public informational meeting and a public hearing on April 7, 2022. All substantive information we received during the comment period has either been incorporated directly into this final determination or is addressed below.

Peer Reviewer Comments

As discussed in Peer Review above, we received comments from three peer reviewers. We reviewed their comments for substantive issues and new information regarding the information contained in the SSA report. The peer reviewers generally concurred with our methods and conclusions and provided additional information, clarifications, and suggestions to improve the final SSA report. We incorporated peer reviewer comments into the final SSA report as appropriate.

Public Comments Related to the SSA Report

(1) Comment: One commenter noticed an error in the SSA report's table 4.2. We described the scope of wind energy impacts as ''Pervasive,'' when it should in fact be ''Large.''

Our Response: We have corrected this error and will make available an updated version of the SSA report at *https://www.regulations.gov* under Docket No. FWS–R3–ES–2021–0140 when this final rule publishes. The error does not change the overall outcome of the analysis where the current impact from wind is ''Medium.''

(2) Comment: Two commenters felt that, in calculating wind energy's impacts, our SSA report appeared to assume that the species composition of northern long-eared bat in ''all-bat'' fatalities from wind remained constant over time even though the report acknowledges this to be biologically unlikely and is contradicted by a robust set of real-world data.

Our Response: We explored developing pre- and post-WNS species composition rates (the percent of all wind energy-related bat fatalities that are northern long-eared bat); however, there was no statistically significant difference in northern long-eared bat species composition rates pre- and post-WNS, likely due to a small sample size. Although we are able to detect differences in pre- and post-WNS species composition rates in other bat species (tricolored bat (*Perimyotis subflavus*) and little brown bat (*Myotis lucifugus*), these species have larger data sets. We acknowledge that constant species composition rates for northern long-eared bat may be biologically unlikely; however, the best available science at this time shows constant rates pre- and post-WNS.

One of the commenters provided a different species composition rate for consideration during the public comment period but did not provide the dataset used to calculate the differing rate nor the methods and results used to calculate this alternate rate. It is possible that this different species composition rate would result in the wind impact changing from medium to low in the species status assessment. We will update our SSA report for the northern long-eared bat if we receive substantive new data in the future. However, we are not able to compare our results to the commenter's results because their dataset, methodologies, analytical approach, and inclusion criterion were not available to us. Even if the impact of wind on the northern long-eared bat is low, we would likely list the species as an endangered species because the status is primarily driven by WNS.

(3) Comment: A commenter stated that they did not think it was reasonable to assume northern long-eared bats remain a constant percentage of bat fatalities at wind farms rangewide.

Our Response: We evaluated wind-related mortality across the range of the northern long-eared bat in the United States and did not detect a difference in fatality rate by region. However, we used different bat fatality rates for the United States and Canada because we had different fatality rates between the two countries. We were able to detect differences in fatality rates by region for the other two species (tricolored bat and little brown bat), which have larger data sets than the northern long-eared bat. The commenter provided alternate values to those used in the SSA but did not provide the underlying data or the technical memo describing the methods or results, so we were unable to verify these alternative values.

(4) Comment: One commenter stated that the Service's assumptions and demographic modeling tool results differ drastically from real-world experience. The commenter says the contradictory, real-world results found in the Service's calculation for wind energy impacts to northern long-eared bat in Iowa, as shown in figure 4.7 of the SSA report. The commenter noted that no northern long-eared bat mortality has been documented at wind facilities in Iowa, post-WNS. The commenter stated that this an example of how the Service's results differ dramatically from real-world results.

Our Response: In response to this comment, we updated figure 4.7 in the SSA report to more accurately show where the model predicts bat fatality will occur. The previous figure included wind turbine locations beyond the northern long-eared bat's migration range from known hibernacula, while the caption explained that the mortality depicted in the figure included locations that were not incorporated into the model. We have revised the figure to include locations and mortality that were incorporated into the model only. To the commenter's specific point about Iowa, the updated figure continues to depict some mortality at Iowa wind facilities given their proximity to known northern long-eared bat hibernacula in neighboring States. Detection probability associated with post-construction mortality monitoring is typically low and always under 1; thus, the reported number of mortalities are likely an underestimate of the actual number of northern long-eared bats killed by wind turbines. For these reasons, we determined that the fatality rate used in our model is reasonable and supported by the best available science.

(5) Comment: Another commenter felt that the Service did not fully explain the methods used to arrive at ''no detectable difference'' conclusion between pre- and post-WNS species composition rates at wind facilities; therefore, our decision was not clear.

Our Response: We compared pre- and post-WNS composition rates for three bat species in separate SSAs using the same analytical framework. Only the northern long-eared bat had no detectable difference due to limited data

for the species. We explain more fully our process below.

Northern long-eared bat percent species composition is very small to start (0.2 percent). As such, declines in percent species composition will necessarily be small. As a result, the difference in the total amount of take (killed bats) pre- and post-WNS will be small; however, this does not mean the take will be insignificant. Furthermore, northern long-eared bat data are very limited and thus erratic. For example, northern long-eared bat post-WNS percent species composition varies from 0.2 percent pre-WNS to 0.09 percent during the invasion stage and increases to 0.4 percent in the epidemic stage (where we would expect to see the highest decline in percent species composition to 0 percent in the establishment stage). However, we would expect percent species composition to decline over the invasion, epidemic, and establishment stages. Given the limited pre- and post-WNS data sample sizes and subsequent inconclusive results and the small number of bats killed overall, the most efficient and defensible approach was to consolidate the pre- and post-WNS data (*i.e.,* assume no change in percent species composition) for the northern long-eared bat (rather than further derive pre- and post-WNS values from even smaller sample sizes). Given the above, the data were too limited to calculate a pre- and post-WNS percent species composition value. Instead, we used all data to calculate a single percent species composition value.

(6) Comment: A few commenters stated that they believe the Service relied on an insufficient peer review that is contrary to agency policy. The commenters contended that the Service had only the northern long-eared bat SSA report peer reviewed but should have had the other bat SSA reports peer reviewed as well. Some commenters also expressed concern that the analysis presented in the northern long-eared bat report was not publicly available or peer reviewed; therefore, the Service did not rely on the best available data.

Our Response: The Service's peer review policy states that we will solicit review of, and comment on, such listing and recovery actions from three or more objective and independent reviewers with expertise relevant to the scientific questions. In general, we will attempt to solicit from the reviewer whether: (1) We have assembled and considered the best available scientific and commercial information relevant to our decision; (2) our analysis of this information is correct and properly applied to our decisions; and (3) our scientific conclusions are reasonable in light of the information.

To the commenter's point, we solicited peer review from five (more than the required three) independent peer reviewers for the northern long-eared bat SSA report as per the requirement of the guidance. We evaluated three bat species concurrently using the same analytical approach; however, we developed individual reports for each species, and each report was peer reviewed by a separate set of peer reviewers.

Additionally, the supplementary analytical reports mentioned by the commenter that were not publicly available at the time of peer review have become publicly available since the time that the proposed rule published (87 FR 16442; March 23, 2022). The analyses used in support of the northern long-eared bat SSA report have also been independently peer reviewed since that time (though not required by our peer review policy). The reports were published by the U.S. Geological Survey and followed their Fundamental Science Practices for peer review. This process included receiving peer review from two independent peer reviewers for each chapter of the reports. Accordingly, we have exceeded the requirements of the Service's peer review guidelines and policies.

Public Comments Related to the Reclassification of the Northern Long-Eared Bat

(7) Comment: Some commenters believe there has been no significant status change since the northern long-eared bat was listed as threatened in 2015 and that maintaining the threatened status is more appropriate.

Our Response: The status of the northern long-eared bat has changed since we listed the species as a threatened species under the Act (see 80 FR 17974; April 2, 2015), and it now meets the Act's definition of an endangered species. The primary threat affecting northern long-eared bats continues to be WNS, and the disease has spread significantly since 2015, at which time it was present in approximately 60 percent of the species' range and in 25 of the 37 States in the U.S. range of the species. As WNS spreads, its impact on northern long-eared bats is severe. WNS caused estimated population declines of 97–100 percent across 79 percent of northern long-eared bat's range and WNS is now likely present in every State within the U.S. range of the northern long-eared bat (Cheng et al. 2021, entire; Service 2022, pg. 34; see figure 1, below). WNS is likely to affect bats across 100 percent of the northern long-eared bat's range by the end of the decade. As a result, we are finalizing the listing for the northern long-eared bat as an endangered species.

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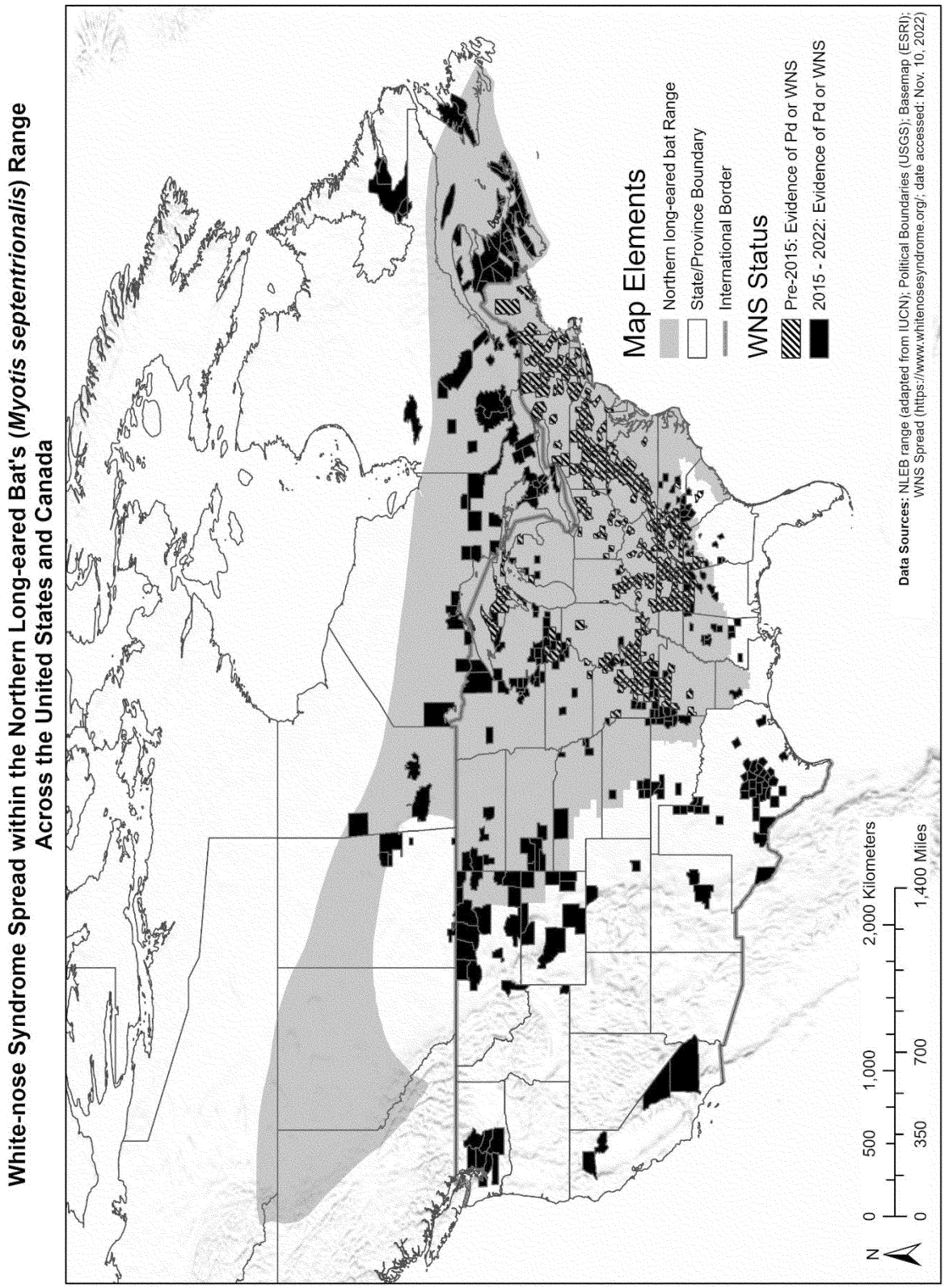

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Figure 1. Counties/districts with evidence of WNS or the WNS-causing fungus (*Pd*) as of 2015 (hashed polygons) and 2022 (solid black polygons), respectively, throughout the range of the northern long-eared bat (grey polygon). WNS spread data were obtained from *http://www.whitenosesyndrome.org* (accessed October 27, 2022).

(8) Comment: Several commenters encouraged the Service to conduct a more extensive literature review and incorporate more threats to individual bats into the northern long-eared bat SSA report. They provided citations for relevant literature not included in the report.

Our Response: We have reviewed the literature provided by commenters and incorporated this information into the SSA report, where appropriate. The purpose of an SSA is to present the best available scientific information regarding a species' status that focuses on the likelihood that the species will sustain populations into the future. The SSA is not designed to conduct an exhaustive literature review on all aspects of the species' life history. As a result, we did not incorporate all information in the SSA regarding individual actions that may result in the harm or loss of a single bat; instead, we focused on science that elucidates what is happening to the species at the population and species level to inform our determination regarding the danger of extinction for the species.

(9) Comment: Several commenters stated that hibernacula survey data are too unreliable to determine the species' status because northern long-eared bats are often overlooked in winter surveys due to their cryptic nature, and that instead, the Service should base its listing decision on summer survey data. Further, some commenters stated that this means that the Service was not basing its decision on the best available data.

Our Response: Northern long-eared bats are often difficult to observe during winter hibernacula surveys due to their tendency to roost deep in cracks and crevices within hibernacula. Despite the difficulties in observing or counting northern long-eared bats, hibernacula survey counts are regularly relied on since they are consistently available over time. Winter counts are conducted in mid- to late winter when bats are expected to be predominantly inactive and occupying known locations. Surveying known locations regularly allows for accurate observation of trend data over time. Across the eastern half of North America, where many bat species aggregate (including the northern long-eared bat) during hibernation, counts of bats during hibernation provide the best available data for estimating changes in abundance related to the invasion and progression of WNS (Frick et al., 2010, 2015; Turner et al., 2011; Langwig et al., 2012; Thogmartin et al., 2012 as cited in Cheng et al. 2021, pp. 1588–1589) For these reasons, we conclude that hibernacula surveys are considered the best available data for cave-dwelling bats. However, the SSA made use of several forms of ''summer data'' in acoustic call (mobile and stationary) and mist-net data in our analysis (Service 2022, entire). Together, these data represent the best scientific and commercial data available to us.

(10) Comment: The North Dakota Game and Fish Department requested that the Service consider a recently finalized report (Gillam 2021, entire) that recommends the range of the northern long-eared bat in North Dakota be modified to only include the badlands habitats of extreme western North Dakota. The final report also states that the most appropriate categorization of this species is rare in western North Dakota and absent in the remainder of the State. The North Dakota Department of Agriculture (NDDA), the North Dakota Public Service Commission (NDPSC) and several North Dakota commenters also echoed these comments. The NDDA and NDPSC indicate that scattered woodlands comprise less than 1.8 percent of the total lands in North Dakota, while the remaining 98.2 percent of the State is non-wooded lands and does not contain any suitable or potentially suitable habitat for the northern long-eared bat.

Our Response: We thank the commenters for providing the recently completed Gillam (2021, entire) report. Although the report provides recent bat data, we determined that the limited number of survey sites does not provide sufficient information for us to assess Statewide occupancy for the northern long-eared bat. The methods used in the report are not designed to determine presence/probable absence for individual species, such as northern long-eared bat. It is unclear if the acoustic detectors used in the survey were deployed in areas with potential suitable habitat for northern long-eared bat and if specific habitat requirements for northern long-eared were considered in the selection of individual mist-net sites. Mist-net locations were selected only in the western part of the State, as the author stated that eastern North Dakota is a very difficult area to capture bats due to a lack of known roosts and the predominance of agriculture, which is primarily open and lacks natural flyways in which bats can be effectively captured using mist nets.

However, Haugen et al. (2009, p. 16) considered forests to be more abundant in eastern North Dakota than in the western half of the State, as conditions become less favorable to the west. The report's author states that ''given issues with distinguishing the calls of this species from other *Myotis* species'' in the State, these results ''support the finding that this species is rare to absent'' in North Dakota. However, it is also possible that there were northern long-eared bat calls that were missed by the acoustic identification software, as a high number of high-frequency calls that could possibly have been northern long-eared bats were recorded at several locations. Further, it is unclear if the qualitative analysis was conducted on those calls classified as northern long-eared bat calls or high frequency. To conclusively determine presence/probable absence of the northern long-eared bat, we recommend use of the rangewide Indiana bat and northern long-eared bat survey guidelines (*https://www.fws.gov/library/collections/range-wide-indiana-bat-and-northern-long-eared-bat-survey-guidelines*). Overall, we do not find that this single study provides conclusive evidence of absence of the northern long-eared bat in the eastern portion of North Dakota or Statewide.

We also reviewed the North Dakota Forest Service Forest Action Plan presented by NDDA and NDPSC. Northern long-eared bats predominantly are found in forest habitat (outside of hibernation), but when foraging they have also been observed in other habitat, such as over small forest clearings and water and along roads (van Zyll de Jong 1985, p. 94). In areas where forested habitat is scattered, such as North Dakota, remaining patches of habitat are increasingly important for the species where it is still present. We are currently developing a comprehensive current range map for the northern long-eared bat, which will incorporate the best available information on habitat feature requirements for the species. This map will be subject to revision over time as the quality of our scientific information improves.

(11) Comment: The Kansas Department of Wildlife and Parks (KDWP) commented that since the northern long-eared bat's range is known to occur in only a small portion of the State, the KDWP requests that Kansas be exempt from the endangered species status and maintain the species' threatened status with the current 4(d) rule remaining in effect throughout the State.

Our Response: The Service has found that the northern long-eared bat meets the Act's definition of an endangered species, rather than a threatened species, throughout all of its range. Therefore, it is not possible for a portion of the species' range to maintain threatened species status with the current 4(d) rule remaining in effect.

(12) Comment: Several commenters requested that the Service identify activities for which take is not reasonably certain to occur. Several State commenters (Massachusetts

Division of Fisheries and Wildlife and Iowa Department of Natural Resources) requested guidance on how activities, such as habitat management, habitat restoration, and forest management, can continue in a streamlined manner. These commenters all expressed their desire for regulatory predictability and the need for the Service to provide a list of activities that are likely to result in a violation of Section 9 of the Act and a list of activities that are not likely to result in a violation of section 9 in the Act (which the commenters referred to as ''no-take guidance'').

Our Response: We recognize the need expressed from commenters to provide regulatory predictability by identifying those activities for which take is not reasonably certain to occur. Due to the northern long-eared bat's extensive range with a variety of habitat conditions, we are unable to provide a comprehensive list of activities that would not be considered to result in a violation of section 9 of the Act. However, we have added a condensed list of activities that are not likely to result in a violation of section 9 of the Act, if these activities are carried out in accordance with existing regulations and permit requirements (see Available Conservation Measures, below).

Further, we continue to develop tools to allow projects compatible with the species' conservation to move forward. We are developing streamlining tools and guidance to help project proponents identify what types of activities may result in ''take'' under the Act. When available, these resources will be accessible on the Service's northern long-eared bat website (*https://www.fws.gov/species/northern-long-eared-bat-myotis-septentrionalis*). One tool in development intended to streamline consultation is the rangewide northern long-eared bat determination key (DKey). The DKey will address many project scenarios in which adverse effects to the species would be unlikely. The DKey will help streamline section 7 consultations for Federal agencies and their designated non-Federal representatives and will help proponents of non-Federal actions determine whether their action may cause incidental take of the northern long-eared bat.

(13) Comment: Many commenters requested the Service pursue programmatic section 7 consultations under the Act and cited as an example the Federal Highway Administration (FHWA), Federal Railroad Administration, and Federal Transit Administration's section 7 rangewide consultation for Indiana bat and northern long-eared bat.

Our Response: We are fortunate to have experience in developing streamlined consultations under the Act and compliance processes for this and other listed bat species. The Service will look to build on those example programmatic consultations and to work proactively with other Federal agencies to develop other similar streamlined consultations to ensure efficiency in compliance with the requirements in the Act.

(14) Comment: Commenters encouraged the Service to develop regional or industry-wide habitat conservation plans (HCPs) with associated incidental take permits (ITPs) or general conservation plans (GCPs) to avoid potential delays to projects. Commenters also encouraged the Service to accept financial contributions toward research into preventing and reversing the effects of white-nose syndrome as a valid option for compensatory mitigation in HCPs.

Our Response: We recommend applying for an ITP when incidental take is reasonably certain to occur. For some non-Federal activities, there may not be reasonable certainty of take for northern long-eared bats. The decision to pursue a permit rests with the applicant based on their environmental risk assessment. The Service continues to develop tools and templates to streamline regulatory processes (see our response to *(12) Comment,* above). The Service has developed a short-term HCP template for wind facility impacts to northern long-eared bats and Indiana bats. State or regional forestry HCPs have been issued or are in development for Missouri, Pennsylvania, Minnesota, Michigan, and Wisconsin. A regional GCP is in development for projects in the Northeast Region. We will continue to work with industry in developing effective mitigation measures for the northern long-eared bat.

The latest information on these tools is available on our northern long-eared bat website: *https://www.fws.gov/species/northern-long-eared-bat-myotis-septentrionalis.*

(15) Comment: Commenters expressed concerns over the Service's rangewide Indiana bat and northern long-eared bat survey guidelines and recommended that the Service separate survey guidelines for the Indiana bat and northern long-eared bat. Also, commenters recommended that the Service consider identifying ''block clearance'' zones (area that is free of value to northern long-eared bats) within the species' range.

Our Response: The team that developed the rangewide Indiana bat and northern long-eared bat survey guidelines (guidelines) considered the best available information in developing survey recommendations for both the northern long-eared bat and Indiana bat. The Service's white paper (Niver et al. 2014, entire) and 2018 addendum (Niver et al. 2018, entire) outline the methods used to determine the minimum Indiana bat level of effort (LOE). Our 2022 addendum (Armstrong et al. 2022, entire) provides the rationale for the northern long-eared bat minimum LOE for acoustic and mist-net surveys (previously we deferred to LOE used for the Indiana bat). The guidelines take into consideration the differences between the two species' ranges and habitat requirements, and they provide separate recommendations for each species for survey level of effort and survey equipment placement. See *https://www.fws.gov/library/collections/range-wide-indiana-bat-and-northern-long-eared-bat-survey-guidelines* for more information. We may consider identifying ''block clearance'' zones as suggested. We may identify areas where take is unlikely to occur as areas with extensive surveys that demonstrate the absence of northern long-eared bat and in areas with no suitable habitat (see definition in SSA report (Service 2022, Chapter 2) and guidelines); however, the northern long-eared bat is a highly mobile species, which presents challenges to confirming absence from large ''blocks'' of suitable habitat.

(16) Comment: One commenter stated that the Service did not rely on the best available data in the SSA by not fully considering the impact of WNS in each portion of the species' range, particularly in the mid- to southern Atlantic Coast where the species may remain viable. Also, this and other commenters state that the SSA did not fully consider the benefit of positive actions, such as habitat management, in the analysis of threats to the species.

Our Response: The SSA assessed the current and future impacts to the species from WNS, not only rangewide but separately for each representation unit (*i.e.,* areas of unique adaptive diversity) throughout the range. Five representation units were identified in the SSA: Eastern Hardwoods, Southeast, Midwest, Subarctic, and East Coast. All current and future hibernacula abundances and probability of persistence either have already declined or are projected to decline precipitously throughout all representation units, including the East Coast unit, which includes the mid- to southern Atlantic Coast portion of the species' range.

As for considering all positive actions in the assessment of influences on the species, we considered all relevant

potential influences on the species (positive and negative), and we included in our analysis only those that were ecologically significant at the population level or species level and for which we had adequate qualitative or quantitative information (WNS, wind energy mortality, effects from climate change, habitat loss, and conservation efforts).

(17) Comment: Several commenters sought clarification to ensure that specific activities or projects will not constitute harassment or harm or both of potential (summer) roosting northern long-eared bats.

Our Response: For information on impacts to northern long-eared bats from specific activities or projects, we recommend contacting your respective field office(s) where the activity or project will occur for further guidance (see *https://www.fws.gov/our-facilities?program=%5B%22Ecological%20Services%22%5D*).

(18) Comment: One commenter recommended that the final rule state that any threats or stresses to cave-dwelling bats from the operation of offshore wind energy have not been documented.

Our Response: For offshore wind development, assessment of potential impacts to bats is complicated due to a broader lack of data on bat use of offshore environments. North American bats have been observed offshore along the Atlantic coast, mainly within the extent of the continental shelf, although there are also several observations of bats found farther offshore. Most observations are of migratory species (*e.g.,* hoary bat (*Aeorestes cinereus*), eastern red bat (*Lasiurus borealis*), silver-haired bat (*Lasionycteris noctivagans*)), with records of *Myotis* species, tricolored bats, and big brown bats being relatively rare. It is possible that individual northern long-eared bats may be killed by wind turbines offshore. However, at this time, data are lacking to project the potential for substantive impacts of offshore wind development on populations of northern long-eared bats.

(19) Comment: One commenter stated they were opposed to listing the bat as an endangered species because of the restrictions that will be placed on farmers and ranchers. They were concerned that the listing would affect a significant amount of land and practices that are otherwise beneficial to animal and plant species. The commenter expressed that listing the northern long-eared bat would create hardship for food producers when they did not cause the issue (*i.e.,* white nose syndrome).

Our Response: We appreciate the commenters' concerns. The Act does not allow us to consider these impacts from a listing, when making a determination that a species meets the definition of a threatened or endangered species. When a species is listed as endangered, the species receives protections that are outlined in section 9 of the Act. These protections include a prohibition of take of the listed species. Take means to harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, or collect, or attempt to engage in any such conduct. Ranching and farming activities are not prohibited under section 9 of the Act, unless they result in take of the northern long-eared bat.

We understand there may be concern about the effect of listing the northern long-eared bat as an endangered species under the Act. We encourage any landowners with a listed species present on their property and who think they carry out activities that may negatively impact that listed species to work with the Service. We can help those landowners determine whether a habitat conservation plan (HCP) or safe harbor agreement (SHA) may be appropriate for their needs. These plans or agreements provide for the conservation of the listed species while providing the landowner with a permit for incidental take of the species during the course of otherwise lawful activities.

(20) Comment: Several commenters stated that they believed the definition of ''take'' had been amended and the Service should explain that the revised ''take'' definition recognizes that actual death or injury of a protected animal is necessary for a violation of section 9 of the Act. To support their argument, commenters point to the definition of harm in our regulations (see 50 CFR 17.3), which states that ''harm'' means an act which actually kills or injures wildlife. Such act may include significant habitat modification or degradation where it actually kills or injures wildlife by significantly impairing essential behavioral patterns, including breeding, feeding or sheltering.

Our Response: The Act defines ''take'' as to harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, or collect or to attempt to engage in any such conduct (16 U.S.C. 1532(19)). The Act's definition of ''take'' has been supplemented by the Service with regulatory definitions of the terms ''harm'' and ''harass,'' and these terms have been redefined several times. As the commenters stated, ''harm'' means an act which actually kills or injures wildlife. Such an act may include significant habitat modification or degradation where it actually kills or injures wildlife by significantly impairing essential behavior patterns, including breeding, feeding, or sheltering (see 50 CFR 17.3). ''Harass'' is defined in our regulations (see 50 CFR 17.3) as an intentional or negligent act or omission which creates the likelihood of injury to wildlife by annoying it to such an extent as to significantly disrupt normal behavioral patterns which include, but are not limited to, breeding, feeding, or sheltering. Therefore ''take'' is broader than just ''harm'' and includes other actions besides those that result in death or injury of a northern long-eared bat.

(21) Comment: Several commenters stated that the Service should state that forest management activities that comply with the existing 4(d) rule are not likely to cause take.

Our Response: When this final rule goes into effect (see **DATES**, above), the species-specific rule issued under section 4(d) of the Act (''4(d) rule'') that was associated with the northern long-eared bat's threatened species status will be null and void and will be removed from the Code of Federal Regulations. The 4(d) rule for the northern long-eared bat did not prohibit take that may occur during certain tree removal activities in certain locations, provided the activities complied with the conservation measures in the 4(d) rule. Although the 4(d) rule did not prohibit this take, the Service did not determine that take is not likely to occur during such activities. Many of the actions excepted by the 4(d) rule may actually cause take, so we are unable to do what the commenter requested. For example, it is possible that tree removal activities could result in take if an unknown but occupied roost tree is cut down while northern long-eared bats are present. If any private entity is concerned that they may be engaging in an activity that will result in take of a northern long-eared bat, they should coordinate with their respective Service field office.

(22) Comment: Several commenters argued that the proposed reclassification rule did not satisfy the ''best scientific and commercial data available'' and a commenter provided alternative results to parts of our analysis using a different dataset.

Our Response: We find that we did comply with this standard. We collected data and information during a multi-month data collection period and throughout the SSA process. The Service considered and incorporated all data relevant to our analysis. The

Service coordinated with Federal agencies, Tribal nations, 47 States, academia, and many nongovernmental organizations during the SSA process. No information that we received was overlooked. The Service used multiple data sets (*e.g.,* hibernacula count, mist-net captures, mobile and stationary acoustic data) in its modeling effort and the report was reviewed by independent peer reviewers and many experts selected from across the range of the species. No one data stream was prioritized or weighted more heavily than another. We also conducted a qualitative analysis of the threats considered in the SSA. All data submitted to the Service (multiple analyses and data streams) provided the scientific bedrock for this decision. Although one commenter provided alternative results to our analysis, the commenter did not provide us the underlying data they used; therefore, we could not fully evaluate their analysis. Therefore, we considered the best scientific and commercial data available when determining that the northern long-eared bat meets the definition of an endangered species.

(22) Comment: One commenter was concerned with the effect of the listing on wildlife control officers, private citizens, or both with regard to actions that may be classified as ''take'' when conducting bat removal or exclusion activities in buildings or other artificial structures. Specifically, the commenter mentioned concern about the cost, feasibility, or both of identifying whether bats being considered for exclusion were northern long-eared bats, whether exclusions can occur if northern long-eared bats are present, and whether northern long-eared bats can be submitted for disease testing in accordance with State/local Department of Health guidelines.

Our Response: The reclassification of the northern long-eared bat to an endangered species will not prevent citizens from removing bats from dwellings or other structures, but additional coordination with the Service may be needed. The Act's implementing regulations include a take exception for the defense of human life (see 50 CFR 17.21(c)(2)). The regulations require that any person taking, including killing, endangered wildlife in the defense of human life under this exception must report that take as set forth at 50 CFR 17.21(c)(4). It is important to note that Federal regulations do not supersede State or local laws that are more restrictive than those mentioned here. Please consult your local Service field office (*https://www.fws.gov/our-facilities?program=%5B%22Ecological%20Services%22%5D*) or State wildlife conservation agency with any questions or concerns.

When the presence of a bat or bat colony is not imminently endangering human safety, we recommend contacting the local Service field office for assistance. We encourage the bat removal to be conducted safely and humanely by a trained professional, such as a wildlife or pest exclusion company or a State-certified bat rehabilitator. Additionally, we recommend the White-nose Syndrome Response Team's acceptable management practices (AMPs) for nuisance wildlife control operators (available at *https://www.whitenosesyndrome.org/mmedia-education/acceptable-management-practices-for-bat-control-activities-in-structures-a-guide-for-nuisance-wildlife-control-operators*). The AMPs were developed in concert with wildlife control operators, State and Federal agencies, private conservation organizations, and the Centers for Disease Control. The AMPs are recommended for use with all structure-dwelling bat species, regardless of their conservation status. Again, these recommendations do not supersede or replace any existing, valid State or local government laws regarding the handling of bats in homes and artificial structures.

(23) Comment: Several commenters pointed out several potential stressors (for example, hibernacula collapse and vandalism, pesticide use, disease (other than WNS), and road related mortalities) to the northern long-eared bat that were not analyzed in the SSA.

Our Response: We considered all relevant population- and species-level potential stressors to the species (positive and negative) and only those for which we had substantial qualitative or quantitative information (WNS, wind energy mortality, effects from climate change, and habitat loss) were included our analysis. We did not include every known source of mortality to individuals of the species.

(24) Comment: Some commenters requested that the Service delay the effective date of the final rule to allow more time for coordination and preparations for the effect of reclassifying the northern long-eared bat and removing its species-specific 4(d) rule.

Our Response: We have set an effective date of 60 days after this rule publishes so that the Service can finalize consultation tools for the northern long-eared bat (*e.g.,* a determination key and an interim consultation framework). A delay in effective date will have little to no effect on the northern long-eared bat because it will still be protected under the previous final listing rule. Additionally, the species will be hibernating throughout most of its range during this time and we anticipate few projects occurring between this final rule publication and the bat's active season in 2023.

(25) Comment: One commenter requested that emergency work (*e.g.,* hazard tree removal, storm restoration), that was allowed under the 4(d) rule, should continue to be allowed.

Our Response: A 4(d) rule is a tool provided by the Act to allow for flexibility in the Act's implementation and to tailor prohibitions to those that make the most sense for protecting and managing at-risk species. This rule, which may be applied only to species listed as threatened, directs the Service to issue regulations deemed ''necessary and advisable to provide for the conservation of threatened species.'' The Act does not allow application of 4(d) rules for species listed as endangered; thus, the 4(d) rule will be nullified.

However, Section 7 regulations recognize that a Federal action agency's response to an emergency may require expedited consultation and such provisions are provided at 50 CFR 402.05.

We recommend coordinating with your respective Service field office (see *https://www.fws.gov/our-facilities?program=%5B%22Ecological%20Services%22%5D*) as soon as practicable after the emergency is under control.

I. Final Listing Determination

Background

A thorough review of the taxonomy, life history, and ecology of the northern long-eared bat is presented in the SSA report (Service 2022, entire).

The northern long-eared bat is a wide-ranging bat species found in 37 States (Alabama, Arkansas, Connecticut, Delaware, Georgia, Illinois, Indiana, Iowa, Kansas, Kentucky, Louisiana, Maine, Maryland, Massachusetts, Michigan, Minnesota, Mississippi, Missouri, Montana, Nebraska, New Hampshire, New Jersey, New York, North Carolina, North Dakota, Ohio, Oklahoma, Pennsylvania, Rhode Island, South Carolina, South Dakota, Tennessee, Vermont, Virginia, West Virginia, Wisconsin, and Wyoming), the District of Columbia, and 8 Canadian provinces. The species typically

overwinters in caves or mines and spends the remainder of the year in forested habitats. As its name suggests, the northern long-eared bat is distinguished by its long ears, particularly as compared to other bats in its genus, *Myotis.* The bat is medium to dark brown on its back, with dark brown ears and wings, and tawny to pale-brown fur on its ventral side. Its weight ranges from approximately 5 to 8 grams (0.2 to 0.3 ounces). Female northern long-eared bats produce a maximum of one pup per year; therefore, loss of one pup results in missing one year of recruitment for a female.

The individual, population-level, and species-level needs of the northern long-eared bat are summarized below in tables 1 through 3. For additional information, please see the SSA report (Service 2022, chapter 2).

TABLE 1—THE ECOLOGICAL REQUISITES FOR SURVIVAL AND REPRODUCTIVE SUCCESS OF NORTHERN-LONG-EARED BAT INDIVIDUALS

LIFE STAGE	SEASON			
	Spring	Summer	Fall	Winter
Pups (non-flying juveniles).		Roosting habitat with suitable conditions for lactating females and for pups to stay warm and protected from predators while adults are foraging.		
Juveniles		Other maternity colony members (colony dynamics, thermoregulation), and suitable roosting and foraging habitat near abundant food and water resources.	Suitable roosting and foraging habitat near abundant food and water resources.	Habitat with suitable conditions for prolonged bouts of torpor and shortened periods of arousal.
All adults	Suitable roosting and foraging habitat near abundant food and water resources, and habitat connectivity and open-air space for safe migration between winter and summer habitats.	Summer roosts and foraging habitat near abundant food and water resources.	Suitable roosting and foraging habitat near abundant food and water resources, cave and/or mine entrances or other similar locations (for example, culvert, tunnel) for conspecifics to swarm and mate, and habitat connectivity and open-air space for safe migration between winter and summer habitats.	Habitat with suitable conditions for prolonged bouts of torpor and shortened periods of arousal.
Reproductive females.		Other maternity colony members (colony dynamics), a network of suitable roosts (i.e., multiple summer roosts in close proximity) near conspecifics, and foraging habitat near abundant food and water resources.		

TABLE 2—POPULATION-LEVEL REQUISITES FOR A HEALTHY NORTHERN LONG-EARED BAT POPULATION

Parameter	Requirements
Population growth rate, λ	At a minimum, λ must be ≥ 1 for a population to remain stable over time.
Population size, N	Sufficiently large N to allow for essential colony dynamics and to be adequately resilient to environmental fluctuations.
Winter roosting habitat	Safe and stable winter roosting sites with suitable microclimates.
Migration habitat	Safe space to migrate between spring/fall habitat and winter roost sites.
Spring and fall roosting, foraging, and commuting (i.e., traveling between habitat types) habitat.	A matrix of habitat of sufficient quality and quantity to support bats as they exit hibernation (lowest body condition) or as they enter hibernation (need to put on body fat).
Summer roosting, foraging, and commuting habitat	A matrix of habitat of sufficient quality and quantity to support maternity colonies.

TABLE 3—SPECIES-LEVEL ECOLOGY: REQUISITES FOR LONG-TERM VIABILITY

[Ability to maintain self-sustaining populations over a biologically meaningful timeframe]

3 Rs	Requisites for long-term viability	Description
Resiliency (populations able to withstand stochastic events).	Healthy populations across a diversity of environmental conditions.	Self-sustaining populations are demographically, genetically, and physiologically robust, and have enough suitable habitat.
Redundancy (number and distribution of populations to withstand catastrophic events).	Multiple and sufficient distribution of populations within areas of unique variation (representation units).	Sufficient number and distribution of populations to guard against population losses.
Representation (genetic and ecological diversity to maintain adaptive potential).	Maintain adaptive diversity of the species	Populations maintained across a range of behavioral, physiological, ecological, and environmental diversity.
	Maintain evolutionary processes	Maintain evolutionary drivers—gene flow, natural selection—to mimic historical patterns.

Regulatory and Analytical Framework

Regulatory Framework

Section 4 of the Act (16 U.S.C. 1533) and the implementing regulations in title 50 of the Code of Federal Regulations set forth the procedures for determining whether a species is an endangered species or a threatened species, issuing protective regulations for threatened species, and designating critical habitat for threatened and endangered species. In 2019, jointly with the National Marine Fisheries Service, the Service issued final rules that revised the regulations in 50 CFR parts 17 and 424 regarding how we add, remove, and reclassify threatened and endangered species and the criteria for designating listed species' critical habitat (84 FR 45020 and 84 FR 44752; August 27, 2019). At the same time, the Service also issued final regulations that, for species listed as threatened species after September 26, 2019, eliminated the Service's general protective regulations automatically applying to threatened species the prohibitions that section 9 of the Act applies to endangered species (collectively, the 2019 regulations).

As with the proposed rule, we are applying the 2019 regulations for this final rule because the 2019 regulations are the governing law just as they were when we completed the proposed rule. Although there was a period in the interim—between July 5, 2022, and September 21, 2022—when the 2019 regulations became vacated and the pre-2019 regulations therefore governed, the 2019 regulations are now in effect and govern listing and critical habitat decisions (*see Center for Biological Diversity* v. *Haaland,* No. 4:19–cv–05206–JST, Doc. 168 (N.D. Cal. July 5, 2022) (CBD v. Haaland) (vacating the 2019 regulations and thereby reinstating the pre-2019 regulations)); *In re: Cattlemen's Ass'n,* No. 22–70194 (9th Cir. Sept. 21, 2022) (staying the district court's order vacating the 2019 regulations until the district court resolved a pending motion to amend the order); *Center for Biological Diversity* v. *Haaland,* No. 4:19–cv–5206–JST, Doc. Nos. 197, 198 (N.D. Cal. Nov. 16, 2022) (granting plaintiffs' motion to amend July 5, 2022 order and granting government's motion for remand without vacatur).

The Act defines an ''endangered species'' as a species that is in danger of extinction throughout all or a significant portion of its range, and a ''threatened species'' as a species that is likely to become an endangered species within the foreseeable future throughout all or a significant portion of its range. The Act requires that we determine whether any species is an endangered species or a threatened species because of any of the following factors:

(A) The present or threatened destruction, modification, or curtailment of its habitat or range;

(B) Overutilization for commercial, recreational, scientific, or educational purposes;

(C) Disease or predation;

(D) The inadequacy of existing regulatory mechanisms; or

(E) Other natural or manmade factors affecting its continued existence.

These factors represent broad categories of natural or human-caused actions or conditions that could have an effect on a species' continued existence. In evaluating these actions and conditions, we look for those that may have a negative effect on individuals of the species, as well as other actions or conditions that may ameliorate any negative effects or may have positive effects.

We use the term ''threat'' to refer in general to actions or conditions that are known to or are reasonably likely to negatively affect individuals of a species. The term ''threat'' includes actions or conditions that have a direct impact on individuals (direct impacts), as well as those that affect individuals through alteration of their habitat or required resources (stressors). The term ''threat'' may encompass—either together or separately—the source of the action or condition or the action or condition itself.

However, the mere identification of any threat(s) does not necessarily mean that the species meets the statutory definition of an ''endangered species'' or a ''threatened species.'' In determining whether a species meets either definition, we must evaluate all identified threats by considering the expected response by the species, and the effects of the threats—in light of those actions and conditions that will ameliorate the threats—on an individual, population, and species level. We evaluate each threat and its expected effects on the species, then analyze the cumulative effect of all of the threats on the species as a whole. We also consider the cumulative effect of the threats in light of those actions and conditions that will have positive effects on the species, such as any existing regulatory mechanisms or conservation efforts. The Secretary determines whether the species meets the definition of an ''endangered species'' or a ''threatened species'' only after conducting this cumulative analysis and describing the expected effect on the species now and in the foreseeable future.

The Act does not define the term ''foreseeable future,'' which appears in the statutory definition of ''threatened species.'' Our implementing regulations at 50 CFR 424.11(d) set forth a framework for evaluating the foreseeable future on a case-by-case basis. The term ''foreseeable future'' extends only so far into the future as the Services can reasonably determine that both the future threats and the species' responses to those threats are likely. In other words, the foreseeable future is the period of time in which we can make

reliable predictions. ''Reliable'' does not mean ''certain''; it means sufficient to provide a reasonable degree of confidence in the prediction. Thus, a prediction is reliable if it is reasonable to depend on it when making decisions.

It is not always possible or necessary to define the foreseeable future as a particular number of years. Analysis of the foreseeable future uses the best scientific and commercial data available and should consider the timeframes applicable to the relevant threats and to the species' likely responses to those threats in view of its life-history characteristics. Data that are typically relevant to assessing the species' biological response include species-specific factors such as lifespan, reproductive rates or productivity, certain behaviors, and other demographic factors.

Analytical Framework

The SSA report documents the results of our comprehensive biological review of the best scientific and commercial data regarding the status of the species, including an assessment of the potential threats to the species. The SSA report does not represent our decision on whether the species should be listed as an endangered or threatened species under the Act. However, it does provide the scientific basis that informs our regulatory decisions, which involve the further application of standards within the Act and its implementing regulations and policies.

To assess the northern long-eared bat's viability, we used the three conservation biology principles of resiliency, redundancy, and representation (Shaffer and Stein 2000, pp. 306–310). Briefly, resiliency is the ability of the species to withstand environmental and demographic stochasticity (for example, wet or dry, warm or cold years), redundancy is the ability of the species to withstand catastrophic events (for example, droughts, large pollution events), and representation is the ability of the species to adapt to both near-term and long-term changes in its physical and biological environment (for example, climate conditions, pathogens). In general, species viability will increase with increases in resiliency, redundancy, and representation (Smith et al. 2018, p. 306). Using these principles, we identified the species' ecological requirements for survival and reproduction at the individual, population, and species levels, and described the beneficial and risk factors influencing the species' viability.

The SSA process can be categorized into three sequential stages. During the first stage, we evaluated the individual species' life-history needs. The next stage involved an assessment of the historical and current condition of the species' demographics and habitat characteristics, including an explanation of how the species arrived at its current condition. The final stage of the SSA involved making predictions about the species' responses to positive and negative environmental and anthropogenic influences. Throughout all of these stages, we used the best available information to characterize viability as the ability of a species to sustain populations in the wild over time. We use this information to inform our regulatory decision.

The following is a summary of the key results and conclusions from the SSA report; the full SSA report can be found under Docket No. FWS–R3–ES–2021–0140 at *https://www.regulations.gov* and at *https://www.fws.gov/species/northern-long-eared-bat-myotis-septentrionalis.*

Summary of Biological Status and Threats

In this discussion, we review the biological condition of the species and its resources, and the threats that influence the species' current and future condition, in order to assess the species' overall viability and the risks to that viability. For a full description, see the SSA report (Service 2022, entire).

Although there are other stressors affecting the northern long-eared bat, the primary factor influencing its viability is white-nose syndrome (WNS), a disease of bats caused by a fungal pathogen. Some of the other factors that influence the northern long-eared bat's viability (although to a far lesser extent than the influence of WNS) include wind energy mortality, effects from climate change, and habitat loss. These stressors and their effects to the northern long-eared bat are summarized below:

- WNS has been the foremost stressor on the northern long-eared bat for more than a decade. The fungus that causes the disease, *Pd,* invades the skin of bats. Infection leads to increases in the frequency and duration of arousals during hibernation and eventual depletion of fat reserves needed to survive winter and results in mortality. Since its discovery in New York in 2006, *Pd* has been confirmed (or presumed) in 43 States and 8 Canadian provinces. There is no known mitigation or treatment strategy to slow the spread of *Pd* or to treat WNS in bats. WNS has caused estimated northern long-eared bat population declines of 97–100 percent across 79 percent of the species' range.
- Wind energy-related mortality of the northern long-eared bat is a stressor at local and regional levels. In 2020, northern long-eared bats were at risk from wind mortality in approximately 49 percent of their range, based on the areas where wind turbines were in place and operating (using known northern long-eared bat occurrences, average migration distance, and the spatial distribution of wind turbines) (Service 2022, p. iv). Most bat mortality at wind energy projects is caused by direct collisions with moving turbine blades.
- Climate change variables, such as changes in temperature and precipitation, may influence the northern long-eared bat's resource needs, such as suitable roosting habitat for all seasons, foraging habitat, and prey availability. Although a changing climate may provide some benefit to the northern long-eared bat, overall negative impacts are anticipated, especially at local levels.
- Habitat loss (including, but not limited to, forest conversion or hibernacula disturbance or destruction) may include loss of suitable roosting or foraging habitat, resulting in longer flights between suitable roosting and foraging habitats due to habitat fragmentation, fragmentation of maternity colony networks, and direct injury or mortality. Loss or modification of winter roosts (*i.e.,* making hibernaculum no longer suitable) can result in impacts to individuals or at the population level. However, habitat loss alone is not considered to be a key stressor at the species level, and habitat does not appear to be limiting.

We note that, by using the SSA framework to guide our analysis of the scientific information documented in the SSA report, we have not only analyzed individual effects on the species, but we have also analyzed their potential cumulative effects. We incorporate the cumulative effects into our SSA analysis when we characterize the current and future condition of the species. To assess the current and future condition of the species, we undertake an iterative analysis that encompasses and incorporates the threats individually and then accumulates and evaluates the effects of all the factors that may be influencing the species, including threats and conservation efforts. Because the SSA framework considers not just the presence of the factors, but to what degree they collectively influence risk to the entire species, our assessment integrates the cumulative effects of the factors and

replaces a standalone cumulative effects analysis.

Current Condition

In evaluating current conditions of the northern long-eared bat, we used the best available data. Winter hibernacula counts provide the most consistent, long-term, reliable trend data and provide the most direct measure of WNS impacts. We also used summer data in evaluating population trends, although the availability and quality of summer data varies temporally and spatially.

Available evidence, including both winter and summer data, indicates northern long-eared bat abundance has and will continue to decline substantially under current demographic and stressor conditions, primarily driven by the effects of WNS. As part of our assessment of the current condition of northern long-eared bat's representation, we identified and delineated the variation across the northern long-eared bat's range into geographical representation units (RPUs) using the following proxies: variation in biological traits, genetic diversity, peripheral populations, habitat niche diversity, and steep environmental gradients.

Winter abundance (from known hibernacula) has declined rangewide (49 percent) and declined across all but one RPU (declines range from no decline to 90 percent). The number of extant winter colonies also declined rangewide (by 81 percent) and across all RPUs (40–88 percent). There has also been a noticeable shift towards smaller colony sizes, with a 96–100 percent decline in the number of large hibernacula (≥100 individuals) across the RPUs (see figure 2, below). Continued declines are anticipated, with projections indicating rangewide abundance declining by 95 percent and the spatial extent declining by 75 percent from historical conditions (under current threat conditions), by 2030 (Service 2022, Chapter 5). Declines continue to be driven by the catastrophic effects of WNS.

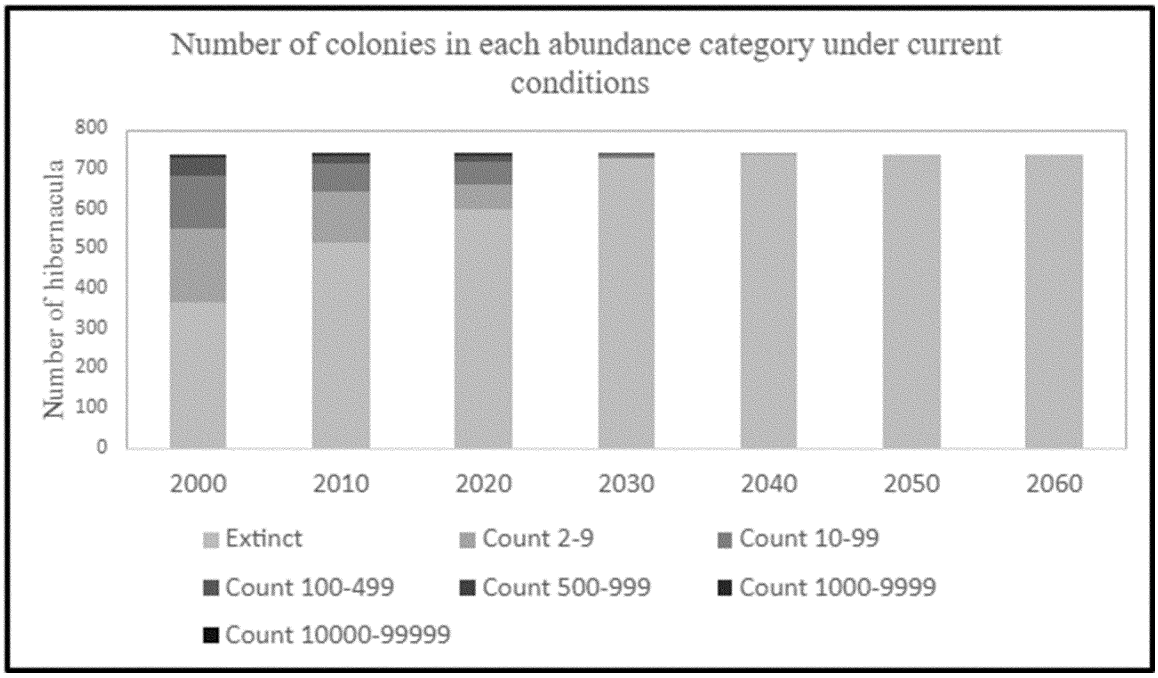

Figure 2. The number of hibernacula in each colony abundance category under current conditions.

Declining trends in abundance and extent of occurrence are also evident across much of the northern long-eared bat's summer range. Rangewide occupancy has declined by 80 percent from 2010–2019. Data collected from mobile acoustic transects found a 79 percent decline in rangewide relative abundance from 2009–2019, and summer mist-net captures declined by 43–77 percent (across RPUs) compared to pre-WNS capture rates.

As discussed above, multiple data types and analyses indicate downward trends in northern long-eared bat population abundance and distribution over the last 14 years, and the best available information indicates that this downward trend will continue. Northern long-eared bat abundance (winter and summer), number of occupied hibernacula, spatial extent, and summer habitat occupancy across the range and within all RPUs are decreasing. Since the occurrence of WNS, northern long-eared bat abundance has steeply declined, leaving populations with small numbers of individuals. At these low population sizes, colonies are vulnerable to extirpation from stochastic events and the deleterious effects of reduced population sizes, such as limiting natural selection processes and decreased genetic diversity. Furthermore, small populations generally cannot rescue one another from such a depressed state because of the northern long-eared bat's low reproduction output (one pup per year) and its high philopatry (tending to return to a particular area). These inherent life-history traits limit the ability of populations to recover from low abundances. Consequently, effects of small population sizes exacerbate the effects of current and future declines due to continued exposure to WNS, mortality from wind turbines, and impacts associated with habitat loss and climate change.

Therefore, the northern long-eared bat's resiliency is greatly compromised in its current condition. Because the northern long-eared bat's abundance and spatial extent have so dramatically declined, it has also become more vulnerable to catastrophic events. In other words, its redundancy has also declined dramatically. The steep and

continued declines in abundance have likely led to reductions in genetic diversity, and thereby reduced the northern long-eared bat's adaptive capacity, and a decline in the species' overall representation. Moreover, at its current low abundance, loss of genetic diversity will likely accelerate. Consequently, limited natural selection processes and decreased genetic diversity will further lessen the species' ability to adapt to novel changes and exacerbate declines due to continued exposure to WNS, mortality from wind turbines, and impacts associated with habitat loss and climate change. Thus, even without further WNS spread and additional wind energy development (northern long-eared bat's current condition), its viability is likely to continue to rapidly decline over the next 10 years.

Future Condition

As part of the SSA, we also developed two future condition scenarios to capture the range of uncertainties regarding future threats and the projected responses by the northern long-eared bat. Our scenarios included a plausible highest impact scenario and a plausible lowest impact scenario for each primary threat. Because we determined that the current condition of the northern long-eared bat is consistent with an endangered species (see Determination of Northern Long-eared Bat's Status, below), we are not presenting the results of the future scenarios in this rule. Please refer to the SSA report (Service 2022, entire) for the full analysis of future scenarios.

Conservation Efforts and Regulatory Mechanisms

Below is a brief description of conservation measures and regulatory mechanisms currently in place. Please see the SSA report for a more detailed description (Service 2022, appendix 4).

Multiple national and international efforts are underway to try to reduce the impacts of WNS. Despite these efforts, there are no proven measures to reduce the severity of impacts of WNS. More than 100 State and Federal agencies, Tribes, organizations, and institutions are engaged in this collaborative work to combat WNS and conserve affected bats. Partners from all 37 States in the northern long-eared bat's range, Canada, and Mexico are engaged in collaborations to conduct disease surveillance, population monitoring, and management actions in preparation for or response to WNS.

To reduce bat fatalities, some wind facilities ''feather'' turbine blades (*i.e.,* pitch turbine blades parallel with the prevailing wind direction to slow rotation speeds) at low wind speeds at times when bats are more likely to be present. The wind speed at which the turbine blades begin to generate electricity is known as the ''cut-in speed,'' and this can be set at the manufacturer's recommended speed or at a higher threshold, typically referred to as curtailment. The effectiveness of feathering below various cut-in speeds differs among sites and years (Arnett et al. 2013, entire; Berthinussen et al. 2021, pp. 94–106); nonetheless, most studies have shown all-bat (based on dead bats detected from all bat species) fatality reductions of greater than 50 percent associated with raising cut-in speeds by 1.0–3.0 meters per second (m/s) above the manufacturer's cut-in speed (Arnett et al. 2013, entire; USFWS unpublished data). The effectiveness of curtailment at reducing fatality rates specifically for the northern long-eared bat has not been documented.

All States have active forestry programs with a variety of goals and objectives. Several States have established habitat protection buffers around known Indiana bat hibernacula that will also serve to benefit other bat species by maintaining sufficient quality and quantity of swarming habitat. Some States conduct some of their forest management activities in the winter within known listed bat home ranges as a measure that would protect maternity colonies and non-volant (non-flying) pups during summer months. Depending on the type and timing of activities, forest management can be beneficial to bat species (for example, maintaining or increasing suitable roosting and foraging habitat). Forest management that results in heterogeneous (including forest type, age, and structural characteristics) habitat may benefit tree-roosting bat species such as northern long-eared bat (Silvis et al. 2016, p. 37). Silvicultural practices can meet both male and female northern long-eared bats' roosting requirements by maintaining large-diameter snags in early stages of decay, while allowing for regeneration of forests (Lacki and Schwierjohann 2001, p. 487).

Many State and Federal agencies, conservation organizations, and land trusts have installed bat-friendly gates to protect important hibernation sites. All known hibernacula within national grasslands and forestlands of the Rocky Mountain Region of the U.S. Forest Service (USFS) are closed during the winter hibernation period, primarily due to the threat of WNS, although this will reduce disturbance to bats in general inhabiting these hibernacula (USFS 2013, unpaginated). Because of concern over the importance of bat roosts, including hibernacula, the American Society of Mammologists developed guidelines for protection of roosts, many of which have been adopted by government agencies and special interest groups (Sheffield et al. 1992, p. 707). Also, regulations, such as the Federal Cave Resources Protection Act (16 U.S.C. 4301 *et seq.*), protect caves on Federal lands by limiting access to some caves, thereby reducing disturbance. Finally, many Indiana bat hibernacula have been gated, and some have been permanently protected via acquisition or easement, which provides benefits to other bats that also use the sites, including the northern long-eared bat.

The northern long-eared bat is listed as endangered under Canada's Species at Risk Act (COSEWIC 2013, entire). In addition, the northern long-eared bat receives varying degrees of protection through State laws, which designate the species as endangered in 9 States (Arkansas, Connecticut, Delaware, Indiana, Maine, Massachusetts, Missouri, New Hampshire, and Vermont); as threatened in 10 States (Georgia, Illinois, Louisiana, Maryland, New York, Ohio, Pennsylvania, Tennessee, Virginia, and Wisconsin); and as a species of special concern in 10 States (Alabama, Iowa, Michigan, Minnesota, Mississippi, Oklahoma, South Carolina, South Dakota, West Virginia, and Wyoming).

Determination of Northern Long-Eared Bat's Status

Section 4 of the Act (16 U.S.C. 1533) and its implementing regulations (50 CFR part 424) set forth the procedures for determining whether a species meets the definition of an endangered species or a threatened species. The Act defines an ''endangered species'' as a species in danger of extinction throughout all or a significant portion of its range, and a ''threatened species'' as a species likely to become an endangered species within the foreseeable future throughout all or a significant portion of its range. The Act requires that we determine whether a species meets the definition of endangered species or threatened species because of any of the following factors: (A) The present or threatened destruction, modification, or curtailment of its habitat or range; (B) overutilization for commercial, recreational, scientific, or educational purposes; (C) disease or predation; (D) the inadequacy of existing regulatory mechanisms; or (E) other natural or manmade factors affecting its continued existence.

Status Throughout All of Its Range

WNS has been the foremost stressor on the northern long-eared bat for more than a decade and continues to be currently. The fungus that causes the disease, *Pd,* invades the skin of bats and leads to infection that increases the frequency and duration of arousals during hibernation that eventually deplete the fat reserves needed to survive winter, resulting in mortality. There is no known mitigation or treatment strategy to slow the spread of *Pd* or to treat WNS in bats. WNS has caused estimated northern long-eared bat population declines of 97–100 percent across 79 percent of the species' range (Factor C). Winter abundance (from known hibernacula) has declined rangewide (49 percent) and declined across all but one RPU (declines range from 0 to 90 percent), and the number of extant winter colonies also declined rangewide (81 percent) and across all RPUs (40–88 percent). There has also been a noticeable shift towards smaller colony sizes, with a 96–100 percent decline in the number of large hibernacula (≥100 individuals). Rangewide summer occupancy has declined by 80 percent from 2010–2019. Summer data collected from mobile acoustic transects found a 79 percent decline in rangewide relative abundance from 2009–2019, and summer mist-net captures declined by 43–77 percent (across RPUs) compared to pre-WNS capture rates. We created projections for the species using its current condition and the current rates of mortality from WNS effects and wind energy. Rangewide abundance is projected to decline by 95 percent and the spatial extent is projected to decline by 75 percent from historical conditions by 2030.

As a result of these steep population declines, the northern long-eared bat's resiliency is greatly compromised in its current condition. Because the northern long-eared bat's abundance and spatial extent substantially declined, its redundancy has decreased such that northern long-eared bats are more vulnerable to catastrophic events. The northern long-eared bat's representation has also been reduced, as the steep and continued declines in abundance have likely led to reductions in genetic diversity, and thereby reduced the northern long-eared bat's adaptive capacity. Further, the projected widespread reduction in the distribution of occupied hibernacula under current conditions will lead to losses in the diversity of environments and climatic conditions occupied, which will impede natural selection and further limit the northern long-eared bat's ability to adapt to changing environmental conditions. Moreover, at its current low abundance, loss of genetic diversity via genetic drift will likely accelerate. Consequently, limiting natural selection process and decreasing genetic diversity will further lessen the northern long-eared bat's ability to adapt to novel changes (currently ongoing as well as future changes) and exacerbate declines due to continued exposure to WNS and other stressors. Thus, even without further *Pd* spread and additional pressure from other stressors, the northern long-eared bat's viability has declined substantially and is expected to continue to rapidly decline over the near term.

Current population trends and status indicate this species is currently in danger of extinction. The species continues to experience the catastrophic effects of WNS and the compounding effect of other stressors from which extinction is now a plausible outcome under the current conditions. Therefore, the species meets the Act's definition of an endangered species rather than that of a threatened species. Thus, after assessing the best available information, we determine that the northern long-eared bat is in danger of extinction throughout all of its range.

Status Throughout a Significant Portion of Its Range

Under the Act and our implementing regulations, a species may warrant listing if it is in danger of extinction or likely to become so in the foreseeable future throughout all or a significant portion of its range. We have determined that the northern long-eared bat is in danger of extinction throughout all of its range and accordingly did not undertake an analysis of any significant portions of its range. Because the northern long-eared bat warrants listing as endangered throughout all of its range, our determination does not conflict with the decision in *Center for Biological Diversity* v. *Everson,* 435 F. Supp. 3d 69 (D.D.C. 2020), which vacated the provision of the Final Policy on Interpretation of the Phrase ''Significant Portion of Its Range'' in the Endangered Species Act's Definitions of ''Endangered Species'' and ''Threatened Species'' (Final Policy) (79 FR 37578, July 1, 2014) providing that if the Services determine that a species is threatened throughout all of its range, the Services will not analyze whether the species is endangered in a significant portion of its range.

Determination of Status

Our review of the best available scientific and commercial information indicates that the northern long-eared bat meets the definition of an endangered species. Therefore, we are reclassifying the northern long-eared bat as an endangered species in accordance with sections 3(6) and 4(a)(1) of the Act.

Available Conservation Measures

Conservation measures provided to species listed as endangered or threatened species under the Act include recognition as a listed species, planning and implementation of recovery actions, requirements for Federal protection, and prohibitions against certain practices. Recognition through listing results in public awareness, and conservation by Federal, State, Tribal, and local agencies, private organizations, and individuals. The Act encourages cooperation with the States and other countries and calls for recovery actions to be carried out for listed species. The protection required by Federal agencies and the prohibitions against certain activities are discussed, in part, below.

The primary purpose of the Act is the conservation of endangered and threatened species and the ecosystems upon which they depend. The ultimate goal of such conservation efforts is the recovery of these listed species, so that they no longer need the protective measures of the Act. Section 4(f) of the Act calls for the Service to develop and implement recovery plans for the conservation of endangered and threatened species. The goal of this process is to restore listed species to a point where they are secure, self-sustaining, and functioning components of their ecosystems.

Recovery planning consists of preparing draft and final recovery plans, beginning with the development of a recovery outline and making it available to the public within 30 days of a final listing determination. The recovery outline guides the immediate implementation of urgent recovery actions and describes the process to be used to develop a recovery plan. Revisions of the plan may be done to address continuing or new threats to the species, as new substantive information becomes available. The recovery plan also identifies recovery criteria for review of when a species may be ready for reclassification from endangered to threatened (''downlisting'') or removal from protected status (''delisting''), and methods for monitoring recovery progress. Recovery plans also establish a framework for agencies to coordinate

their recovery efforts and provide estimates of the cost of implementing recovery tasks. Recovery teams (composed of species experts, Federal and State agencies, nongovernmental organizations, and stakeholders) are often established to develop recovery plans. When completed, the recovery outline, draft recovery plan, and the final recovery plan will be available on our website (*https://www.fws.gov/species/northern-long-eared-bat-myotis-septentrionalis*), or from our Minnesota Wisconsin Ecological Services Field Office (see **FOR FURTHER INFORMATION CONTACT**).

Implementation of recovery actions generally requires the participation of a broad range of partners, including other Federal agencies, States, Tribes, nongovernmental organizations, businesses, and private landowners. Examples of recovery actions include habitat restoration (*e.g.,* restoration of native vegetation), research, captive propagation and reintroduction, and outreach and education. The recovery of many listed species cannot be accomplished solely on Federal lands because their range may occur primarily or solely on non-Federal lands. To achieve recovery of these species requires cooperative conservation efforts on private, State, and Tribal lands.

Funding for recovery actions is available from a variety of sources, including Federal budgets, State programs, and cost-share grants for non-Federal landowners, the academic community, and nongovernmental organizations. In addition, pursuant to section 6 of the Act, the States of Alabama, Arkansas, Connecticut, Delaware, Georgia, Illinois, Indiana, Iowa, Kansas, Kentucky, Louisiana, Maine, Maryland, Massachusetts, Michigan, Minnesota, Mississippi, Missouri, Montana, Nebraska, New Hampshire, New Jersey, New York, North Carolina, North Dakota, Ohio, Oklahoma, Pennsylvania, Rhode Island, South Carolina, South Dakota, Tennessee, Vermont, Virginia, West Virginia, Wisconsin, and Wyoming will continue to be eligible for Federal funds to implement management actions that promote the protection or recovery of the northern long-eared bat. Information on our grant programs that are available to aid species recovery can be found at: *https://www.fws.gov/service/financial-assistance.*

Please let us know if you are interested in participating in recovery efforts for the northern long-eared bat. Additionally, we invite you to submit any new information on this species whenever it becomes available and any information you may have for recovery planning purposes (see **FOR FURTHER INFORMATION CONTACT**).

Section 7(a) of the Act requires Federal agencies to evaluate their actions with respect to any species that is listed as an endangered or threatened species. Regulations implementing this interagency cooperation provision of the Act are codified at 50 CFR part 402. Section 7(a)(2) of the Act requires Federal agencies to ensure that activities they authorize, fund, or carry out are not likely to jeopardize the continued existence of any endangered or threatened species. If a Federal action may affect a listed species, the responsible Federal agency must enter into consultation with us.

Federal agency actions within the species' habitat that may require consultation include, but are not limited to, management and any other landscape-altering activities on Federal lands administered by the U.S. Fish and Wildlife Service, U.S. Forest Service, Bureau of Land Management, National Park Service, and other Federal agencies; issuance of section 404 Clean Water Act (33 U.S.C. 1251 *et seq.*) permits by the U.S. Army Corps of Engineers; and construction and maintenance of roads or highways by the Federal Highway Administration.

The Act and its implementing regulations set forth a series of general prohibitions and exceptions that apply to endangered wildlife. The prohibitions of section 9(a)(1) of the Act, codified at 50 CFR 17.21, make it illegal for any person subject to the jurisdiction of the United States to take (which includes harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, or collect; or to attempt any of these) endangered wildlife within the United States or on the high seas. In addition, it is unlawful to import; export; deliver, receive, carry, transport, or ship in interstate or foreign commerce in the course of commercial activity; or sell or offer for sale in interstate or foreign commerce any species listed as an endangered species. It is also illegal to possess, sell, deliver, carry, transport, or ship any such wildlife that has been taken illegally. Certain exceptions apply to employees of the Service, the National Marine Fisheries Service, other Federal land management agencies, and State conservation agencies.

We may issue permits to carry out otherwise prohibited activities involving endangered wildlife under certain circumstances. Regulations governing permits are codified at 50 CFR 17.22. With regard to endangered wildlife, a permit may be issued for the following purposes: for scientific purposes, to enhance the propagation or survival of the species, and for incidental take in connection with otherwise lawful activities. There are also certain statutory exemptions from the prohibitions, which are found in sections 9 and 10 of the Act.

It is our policy, as published in the **Federal Register** on July 1, 1994 (59 FR 34272), to identify to the maximum extent practicable at the time a species is listed, those activities that will or will not constitute a violation of section 9 of the Act. The intent of this policy is to increase public awareness of the effect of a final listing on proposed and ongoing activities within the range of a listed species. Based on the best available information, the following actions are unlikely to result in a violation of section 9, if these activities are carried out in accordance with existing regulations and permit requirements; this list is not comprehensive:

(1) Minimal tree removal and vegetation management activities that occur any time of the year outside of suitable forested/wooded habitat and more than 5 miles from known or potential hibernacula. We define suitable forested/wooded habitat as containing potential roosts (*i.e.,* live trees or snags greater or equal to 3 inches in diameter at breast height that have exfoliating bark, cracks, crevices, or cavities), as well as forested linear features such as wooded fencerows, riparian forests, and other wooded corridors. Individual trees may be suitable habitat when they exhibit characteristics of potential roost trees and are within 1,000 feet (305 meters) of other forested/wooded habitat (USFWS 2022, pp.16–17). We broadly define hibernacula as caves (or associated sinkholes, fissures, or other karst features), mines, rocky outcroppings, or tunnels.

(2) Insignificant amounts of suitable forested/wooded habitat removal provided it occurs during the hibernation period and the modification of habitat does not significantly impair an essential behavior pattern such that it is likely to result in the actual killing or injury of northern long-eared bats after hibernation.

(3) Tree removal that occurs at any time of year in highly developed urban areas (*e.g.,* street trees, downtown areas; USFWS 2022, p. 17).

(4) Herbicide application activities that adhere to the product label, occur outside of suitable forested/wooded habitat, and are more than 5 miles from known or potential hibernacula.

(5) Prescribed fire activities that are restricted to the inactive (hibernation) season, provided they are more than 0.5

miles from a known hibernacula and do not result in changes to suitable forested/wooded habitat to the extent that the habitat becomes unsuitable for the northern long-eared bat.

(6) Activities that may disturb northern long-eared bat hibernation locations, provided they are restricted to the active (non-hibernation) season and could not result in permanent changes to suitable or potential hibernacula.

(7) Activities that may result in modification or removal of human structures provided: (a) the structure does not provide roosting habitat for northern long-eared bats, or (b) the results of a structure assessment indicate no signs of bats.

(8) Wind turbine operations at facilities following a Service-approved avoidance strategy (such as curtailment, deterrents, or other technology) documented in a letter specific to the facility from the appropriate Ecological Services field office.

(9) All activities (except wind turbine operation) in areas where a negative presence/probable absence survey result was obtained using the most recent version of the rangewide northern long-eared bat survey guidance and with Service approval of the proposed survey methods and results.

(10) Livestock grazing and routine ranch maintenance.

(11) Residential and commercial building construction, exterior improvements or additions, renovation, and demolition in urban areas.

(12) Mowing of existing (non-suitable forested/woodland habitat) rights-of-way.

(13) Maintenance, repair, and replacement activities conducted completely within existing, maintained utility rights-of-way provided there is no tree removal or tree trimming.

(14) Maintenance and repair activities conducted completely within existing road or rail surface that do not involve tree removal, tree trimming, or blasting or other percussive activities.

Based on the best available information, the following activities may potentially result in a violation of section 9 of the Act if they are not authorized in accordance with applicable law; this list is not comprehensive:

(1) Unauthorized collecting, handling, possessing, selling, delivering, carrying, or transporting of the species, including import or export across State lines and international boundaries, except for properly documented antique specimens of this taxon at least 100 years old, as defined by section 10(h)(1) of the Act.

(2) Incidental take of the species without authorization pursuant to section 7 or section 10(a)(1)(B) of the Act.

(3) Disturbance or destruction (or otherwise making a hibernaculum no longer suitable) of known hibernacula due to commercial or recreational activities during known periods of hibernation.

(4) Unauthorized destruction or modification of suitable forested habitat (including unauthorized grading, leveling, burning, herbicide spraying, or other destruction or modification of habitat) in ways that kill or injure individuals by significantly impairing the species' essential breeding, foraging, sheltering, commuting, or other essential life functions.

(5) Unauthorized removal or destruction of trees and other natural and manmade structures being used as roosts by the northern long-eared bat that results in take of the species.

(6) Unauthorized release of biological control agents that attack any life stage of this taxon.

(7) Unauthorized removal or exclusion from buildings or artificial structures being used as roost sites by the species, resulting in take of the species.

(8) Unauthorized building and operation of wind energy facilities within areas used by the species, which results in take of the species.

(9) Unauthorized discharge of chemicals, fill, or other materials into sinkholes, which may lead to contamination of known northern long-eared bat hibernacula.

Questions regarding whether specific activities would constitute a violation of section 9 of the Act should be directed to the Minnesota Wisconsin Ecological Services Field Office (see **FOR FURTHER INFORMATION CONTACT**).

Required Determinations

Government-to-Government Relationship With Tribes

In accordance with the President's memorandum of April 29, 1994 (Government-to-Government Relations with Native American Tribal Governments; 59 FR 22951), Executive Order 13175 (Consultation and Coordination with Indian Tribal Governments), and the Department of the Interior's manual at 512 DM 2, we readily acknowledge our responsibility to communicate meaningfully with recognized Federal Tribes on a government-to-government basis. In accordance with Secretarial Order 3206 of June 5, 1997 (American Indian Tribal Rights, Federal-Tribal Trust Responsibilities, and the Endangered Species Act), we readily acknowledge our responsibilities to work directly with Tribes in developing programs for healthy ecosystems, to acknowledge that Tribal lands are not subject to the same controls as Federal public lands, to remain sensitive to Indian culture, and to make information available to Tribes. We solicited information, provided updates, and invited participation in the SSA process in emails sent to Tribes, nationally, in April 2020 and November 2020. We will continue to work with Tribal entities during the recovery planning for the northern long-eared bat.

References Cited

A complete list of references cited in this rulemaking is available on the internet at *https://www.regulations.gov* and upon request from the Minnesota Wisconsin Ecological Services Field Office (see **FOR FURTHER INFORMATION CONTACT**).

Authors

The primary authors of this final rule are the staff members of the Fish and Wildlife Service's Species Assessment Team and the Minnesota Wisconsin Ecological Services Field Office.

List of Subjects in 50 CFR Part 17

Endangered and threatened species, Exports, Imports, Plants, Reporting and recordkeeping requirements, Transportation, Wildlife.

Regulation Promulgation

Accordingly, we amend part 17, subchapter B of chapter I, title 50 of the Code of Federal Regulations, as set forth below:

PART 17—ENDANGERED AND THREATENED WILDLIFE AND PLANTS

■ 1. The authority citation for part 17 continues to read as follows:

Authority: 16 U.S.C. 1361–1407; 1531–1544; and 4201–4245, unless otherwise noted.

■ 2. In § 17.11, in paragraph (h) amend the table ''List of Endangered and Threatened Wildlife'' by revising the entry for ''Bat, northern long-eared'' under MAMMALS to read as follows:

§ 17.11 Endangered and threatened wildlife.

* * * * *

(h) * * *

Common name	Scientific name	Where listed	Status	Listing citations and applicable rules
MAMMALS				
* *	*	*	*	* *
Bat, northern long-eared	*Myotis septentrionalis*	Wherever found	E	80 FR 17974, 4/2/2015; 87 FR [Insert **Federal Register** page where the document begins], 11/30/22.
* *	*	*	*	* *

§ 17.40 [Amended]

■ 3. Amend § 17.40 by removing and reserving paragraph (o).

Stephen Guertin,

Acting Director, U.S. Fish and Wildlife Service.

[FR Doc. 2022–25998 Filed 11–29–22; 8:45 am]

BILLING CODE 4333–15–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 635

[Docket No. 220523–0119; RTID 0648–XC483]

Atlantic Highly Migratory Species; Atlantic Bluefin Tuna Fisheries; General Category December Quota Transfer

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

ACTION: Temporary rule; quota transfer.

SUMMARY: NMFS is transferring a total of 57.5 metric tons (mt) of Atlantic bluefin tuna (BFT) quota from both the Reserve category and the Harpoon category to the General category for the remainder of the 2022 fishing year. With this transfer, the adjusted General category December subquota, Reserve category quota, and Harpoon category quota will be 50.1 mt, 6 mt, and 76.4 mt respectively. This action accounts for the accrued overharvest from previous 2022 General category time period subquotas, and will further opportunities for General category fishermen to participate in the December General category fishery, based on consideration of the regulatory determination criteria regarding inseason adjustments. This action would affect Atlantic Tunas General category (commercial) permitted vessels and Highly Migratory Species (HMS) Charter/Headboat permitted vessels with a commercial sale endorsement when fishing commercially for BFT.

DATES: Effective December 1, 2022, through December 31, 2022.

FOR FURTHER INFORMATION CONTACT: Becky Curtis, *becky.curtis@noaa.gov,* 301–427–8503, Larry Redd, Jr., *larry.redd@noaa.gov,* 301–427–8503, or Nicholas Velseboer, *nicholas.velseboer@noaa.gov,* 978–281–9260.

SUPPLEMENTARY INFORMATION: Atlantic HMS fisheries, including BFT fisheries, are managed under the authority of the Atlantic Tunas Convention Act (ATCA; 16 U.S.C. 971 *et seq.*) and the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act; 16 U.S.C. 1801 *et seq.*). The 2006 Consolidated Atlantic HMS Fishery Management Plan (FMP) and its amendments are implemented by regulations at 50 CFR part 635. Section 635.27 divides the U.S. BFT quota recommended by the International Commission for the Conservation of Atlantic Tunas (ICCAT) and as implemented by the United States among the various domestic fishing categories, per the allocations established in the 2006 Consolidated Atlantic HMS FMP and its amendments. NMFS is required under the Magnuson-Stevens Act to provide U.S. fishing vessels with a reasonable opportunity to harvest quotas under relevant international fishery agreements such as the ICCAT Convention, which is implemented domestically pursuant to ATCA.

The baseline General, Reserve, and Harpoon category quotas are 587.9 mt, 29.5 mt, and 48.7 mt respectively. The General category baseline quota is further suballocated to different time periods. Relevant to this action, the baseline subquota for the December time period is 30.6 mt. On December 23, 2021 (86 FR 72857), NMFS transferred 19.5 mt of BFT quota from the December 2022 subquota time period to the January through March 2022 subquota time period, resulting in an adjusted subquota of 9.4 mt for the December 2022 time period. This adjusted subquota was subsequently adjusted to 11.1 mt via a final rulemaking that adjusted the overall quota (87 FR 33049, June 1, 2022).

To date for 2022, NMFS has published several actions that adjusted the Reserve and Harpoon category quotas, including the allowable carryover of underharvest from 2021 to 2022 (87 FR 5737, February 2, 2022; 87 FR 33049, June 1, 2022; 87 FR 43447, July 21, 2022; 87 FR 54910, September 8, 2022; 87 FR 60938, October 7, 2022). The current adjusted Reserve and Harpoon category quotas are 61.2 mt and 78.7 mt, respectively. Per § 635.27(a)(5), the Harpoon category fishery closed for the year on September 5, 2022 (87 FR 54912, September 9, 2022). At that time, 2.3 mt of the Harpoon category quota remained unharvested.

Quota Transfer Calculations

Under § 635.27(a)(9), NMFS has the authority to transfer quota among fishing categories or subcategories after considering the determination criteria provided under § 635.27(a)(8). This section focuses on the various calculations involved in transferring quotas; the consideration of the determination criteria can be found below after this section.

To date, preliminary landings data indicate that the General category landed 836.8 mt through November 30, 2022. This amount exceeds the cumulative adjusted quota available through November 30 (818.3 mt) by 18.5 mt (836.8 mt − 818.3 mt = 18.5 mt).

As stated above, the adjusted Reserve category quota is 61.2 mt. The quota in the Reserve category is held in reserve for inseason or annual adjustments and research. Under § 635.24(a)(7), NMFS may allocate any portion of the Reserve category quota for inseason or annual adjustments to any fishing category quota. Transferring 55.2 mt from the Reserve category would account for the 18.5 mt accrued overharvest from the prior time periods. This transfer would result in 36.7 mt being available for the General category December subquota time period (55.2 mt − 18.5 mt = 36.7 mt). Transferring 55.2 mt out of the Reserve category would leave 6 mt in the Reserve category (61.2 mt − 55.2 mt = 6 mt), which could be used to account

for any BFT mortalities associated with research.

Additionally, preliminary landings data indicate that the Harpoon category landed 76.4 mt of the 78.7 mt adjusted Harpoon category quota before closing. Because the Harpoon category closes on November 15 of each year (§ 635.24(a)(5)) and closed this year on September 5, 2022 (87 FR 54912, September 9, 2022), the remaining quota of 2.3 mt (78.7 mt − 76.4 mt = 2.3 mt) is available and could be used by the General category. Transferring 2.3 mt out of the Harpoon category would result in an adjusted Harpoon category quota of 76.4 mt.

Given the current adjusted quota for the December time period is 11.1 mt, these transfers from the Reserve and Harpoon categories would result in an adjusted December subquota of 50.1 mt (11.1 mt + 36.7 mt + 2.3 mt = 50.1 mt). The transfers also would result in adjusted quotas for the Reserve and Harpoon categories of 6 mt and 76.4 mt, respectively.

Consideration of the Relevant Determination Criteria

As described below, NMFS has considered all of the relevant determination criteria and their applicability to this inseason quota transfer. Given these considerations, after transferring a total of 57.5 mt (55.2 mt from the Reserve category quota and 2.3 mt from the Harpoon category quota), the adjusted General category December 2022 subquota will be 50.1 mt, the adjusted Reserve category quota will be 6 mt, and the adjusted Harpoon category quota will be 76.4 mt. The General category fishery will remain open until December 31, 2022, or until the adjusted General category quota is reached, whichever comes first.

In making these transfers, NMFS considered, among other things, the following.

Regarding the usefulness of information obtained from catches in the particular category for biological sampling and monitoring of the status of the stock (§ 635.27(a)(8)(i)), biological samples collected from BFT landed by General category fishermen continue to provide NMFS with valuable parts and data for ongoing scientific studies of BFT age and growth, migration, and reproductive status. Additional opportunity to land BFT in the General category would support the continued collection of a broad range of data for these studies and for stock monitoring purposes.

NMFS also considered the catches of the General category quota to date and the likelihood of closure of that segment of the fishery if no adjustment is made (§ 635.27(a)(8)(ii) and (ix)). As described above, preliminary landings data indicate that the General category has landed 836.8 mt through November 30, which exceeds the cumulative adjusted quota available through November 30 by 18.5 mt. While the General category December time period subquota has not yet been exceeded, without a quota transfer at this time, based on catch rates in the last 3 years in comparison to the current available quota (11.1 mt), NMFS anticipates it would likely need to close the General category fishery very early in December. Once the fishery is closed, participants would have to stop BFT fishing activities even though commercial-sized BFT remain available in the areas where General category permitted vessels operate and U.S. BFT quota is available. Transferring quota from the Reserve and Harpoon categories would provide limited additional opportunities to harvest the U.S. BFT quota while avoiding exceeding it.

Regarding the projected ability of the vessels fishing under the General category quota to harvest the additional amount of BFT quota transferred before the end of the fishing year (§ 635.27(a)(8)(iii)), NMFS considered General category landings over the last several years and landings to date this year. Landings are highly variable and depend on access to commercial-sized BFT and fishing conditions, among other factors. NMFS anticipates that General category participants will be able to harvest transferred BFT quota by the end of the subquota time period and end of the fishing year. Thus, this quota transfer would allow fishermen to take advantage of the availability of BFT on the fishing grounds and provide a reasonable opportunity to harvest the available U.S. BFT quota.

NMFS also considered the estimated amounts by which quotas for other gear categories of the fishery might be exceeded (§ 635.27(a)(8)(iv)) and the ability to account for all 2022 landings and dead discards. In the last several years, total U.S. BFT landings have been below the available U.S. quota such that the United States has carried forward the maximum amount of underharvest allowed by ICCAT from one year to the next. NMFS recently took such an action to carry over the allowable 127.3 mt of underharvest from 2021 to 2022 (87 FR 33049, June 1, 2022). NMFS will need to account for 2022 landings and dead discards within the adjusted U.S. quota, consistent with ICCAT recommendations, and anticipates having sufficient quota to do that.

NMFS also considered the effects of the transfer on the BFT stock and the effects of the transfer on accomplishing the objectives of the 2006 Atlantic Consolidated FMP (§ 635.27(a)(8)(v) and (vi)). This transfer would be consistent with established quotas and subquotas, which are implemented consistent with ICCAT recommendations (established in Recommendation 21–07), ATCA, and the objectives of the 2006 Consolidated HMS FMP and amendments. In establishing these quotas and subquotas and associated management measures, ICCAT and NMFS considered the best scientific information available, objectives for stock management and status, and effects on the stock. This quota transfer is in line with the established management measures and stock status determinations. Another principal consideration is the objective of providing opportunities to harvest the available General category quota without exceeding the annual quota, based on the objectives of the 2006 Consolidated HMS FMP and amendments, including to achieve optimum yield on a continuing basis and to optimize the ability of all permit categories to harvest available BFT quota allocations (related to § 635.27(a)(8)(x)). Specific to the General category, this includes providing opportunities equitably across all time periods.

Monitoring and Reporting

NMFS will continue to monitor the BFT fishery closely. Dealers are required to submit landing reports within 24 hours of a dealer receiving BFT. Late reporting by dealers compromises NMFS' ability to timely implement actions such as quota and retention limit adjustments, as well as closures, and may result in enforcement actions. Additionally, and separate from the dealer reporting requirement, General category and HMS Charter/Headboat permitted vessel owners are required to report the catch of all BFT retained or discarded dead within 24 hours of the landing(s) or end of each trip, by accessing *hmspermits.noaa.gov,* by using the HMS Catch Reporting app, or calling 888–872–8862 (Monday through Friday from 8 a.m. until 4:30 p.m.).

Depending on the level of fishing effort and catch rates of BFT, NMFS may determine that additional adjustments are necessary to ensure available quota is not exceeded or to enhance scientific data collection from, and fishing opportunities in, all geographic areas. If needed, subsequent adjustments will be published in the **Federal Register**. In addition, fishermen may call the Atlantic Tunas Information

Line at 978–281–9260, or access *hmspermits.noaa.gov,* for updates on quota monitoring and inseason adjustments.

Classification

NMFS issues this action pursuant to section 305(d) of the Magnuson-Stevens Act and regulations at 50 CFR part 635 and is exempt from review under Executive Order 12866.

The Assistant Administrator for NMFS (AA) finds that pursuant to 5 U.S.C. 553(b)(B), it is impracticable and contrary to the public interest to provide prior notice of, and an opportunity for public comment on, this action for the following reasons. Specifically, the regulations implementing the 2006 Consolidated HMS FMP and amendments provide for inseason retention limit adjustments to respond to the unpredictable nature of BFT availability on the fishing grounds, the migratory nature of this species, and the regional variations in the BFT fishery. Providing prior notice and opportunity for public comment on the quota transfer for the December 2022 time period is impracticable. The General category fishery is underway, there was an exceedance of prior subquota time periods. While the December subquota has not yet been exceeded, NMFS anticipates that it will need to close the General category in December even with the transfer. Delaying the action is contrary to the public interest, not only because it would likely result in a premature General category closure and associated costs to the fishery, but also administrative costs due to further agency action needed to re-open the fishery after quota is transferred. The delay would preclude the fishery from harvesting BFT that are available on the fishing grounds and that might otherwise become unavailable during a delay. This action does not raise conservation and management concerns. Transferring quota from the Reserve and Harpoon categories to the General category does not affect the overall U.S. BFT quota, and available data show the adjustment would have a minimal risk of exceeding the ICCAT-allocated quota. NMFS notes that the public had an opportunity to comment on the underlying rulemakings that established the U.S. BFT quota and the inseason adjustment criteria.

For all the above reasons, the AA also finds that pursuant to 5 U.S.C. 553(d), there is good cause to waive the 30-day delay in effectiveness.

Authority: 16 U.S.C. 971 *et seq.* and 1801 *et seq.*

Dated: November 22, 2022.

Kelly Denit,

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

[FR Doc. 2022–25894 Filed 11–28–22; 4:15 pm]

BILLING CODE 3510–22–P

Proposed Rules

Federal Register
Vol. 87, No. 229
Wednesday, November 30, 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 AGRICULTURE

Agricultural Marketing Service

9 CFR Part 201

[Doc. No. AMS–FTPP–21–0045]

RIN 0581–AE05

Inclusive Competition and Market Integrity Under the Packers and Stockyards Act

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Notice; extension of comment period.

SUMMARY: The Agricultural Marketing Service is providing an additional 45 days for submission of comments and information from the public regarding the proposed revisions to the regulations under the Packers and Stockyards Act, 1921 that promote inclusive competition and market integrity in the livestock, meats, poultry, and live poultry markets.

DATES: The comment period for the proposed rule originally published on October 3, 2022, at 87 FR 60010, is extended. Comments must be submitted on or before January 17, 2023.

ADDRESSES: Comments must be submitted through the Federal e-rulemaking portal at *https://www.regulations.gov* and should reference the document number and the date and page number of this issue of the **Federal Register**. AMS strongly prefers comments be submitted electronically. However, written comments may be submitted (*i.e.,* postmarked) via mail to S. Brett Offutt, Chief Legal Officer, Packers and Stockyards Division, USDA, AMS, FTPP; Room 2097–S, Mail Stop 3601, 1400 Independence Ave. SW, Washington, DC 20250–3601. All comments submitted in response to this proposed rule will be included in the record and will be made available to the public. Please be advised that the identity of individuals or entities submitting comments will be made public on the internet at the address provided above. Parties who wish to comment anonymously may do so by entering ''N/A'' in the fields that would identify the commenter.

FOR FURTHER INFORMATION CONTACT: S. Brett Offutt, Chief Legal Officer/Policy Advisor, Packers and Stockyards Division, USDA AMS Fair Trade Practices Program, 1400 Independence Ave. SW, Washington, DC 20250; Phone: (202) 690–4355; or email: *s.brett.offutt@usda.gov*.

SUPPLEMENTARY INFORMATION: A proposed rule published in the **Federal Register** on October 3, 2022 (87 FR 60010), would revise the regulations under the Packers and Stockyards Act (7 U.S.C. 181 *et seq.*) at 9 CFR part 201. Under the proposal, packers, swine contractors and live poultry dealers (regulated entities) would be prohibited from engaging in certain activities that prejudice, disadvantage, or inhibit market access of a covered producer and may not take adverse action against covered producers based upon the producer's status as a market vulnerable individual or as a cooperative. Regulated entities also would be prohibited from retaliating against covered producers and would be prohibited from engaging in certain deceptive practices with respect to their livestock, meat, or poultry operations.

The proposed rule announced a 60-day comment period, ending December 2, 2022. During the initial comment period, AMS received requests asking for additional time to submit comments, citing the proposed rule's complexity and its connection with other Packers and Stockyards actions under consideration at this time. AMS is now extending the comment period for this proposed rule. Comments must be submitted on or before January 17, 2023.

Erin Morris,

Associate Administrator, Agricultural Marketing Service.

[FR Doc. 2022–26081 Filed 11–29–22; 8:45 am]

BILLING CODE P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2022–1410; Project Identifier AD–2022–00198–T]

RIN 2120–AA64

Airworthiness Directives; The Boeing Company Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: The FAA proposes to adopt a new airworthiness directive (AD) for certain The Boeing Company Model 737–600, –700, –700C, –800, –900, and –900ER series airplanes, and certain Model 737–8 and –9 airplanes. This proposed AD was prompted by reports of uncommanded escape slide deployments in the passenger compartment, caused by too much tension in the inflation cable and the movement of the escape slide assembly in the escape slide compartment. This proposed AD would require inspecting all escape slide assemblies to identify affected parts, and applicable on-condition actions. The FAA is proposing this AD to address the unsafe condition on these products.

DATES: The FAA must receive comments on this proposed AD by January 17, 2023.

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

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

AD Docket: You may examine the AD docket at *regulations.gov* under Docket No. FAA–2022–1410; or in person at Docket Operations between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket

contains this NPRM, any comments received, and other information. The street address for Docket Operations is listed above.

Material Incorporated by Reference:

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

• You may view this service information at the FAA, Airworthiness Products Section, Operational Safety Branch, 2200 South 216th St., Des Moines, WA. For information on the availability of this material at the FAA, call 206–231–3195. It is also available at *regulations.gov* under Docket No. FAA–2022–1410.

FOR FURTHER INFORMATION CONTACT: Brandon Lucero, Aerospace Engineer, Cabin Safety and Environmental Systems Section, FAA, Seattle ACO Branch, 2200 South 216th St., Des Moines, WA 98198; phone: 206–231–3569; email: *brandon.lucero@faa.gov.*

SUPPLEMENTARY INFORMATION:

Comments Invited

The FAA invites you to send any written relevant data, views, or arguments about this proposal. Send your comments to an address listed under **ADDRESSES**. Include ''Docket No. FAA–2022–1410; Project Identifier AD–2022–00198–T'' at the beginning of your comments. The most helpful comments reference a specific portion of the proposal, explain the reason for any recommended change, and include supporting data. The FAA will consider all comments received by the closing date and may amend this proposal because of those comments.

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

Confidential Business Information

CBI is commercial or financial information that is both customarily and actually treated as private by its owner. Under the Freedom of Information Act (FOIA) (5 U.S.C. 552), CBI is exempt from public disclosure. If your comments responsive to this NPRM contain commercial or financial information that is customarily treated as private, that you actually treat as private, and that is relevant or responsive to this NPRM, it is important that you clearly designate the submitted comments as CBI. Please mark each page of your submission containing CBI as ''PROPIN.'' The FAA will treat such marked submissions as confidential under the FOIA, and they will not be placed in the public docket of this NPRM. Submissions containing CBI should be sent to Brandon Lucero, Aerospace Engineer, Cabin Safety and Environmental Systems Section, FAA, Seattle ACO Branch, 2200 South 216th St., Des Moines, WA 98198; phone: 206–231–3569; email: *brandon.lucero@faa.gov.* Any commentary that the FAA receives that is not specifically designated as CBI will be placed in the public docket for this rulemaking.

Background

The FAA has received reports from Boeing of uncommanded escape slide deployments in the passenger compartment while the airplane was on the ground, caused by too much tension in the inflation cable (introduced during packing of the slide) and the movement of the escape slide assembly in the escape slide compartment during normal airplane operations. The escape slide is used in the door-mounted escape system of the forward and aft entry doors, and the forward and aft galley service doors on the affected airplanes. This excessive tension and movement could result in inflation of the escape slide while it is in the escape slide compartment or uncommanded deployment of the escape slide inside the cabin. This unsafe condition, if not addressed, could result in injury to passengers and crew during normal airplane operation or impede an emergency evacuation by rendering the exit unusable.

FAA's Determination

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

Related Service Information Under 1 CFR Part 51

The FAA reviewed Boeing Special Attention Requirements Bulletin 737–25–1855 RB, Revision 1, dated April 13, 2022, and Boeing Special Attention Requirements Bulletin 737–25–1866 RB, Revision 1, dated April 11, 2022. This service information specifies procedures for inspecting all escape slide assemblies to identify affected parts, and applicable on-condition actions. The on-condition actions include replacing any escape slide assembly having part number (P/N) 5A3307–7 with a new assembly having P/N 5A3307–9 or P/N 5A3307–701 (an escape slide assembly having P/N 5A3307–701 is one on which a firing cable retention modification has been done and the assembly has been reidentified). These documents are distinct since they apply to different airplane models.

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

Proposed AD Requirements in This NPRM

This proposed AD would require accomplishing the actions specified in the service information already described, except for any differences identified as exceptions in the regulatory text of this proposed AD. For information on the procedures and compliance times, see this service information at *regulations.gov* by searching for and locating Docket No. FAA–2022–1410.

Costs of Compliance

The FAA estimates that this AD, if adopted as proposed, would affect 2,502 airplanes of U.S. registry. The FAA estimates the following costs to comply with this proposed AD:

ESTIMATED COSTS

Action	Labor cost	Parts cost	Cost per product	Cost on U.S. operators
Inspection	1 work-hours × $85 per hour = $85	$0	$170	$212,670

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

ON-CONDITION COSTS

Action	Labor cost	Parts cost	Cost per product
Replacement	Up to 1 work hours × $85 per hour = up to $85	Up to $19,000	Up to $19,085 per escape slide assembly.

Authority for This Rulemaking

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

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

Regulatory Findings

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

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

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

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

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

List of Subjects in 14 CFR Part 39

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

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

The Boeing Company: Docket No. FAA–2022–1410; Project Identifier AD–2022–00198–T.

(a) Comments Due Date

The FAA must receive comments on this airworthiness directive (AD) by January 17, 2023.

(b) Affected ADs

None.

(c) Applicability

This AD applies to The Boeing Company airplanes identified in paragraphs (c)(1) and (2) of this AD.

(1) Model 737–600, –700, –700C, –800, –900, and –900ER series airplanes, as identified in Boeing Special Attention Requirements Bulletin 737–25–1855 RB, Revision 1, dated April 13, 2022.

(2) Model 737–8 and –9 airplanes, as identified in Boeing Special Attention Requirements Bulletin 737–25–1866 RB, Revision 1, dated April 11, 2022.

(d) Subject

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

(e) Unsafe Condition

This AD was prompted by reports of uncommanded escape slide deployments in the passenger compartment, caused by too much tension in the inflation cable and the movement of the escape slide assembly in the escape slide compartment. The FAA is issuing this AD to address inflation of the escape slide while it is in the escape slide compartment, which could result in injury to passengers and crew during normal operation, or impede an emergency evacuation by rendering the exit unusable.

(f) Compliance

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

(g) Required Actions

Except as specified by paragraph (h) of this AD: At the applicable times specified in the ''Compliance'' paragraph of Boeing Special Attention Requirements Bulletin 737–25–1855 RB, Revision 1, dated April 13, 2022, and Boeing Special Attention Requirements Bulletin 737–25–1866 RB, Revision 1, dated April 11, 2022, do all applicable actions identified in, and in accordance with, the Accomplishment Instructions of Boeing Special Attention Requirements Bulletin 737–25–1855 RB, Revision 1, dated April 13, 2022 (for Model 737–600, –700, –700C, –800, –900, and –900ER series airplanes), and Boeing Special Attention Requirements Bulletin 737–25–1866 RB, Revision 1, dated April 11, 2022 (for Model 737–8 and –9 airplanes); as applicable.

Note 1 to paragraph (g): Guidance for accomplishing the actions required by this AD can be found in Boeing Special Attention Bulletin 737–25–1855, Revision 1, dated April 13, 2022, which is referred to in Boeing Special Attention Requirements Bulletin 737–25–1855 RB, Revision 1, dated April 13, 2022.

Note 2 to paragraph (g): Guidance for accomplishing the actions required by this AD can be found in Boeing Special Attention Bulletin 737–25–1866, Revision 1, dated April 11, 2022, which is referred to in Boeing Special Attention Requirements Bulletin 737–25–1866 RB, Revision 1, dated April 11, 2022.

(h) Exceptions to Service Information Specifications

(1) Where the Compliance Time columns of the tables in the ''Compliance'' paragraph of Boeing Special Attention Requirements Bulletin 737–25–1855 RB, Revision 1, dated April 13, 2022, use the phrase ''the Original Issue date of Requirements Bulletin 737–25–1855 RB,'' this AD requires using ''the effective date of this AD.''

(2) Where the Compliance Time columns of the tables in the ''Compliance'' paragraph of Boeing Special Attention Requirements Bulletin 737–25–1866 RB, Revision 1, dated April 11, 2022, use the phrase ''the Original Issue date of Requirements Bulletin 737–25–1866 RB,'' this AD requires using ''the effective date of this AD.''

(i) Credit for Previous Actions

This paragraph provides credit for the actions specified in paragraph (g) of this AD, if those actions were performed before the effective date of this AD using Boeing Special Attention Requirements Bulletin 737–25–1855 RB, dated August 31, 2021, or Boeing Special Attention Requirements Bulletin 737–25–1866 RB, dated September 27, 2021, as applicable.

(j) Alternative Methods of Compliance (AMOCs)

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

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

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

(k) Related Information

For more information about this AD, contact Brandon Lucero, Aerospace Engineer, Cabin Safety and Environmental Systems Section, FAA, Seattle ACO Branch, 2200 South 216th St., Des Moines, WA 98198; phone: 206–231–3569; email: *brandon.lucero@faa.gov.*

(l) Material Incorporated by Reference

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

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

(i) Boeing Special Attention Requirements Bulletin 737–25–1855 RB, Revision 1, dated April 13, 2022.

(ii) Boeing Special Attention Requirements Bulletin 737–25–1866 RB, Revision 1, dated April 11, 2022.

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

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

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

Issued on November 1, 2022.

Christina Underwood,

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

[FR Doc. 2022–26064 Filed 11–29–22; 8:45 am]

BILLING CODE 4910–13–P

POSTAL SERVICE

39 CFR Part 111

Electronic Indicators for the Mailing of Hazardous Materials

AGENCY: Postal Service™.

ACTION: Proposed rule for special standards; invitation to comment.

SUMMARY: The Postal Service proposes to provide unique electronic service codes and to standardize extra service options for shipments of hazardous materials (HAZMAT). If adopted, this proposal would amend Publication 52, *Hazardous, Restricted, and Perishable Mail* (Pub 52) by requiring the use of unique service type codes and extra service codes within the electronic data submission and tracking barcodes for shipments containing HAZMAT provided to the USPS by the mailers in their Shipping Services File (SSF). This proposal would standardize the acceptance and handling of shipments containing HAZMAT by collecting electronic data to create manifests for the Postal Service's air carrier suppliers and ensuring these items are handled appropriately with regards to the category of HAMZAT contained within the package. The Postal Service also proposes to amend the *Mailing Standards of the United States Postal Service Domestic Mail Manual* (DMM) that would alter the refund eligibility of Priority Mail Express containing hazardous materials.

DATES: Submit comments on or before December 30, 2022.

ADDRESSES: Mail or deliver written comments to the Director, Product Classification, U.S. Postal Service, 475 L'Enfant Plaza SW, Room 4446, Washington, DC 20260–5015. If sending comments by email, include the name and address of the commenter and send to *PCFederalRegister@usps.gov,* with a subject line of ''Electronic Indicators''. Faxed comments will not be accepted.

All submitted comments and attachments are part of the public record and subject to disclosure. Do not enclose any material in your comments that you consider to be confidential or inappropriate for public disclosure.

You may inspect and photocopy all written comments, by appointment only, at USPS® Headquarters Library, 475 L'Enfant Plaza SW, 11th Floor North, Washington, DC 20260. These records are available for review Monday through Friday, 9 a.m. to 4 p.m., by calling 202–268–2906.

FOR FURTHER INFORMATION CONTACT: Jennifer Cox at (202) 268–2108, Juliaann Hess at (202) 268–7663, or Dale Kennedy (202) 268–6592.

SUPPLEMENTARY INFORMATION: The Postal Service proposes to amend Publication 52, *Hazardous, Restricted, and Perishable Mail* (''Pub 52''), with the provisions set forth herein. While not codified in title 39, Code of Federal Regulations (''CFR''), Publication 52 is a regulation of the Postal Service, and changes to it may be published in the **Federal Register**. 39 CFR 211.2(a)(2). Moreover, Publication 52 is incorporated by reference into *Mailing Standards of the United States Postal Service,* Domestic Mail Manual (''DMM'') section 601.8.1, which is incorporated by reference, in turn, into the Code of Federal Regulations. 39 CFR 111.1, 111.3. Publication 52 is publicly available, in a read-only format, via the Postal Explorer® website at *https://pe.usps.com.* In addition, links to Postal Explorer are provided on the landing page of *USPS.com,* the Postal Service's primary customer-facing website, and on *Postal Pro,* an online informational source available to postal customers. If the proposal is adopted, the Postal Service will amend Pub 52 and the DMM with the requirements below:

1. Require PC Postage, eVS, ePostage, and USPS Ship mailers to transmit a Shipping Services File (SSF), or Shipping Partner Event File (SPEF) to the Postal Service before, or concurrent with, the tendering of hazardous materials shipments, and require mailers using USPS generated labels (including but not limited to USPS API, WebTools, Click-n-Ship, or Merchant Returns Application) to indicate the shipment includes hazardous materials at the time of requesting a label.

2. Require the use of unique Service Type Codes (STCs) for hazardous materials packages shipped domestically. At a minimum, mailers must use one of six unique STCs, each of which would correspond to the hazardous materials contained within a domestic shipment via Priority Mail®, First-Class Package Service®, Parcel Select®, Parcel Select Lightweight®, and USPS Retail Ground®, or, if purchasing extra services, use one of sixteen STCs to show the product and extra service used.

3. Require the use of unique STCs for hazardous materials for returns (packages using any of the USPS Return

products). At a minimum, mailers must use one of eight STCs, each of which will correspond with the hazardous materials return shipments via Priority Mail Return Service, First-Class Package Return Service®, Parcel Return Service, and USPS Ground Return Service, or, if purchasing extra services, use one of six STCs to reflect the product and extra service used.

4. Specify that Insurance and Adult Signature will be the only domestic Extra Services available on a package containing hazardous materials. The Postal Service proposes to provide a unique STC for each product without an Extra Service (which would include basic USPS ''tracking provided'' as a built-in feature of these products), with purchases of insurance less than or equal to $500, with purchases of insurance over $500, with Signature Requested for Priority Mail Express, and with the required use of Adult Signature over 21 for Priority Mail Express and Priority Mail shipments of tobacco/Electronic Nicotine Delivery System (ENDS) products.

5. Specify five unique STCs for Priority Mail Express® shipments to identify packages where the mailer is requesting a signature waiver, requiring a signature, Adult Signature over 21 (when shipping tobacco/ENDS products via PME and PM), purchasing insurance less than or equal to $500, or purchasing insurance over $500.

6. Specify three unique STCs to explicitly identify Division 6.2, Infectious Substances, returned through the Postal Service network using any USPS Return Service product.

7. Provide unique Extra Service Codes (ESC) to identify categories of hazardous materials with specific relevance to segregation, handling, and identification in the Postal Service network.

8. Encourage adoption of the Postal Service's recommendation to add two (2) supplemental GS1-DataMatrix (2D) IMpbs to shipping labels to improve package visibility; one in the address block to the left of the Delivery Address and one in the lower right corner of the shipping label.

9. Provide for the optional use of hazardous materials electronic indicators from the date of publication of the final rule until January 21, 2023, and, if the final rule is adopted, to require their use by April 30, 2023.

Overview

Due to the rapid expansion of eCommerce, the United States Postal Service® (Postal Service®) has encountered a significant increase in the number of hazardous material shipments being entered into the mailstream. Materials such as lithium batteries, flammable liquids, flammable gases, non-flammable compressed gases, and corrosive cleaning solutions that were typically purchased through brick-and-mortar establishments are now routinely being purchased online and shipped to their destination. This increase in hazardous material volume has brought with it a proportional increase in instances of improper labelling and packaging, use of ineligible shipping services, and an increase in safety related incidents in Postal Service facilities. These incidents have increased risks to Postal Service employees, customers, and business suppliers, especially risks related to personal safety/property damage, and resulted in millions of dollars in losses.

The Postal Service relies heavily on commercial cargo and passenger aircraft to transport mail in circumstances where the use of ground transportation is insufficient to meet its service standards or is otherwise operationally or financially impracticable. With regard to the transportation of hazardous materials, commercial air carriers observe requirements promulgated by the Federal Aviation Administration (FAA), and the International Civil Aviation Organization (ICAO).

In accordance with FAA regulations, commercial air carriers are required to develop and maintain a Safety Management System (SMS). In applying the safety risk management concept of their respective SMS, air carriers conduct a systemic analysis to identify hazards and then develop and maintain processes to analyze the safety risks associated with the hazards identified. This process requires air carriers to acquire data with respect to their operations, products, and services, to monitor the safety performance of their operations, and to conduct and update their risk assessments. Previously, the Postal Service tendered mail, including packages containing both non-hazardous and marked hazardous materials, to its contracted air carriers in sacks. Due to the ''sacking'' of marked hazardous materials from the Postal Service, air carriers were often unaware of the specific marked hazardous materials they were accepting and transporting. Without this information, air carriers were unable to accurately define and address the risks associated with the mail. To address these issues, and several others related to hazardous materials shipments, the Postal Service promulgated an interim final rule specifying that mailers must separate hazardous materials from other mail when tendering to the Postal Service. 87 FR 34197. In a separate final rule being published today, the Postal Service promulgated as a final rule the changes to Pub 52, with some alterations from the interim final rule. The current proposal complements the effective implementation of both the interim final rule and the more recent final rule, but also is part of a broader effort to increase safety and security when hazardous materials are transported through the mail.

Proposal

To enhance its ability to make knowledgeable decisions regarding the handling and disposition of hazardous materials shipments in its networks and better leverage the use of operational processes to properly segregate and tender these items, the Postal Service proposes to require mailers to identify and categorize their hazardous materials shipments through the use of specified electronic indicators.

The Postal Service expects to use these indicators to capture details about the categories, volume, and weight of the hazardous materials contained in packages tendered to its contracted transportation providers, which would ensure that both the Postal Service and its contracted transportation providers have the required information to be able to handle these packages in a safe and operationally efficient manner. These HAZMAT-specific indicators will be required regardless of whether the mailpieces are entered at origin or in connection with destination entry.

The Postal Service has enhanced its operational capability to provide piece-level tracking and visibility through the use of the Intelligent Mail Package Barcodes (IMpb®). These barcodes can be scanned by automated processing equipment and Intelligent Mail scanning devices. Today, mailers are required to encode certain information into the barcode structure of the IMpb through the use of STCs and to encode additional information into a USPS-Approved SSF/SPEF through the use of Extra Service Codes (ESCs). As part of current procedures under Postal Service Publication 199, mailers tendering commercial packages to the Postal Service are required to accurately encode their IMpb barcodes for each package and supply the Postal Service with a complete SSF/SPEF when entering their packages into the Postal Service's network.

The Postal Service is committed to improving package visibility by increasing the volume and quality of scan data that is collected within its processing environment. Extreme curvature, fold-overs, and creased

shipping labels on soft packs and irregularly shaped parcels often distort the current/traditional one-dimensional GS1–128 IMpb barcode to an extent that the barcode becomes unreadable resulting in no-reads. This reduces overall package visibility to the customer and may require that the piece be re-run or manually sorted. In an effort to improve processing efficiency and improve package visibility, the Postal Service will recommend adding two (2) supplemental GS1-DataMatrix (2D) IMpbs to shipping labels: one in the address block to the left of the Delivery Address and the other in the lower right corner of the shipping label. The Postal Service may require this practice in the future. For more information on the GS1-DataMatrix (2D) IMpbs, mailers can view GS1 (2D) information and find barcode specifications at: *https://www.gs1.org/docs/barcodes/GS1_DataMatrix_Guideline.pdf and https://postalpro.usps.com/shipping/impb/2d-impb-guide.*

As a related matter, the Postal Service proposes to amend the *Mailing Standards of the United States Postal Service Domestic Mail Manual* (DMM) that would alter the refund eligibility of Priority Mail Express containing hazardous materials. Given that shipments containing HAZMAT may have to be processed differently than if they did not contain HAZMAT. As a result, the Postal Service proposes that refunds for domestic Priority Mail Express would not be available for shipments containing live animals or hazardous materials and the item is delivered or delivery was attempted within 3 days of the date of mailing.

Restriction of Extra Services

The Postal Service proposes to restrict the Extra Service options available for shipments of regulated hazardous materials, including restrictions on Adult Signature over 21 (used when regulations require restricted delivery to adults aged 21 years and older for tobacco and ENDS shipments), insurance over and under $500 for most mail classes or products, and insurance over and under $500 in addition to waiver of signature for Priority Mail Express. The Postal Service is proposing these additional restrictions to reduce the complexity for mailers complying with the requirements in this **Federal Register** Notice. The Postal Service expects the demand for the variety of Extra Services covered under this proposed restriction to be low enough for shippers of hazardous materials to generally be of minor concern.

PC Postage, eVS, USPS Ship, and ePostage Users or Users of USPS-Generated Labels (USPS APIs, WebTools, Click-n-Ship, MRA)

The generation of the flight-specific air carrier manifests and the other operational enhancements proposed in this **Federal Register** Notice would be possible only when the information is included in a mailer's SSF/SPEF and is made available to all Postal Service systems in a timely fashion. It is for this reason that the Postal Service is proposing to require impacted mailers to transmit an approved SSF/SPEF before, or concurrent with, the physical tendering of regulated hazardous materials shipments to the Postal Service regardless of the postage payment method used. In addition to the other postage payment methods, this requirement would extend to mailers using electronic payment systems (PC Postage, eVS, ePostage, or USPS Ship). Additionally, any mailer using a USPS generated label (including but not limited to USPS API, WebTools, Click-n-Ship, or Merchant Returns Application) would indicate before label generation that the shipment includes hazardous materials.

Legacy Postal Meters and Hard Copy Mailers

To ensure electronic information for all hazardous materials shipments is available and provided to the Postal Service concurrent with the induction of each shipment into the Postal Service's network, the Postal Service proposes to restrict shipments of hazardous materials from mailers using postage meters not capable of electronically transmitting transactional data to the Postal Service, mailers submitting paper postage statements, and any other mailers who may still be using legacy package barcodes. The Postal Service urges these mailers to transition to newer systems or to bring their hazardous materials to a Postal Service retail unit for induction.

Service Type Codes and Extra Service Codes for Hazardous Materials

The Postal Service proposes to specify six unique required STCs and an optional sixteen STCs to correspond with each product and extra service used to identify the hazardous materials contained in domestic originating shipments via Priority Mail Service, First-Class Package Service®, Parcel Select, Parcel Select Lightweight, and USPS Retail Ground Service. The optional STCs would provide a unique STC for each product without an Extra Service, requests for insurance less than or equal to $500, requests for insurance over $500, Signature Requested for Priority Mail Express, and Adult Signature over 21 for Priority Mail Express and Priority Mail. The Postal Service also proposes to specify eight unique required STCs and an optional six STCs to reflect the product and extra service used, each to correspond to hazardous materials return shipments via Priority Mail Return Service, First-Class Package Return Service®, Parcel Return Service, and USPS Ground Return Service. The eight required STCs specify unique STCs for each product, and specify unique STCs to explicitly identify Division 6.2, Infectious Substances, while the optional STCs would correspond to the Extra Service options described above for domestic shipments returned through the Postal Service network using each of these return services. The Postal Service proposes unique STCs to identify Division 6.2, Infectious Substances, because hazardous materials in this category are the most commonly shipped hazardous materials through the Postal Service network via a return service. Additional visibility into these shipments would be beneficial to the Postal Service reducing incidents related to the mailing of hazardous materials.

The Postal Service proposes to provide unique ESCs to identify specified categories of hazardous materials with specific relevance to segregation, handling, and identification in Postal Service networks. The Postal Service plans to specify approximately 23 ESCs, each to identify a category of hazardous materials that is associated with specific restrictions, packaging, and markings requirements, and for some ESCs, restrictions in air transportation. Included among the proposed categories to be assigned with a specific ESC, and intended for air transportation are:

- Air Eligible Consumer Commodity/ Limited Quantity
- Air-eligible Ethanol
- Excepted Quantity
- Division 5.1, Oxidizer
- Division 5.2, Organic Peroxide
- Division 6.1, Toxic Material (Packaging Instruction 6B)
- Class 8, Corrosive
- Class 8, Nonspillable battery
- Class 9, Dry Ice
- Class 9, Magnetized Material
- Class 9, Lithium Battery (marked)
- Class 9, Lithium Battery (unmarked)

The Postal Service has also specified one proposed ESC to indicate a shipment with hazardous materials to be used when requesting a USPS

generated label from USPS APIs or WebTools. Additionally, the Postal Service has specified proposed ESCs to correspond with categories of hazardous materials shipments intended for ground transportation, which will be available in Appendix G of Pub 52.

The Postal Service expects to have these STCs and ESCs available for optional use by mailers before the end of the 2022 calendar year. If the final rule is adopted, the Postal Service intends to require STC adoption by April 30, 2023. The use of ESCs in domestic mail and GS1 DotMatrix (2D) barcodes would remain optional for mailers for the foreseeable future. The use of the appropriate STC and ESC is contingent upon the mailability of the hazardous material. Mailers must adhere to the packaging instructions in Pub 52 for specific hazardous materials being shipped in order to assess mailability prior to finalizing the shipment.

International Shipments

Tracking numbers for international packages include the use of an IMpb and would not have unique STCs for hazardous materials. However, international mailpieces containing hazardous materials/Dangerous Goods (DG) ((DG) is an international term used to identify hazardous materials) would be required to utilize the appropriate ESC for the category of hazardous materials/DG in the SSF/SPEF used by the mailer and transmitted to the Postal Service. The Postal Service proposes to require mailers to include the hazardous materials/DG ESC applicable to the category of material being shipped. In accordance with *Mailing Standards of the United States Postal Service,* International Mail Manual (IMM®) part 135, only three categories of hazardous materials/DG are permitted in international mail. Hazardous materials/DG permitted in international mail are restricted to specified subsets of the following DG classes:

- Division 6.2, Infectious Substances (permitted only by authorization from Product Classification, USPS® Headquarters)
- Class 7, Radioactive Materials
- Class 9, Lithium Batteries installed in equipment (unmarked)

The Postal Service would provide access to the ESCs applicable to these hazardous materials categories for use with international mail.

Systems Enhancements

To provide greater visibility into the quantities, weights, and categories of hazardous materials being tendered to the Postal Service's contracted air carriers, the Postal Service plans to use the data from the STCs and ESCs to improve its identification of hazardous materials/DG shipments, ensure proper assignment of these shipments to the proper mode of transportation, acquire better data on what hazardous materials/DG are transiting its system, and provide increased safety to customer, employees, contractors, and shippers.

These electronic indicators would also provide Postal Service operations personnel with the ability to identify packages containing hazardous materials/DG and the categories under which they fall. This additional information would allow the Postal Service to separate or handle such hazardous materials/DG packages as necessary to meet operational requirements and allow Postal Service operations to affix, when necessary, the applicable markings to a postal receptacle containing hazardous materials/DG.

Enforcement

If this proposal is adopted, the United States Postal Inspection Service® (USPIS®) expects universal compliance by mailers following a reasonable period of time to communicate the new requirements to mailers and postage payment providers, and for them to make the necessary changes to their systems. Following the implementation period, USPIS® intends to enforce these new requirements using its civil penalty authority under 39 U.S.C. 3018 and/or 39 CFR 233.12(f).

The Postal Service is revising the Priority Mail Express refund policy in DMM subsection 604.9.5.5 to not allow a refund if the shipment contains hazardous materials and was delivered or delivery was attempted within 3 days of the date of mailing.

Although exempt from the notice and comment requirements of the Administrative Procedure Act (5 U.S.C. 553(b), (c)) regarding proposed rulemaking by 39 U.S.C. 410(a), the Postal Service invites public comment on the following proposed revisions to *Mailing Standards of the United States Postal Service,* Domestic Mail Manual (DMM), incorporated by reference in the Code of Federal Regulations. *See* 39 CFR 111.1.

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

The Postal Service also proposes to adopt the following changes to Publication 52, *Hazardous, Restricted, and Perishable Mail,* incorporated by reference into the DMM, section 601.8.1, which is further incorporated by reference in the Code of Federal Regulations. 39 CFR 111.1, 111.3. Publication 52 is also a regulation of the Postal Service, changes to which may be published in the **Federal Register**. 39 CFR 211.2(a).

List of Subjects in 39 CFR Part 111

Administrative practice and procedure, Postal Service.

Accordingly, 39 CFR part 111 is proposed to be amended as follows:

PART 111—[AMENDED]

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

Authority: 5 U.S.C. 552(a); 13 U.S.C. 301–307; 18 U.S.C. 1692–1737; 39 U.S.C. 101, 401, 403, 404, 414, 416, 3001–3011, 3201–3219, 3403–3406, 3621, 3622, 3626, 3632, 3633, and 5001.

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

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

* * * * *

600 Basic Standards for All Mailing Services

* * * * *

604 Postage Payment Methods and Refunds

* * * * *

9.0 Exchanges and Refunds

* * * * *

9.5 Priority Mail Express Postage and Fees Refunds

* * * * *

9.5.5 Refunds Not Given

Postage will not be refunded if the guaranteed service was not provided due to any of the following circumstances:

* * * * *

[*Revise the text of item g to read as follows:*]

g. The shipment contained live animals or hazardous materials and was delivered or delivery was attempted within 3 days of the date of mailing.

* * * * *

■ 3. Revise Publication 52 as follows:

Publication 52, Hazardous, Restricted and Perishable Mail

* * * * *

3 Hazardous Materials

* * * * *

32 General

* * * * *

323 Mailer Responsibility

[*Add new sections 323.1, 323.2, 323.3 and 323.4 to read as follows:*]

323.1 Electronic Service Type and Extra Service Codes

Mailers tendering packages containing hazardous materials to the Postal Service must use a unique Service Type Code (STC) for domestic outbound and return packages that correspond to the appropriate product being shipped (*i.e.,* Priority Mail®, First-Class Package Service®, Parcel Select®, Parcel Select Lightweight®, and USPS Retail Ground®). The STC is required regardless of whether the mailpieces are entered at origin or for destination entry. If purchasing an eligible extra service, mailers must use the STC indicating the product and extra service in conjunction with the appropriate Extra Service Code (ESC). Extra services permitted with hazardous materials mailings are:

a. Adult Signature
b. Insurance less than or equal to $500
c. Insurance over $500
d. Signature Requested for Priority Mail Express
e. Adult Signature over 21 for Priority Mail Express (tobacco/Electronic Nicotine Delivery System (ENDS) products)
f. Adult Signature over 21 for Priority Mail (ENDS products)

A list of HAZMAT STCs and ESCs can be found in Appendix G and Pub 199.

323.2 Additional GS1 DotMatrix (2D) IMpb

In addition to including the appropriate STC in the one-dimensional GS1–128 IMpb barcode on the address label, the Postal Service recommends adding two (2) supplemental GS1-DataMatrix (2D) IMpbs to shipping labels. One in the address block to the left of the Delivery Address and one in the lower right corner of the shipping label.

Note: while currently this is a recommended practice, the Postal Service may undertake to make this requirement mandatory in the future. For more information on the GS1-DataMatrix (2D) IMpbs, mailers can view GS1 (2D) information and find barcode specifications at: *https://www.gs1.org/docs/barcodes/GS1_DataMatrix_Guideline.pdf* and *https://postalpro.usps.com/shipping/impb/2d-impb-guide.*

323.3 Shipping Service File

Mailers shipping hazardous materials domestically utilizing PC Postage, eVS, USPS Ship, and/or ePostage platforms must incorporate the applicable Service Type Code (STC) and/or Extra Service Code (ESC) found in Appendix G and Pub 199 and transmit a Shipping Services File (SSF), Version 1.7 or higher, or Shipping Partner Event File (SPEF), using Version 5.0 or higher, to the Postal Service before, or concurrent with the tendering of any hazardous materials shipments.

323.4 Legacy Postage and Hard Copy Postage Statements

Mailers using legacy postage meters or hard copy postage forms must present hazardous materials mailings to a Postal Service retail unit for acceptance.

323.5 USPS Generated Shipping Labels

Mailers using a label generated by the USPS (including but not limited to USPS APIs, WebTools, Click-n-Ship, or Merchant Returns Application) must indicate whether the shipment contains hazardous materials at the time of label generation.

* * * * *

327 Transportation Requirements

327.1 General

[*Revise the last sentence in bullet b. to read as follows:*]

b. * * *A mailpiece containing mailable hazardous materials with postage paid at Marketing Mail, USPS Retail Ground, Parcel Select, or Package Service prices must not, under any circumstances, be transported on air transportation. This excludes those ZIP Codes that are only serviced by air transportation. See Appendix F for ZIP Codes serviced by air transportation only.

* * * * *

6 International Mail

62 Hazardous Materials: International Mail

621 General Requirements

* * * * *

[*Add new section 621.5 to read as follows:*]

621.5 Extra Service Codes and Shipping Service Files

Mailers shipping dangerous goods internationally, including to APO/FPO/DPO destinations utilizing PC Postage, eVS, USPS Ship, and ePostage platforms, must incorporate the applicable Extra Service Code (ESC) found in Appendix G and Pub 199 and transmit a Shipping Services File (SSF), Version 1.7 or higher, or Shipping Partner Event File (SPEF), using Version 5.0 or higher, to the Postal Service before, or concurrent with, the tendering of any dangerous goods shipments.

* * * * *

[*Add new Appendix G to read as follows:*]

Appendix G

Hazardous Materials Service Type Codes (STCs) and Extra Service Codes (ESCs)

This appendix contains a complete list of the required and optional STCs and ESCs when shipping hazardous materials and/or dangerous goods. If an optional STC is selected, then a corresponding ESC must be used. See 323 and 621.5.

STCs Domestic Outbound (Required)

The following STCs are required when shipping domestic hazardous materials, unless an STC from the ''Optional'' table is used in combination with the applicable ESC. ESCs are not required and are optional when using an STC from the following list.

760	Priority Mail Express Signature Waived—Hazardous Materials.
116	Priority Mail USPS Tracking—Hazardous Materials.
184	First-Class Package Service USPS Tracking—Hazardous Materials.
395	Parcel Select USPS Tracking—Hazardous Materials.
785	Parcel Select Lightweight USPS Tracking—Hazardous Materials.
362	USPS Retail Ground USPS Tracking—Hazardous Materials.

STCs Domestic Outbound (Optional)

The following STCs are optional and are allowed to be used when shipping domestic hazardous materials if the use of the applicable Extra Service is needed.

678	PRS Insurance > $500—Hazardous Materials.
761	Priority Mail Express Signature Requested—Hazardous Materials.
762	Priority Mail Express Add Insurance <= $500—Hazardous Materials.
763	Priority Mail Express Insurance > $500 Restricted Delivery—Hazardous Materials.
764	Priority Mail Express Adult Signature Over 21—Hazardous Materials.
120	Priority Mail Insurance <= $500—Hazardous Materials.
323	Priority Mail Insurance > $500—Hazardous Materials.
075	Priority Mail Adult Signature Over 21—Hazardous Materials.
185	First-Class Package Service Insurance <= $500—Hazardous Materials.
186	First-Class Package Service Insurance > $500—Hazardous Materials.
483	Parcel Select Insurance <= $500—Hazardous Materials.
628	Parcel Select Insurance > $500—Hazardous Materials.
786	Parcel Select Lightweight Insurance <= $500—Hazardous Materials.
787	Parcel Select Lightweight Insurance > 500—Hazardous Materials.
363	USPS Retail Ground Insurance <= $500—Hazardous Materials.
365	USPS Retail Ground Insurance > $500—Hazardous Materials.

STCs Domestic Returns (Required)

The following STCs for domestic hazardous materials returns packages are required, unless an STC from the ''Optional'' list is used in conjunction with the applicable ESC. ESCs are not required and are optional when using an STC from the following list.

676	PRS—Hazardous Materials.
187	First-Class Package Return Service—Hazardous Materials.
385	Ground Return Service—Hazardous Materials.
037	Priority Mail Return Service—Hazardous Materials.
217	First-Class Package Return Service—Division 6.2 Hazardous Materials.
218	Ground Return Service—Division 6.2 Hazardous Materials.
219	Priority Mail Return Service—Division 6.2 Hazardous Materials.
859	PRS: HAZMAT—Division 6.2 Hazardous Materials.

STCs Domestic Returns (Optional)

The following STCs are optional for domestic hazardous materials returns packages if the use of the applicable Extra Service is needed.

190	First-Class Package Return Service Insurance <= $500—Hazardous Materials.
191	First-Class Package Return Service Insurance > $500—Hazardous Materials.
388	Ground Return Service Insurance <= $500—Hazardous Materials.
399	Ground Return Service Insurance > $500—Hazardous Materials.
515	Priority Mail Return Service Insurance <= $500—Hazardous Materials.
517	Priority Mail Return Service Insurance > $500—Hazardous Materials.

ESCs Domestic (Optional)

The following is a list of ESCs that may be used in conjunction with a required STC if the mailer chooses.

810	Air Eligible Ethanol Package.
811	Class 1—Toy Propellant/Safety Fuse Package.
812	Hazardous Materials Class 3—Package.
813	Class 7—Radioactive Materials Package.
814	Class 8—Corrosive Materials Package.
815	Class 8—Nonspillable Wet Battery Package.
816	Class 9—Lithium Battery Marked—Ground Only Package.
817	Class 9—Lithium Battery—Returns Package.
818	Class 9—Lithium batteries, marked package.
819	Class 9—Dry Ice Package.
820	Class 9—Lithium batteries, unmarked package.
821	Class 9—Magnetized Materials Package.
822	Division 4.1—Mailable flammable solids and Safety Matches Package.
823	Division 5.1—Oxidizers Package.
824	Division 5.2—Organic Peroxides Package.
825	Division 6.1—Toxic Materials Package (with an LD50 of 50 mg/kg or less).
826	Division 6.2 Hazardous Materials.

827	Excepted Quantity Provision Package.
828	Ground Only Hazardous Materials.
829	ID8000 Consumer Commodity Package.
830	Lighters Package.
831	LTD QTY Ground Package.
832	Small Quantity Provision Package.

ESCs Domestic & APO/FPO/DPO (Requesting Label From USPS APIs or WebTools) (Required)

The following is an ESC that must be provided if requesting a USPS created label from USPS APIs or WebTools for a shipment containing hazardous materials.

857	Hazardous Materials.

ESCs International (Required)

The following is a list of ESCs required for use in the mailers Shipping Service File, when tendering dangerous goods internationally with the Postal Service.

813	Class 7—Radioactive Materials Package.
820	Class 9—Lithium batteries, unmarked package.
826	Division 6.2 Hazardous Materials.

* * * * *

Sarah Sullivan,

Attorney, Ethics & Legal Compliance.

[FR Doc. 2022–26072 Filed 11–25–22; 11:15 am]

BILLING CODE P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

42 CFR Part 10

[Docket No. 2021–0004]

RIN 0906–AB28

340B Drug Pricing Program; Administrative Dispute Resolution

AGENCY: Health Resources and Services Administration (HRSA), Department of Health and Human Services (HHS).

ACTION: Notice of proposed rulemaking.

SUMMARY: The Health Resources and Services Administration implements section 340B of the Public Health Service (PHS) Act, which is referred to as the ''340B Drug Pricing Program'' or the ''340B Program.'' This notice of proposed rulemaking (NPRM) proposes to revise the current 340B administrative dispute resolution (ADR) final rule (Dec. 14, 2020) with a new process and solicits comment on the proposal.

DATES: Written comments and related material to this proposed rule must be received on or before January 30, 2023.

ADDRESSES: You may submit written comments electronically by the following method: *Federal eRulemaking Portal: https://www.regulations.gov.* Follow the instructions on the website for submitting comments. Include the HHS Docket No. ''HRSA–2021–000X'' in your comments. All comments received will be posted without change to *https://www.regulations.gov.* Please do not include any personally identifiable or confidential business information you do not want publicly disclosed.

FOR FURTHER INFORMATION CONTACT: Michelle Herzog, Deputy Director, Office of Pharmacy Affairs, HRSA, 5600 Fishers Lane, Mail Stop 08W12, Rockville, MD 20857; email: *340badr@hrsa.gov;* telephone: 301–594–4353.

SUPPLEMENTARY INFORMATION:

I. Background and Purpose

Section 340B of the PHS Act entitled ''Limitation on Prices of Drugs Purchased by Covered Entities,'' was created under section 602 of Public Law 102–585, the ''Veterans Health Care Act of 1992,'' and codified at 42 U.S.C. 256b. The 340B Program is intended to enable covered entities ''to stretch scarce Federal resources as far as possible, reaching more eligible patients and providing more comprehensive services.'' H.R. Rep. No. 102–384(II), at 12 (1992). The Secretary of Health and Human Services (Secretary) delegated the authority to establish and administer the 340B Program to the HRSA Administrator. The Office of Pharmacy Affairs (OPA), within HRSA, oversees the 340B Program. Eligible covered entity types are defined in Section 340B(a)(4) of the PHS Act, as amended. Section 340B(a)(1) of the PHS Act instructs HHS to enter into pharmaceutical pricing agreements (PPAs) with manufacturers of covered outpatient drugs. Under section 1927(a)(5)(A) of the Social Security Act, a manufacturer must enter into an agreement with the Secretary that complies with section 340B of the PHS Act ''[i]n order for payment to be available under section 1903(a) or under part B of title XVIII of the Social Security Act for covered outpatient drugs of a manufacturer.'' When a drug manufacturer signs a PPA, it agrees that the prices charged for covered outpatient drugs to covered entities will not exceed statutorily defined 340B ceiling prices. Those prices are based on quarterly pricing reports that manufacturers must provide to the Secretary through the Centers for Medicare & Medicaid Services (CMS).

Section 7102 of the Patient Protection and Affordable Care Act (Pub. L. 111–148), as amended by section 2302 of the Health Care and Education Reconciliation Act (Pub. L. 111–152), jointly referred to as the ''Affordable Care Act,'' added section 340B(d)(3) to the PHS Act, which requires the Secretary to promulgate regulations establishing and implementing a binding ADR process for certain disputes arising under the 340B Program. Under the 340B statute, the purpose of the ADR process is to resolve (1) claims by covered entities that they have been overcharged for covered outpatient drugs by manufacturers and (2) claims by manufacturers, after a manufacturer has conducted an audit as authorized by section 340B(a)(5)(C) of the PHS Act, that a covered entity has violated the prohibition on diversion or duplicate discounts.

The ADR process is an *administrative* process designed to assist covered entities and manufacturers in resolving disputes regarding overcharging, duplicate discounts, or diversion, as outlined in statute. The 340B ADR process should be reserved for the above-stated statutory areas where the 340B ADR Panel can apply 340B law and policy to the case-specific factual circumstances at issue in a dispute.

Historically, HHS has encouraged manufacturers and covered entities to work with each other to attempt to resolve disputes in good faith. HHS recognizes that most disputes that occur between individual parties are resolved in a timely manner without needing HRSA's involvement. The ADR process is not intended to replace these good faith efforts and should be considered only when good faith efforts to resolve disputes have been exhausted and failed.

In 2010, HHS issued an advanced notice of proposed rulemaking that requested comments on the development of an ADR process (75 FR 57233, Sept. 20, 2010). HHS received 14

comments. In 2016, HHS issued a notice of proposed rulemaking and received 30 non-duplicative comments. On December 14, 2020, HHS issued a final rule (85 FR 80632, Dec. 14, 2020, herein referred to as the 2020 final rule), which was codified at 42 CFR 10.20 through 10.24. HRSA began implementing the 2020 final rule when it became effective on January 13, 2021, by accepting claims and establishing the ADR process. However, as outlined in the *Justification for proposing to revise the ADR process established by the 2020 final rule* section below, HRSA has encountered policy and operational challenges with implementation of the 2020 final rule. Therefore, HHS is proposing to revise the ADR process set forth in the 2020 final rule and is soliciting comment on this new approach. HHS proposes that the ADR process set forth in this NPRM, if finalized, would revise the ADR process established by the 2020 final rule.

HHS proposes that upon finalization of this NPRM, any claims that are in process and have been submitted pursuant to the 2020 final rule would be automatically transferred to the new process under this proposed rule. HHS is soliciting comment on this proposal, including whether extensions should be granted for pending claims, or whether pending claims should instead be resubmitted by the party that filed the claim to OPA.

II. Discussion of Proposed Rule

Justification for Proposing To Revise the ADR Process Established by the 2020 Final Rule

HHS is soliciting comment on its proposal to revise the current ADR process by modifying the regulations issued under the 2020 final rule. The 2020 final rule poses policy and operational challenges that are described in this section. First, HHS is proposing that the 340B ADR process be revised to be more accessible, administratively feasible and timely. The 340B statute at section 340B(d)(3)(B)(ii) of the PHS Act, requires the establishment of deadlines and procedures that ensure that claims are resolved fairly, efficiently, and expeditiously. This ADR process should be a more expeditious and less formal process for parties to resolve disputes. An ADR process governed by the Federal Rules of Evidence (FRE) and Civil Procedure (FRCP), as envisioned in the 2020 final rule, does not advance these goals. For example, potential petitioners, many of whom are safety net providers in under-resourced communities, may lack the resources to access ADR even if it would be in their best interest to do so. In addition, reliance on the FRE and FRCP could create unnecessary delays in what is intended to be a timely decision-making process. Finally, it is challenging to assign ADR Panel members with expertise in the FRE or FRCP. In implementing the 2020 final rule, HRSA received questions from stakeholders about the formality of the ADR process and the legal requirements under the FRCP for submitting a petition and accompanying documents, *e.g.,* whether the filings submitted must conform to the FRCP, which added to the complexity and difficulty of the ADR process.

HHS is proposing an ADR process that is designed to assist covered entities and manufacturers in resolving disputes regarding overcharging, duplicate discounts, or diversion, as set forth in the 340B statute. HHS recognizes that many covered entities are small, community-based organizations with limited means and for the ADR process to be workable, it needs to be accessible. These covered entities may not have the financial resources to hire an attorney to navigate the complex FRCP and FRE requirements and engage in a lengthy, trial-like process, as envisioned in the 2020 final rule. The 340B statute does not compel such a process. The 2020 final rule also institutes a minimum threshold of $25,000 or where the equitable relief sought will likely have a value of more than $25,000 to be met before the petition could be filed. HHS believes that flexibility should be maintained with respect to the amount of damages and is therefore not proposing a minimum threshold for accessing the ADR process. However, covered entities and manufacturers should carefully evaluate whether the ADR process is appropriate for minor or de minimis claims given the time and resource investment required of the parties involved. After deliberate consideration of these issues, HHS is proposing a more accessible process where stakeholders have equal access to the ADR process and can easily understand and participate in it without expenditure of significant resources or legal expertise. HRSA is seeking comments on whether to retain the existing minimum threshold, eliminate the minimum threshold altogether, or set a new minimum threshold for submitting a claim to ensure a fair, efficient, and expeditious process.

Second, the 2020 final rule states that the Secretary of HHS shall establish a 340B ADR Board that consists of at least six members appointed by the Secretary with equal numbers from HRSA, CMS, and the HHS Office of the General Counsel (OGC). It also requires the HRSA Administrator to select three members from the ADR Board to form a 340B ADR Panel and that each 340B ADR Panel include one ex-officio, non-voting member (appointed by the Secretary) from OPA to assist the 340B ADR Panel. The 2020 final rule states that HRSA and CMS ADR Board members must have relevant expertise and experience in drug pricing or drug distribution and that the OGC ADR Board members must have expertise and experience in handling complex litigation.

While the 340B Program is related to drug pricing and drug distribution, it is a distinct program that requires knowledge of the 340B statute and specific 340B Program operations. Therefore, HHS is proposing that the 340B ADR Panel members should have specific knowledge of the authorizing statute and the operational processes of the 340B Program (*e.g.,* registration and program integrity efforts). Consequently, HHS is proposing an ADR process and Panel in which 340B subject matter experts from OPA will resolve matters that proceed through the ADR process. Moreover, decisions by subject matter experts from OPA are less likely to conflict with current 340B policy. All members on the 340B ADR Panel will undergo an additional screening prior to reviewing a specific claim to ensure that the 340B ADR Panel member was not involved in previous agency actions (including previous 340B ADR Panel decisions) concerning the specific issue of the ADR claim as it relates to the specific covered entity or manufacturer involved.

Third, this NPRM proposes that prior to initiating the ADR process, parties must undertake good-faith efforts to resolve the disputed issues. Historically, HRSA has encouraged parties to work in good faith and covered entities and manufacturers have not had significant numbers of disputes due to the success of these good-faith-resolution efforts.

Other 340B Program administrative improvements have narrowed the areas where parties had, in the past, disagreed over 340B Program issues. For example, HRSA released the pricing component of the 340B Office of Pharmacy Affairs Information System (340B OPAIS) in February 2019, which, for the first time, provided 340B ceiling prices to authorized covered entity users. Implementation of that system has provided the necessary transparency to decrease disputes specific to the 340B ceiling price and its calculation. Outside of an issue involving some

manufacturers placing restrictions on certain covered entities use of contract pharmacies, OPA has only received three covered entity overcharge complaints since making 340B ceiling prices available to covered entities through 340B OPAIS.

Of additional note, prior to the 2020 final rule, stakeholders were able to utilize an informal dispute resolution process to resolve disputes between covered entities and manufacturers (61 FR 65406, Dec. 12, 1996) (''1996 guidelines''). There have been only four informal dispute resolution requests since the publication of the 1996 guidelines. Of the four informal dispute resolution requests received, two were terminated by HRSA due to non-participation by one of the parties, another was dismissed due to lack of sufficient evidence, and the last was terminated because the parties disputed each other's attempts of good faith resolution. The relatively small number may also be attributed to the parties' successful attempts to resolve issues in good faith. With this very small number of past informal disputes, the increased transparency in 340B pricing data, and HRSA's encouragement that parties work to resolve issues in good faith, HHS is proposing an ADR process more closely aligned with the process that was established in the 1996 guidelines, and less trial-like and resource-intensive—for both the participants and HHS—than that established in the 2020 final rule.

Also, in the time since Congress enacted the 340B ADR statutory provision, HRSA implemented its extensive audit program in 2012, which ensures that participating covered entities and manufacturers are able to demonstrate compliance with all 340B Program requirements. On average, HRSA conducts 200 covered entity audits each fiscal year including child/associate sites and contract pharmacies associated with the covered entities, and issues findings in three areas: eligibility, diversion, and duplicate discounts. These findings vary in terms of severity—from covered entities not having the correct information in the 340B OPAIS to the diversion of 340B drugs to individuals who are not patients of the covered entity. HRSA conducts approximately five manufacturer audits each year and makes findings related to manufacturers charging above the 340B statutorily required ceiling price and manufacturers not reporting the required 340B pricing data to HRSA. All audit results are posted in summary form on the 340B Program website.[1] Since the establishment of HRSA audits of covered entities and manufacturers, HRSA has been able to identify 340B compliance concerns that would have previously been disputed. In addition to the extensive audit program, HRSA has also developed a comprehensive program integrity strategy to ensure compliance among all stakeholders participating in the 340B Program. These activities include quarterly checks of 340B Program eligibility, a self-disclosure and allegation process which involves communication between OPA and the stakeholders regarding the compliance issue, and spot checks of supporting eligibility documentation including contracts with state and local governments and contract pharmacy agreements.

Further, manufacturers are required to audit a covered entity prior to filing an ADR claim pursuant to section 340B(d)(3)(B)(iv) of the PHS Act. Over the last 3 years, two manufacturers have requested to audit covered entities. In both instances, HRSA approved the audits and received final audit reports from the manufacturers. The historical infrequency of manufacturer audit requests along with the requirement that manufacturers audit covered entities prior to filing an ADR claim suggests that the number of manufacturer ADR claims will be low, but HHS welcomes comment on its assessment.

HRSA's impartial facilitation of good faith resolution efforts have allowed parties to take advantage of opportunities for open communication to better understand each other's positions and come to an agreement, without need for formal intervention by HRSA (*e.g.,* through a HRSA targeted audit).

Fourth, the ADR process should be reserved for those disputes set forth in the statutory ADR provision (overcharge, diversion, or duplicate discount). For example, a manufacturer that audited a covered entity may report its findings of alleged duplicate discounts identified by specific purchasing patterns over a period of time. The covered entity may disagree with the audit assessment of purchases. In this example, the matter would be best resolved through the ADR process as it involves an alleged duplicate discount violation.

This NPRM aligns with the statutory provisions by outlining the specific types of claims that can be brought forth through the ADR process—claims for overcharge, diversion or duplicate discounts. HHS is soliciting comment on whether there may be appropriate claims limitations to ensure that ADR is limited to the specific statutory areas (diversion, duplicate discounts and overcharges).

HHS is also proposing as part of the ADR process that if the ADR Panel determines that a specific issue in a claim is the same as or similar to an issue that is pending in Federal court, the ADR Panel will suspend review of the claim until such time the issue is no longer pending in Federal court. HHS welcomes comments on its proposal to suspend ADR review of claims that involve issues pending in Federal court.

Fifth, HHS believes that there should be an opportunity for dissatisfied parties to seek reconsideration of the 340B ADR Panel's decision by HRSA. Several comments received on the 2016 NPRM requested an appeals process be made available to all parties. This NPRM proposes an appeals or reconsideration process option that would be made available to either party. Under the 2020 final rule and under this proposal, the Secretary has the inherent authority to review and reverse or alter the 340B ADR Panel's decision. Discretionary review by the Secretary would similarly apply to any reconsideration decision upon finalization of this NPRM. The final agency decision will be binding upon the parties involved in the dispute, unless invalidated by an order of a Federal court.

Therefore, based on these concerns with the 2020 final rule, HHS is proposing in this NPRM to (1) establish a more accessible ADR process that is reflective of an administrative process rather than a trial-like proceeding; (2) revise the structure of the 340B ADR Panel so that it is comprised of 340B Program subject-matter experts; (3) ensure that the parties have worked in good faith before proceeding through the ADR process; (4) more closely align the ADR process with the provisions set forth in the 340B statute (diversion, duplicate discounts, and overcharges); and (5) include a reconsideration process for parties dissatisfied with a 340B ADR Panel's decision. HHS is seeking comments on all components of the NPRM, and whether HHS should consider specific alternatives.

III. Summary of the Proposed Regulations

The proposed revisions to 42 CFR part 10 are described according to the applicable section of the regulations. This NPRM proposes to add and revise the definitions of ''Administrative Dispute Resolution Panel (340B ADR Panel),'' ''Administrative Dispute

[1] See: *https://www.hrsa.gov/opa/program-integrity/index.html.*

Resolution Process,'' ''claim,'' ''consolidated claim,'' ''joint claim,'' and ''Office of Pharmacy Affairs'' at § 10.3 as set forth below. HHS proposes to revise the language in subpart C as set forth below.

Section 10.3 Definitions

HHS is proposing to add and revise the following definitions: ''Administrative Dispute Resolution Panel (340B ADR Panel),'' ''Administrative Dispute Resolution Process,'' ''claim,'' ''consolidated claim,'' ''joint claim,'' and ''Office of Pharmacy Affairs.''

Subpart C—Administrative Dispute Resolution

Section 10.20 340B Administrative Dispute Resolution Panel

(a) Members of the 340B ADR Panel

As required by section 340B(d)(3)(B)(i) of the PHS Act, regulations promulgated by the Secretary shall designate or establish a decision-making official or body within HHS to review and make a decision for claims filed by covered entities and manufacturers. HHS proposes to revise the composition of the decision-making body (referred to as the ''340B ADR Panel'' or ''Panel'') that will review and resolve such claims.

In this section, HHS is proposing that the Secretary appoint a roster of eligible individuals (Roster), consisting of OPA staff, to serve on the 340B ADR Panels. The Roster will include no less than 10 staff from OPA. The OPA Director, or designee, shall select at least three members from the Roster to form a 340B ADR Panel to facilitate the review and resolution of an ADR claim. The OPA Director would have the authority to ensure that the Panel is operating in accordance with this proposed rule, including through the selection of the Panel members and the removal of Panel members for reasons including but not limited to conflicts of interest as described in paragraph (b) or pursuant to instructions from the Secretary in accordance with the Secretary's authority to remove 340B ADR Panel or Roster members at will.

Subject matter experts in the 340B Program are best suited to resolve issues for covered entity and manufacturer claims, in a manner similar to the process that OPA uses when it conducts program compliance audits of covered entities and manufacturers. OPA staff are knowledgeable of 340B Program operations and oversight. They have years of subject matter expertise on the complex matters that may arise as part of dispute resolution. OPA also has experience in conducting audits and has a robust audit program of both covered entities and manufacturers that focuses on many of the challenges facing stakeholders in implementing 340B Program policy. OPA has already instituted processes to help parties resolve issues (many of which are resolved in good faith or are errors/misunderstandings). For example, the 340B Program has existing processes and reporting when a covered entity asserts a 340B price is unavailable. OPA has the capability and experience to initiate a dialogue between covered entities and manufacturers to resolve such matters and has done so successfully on many occasions. OPA's access to appropriate stakeholder contact information and awareness of 340B drug distribution plans have facilitated resolutions to certain drug product access concerns. These examples illustrate that OPA has the requisite expertise to administer and staff the 340B ADR Panels to ensure alignment, consistency, and transparency in ADR decisions, and understands the impact of these decisions on the 340B Program as a whole, and the 340B Program audits, as well as other program integrity initiatives.

HHS is soliciting specific comments on the proposed size and composition of the 340B ADR Panel, including the proposal to maintain the 340B ADR Panel within OPA or whether staff from other components of HRSA or HHS more generally should serve as members of the Panel.

(b) Conflicts of Interest

The ADR process assists covered entities and manufacturers in resolving disputes specifically related to overcharging, duplicate discounts, or diversion as outlined in section 340B(d)(3) of the PHS Act. Neither HHS, HRSA, nor OPA are parties to the ADR process, but rather help facilitate the process between covered entities and manufacturers. HHS is proposing that OPA staff serve on the 340B ADR Panel to review and make decisions on claims that are brought forth through the ADR process. HHS is also proposing that the OPA Director will ensure that each 340B ADR Panel member is screened prior to reviewing a claim and that there are no conflicts of interest between the parties involved in the dispute and the 340B ADR Panel member. As background, HRSA employs an ongoing, rigorous ethics clearance process for OPA staff to ensure that there are no conflicts of interest between staff and 340B stakeholders. OPA employees undergo an annual ethics clearance process in accordance with the U.S. Office of Government Ethics policies applicable to Federal employees. As part of this annual clearance, OPA staff are assessed in the following areas: if they have a (1) financial interest in a covered entity or a manufacturer participating in the 340B Program; (2) family or close relation who is either employed by or otherwise involved with a covered entity or a manufacturer participating in the 340B Program; (3) current or former business or employment relationship to a covered entity or manufacturer participating in the Program. If a potential conflict arises, OPA staff must immediately inform their supervisors and disclose any potential issues. In this case, depending on the circumstances, the staff member may be removed from the ADR Panel. However, to ensure fairness and objectivity in the ADR process, this NPRM proposes that each OPA 340B ADR Panel member also undergo additional screening prior to reviewing a specific claim and will not be allowed to review the claim if any conflicts of interest exist. In addition, this NPRM proposes that dedicated OPA staff members will have specific ADR duties as part of their job functions, including being part of the 340B ADR Panel that makes decisions on an ADR claim.

The staff with ADR duties in their job functions will also be screened prior to being assigned to a 340B ADR Panel to ensure that they have not been involved in prior 340B Program oversight work related to the parties involved, including previous 340B ADR Panel decisions concerning the ADR claim as it relates to the specific covered entity or manufacturer involved. For example, if an OPA staff member were involved in reviewing or approving an audit work plan for a specific manufacturer that is part of an ADR claim, then that staff member would not serve on that 340B ADR Panel. This would not, however, preclude an OPA staff member from serving on the 340B ADR Panel when the covered entities or manufacturers were parties in a prior ADR decision. HHS solicits comments on this aspect of the proposed process and will consider other proposals to ensure that the 340B ADR Panel members are fair and objective.

In addition, HHS proposes that OPA staff members serving on a 340B ADR Panel may be removed by the OPA Director for reasons including but not limited to conflicts of interest. For example, if it is determined prior to or during the course of a Panel member's review of a claim that there is a conflict of interest, as described in paragraph (b), with respect to that claim, the Panel member would be removed from the

Panel and replaced by another OPA staff member from the Roster of eligible individuals.

(c) Secretarial Removal Power

The Secretary retains the authority to remove an individual from the Roster of persons appointed to sit on a 340B ADR Panel at any time, such that the individual may no longer serve on any 340B ADR Panel. In addition to the ability to remove an individual from the Roster, the Secretary may also remove a panelist from a particular 340B ADR Panel at any time.

(d) Duties of the 340B ADR Panel

HHS is proposing that the role of the 340B ADR Panel is to independently review and apply 340B law and policy to the case-specific factual circumstances at issue in an overcharge, diversion, or duplicate discount dispute. In this proposed rule, once OPA determines a claim meets the requirements set forth in § 10.21(b) and forwards the claim to the 340B ADR Panel, the Panel will review and evaluate all documentation submitted by the party initiating the claim. The 340B ADR Panel may request additional information or clarification from any party involved in the claim during the review and evaluation process. The 340B ADR Panel will also facilitate the review of covered entity requests for information and documents from manufacturers and third parties as outlined in § 10.22 of this proposed rule. If the 340B ADR Panel finds that either party does not fully respond to a request for information or documents from OPA or the 340B ADR Panel, HHS proposes that the 340B ADR Panel may draw an adverse inference and make a decision on the claim based on the information submitted in the claim package that moved forward for review.

HHS also proposes that the 340B ADR Panel would conduct a review of the documents submitted by the parties and evaluate claims based on the information received (including from any associations or organizations, or legal counsel representing the parties) unless, at the 340B ADR Panel's discretion, the nature of the claim necessitates that a meeting with the parties be held. In addition, the 340B ADR Panel may consult with, as appropriate or necessary, other staff within OPA, other HHS offices, other Federal agencies, or with outside parties to the extent additional information is needed.

The 340B ADR Panel will issue a decision on the claim in accordance with § 10.23. HHS proposes that the 340B ADR Panel's decision must represent the decision of a majority of the Panel members.

Section 10.21 Claims

(a) Claims Permitted

Section 7102 of the Affordable Care Act added section 340B(d)(3) to the PHS Act. It instructs the Secretary to establish and implement a binding ADR process to resolve certain claims of 340B Program statutory violations. Section 340B(d)(3)(A) of the PHS Act specifies that the ADR process is to be used to resolve: (1) claims by covered entities that they have been overcharged by manufacturers for drugs purchased under this section and (2) claims by manufacturers, after a manufacturer has conducted an audit of a covered entity, as authorized by section 340B(a)(5)(C) of the PHS Act, that a covered entity has violated the prohibitions against duplicate discounts and diversion (sections 340B(a)(5)(A) and (B) of the PHS Act). This NPRM proposes aligning claims to those outlined in the 340B statute and is also proposing that the harm alleged (overcharge, diversion, duplicate discount) be specific to the parties identified in the claim. HHS believes that the role of the 340B ADR Panel is to independently review and apply 340B law and policy to the case-specific factual circumstances at issue in an overcharge, diversion, or duplicate discount dispute. OPA will review each claim to ensure the claim meets the filing requirements set forth in the rule and as outlined in § 10.21(b) prior to forwarding the claim to the 340B ADR Panel.

(b) Requirements for Filing a Claim

HHS proposes that a covered entity and a manufacturer meet certain requirements for filing a claim. These proposed requirements will ensure that a claim of the type specified in section 340B(d)(3)(A) of the PHS Act is the subject of the dispute.

The claims will be submitted through a secure electronic mechanism to safeguard confidential and proprietary information. HHS will provide additional detail as to the mechanism for submitting claims in future sub-regulatory guidance.

HHS is proposing that covered entities and manufacturers file a written claim, based on the facts available, to OPA within 3 years of the alleged specified violation and that any claim not filed within 3 years shall be time barred. The proposed requirement that a claim be filed within 3 years is consistent with the record retention expectations for the 340B Program and would ensure that covered entities and manufacturers have access to relevant records needed to review and respond to claims. This proposal would ensure that documents are submitted with each claim to verify that the alleged violation is not time barred. HHS requests public comment concerning the 3-year limitation on claims submission. HHS is proposing that while there is no minimum threshold to submit a claim through the ADR process, parties should carefully consider whether the ADR process is appropriate for de minimis claims given the time, resources, and investment needed to undertake ADR.

HHS is also proposing that all files, documents, or records associated with the specified claim that are the subject of the dispute must be maintained by the covered entity and/or manufacturer until the final agency decision is issued.

Covered Entity Claims

In § 10.21(b)(2), HHS proposes that to be eligible for the ADR process, each claim filed by a covered entity must provide the basis for the covered entity's belief that it has been overcharged by a manufacturer, along with any such documentation as may be requested by OPA to evaluate the accuracy of the claim. Such documentation may include, but is not limited to: (1) a 340B purchasing account invoice which shows the purchase price by national drug code, less any taxes and fees; (2) the 340B ceiling price for the drug during the quarter(s) corresponding to the time period(s) of the claim; (3) documentation by the manufacturer or wholesaler of the attempts made to purchase the drug via a 340B account at the ceiling price, which resulted in the instance of alleged overcharging; (4) documentation and correspondence with HRSA regarding the alleged overcharge, including price unavailability forms or other correspondence; and (5) an estimate of monetary damages. HHS believes that these documents are readily available to a covered entity in the usual course of business and should not be overly burdensome to produce; however, HHS requests comment on the feasibility of producing the documentation as proposed. HHS is also proposing to require the covered entity, at the time of filing, to provide OPA with a written summary of attempts to work in good faith to resolve the instance of overcharging with the manufacturer at issue. An example of documented good faith efforts could include attempts to enter into discussion to resolve disputes or communication records between the covered entity and the manufacturer. HHS is seeking comment on what other types of documentation would indicate

good faith effort and whether a threshold for attempts at communication should be established.

Manufacturer Claims

In § 10.21(b)(3), HHS proposes that to be eligible for the 340B ADR process, each claim filed by a manufacturer must include documents sufficient to support a manufacturer's claim that a covered entity has violated the prohibition on diversion and/or duplicate discount, along with any such documentation as may be requested by OPA to evaluate the accuracy of the claim. Such documentation shall include but is not limited to: (1) a final audit report which indicates that the manufacturer audited the covered entity for compliance with the prohibition on diversion (section 340B(a)(5)(B) of the PHS Act) and/or duplicate discounts (section 340B(a)(5)(A) of the PHS Act); (2) any communication with the State Medicaid agency indicating rebates claimed (for duplicate discount violations only); (3) the covered entity's written response to the manufacturer's audit finding(s); and (4) an estimate of monetary damages. HHS is proposing to require the manufacturer, at the time of filing, to submit a written summary of attempts to work in good faith to resolve the claim with the covered entity. An example of documented good faith efforts could include attempts to enter into discussion to resolve disputes prior to an audit of a covered entity, along with attempts as part of the covered entity response to any findings. It could also include evidence of communication between the covered entity and the manufacturer. HHS is seeking comments on what other types of evidence would constitute the parties working in good faith and whether a threshold for attempts at communication should be established.

(c) Combining Claims

HHS proposes that, if requested, covered entities or manufacturers may be permitted to combine individual claims. Section 340B(d)(3)(B)(vi) of the PHS Act permits ''multiple covered entities to jointly assert claims of overcharges by the same manufacturer for the same drug or drugs in one administrative proceeding...'' For covered entity joint claims, HHS proposes that the claim must list each covered entity and its 340B IDs and include documentation as described in paragraph (b)(2) and/or information from each individual covered entity demonstrating that each covered entity meets all of the requirements for filing an ADR claim. Additionally, a letter requesting the combining of claims must also accompany the claim at the time of filing and must document that each covered entity consents to the combination of the claim, including signatures of the individuals representing each covered entity.

Pursuant to section 340B(d)(3)(B)(vi) of the PHS Act, joint claims are also permitted on behalf of covered entities by associations or organizations representing their interests. Therefore, this NPRM proposes that the covered entities represented in the claim must be members of the association or the organization representing them and that each individual covered entity listed in the claim must meet the requirements listed in paragraph (b) for filing a claim with OPA.

The proposed joint claim must assert overcharging by a single manufacturer for the same drug(s), and the organization or association will be responsible for filing the claim. HHS also proposes requiring that a letter requesting the combining of claims must accompany the claim and must include documentation that each covered entity consents to the organization or association asserting a claim on its behalf, including signatures of individuals representing each covered entity and a point of contact for the covered entity. HHS is also proposing that covered entities will not be permitted to file claims against multiple manufacturers in a single ADR proceeding. In other words, covered entities are only permitted to file a claim (individual or joint) against a single manufacturer for the same drug(s) in a single ADR proceeding.

Section 340B(d)(3)(B)(v) of the PHS Act permits the consolidation of claims brought by more than one manufacturer against the same covered entity if consolidation is consistent with the statutory goals of fairness and economy of resources. This NPRM proposes that the claim must list each manufacturer and include documentation as described in paragraph (b)(3), and/or information from each manufacturer demonstrating that each individual manufacturer meets the requirements listed in paragraph (b) for filing an ADR claim. HHS also proposes that a letter requesting consolidation of claims must be submitted with the claim and must document that each manufacturer consents to the consolidation of the claims, including signatures of the individuals representing the manufacturers and a single point of contact for the claim being filed on behalf of the consolidated group. The statutory authority for implementing the 340B ADR process does not permit consolidated claims on behalf of manufacturers by associations or organizations representing their interests. Therefore, HHS is not proposing this option in this NPRM.

As required by the 340B statute, HHS is proposing an ADR process that allows more than one manufacturer to consolidate claims against the same covered entity. With regard to the consolidation of claims by manufacturers against the same covered entity, HHS is proposing that the 340B ADR Panel will determine whether such consolidation is appropriate and consistent with the goals of fairness and economy of resources.

(d) Deadlines and Procedures for Filing a Claim

HHS proposes that covered entities and manufacturers can file a claim with OPA, or any successor office assigned to administer the 340B Program, demonstrating that they satisfy the requirements described in paragraph (b). The OPA staff conducting the initial review of a claim will not be appointed to serve on a 340B ADR Panel reviewing that specific claim. OPA will contact the initiating party once the claim has been received. OPA will conduct an initial review of the claim and may request additional information. If additional information is requested, the initiating party filing the claim will have 20 business days from receipt of the request to respond. If the initiating party does not respond to the request for additional information within the time period specified or request an extension, the claim will not move forward to the 340B ADR Panel for review. OPA will determine whether a claim will be forwarded to the 340B ADR Panel for review in accordance with paragraph (b). In the event that a claim does not move forward for review, HHS is proposing that all parties listed on the claim will receive information from HRSA regarding the reason(s) why the claim did not move forward.

OPA will review all information submitted as part of the claim to verify that the requirements for filing a claim have been met and will provide written notification to the initiating party that the claim is complete. HHS is proposing that once the claim is deemed complete, OPA will also provide written notification to the opposing party that the claim was submitted to OPA and that they will have 30 business days to provide OPA with a response. This written notification will be provided to the opposing party before the claim moves forward to the 340B ADR Panel. As part of this written notification, OPA will provide a copy of the claim and additional instructions regarding the

ADR process, including timelines and information on how to submit their response as described in paragraph (e). At such time, OPA will also notify the initiating party that their claim is deemed complete and meets the requirements of paragraph (b).

In addition, HHS proposes that the claim will be forwarded to the 340B ADR Panel for review after OPA receives the opposing party's response. OPA would provide additional information on the 340B ADR process to both the initiating and opposing parties at that time, including contact information for requested follow-up communications.

HHS proposes that if the claim does not move forward for review by the 340B ADR Panel, OPA will send written notice to both parties briefly stating the basis for the decision and will advise the party that they may revise and refile the claim if the party has new information to support the alleged statutory violation.

(e) Responding to a Submitted Claim

HHS proposes that once the parties have been notified by OPA that the claim has met the requirements in paragraph (b) and the claim does not otherwise prevent OPA from moving it forward to the 340B ADR Panel for review as described in paragraph (d), the opposing party will have 30 business days to submit a written response to the allegation to OPA. The opposing party may submit a request for an extension of the initial 30 days and OPA will make a determination to approve or disapprove such request and notify both parties. Once the opposing party's response has been received, OPA will provide a copy to the initiating party and will notify both parties that the claim has moved forward for review by the 340B ADR Panel. If the opposing party does not provide a response or otherwise elects not to participate in the 340B ADR process, OPA will forward the information included as part of the initiating party's claim and the 340B ADR Panel will render its decision after review of the information submitted in the initial claim. Subsequent requests for information regarding the claim would be made by the 340B ADR Panel as appropriate, and the 340B ADR Panel will consider the information gathered during the ADR process and may request additional information from the parties.

Section 10.22 Covered Entity Information and Document Requests

Pursuant to section 340B(d)(3)(B)(iii) of the PHS Act, regulations promulgated by the Secretary for the 340B ADR process will establish procedures by which a covered entity may discover or obtain information and documents from manufacturers and third parties relevant to a claim that the covered entity has been overcharged by the manufacturer. This NPRM proposes that such covered entity information requests be facilitated by the 340B ADR Panel. HHS proposes that, to request information or documents necessary to support its claim from an opposing party, a covered entity must submit a written request to the 340B ADR Panel no later than 20 business days after the entity was notified by OPA that the claim has moved forward for the 340B ADR Panel's review. The 340B ADR Panel will review the information/document request to ensure that it is reasonable, relevant, and within the scope of the asserted claim. The 340B ADR Panel will notify the covered entity in writing if any request is deemed reasonable and within the scope of the asserted claim and permit the covered entity to submit a revised information/document request, if it is not.

In this section, HHS proposes that the 340B ADR Panel will consider relevant factors, such as the scope of the information/document request, whether there are consolidated claims, or the involvement of one or more third parties in distributing drugs on behalf of the manufacturer and that once reviewed, the 340B ADR Panel will submit the information/document request to the manufacturer, which must respond within 20 business days.

HHS also proposes that the manufacturer must fully respond in writing to the information/document request and submit its response to the 340B ADR Panel by the stated deadline and that the manufacturer is responsible for obtaining relevant information/documents from wholesalers or other third parties with which it contracts for sales or distribution of its drugs to covered entities. HHS proposes that if a manufacturer anticipates it will not be able to respond fully by the deadline, the manufacturer may request one extension in writing within 15 business days. The extension request that is submitted to the 340B ADR Panel must include any available information or documents, the reason why the deadline is not feasible, and outline a proposed timeline for fully responding to the information/document request. The 340B ADR Panel will review the extension request and notify both the manufacturer and the covered entity in writing as to whether the request for an extension is granted and the date of the new deadline, if any.

HHS proposes that if the 340B ADR Panel finds that a manufacturer has failed to respond or fully respond to a covered entity information/document request, the 340B ADR Panel may draw an adverse inference, and proceed with facts that have already been established in the proceeding. Such adverse inference could include holding facts to have been established in the proceeding or precluding a party from contesting a particular issue. HHS invites specific comment on this issue.

Section 10.23 340B ADR Panel Decision Process

In § 10.23, HHS proposes that the 340B ADR Panel will conduct an initial review of the claim to determine if the specific issue that would be brought forth in a claim is the same as or similar to an issue that is pending Federal court. If this determination is made, the 340B ADR Panel will suspend review of the claim until such time the issue is no longer pending in Federal court.

If suspending review of the claim is not appropriate, the 340B ADR Panel would review the documents submitted by the parties and determine if there is adequate support to conclude that an overcharge, diversion, or a duplicate discount has occurred in the specific case at issue. In alignment with the statute at section 340B(d)(3)(B)(ii) of the PHS Act, the 340B ADR Panel will seek to ensure that its review and decision of the claim is conducted in a fair, efficient and expeditious manner. The timeline for the review is wholly dependent on the complexity of each claim submitted through the ADR Process.

After review of the claim, the 340B ADR Panel would prepare a decision letter, which includes the 340B ADR Panel's findings regarding the alleged violation. HHS is proposing that the 340B ADR Panel's decision letter be submitted to all parties in the dispute and the OPA Director. HHS is also proposing, as described in § 10.24, that either party may, within 20 business days of the receipt of the 340B ADR Panel's decision letter, initiate a reconsideration of the 340B ADR Panel's decision. While the 340B ADR Panel decision would conclude the 340B ADR Panel process, either party may, at its sole discretion, request reconsideration as described in § 10.24.

If HRSA does not receive a reconsideration request from either party within 20 business days of the issuance of the 340B ADR Panel's decision letter, or the HRSA Administrator has not initiated a reconsideration request as described in § 10.24, the 340B ADR Panel's decision will serve as the final agency decision

letter and will be binding upon the parties involved in the dispute, unless invalidated by order of a Federal court. The 340B ADR Panel decision would bind only the specific parties to the dispute. In addition, in accordance with section 340B(d)(3)(C) of the PHS Act, any dissatisfied party may also seek judicial review of the final agency decision.

Once the parties involved have been notified of the final agency decision, the OPA Director will consider whether to take enforcement action or ensure corrective action, to the extent allowed under the 340B statute. For example, if the 340B ADR Panel finds that a covered entity has violated the prohibition against diversion, the OPA Director may require, as a sanction, that the covered entity repay the affected manufacturer. If the 340B ADR Panel finds that a manufacturer overcharged a covered entity, the OPA Director may require as a sanction that the manufacturer refund or issue a credit to the affected covered entity.

Section 10.24 340B ADR Panel Decision Reconsideration Process

HHS is proposing that after a decision has been issued by a 340B ADR Panel, if either the initiating party or the opposing party is dissatisfied with the decision, they may request administrative reconsideration of the claim if the requirements for obtaining a reconsideration are met. The HRSA Administrator also has the discretion to initiate a reconsideration if no request is received by the parties. HHS is proposing that the reconsideration be conducted by the HRSA Administrator, or designee, as their review will be independent of the 340B ADR Panel's decision.

HHS is proposing that the party requesting a reconsideration must submit its request in writing to both the other party involved in the claim and to the HRSA Administrator within 20 business days of receiving the 340B ADR Panel's decision. The request for reconsideration must include a copy of the 340B ADR Panel's decision letter, and the burden lies with the party filing the reconsideration to submit written documentation indicating why a reconsideration is warranted. New information may not be submitted as part of the reconsideration process in order to remain consistent with the facts that were reviewed by the 340B ADR Panel in determining the final agency decision. HHS proposes that parties be entitled to reconsideration of their claim upon demonstration that the 340B ADR Panel decision may have been inaccurate or flawed. HHS invites comments on its proposal regarding the scope of the reconsideration process.

HHS is proposing that the HRSA Administrator review the 340B ADR Panel decision, consult with HHS personnel, as necessary, and review any information indicating that a reconsideration is warranted based on inaccurate or flawed information.

Under the NPRM, the HRSA Administrator makes a determination of a reconsideration by issuing a decision that provides the basis for the new determination or dismissing the reconsideration. The HRSA Administrator will review the reconsideration in a fair, efficient, and expeditious manner; however, the timeline for making a decision can vary due to the complexity of each case. HRSA will work with the parties involved to ensure that they are updated about the process. The HRSA Administrator's reconsideration decision would be considered the final agency decision.

IV. Statutory and Regulatory Requirements

A. Regulatory Impact Analysis

HHS has examined the effects of this proposed rule as required by Executive Order 12866 on Regulatory Planning and Review (September 30, 1993), Executive Order 13563 on Improving Regulation and Regulatory Review (January 8, 2011), the Regulatory Flexibility Act (September 19, 1980, Pub. L. 96–354), the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4), and Executive Order 13132 on Federalism (August 4, 1999).

B. Executive Orders 12866 and 13563

Executive Orders 12866 and 13563 direct agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). Executive Order 13563 is supplemental to and reaffirms the principles, structures, and definitions governing regulatory review as established in Executive Order 12866, emphasizing the importance of quantifying both costs and benefits, of reducing costs, harmonizing rules, and promoting flexibility. Section 3(f) of Executive Order 12866 defines a ''significant regulatory action'' as an action that is likely to result in a rule: (1) having an annual effect on the economy of $100 million or more in any one year, or adversely and materially affecting a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or state, local, or tribal governments or communities (also referred to as ''economically significant''); (2) creating a serious inconsistency or otherwise interfering with an action taken or planned by another agency; (3) materially altering the budgetary impacts of entitlement grants, user fees, or loan programs or the rights and obligations of recipients thereof; or (4) raising novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive order. A regulatory impact analysis must be prepared for major rules with economically significant effects ($100 million or more in any one year), and a ''significant'' regulatory action is subject to review by the Office of Management and Budget (OMB).

This NPRM is not likely to have an economic impact of $100 million or more in any one year; therefore, it has not been designated an ''economically significant'' rule under section 3(f)(1) of Executive Order 12866. This NPRM would modify the framework for HHS to resolve certain disputed claims regarding manufacturers overcharging covered entities and disputed claims of diversion and duplicate discounts by covered entities audited by manufacturers under the 340B Program. HHS does not anticipate the modification of the ADR process to result in significant economic impact. This is consistent with a similar determination in the 2020 final rule that ''HHS does not anticipate the introduction of an ADR process to result in significant economic impacts.''

C. The Regulatory Flexibility Act

The Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) (RFA) and the Small Business Regulatory Enforcement and Fairness Act of 1996, which amended the RFA, require HHS to analyze options for regulatory relief of small businesses. If a rule has a significant economic effect on a substantial number of small entities, HHS must specifically consider the economic effect of the rule on small entities and analyze regulatory options that could lessen the impact of the rule. HHS will use a RFA threshold of at least a three percent impact on at least five percent of small entities.

This NPRM proposes requirements that would affect drug manufacturers (North American Industry Classification System code 325412: Pharmaceutical Preparation Manufacturing). The small business size standard for drug manufacturers is 750 employees.

Approximately 700 drug manufacturers participate in the 340B Program. While it is possible to estimate the impact of this NPRM on the industry as a whole, the data necessary to project changes for specific manufacturers or groups of manufacturers is not available, as HRSA does not collect the information necessary to assess the size of an individual manufacturer that participates in the 340B Program. This NPRM would also affect health care providers. For purposes of the RFA, HHS considers all health care providers to be small entities either by virtue of meeting the Small Business Administration (SBA) size standard for a small business, or for being a nonprofit organization that is not dominant in its market. The current SBA size standard for health care providers ranges from annual receipts of $7 million to $35.5 million. As of April 1, 2022, 13,730 covered entities participate in the 340B Program.

This NPRM would modify the administrative mechanism to review claims by manufacturers that covered entities have violated certain statutory obligations and claims by covered entities alleging overcharges for 340B covered outpatient drugs by manufacturers. This proposed ADR process would require submission of documents that manufacturers and covered entities are already required to maintain as part of their participation in the 340B Program. HHS expects that this documentation would be readily available prior to submitting a claim. Therefore, the collection of this information would not result in an economic impact or create additional administrative burden on these businesses.

HHS believes the proposed ADR process would provide a less burdensome option for resolving claims that would be more streamlined and less trial-like in nature than the 2020 final rule. This NPRM provides an option to join or consolidate claims by similar situated entities, and covered entities may have claims asserted on their behalf by associations or organizations which could reduce costs. HHS has determined, and the Secretary certifies, that this NPRM would not have a significant economic impact on a substantial number of small health care providers or a significant impact on the operations of a substantial number of small manufacturers; therefore, HHS is not preparing an analysis of impact for the purposes of the RFA. HHS estimates that the economic impact on the less than 5 percent of small entities and small manufacturers participating in the 340B Program would be minimal and less than a 3 percent economic burden and therefore does not meet the RFA threshold of 3 percent. HHS welcomes comments concerning the impact of this proposed rule on small manufacturers and small health care providers.

D. Unfunded Mandates Reform Act of 1995

Section 202(a) of the Unfunded Mandates Reform Act of 1995 requires that agencies prepare a written statement, which includes an assessment of anticipated costs and benefits, before proposing ''any rule that includes any Federal mandate that may result in the expenditure by State, local, and Tribal governments, in the aggregate, or by the private sector, of $100 million or more (adjusted annually for inflation) in any one year.'' In 2021, that threshold is approximately $158 million. HHS does not expect this NPRM to exceed the threshold.

E. Executive Order 13132—Federalism

HHS has reviewed this NPRM in accordance with Executive Order 13132 regarding federalism and has determined that it does not have ''federalism implications.'' This proposed rule would not ''have substantial direct effects on the States, or on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.'' This NPRM, if implemented, would not adversely affect the following family elements: family safety, family stability, marital commitment; parental rights in the education, nurture, and supervision of their children; family functioning, disposable income, or poverty; or the behavior and personal responsibility of youth, as determined under section 654(c) of the Treasury and General Government Appropriations Act of 1999. HHS invites additional comments on the impact of this proposed rule in this area.

F. Collection of Information

The Paperwork Reduction Act of 1995 (44 U.S.C. 3507(d)) requires that OMB approve all collections of information by a Federal agency from the public before they can be implemented. This proposed rule would not impact the current reporting and recordkeeping burden for manufacturers or covered entities under the 340B Program. HHS believes that the 340B ADR process is exempt from Paperwork Reduction Act requirements as it provides the mechanism and procedures for an administrative action or investigation involving an agency against specific individuals or entities, pursuant to 44 U.S.C. 3518(c). In addition, participants in the 340B Program are already required to maintain the necessary records to submit an ADR claim. Comments are welcome on the accuracy of this statement.

Dated: November 21, 2022.

Xavier Becerra,

Secretary, Department of Health and Human Services.

List of Subjects in 42 CFR Part 10

Biologics, Business and industry, Diseases, Drugs, Health, Health care, Health facilities, Hospitals, 340B Drug Pricing Program.

For the reasons set forth in the preamble, the Department of Health and Human Services proposes to amend 42 CFR part 10 as follows:

PART 10—340B DRUG PRICING PROGRAM

■ 1. The authority citation for part 10 continues to read as follows:

Authority: Sec. 340B of the Public Health Service Act (42 U.S.C. 256b) (PHSA), as amended.

■ 2. Amend § 10.3 by revising the definitions for *Administrative Dispute Resolution (ADR) Process, Administrative Dispute Resolution Panel (340B ADR Panel), Claim, Consolidated claim,* and *Joint claim* and adding the definition for *Office of Pharmacy Affairs (OPA),* in alphabetical order, to read as follows:

§ 10.3 Definitions.

* * * * *

Administrative Dispute Resolution (ADR) Process means a process used to resolve the following types of claims, including any issues that assist the 340B ADR Panel in resolving such claims:

(1) Claims by covered entities that may have been overcharged for covered outpatient drugs purchased from manufacturers; and

(2) Claims by manufacturers of 340B drugs, after a manufacturer has conducted an audit of a covered entity (pursuant to section 340B(a)(5)(C) of the Public Health Service Act (PHS Act)), that a covered entity may have violated the prohibitions against duplicate discounts or diversion.

Administrative Dispute Resolution Panel (340B ADR Panel) means a decision-making body within the Health Resources and Services Administration's Office of Pharmacy Affairs that reviews and makes decisions for claims brought under the ADR Process.

* * * * *

Claim means a written allegation filed by or on behalf of a covered entity or by a manufacturer for resolution under the ADR Process.

* * * * *

Consolidated claim means a claim resulting from combining multiple manufacturers' claims against the same covered entity.

* * * * *

Joint claim means a claim resulting from combining multiple covered entities' claims (or claims from their membership organizations' or associations') against the same manufacturer for the same drug or drugs.

* * * * *

Office of Pharmacy Affairs (OPA) means the office, or any successor office, assigned to administer the 340B Program within the Health Resources and Services Administration that oversees the 340B Program.

* * * * *

■ 3. Revise subpart C to read as follows:

Subpart C—Administrative Dispute Resolution

Sec.

Authority: Sec. 340B of the Public Health Service Act (42 U.S.C. 256b) (PHSA), as amended.

§ 10.20 340B Administrative Dispute Resolution Panel.

The Secretary shall appoint a roster of eligible individuals (Roster) consisting of staff within OPA, to serve on a 340B ADR Panel, as defined in § 10.3. The OPA Director, or the OPA Director's designee, shall select at least three members from the Roster to form a 340B ADR Panel to review and make decisions regarding one or more claims filed by covered entities or manufacturers.

(a) *Members of the 340B ADR Panel.* (1) The OPA Director shall:

(i) Select at least three members for each 340B ADR Panel from the Roster of appointed staff;

(ii) Have the authority to remove an individual from the 340B ADR Panel and replace such individual; and

(iii) Select replacement 340B ADR Panel members should an individual resign from the panel or otherwise be unable to complete their duties.

(2) No member of the 340B ADR Panel may have a conflict of interest, as defined in paragraph (b) of this section.

(b) *Conflicts of interest.* (1) All members appointed by the Secretary to the Roster of individuals eligible to be appointed to a 340B ADR Panel will be screened for conflicts of interest prior to reviewing a claim. In determining whether a conflict exists, the Department of Health and Human Services (HHS) will consider financial interest(s), current or former business or employment relationship(s), or other involvement of a prospective panel member or close family member who is either employed by or otherwise has a business relationship with an involved party, subsidiary of an involved party, or particular claim(s) expected to be presented to the prospective panel member. HHS has sole discretion to determine whether a conflict of interest exists.

(2) All members on the 340B ADR Panel will undergo an additional screening prior to reviewing a specific claim to ensure that the 340B ADR Panel member was not involved in previous agency actions, including previous 340B ADR Panel decisions, concerning the specific issue of the ADR claim as it relates to the specific covered entity or manufacturer involved.

(c) *Secretarial removal power.* The Secretary may remove any individual from the Roster of 340B ADR Panelists for any reason, including from any 340B ADR Panel to which the individual has already been assigned.

(d) *Duties of the 340B ADR Panel.* The 340B ADR Panel will:

(1) Review and evaluate claims, including consolidated and joint claims, and documents and information submitted by covered entities and manufacturers;

(2) Review and may request additional documentation, information, or clarification of an issue from any or all parties to make a decision (if the 340B ADR Panel finds that a party has failed to respond or fully respond to an information request, the 340B ADR Panel may draw an adverse inference, and proceed with facts that the 340B ADR Panel determines have been established in the proceeding);

(3) Evaluate claims based on information received, unless, at the 340B ADR Panel's discretion, the nature of the claim necessitates that a meeting with the parties be held;

(4) At its discretion, consult with others, including staff within OPA, other HHS offices, and other Federal agencies while reviewing a claim; and

(5) Make decisions on each claim.

§ 10.21 Claims.

(a) *Claims permitted.* All claims must be specific to the parties identified in the claims and are limited to the following:

(1) Claims by a covered entity that it has been overcharged by a manufacturer for a covered outpatient drug; and

(2) Claims by a manufacturer, after it has conducted an audit of a covered entity pursuant to section 340B(a)(5)(C) of the PHS Act, that the covered entity has violated section 340B(a)(5)(A) of the PHS Act, regarding the prohibition of duplicate discounts, or section 340B(a)(5)(B) of the PHS Act, regarding the prohibition of the resale or transfer of covered outpatient drugs to a person who is not a patient of the covered entity.

(b) *Requirements for filing a claim.* (1) A covered entity or manufacturer must file a claim under this section in writing to OPA within 3 years of the date of the alleged violation. Any file, document, or record associated with the claim that is the subject of a dispute must be maintained by the covered entity and manufacturer until the date of the final agency decision.

(2) A covered entity filing a claim described in paragraph (a)(1) of this section must provide the basis, including all available supporting documentation, for its belief that it has been overcharged by a manufacturer, in addition to any other documentation as may be requested by OPA. A covered entity claim against multiple manufacturers is not permitted.

(3) A manufacturer filing a claim under paragraph (a)(2) of this section must provide documents sufficient to support its claim that a covered entity has violated the prohibition on diversion and/or duplicate discounts, in addition to any other documentation as may be requested by OPA.

(4) A covered entity or manufacturer filing a claim must provide documentation of good faith efforts, including evidence of communication with the opposing party to resolve the matter in good faith prior to filing a claim.

(c) *Combining claims.* (1) Two or more covered entities may jointly file claims of overcharges by the same manufacturer for the same drug or drugs if each covered entity consents to the jointly filed claim and meets the filing requirements.

(i) For covered entity joint claims, the claim must list each covered entity, its 340B ID and include documentation as described in paragraph (b) of this section, which demonstrates that each covered entity meets all of the requirements for filing the ADR claim.

(ii) For covered entity joint claims, a letter requesting the combining of claims must accompany the claim at the time of filing and must document that each covered entity consents to the combining of the claims, including signatures of individuals representing each covered entity and a point of contact for each covered entity.

(2) An association or organization may file on behalf of one or more covered entities representing their interests if:

(i) Each covered entity is a member of the association or the organization representing it and each covered entity meets the requirements for filing a claim;

(ii) The joint claim filed by the association or organization must assert overcharging by a single manufacturer for the same drug(s); and

(iii) A letter requesting the combining of claims must accompany the claim and must include documentation evidencing that each covered entity consents to the organization or association asserting a claim on its behalf, including signatures of individuals representing each covered entity and a point of contact for each covered entity.

(3) A manufacturer or manufacturers may request to consolidate claims brought by more than one manufacturer against the same covered entity if each manufacturer could individually file a claim against the covered entity, consents to the consolidated claim, meets the requirements for filing a claim, and the 340B ADR Panel determines that such consolidation is appropriate and consistent with the goals of fairness and economy of resources. Consolidated claims filed on behalf of manufacturers by associations or organizations representing their interests are not permitted.

(d) *Deadlines and procedures for filing a claim.* (1) Covered entities and manufacturers must file claims in writing with OPA, in the manner set forth by OPA.

(2) OPA will conduct an initial review of all information submitted by the party filing the claim and will make a determination as to whether the requirements in paragraph (b) of this section are met. The OPA staff conducting the initial review of a claim may not be appointed to serve on the 340B ADR Panel reviewing that specific claim.

(3) Additional information to substantiate a claim may be submitted by the initiating party and may be requested by OPA. If additional information is requested, the initiating party will have 20 business days from the receipt of the request to respond. If the initiating party does not respond to a request for additional information within the specified time frame or request and receive an extension, the claim will not move forward to the 340B ADR Panel for review.

(4) OPA will provide written notification to the initiating party that the claim is complete. Once the claim is complete, OPA will also provide written notification to the opposing party that the claim was submitted. This written notification will provide a copy of the initiating party's claim, and additional instructions regarding the ADR process, including timelines and information on how to submit their response in accordance with the procedures for responding to a claim as outlined in paragraph (e) of this section.

(5) If OPA finds that the claim meets the requirements described in paragraph (b) of this section, and once OPA receives the opposing party's response in accordance with the procedures outlined in paragraph (e) of this section, additional written notification will be sent to both parties advising that the claim will be forwarded to the 340B ADR Panel for review.

(6) If OPA finds that the claim does not meet the requirements described in paragraph (b) of this section, written notification will be sent to both parties stating the reasons that the claim did not move forward.

(7) For any claim that does not move forward for review by the 340B ADR Panel, the claim may be revised and refiled if there is new information to support the alleged statutory violation and the claim meets the criteria set forth in this section.

(e) *Responding to a submitted claim.* (1) Upon receipt of notification that a claim is deemed complete and has met the requirements in paragraph (b) of this section, the opposing party in alleged violation will have 30 business days to submit a written response to OPA.

(2) A party may submit a request for an extension of the initial 30 days response period and OPA will make a determination to approve or disapprove such request and notify both parties.

(3) OPA will provide a copy of the opposing party's response to the initiating party and will notify both parties that the claim has moved forward for review by the 340B ADR Panel.

(4) If an opposing party does not respond or elects not to participate in the 340B ADR process, OPA will notify both parties that the claim has moved forward for review by the 340B ADR Panel and the 340B ADR Panel will render its decision after review of the information submitted in the claim.

§ 10.22 Covered entity information and document requests.

(a) To request information necessary to support its claim from an opposing party, a covered entity must submit a written request for additional information or documents to the 340B ADR Panel within 20 business days of the receipt from OPA that the claim was forwarded to the 340B ADR Panel for review. The 340B ADR Panel will review the information/document request and notify the covered entity if the request is not reasonable, not relevant or beyond the scope of the claim, and will permit the covered entity to resubmit a revised request if necessary.

(b) The 340B ADR Panel will transmit the covered entity's information/document request to the manufacturer who must respond to the request within 20 business days.

(c) The manufacturer must fully respond, in writing, to an information/document request from the 340B ADR Panel by the response deadline.

(1) A manufacturer is responsible for obtaining relevant information or documents from any wholesaler or other third party that may facilitate the sale or distribution of its drugs to covered entities.

(2) If a manufacturer anticipates that it will not be able to respond to the information/document request by the deadline, it can request one extension by notifying the 340B ADR Panel in writing within 15 business days of receipt of the request.

(3) A request to extend the deadline must include the reason why the specific deadline is not feasible and must outline the proposed timeline for fully responding to the information/document request.

(4) The 340B ADR Panel may approve or disapprove the request for an extension of time and will notify all parties in writing of its decision.

(5) If the 340B ADR Panel finds that a manufacturer has failed to respond or fully respond to an information/document request, the 340B ADR Panel may draw an adverse inference and proceed with the facts that the 340B ADR Panel has determined have been established in the proceeding.

§ 10.23 340B ADR Panel decision process.

(a) The 340B ADR Panel will conduct an initial review of the claims. If the 340B ADR Panel determines the specific issue that would be brought forth in a claim is the same as or similar to an issue that is pending in Federal court,

it will suspend review of the claim until such time the issue is no longer pending in Federal court.

(b) If no issues are identified in the initial review of the claim under paragraph (a) of this section, the 340B ADR Panel will review all documents gathered during the ADR Process to determine if a violation as described in § 10.21(a)(1) or (2) has occurred.

(c) The 340B ADR Panel will prepare a decision letter based on its review. The 340B ADR Panel decision letter will represent the determination of a majority of the 340B ADR Panel members' findings regarding the claim and include an explanation regarding each finding. The 340B ADR Panel will transmit its decision letter to all parties and to the OPA Director.

(d) Either party may request reconsideration of the 340B ADR Panel decision or the Health Resources and Service Administration (HRSA) Administrator may decide to initiate a reconsideration without such a request as described in § 10.24. If the HRSA Administrator does not initiate the reconsideration process without a request from the parties, or if HRSA does not receive a reconsideration request from either party within 20 business days of the issuance of the 340B ADR Panel's decision letter, as described in § 10.24, the 340B ADR Panel's decision letter will serve as the final agency decision and will be binding upon the parties involved in the dispute, unless invalidated by an order of a Federal court.

(e) The OPA Director will determine any necessary corrective action or consider whether to take enforcement action, and the form of any such action, based on the final agency decision.

§ 10.24 340B ADR Panel decision reconsideration process.

(a) Either party may initiate a reconsideration request, or the HRSA Administrator may decide to initiate the process without such a request.

(b) The request for a reconsideration of the 340B ADR Panel's decision must be made to the HRSA Administrator within 20 business days of the date of the 340B ADR Panel's decision letter.

(1) The request for reconsideration must include a copy of the 340B ADR Panel decision letter, and documentation indicating why a reconsideration is warranted.

(2) New information may not be submitted as part of the reconsideration process in order to remain consistent with the facts that were reviewed by the 340B ADR Panel in determining their decision.

(3) In the case of joint or consolidated claims, the requester must submit documentation showing consent to the reconsideration process, including signatures of the individuals representing each covered entity or manufacturer as described in § 10.21(c).

(c) The reconsideration process may be granted when a party demonstrates that the 340B ADR Panel decision may have been inaccurate or flawed.

(d) The HRSA Administrator, or their designee, will review the record, including the 340B ADR Panel decision, and consult with HHS officials, as necessary.

(e) The HRSA Administrator will make a determination based on the reconsideration request by either issuing a revised decision to be effective 20 business days from issuance or declining to issue a revised decision.

(f) Such reconsideration decision or the 340B ADR Panel decision (in the event of a declination) will serve as the final agency decision and will be binding upon the parties involved in the dispute, unless invalidated by an order of a Federal court.

(g) The OPA Director will determine any necessary corrective action, or consider whether to take enforcement action, and the form of any such action, based on the final agency decision.

[FR Doc. 2022–25752 Filed 11–29–22; 8:45 am]

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DEPARTMENT OF HOMELAND SECURITY

Transportation Security Administration

49 CFR Chapter XII

[Docket No. TSA–2022–0001]

RIN 1652–AA74

Enhancing Surface Cyber Risk Management

AGENCY: Transportation Security Administration, DHS.

ACTION: Advance notice of proposed rulemaking.

SUMMARY: The Transportation Security Administration (TSA) is seeking input regarding ways to strengthen cybersecurity and resiliency in the pipeline and rail (including freight, passenger, and transit rail) sectors. This advance notice of proposed rulemaking (ANPRM) offers an opportunity for interested individuals and organizations, particularly owner/operators of higher-risk pipeline and rail operations, to help TSA develop a comprehensive and forward-looking approach to cybersecurity requirements. TSA is also interested in input from the industry associations representing these owners/operators, third-party cybersecurity subject matter experts, and insurers and underwriters for cybersecurity risks for these transportation sectors. Although TSA will review and consider all comments submitted, we are specifically interested in responses to the questions posed in this ANPRM. Input received in response to this ANPRM will assist TSA in better understanding how the pipeline and rail sectors implement cyber risk management (CRM) in their operations and will support us in achieving objectives related to the enhancement of pipeline and rail cybersecurity.

DATES: Submit comments by January 17, 2023.

ADDRESSES: You may submit comments, identified by the TSA docket number to this rulemaking, to the Federal Docket Management System (FDMS), a government-wide, electronic docket management system. To avoid duplication, please use only one of the following methods:

- *Electronic Federal eRulemaking Portal: https://www.regulations.gov.* Follow the online instructions for submitting comments.
- *Mail:* Docket Management Facility (M–30), U.S. Department of Transportation, 1200 New Jersey Avenue SE, West Building Ground Floor, Room W12–140, Washington, DC 20590–0001. The Department of Transportation (DOT), which maintains and processes TSA's official regulatory dockets, will scan the submission and post it to FDMS. Comments must be postmarked by the date indicated above.
- *Fax:* (202) 493–2251.

See the **SUPPLEMENTARY INFORMATION** section for format and other information about comment submissions.

FOR FURTHER INFORMATION CONTACT:

For program questions: Victor Parker, Surface Division, Policy, Plans, and Engagement, TSA–28, Transportation Security Administration, 6595 Springfield Center Drive, Springfield, VA 20598–6002; telephone (571) 227–1039; email: *VettingPolicy@tsa.dhs.gov.*

For legal questions: David Kasminoff (TSA, Senior Counsel, Regulations and Security Standards) at telephone (571) 227–3583, or email to *VettingPolicy@tsa.dhs.gov.*

SUPPLEMENTARY INFORMATION:

Comments Invited

TSA invites interested persons to participate in this ANPRM by submitting written comments, including relevant data. We also invite comments

relating to the economic, environmental, energy, or federalism impacts that might result from a rulemaking action. *See* **ADDRESSES** section above for information on where to submit comments.

With each comment, please identify the docket number at the beginning of your comments. You may submit comments and material electronically, in person, by mail, or fax as provided under **ADDRESSES**, but please submit your comments and material by only one means. If you submit comments by mail or in person, submit them in an unbound format, no larger than 8.5 by 11 inches, suitable for copying and electronic filing.

If you would like TSA to acknowledge receipt of comments submitted by mail, include with your comments a self-addressed, stamped postcard on which the docket number appears. TSA will stamp the date on the postcard and mail it to you.

All comments, except those that include confidential or sensitive security information (SSI) [1] will be posted to *https://www.regulations.gov,* and will include any personal information you have provided. Should you wish your personally identifiable information redacted prior to filing in the docket, please clearly indicate this request in your submission to TSA. TSA will consider all comments that are in the docket on or before the closing date for comments and will consider comments filed late to the extent practicable. The docket is available for public inspection before and after the comment closing date.

Handling of Certain Sensitive Information Submitted in Public Comments

Do not submit comments that include trade secrets, confidential commercial or financial information, SSI, or protected critical infrastructure information to the public regulatory docket. Comments containing this type of information should be submitted separately from other comments, appropriately marked as containing such information, and submitted by mail to the address listed in **FOR FURTHER INFORMATION CONTACT** section. TSA will take the following actions for all submissions containing SSI:

- TSA will not place comments containing SSI in the public docket and will handle them in accordance with applicable safeguards and restrictions on access.
- TSA will hold documents containing SSI, confidential business information, or trade secrets in a separate file to which the public does not have access, and place a note in the public docket explaining that commenters have submitted such documents.
- TSA may include a redacted version of the comment in the public docket.
- TSA will treat requests to examine or copy information that is not in the public docket as any other request under the Freedom of Information Act (5 U.S.C. 552) and the Department of Homeland Security (DHS) Freedom of Information Act regulation found in 6 CFR part 5.

Reviewing Comments in the Docket

Please be aware that anyone is able to search the electronic form of all comments in any of our dockets by the name of the individual, association, business entity, labor union, *etc.,* who submitted the comment. For more about privacy and the docket, review the Privacy and Security Notice for the FDMS at *https://www.regulations.gov/privacy-notice,* as well as the System of Records Notice DOT/ALL 14—Federal Docket Management System (73 FR 3316, January 17, 2008) and the System of Records Notice DHS/ALL 044—eRulemaking (85 FR 14226, March 11, 2020).

You may review TSA's electronic public docket at *http://www.regulations.gov.* In addition, DOT's Docket Management Facility provides a physical facility, staff, equipment, and assistance to the public. To obtain assistance or to review comments in TSA's public docket, you may visit this facility between 9 a.m. and 5 p.m., Monday through Friday, excluding legal holidays, or call (202) 366–9826. This DOT facility is located in the West Building Ground Floor, Room W12–140 at 1200 New Jersey Avenue SE, Washington, DC 20590.

Availability of Rulemaking Document

You can find an electronic copy of rulemaking documents relevant to this action by searching the electronic FDMS web page at *https://www.regulations.gov* or at *https://www.federalregister.gov.*

In addition, copies are available by writing or calling the individual in the **FOR FURTHER INFORMATION CONTACT** section. Make sure to identify the docket number of this ANPRM.

Abbreviations and Terms Used in This Document

ANPRM—Advance notice of proposed rulemaking
AAR—Association of American Railroads
APTA—Association of Public Transportation Agencies
ATSA—Aviation and Transportation Security Act
C2M2—Cybersecurity Capabilities Maturity Model
CFATS—Chemical Facility Anti-Terrorism Standards
CFSR—Critical facility security reviews
CIP—Critical Infrastructure Protection
CISA—Cybersecurity and Infrastructure Security Agency
CRM—Cyber risk management
CSR—Corporate Security Reviews
DFARS—Defense Federal Acquisition Regulation Supplement
FERC—Federal Energy Regulatory Commission
FRA—Federal Railroad Administration
FSB—Russian Federal Security Service
DHS—Department of Homeland Security
DOE—Department of Energy
DOT—Department of Transportation
ICS—Industrial Control System
IT—Information technology
NERC—North American Electric Reliability Corporation
NIST—National Institute of Standards and Technology
NPRM—Notice of proposed rulemaking
OT—Operational technology
RBPS—Risk-Based Performance Standard
SCADA—Supervisory control and data acquisition
SSI—Sensitive security information
TSA—Transportation Security Administration

I. Introduction

A. Pipeline Transportation

The national pipeline system consists of more than 3.3 million miles of networked pipelines transporting hazardous liquids, natural gas, and other liquids and gases for energy needs and manufacturing. Although most pipeline infrastructure is buried underground, operational elements such as compressors, metering, regulating, pumping stations, aerial crossings, and storage tanks are typically located above ground. Under operating pressure, the pipeline system is used as a conveyance to deliver resources from source location to destination. In addition to portions of the network that are manually operated, the pipeline system includes use of automated industrial control systems (ICS), such as supervisory control and data acquisition (SCADA) systems to monitor and manage the system. These systems use remote sensors, signals, and preprogramed parameters to activate valves and pumps to maintain flows within tolerances. Pipeline systems supply energy commodities and raw

[1] ''Sensitive Security Information'' or ''SSI'' is information obtained or developed in the conduct of security activities, the disclosure of which would constitute an unwarranted invasion of privacy, reveal trade secrets or privileged or confidential information, or be detrimental to the security of transportation. The protection of SSI is governed by 49 CFR part 1520.

materials across the country to utility entities, airports, military sites, and to the Nation's industrial and manufacturing sectors. Protecting vital supply chain infrastructure of pipeline operations is critical to national security and commerce.

B. Rail Transportation

The rail transportation sector includes freight railroads, passenger railroads (including inter-city and commuter), and rail transit.

1. Freight Railroads

The national freight rail network is a complex system that includes both physical and cyber infrastructure and consists of nearly 140,000 rail miles operated by seven Class I railroads and 580 local (also known as Short Line) railroads and 21 regional railroads. The Class I railroads had 2021 operating revenues of at least $900 million. These seven railroads also account for approximately 68 percent of freight rail mileage, 88 percent of employees, and 94 percent of revenue. Regional railroads and local railroads range in size from operations handling a few carloads monthly to multi-state operators nearly the size of a Class I operation.[2] As stated by the American Association of Railroads (AAR), the freight rail sector provides ''a safe, efficient, and cost-effective transportation network that reliably serves customers and the nation's economy.'' [3]

Freight railroads are private entities which own and are responsible for their own infrastructure. They maintain the locomotives, rolling stock, and fixed assets involved in the transportation of goods and materials across the Nation's rail system. As required by Congress, railroads are subject to safety regulations promulgated and enforced by the Federal Railroad Administration (FRA). TSA administers and enforces rail security regulations contained in 49 CFR part 1580.

2. Passenger Railroads

Passenger rail is divided into two categories: inter-city and commuter rail service. Inter-city provides long-distance service, while commuter railroads provide service over shorter distances, usually less than 100 miles. The sole long-distance inter-city passenger railroad in the contiguous United States is Amtrak, which has a pre-pandemic annual ridership of approximately 31.7 million.[4] Amtrak operates a nationwide rail network, serving more than 500 destinations in 46 states, the District of Columbia, and three Canadian provinces on more than 21,300 track-miles.[5] Nearly half of all Amtrak trains operate at top speeds of 100 mph or greater. In fiscal year 2021, Amtrak customers took nearly 12.2 million trips.[6]

Freight railroads provide the tracks for most passenger rail operations. For example, seventy-two percent of the track on which Amtrak operates is owned by other railroads. These ''host railroads'' include large, publicly traded freight rail companies in the U.S. or Canada, state and local government agencies, and small businesses. Amtrak pays the host railroads for use of their track and other resources as needed.[7]

Amtrak and other passenger rail agencies, however, are not wholly dependent on freight rail infrastructure and corridors for operational feasibility; they sometimes control, operate, and maintain tracks, facilities, construction sites, utilities, and computerized networks essential to their own operations. For example, the Northeast Corridor is an electrified railway line in the Northeast megalopolis of the United States owned primarily by Amtrak. It runs from Boston through New York City, Philadelphia, and Baltimore, with a terminus in Washington, DC.

Amtrak and other passenger railroads also host freight rail operations. In fact, the Northeast Corridor is the busiest railroad in North America, with approximately 2,200 Amtrak, commuter, and freight trains operating over some portion of the Washington-Boston route each day.[8] As with freight railroads, passenger railroads are subject to safety regulations put forth and enforced by the FRA. TSA administers and enforces passenger rail security regulations contained in 49 CFR part 1582.

3. Rail Transit

Public transportation in America is critically important to our way of life, as evidenced by the number of riders on the Nation's public transportation systems. According to the American Public Transportation Association (APTA), 2019 Public Transportation Fact Book, there were over 9.97 million unlinked passenger trips in 2019.[9] Nationwide, 7.8 million Americans commute to work on transit, equivalent to approximately five percent of workers. In major metropolitan areas, like New York City, over 31 percent of commuters rely on public transportation for their daily commute.[10] Rail transit is a critical part of this system, representing about 48 percent of trips.[11] A successful cyber-attack would have a profound impact on ridership and a negative economic impact nationwide.

C. Cybersecurity Threats

Cyber actors have demonstrated their willingness to engage in cyber intrusions and conduct cyber-attacks [12] against critical infrastructure by exploiting the vulnerability of Operational Technology (OT) [13] and Information Technology (IT) [14] systems. Pipeline and rail systems, and associated facilities, are vulnerable to cyber-attacks due to legacy ICS that lack updated security controls and the dispersed nature of pipeline and rail

[2] *See https://www.aar.org/wp-content/uploads/2020/08/AAR-Railroad-101-Freight-Railroads-Fact-Sheet.pdf* (last visited Sep. 19, 2022).

[3] *Id.*

[4] *See https://www.apta.com/wp-content/uploads/APTA_Fact-Book-2019_FINAL.pdf* (last visited Sep. 19, 2022).

[5] *Id.*

[6] *See https://www.amtrak.com/content/dam/projects/dotcom/english/public/documents/corporate/nationalfactsheets/Amtrak-Company-Profile-FY2021-030922.pdf* at 1 (last visited Sep. 19, 2022).

[7] *Id.* at 3.

[8] *Id.* at 4.

[9] *Id.* at 10.

[10] *See* APTA, 2021 Public Transportation Fact Book at 12, available at *https://www.apta.com/wp-content/uploads/APTA-2021-Fact-Book.pdf* (last visited Sep. 19, 2022).

[11] Rail transit includes heavy rail systems, often referred to as ''subways'' or ''metros'' that do not interact with traffic; light rail and streetcars, often referred to as ''surface rail,'' that may operate on streets, with or without their own dedicated lanes; and commuter rail services that are higher-speed, higher-capacity trains with less-frequent stops. *See id.* at 8.

[12] For purposes of this ANPRM, TSA uses the National Institute of Standards and Technology (NIST) definition of a cyber-attack: An attack, via cyberspace, targeting an enterprise's use of cyberspace for the purpose of disrupting, disabling, destroying, or maliciously controlling a computing environment/infrastructure; or destroying the integrity of the data or stealing controlled information. *See https://csrc.nist.gov/glossary/term/cyber_attack* (last visited on Sept. 19, 2022).

[13] For purposes of this ANPRM, TSA defines an ''OT system'' as ''a general term that encompasses several types of control systems, including industrial control systems, supervisory control and data acquisition systems, distributed control systems, and other control system configurations, such as programmable logic controllers, fire control systems, and physical access control systems, often found in the industrial sector and critical infrastructure. Such systems consist of combinations of programmable electrical, mechanical, hydraulic, pneumatic devices or systems that interact with the physical environment or manage devices that interact with the physical environment.''

[14] For purposes of this ANPRM, TSA defines an ''IT System'' as ''any services, equipment, or interconnected systems or subsystems of equipment that are used in the automatic acquisition, storage, analysis, evaluation, manipulation, management, movement, control, display, switching, interchange, transmission, or reception of data or information that fall within the responsibility of owner/operator to operate and/or maintain.''

networks spanning urban and outlying areas.

As pipeline and rail owner/operators [15] begin integrating IT and OT systems into their ICS environment to further improve safety, enable efficiencies, and/or increase automation, the ICS environment increasingly becomes more vulnerable to new and evolving cyber threats. A successful cyber-intrusion could affect the safe operation and reliability of OT systems, including SCADA systems, process control systems, distributed control systems, safety control systems, measurement systems, and telemetry systems.

From a design perspective, some pipeline and rail assets are more attractive to cyber-attack simply because of the transported commodity and the impact an attack would have on national security and commerce. Minor pipeline and rail system disruptions may result in commodity price increases, while prolonged pipeline and rail disruptions could lead to widespread energy shortages and disruption of critical supply lines. Short- and long-term disruptions and delays may affect other domestic critical infrastructure and industries that depend on pipeline and rail system commodities, such as our national defense system.

On May 8, 2021, a major pipeline operator announced that it had halted its pipeline operations due to a ransomware attack,[16] temporarily disrupting supplies of gasoline and other refined petroleum products throughout the East Coast of the United States. This ransomware attack highlighted the potentially devastating impact that increasingly sophisticated cybersecurity events can have on our nation's critical infrastructure, as well as the direct repercussions felt by U.S. citizens.

This May 2021 event is just one of many recent ransomware attacks that have demonstrated the necessity of ensuring that critical infrastructure owner/operators are proactively deploying CRM measures. The need to take urgent action to mitigate the threats facing domestic critical infrastructure, which have important implications for national and economic security, including enhancing the pipeline and rail industry's current cybersecurity risk management posture, is further highlighted by recent warnings about Russian, Chinese, and Iranian state-sponsored cyber espionage campaigns to develop capabilities to disrupt U.S. critical infrastructure to include the transportation sector.[17]

On March 24, 2022, the U.S. Department of Justice unsealed indictments of three Russian Federal Security Service (FSB) officers and employees of a State Research Center of the Russian Federation (FGUP) Central Scientific Research Institute of Chemistry and Mechanics (also known as ''TsNIIKhM'') for their involvement in intrusion campaigns against U.S. and international oil refineries, nuclear facilities, and energy companies. Documents revealed that the FSB conducted a multi-stage campaign in which they gained remote access to U.S. and international Energy Sector networks, deployed ICS-focused malware, and collected and exfiltrated enterprise and ICS-related data.[18] A recent multi-national cybersecurity advisory noted that ''Russian state-sponsored cyber actors have demonstrated capabilities to compromise IT networks; develop mechanisms to maintain long-term, persistent access to IT networks; exfiltrate sensitive data from IT and [OT] networks; and disrupt critical [ICS/OT] functions by deploying destructive malware.'' [19]

The Nation's adversaries and strategic competitors will continue to use cyber espionage and cyber-attacks to seek political, economic, and military advantage over the United States and its allies and partners. These recent incidents demonstrate the potentially devastating impact that increasingly sophisticated cybersecurity events can have on our nation's critical infrastructure, as well as the direct repercussions felt by U.S. citizens. The consequences and threats discussed above demonstrate the necessity of ensuring that critical infrastructure owner/operators are proactively deploying CRM measures.

D. Threat of Cybersecurity Incidents at the Nexus of IT and OT Systems

Some sectors have taken significant steps to protect either their IT or OT systems, depending on which is considered most critical for their business needs (*e.g.,* a commodities sector may focus on OT systems while a financial sector or other business that focuses on data may focus on IT systems). Ransomware attacks targeting critical infrastructure threaten *both* IT and OT systems and exploit the connections between these systems. For example, when OT components are connected to IT networks, this connection provides a path for cyber actors to pivot from IT to OT systems.[20] Given the importance of critical infrastructure to national and economic security and America's way of life, accessible OT systems and their connected assets and control structures are an attractive target for malicious cyber actors seeking to disrupt critical infrastructure for profit or to further other objectives. As the Cybersecurity and Infrastructure Security Agency (CISA) recently noted, recent cybersecurity incidents demonstrate that intrusions affecting IT systems can also affect critical operational processes even if the intrusion does not directly impact an OT system.[21] For example, business operations on the IT system sometimes are used to orchestrate OT system operations. As a result, when there is a compromise of the IT system, there is a risk of unaffected OT systems being impacted by the loss of operational directives and accounting functions.

DHS, the Department of Energy (DOE), the Federal Bureau of Investigation, and the National Security Agency have all urged the private sector to implement a layered, ''defense-in-depth'' cybersecurity posture. For example, ensuring that OT and IT systems are separate and segregated will help protect against intrusions that can exploit vulnerabilities from one system

[15] *See* definition of ''owner/operator'' in 49 CFR 1500.3.

[16] Ransomware is a malicious type of cyber-attack where attackers encrypt an organization's data and demand payment to restore access. *See* NIST Guidance on Ransomware at its Small Business Cybersecurity Corner, accessible at *https://www.nist.gov/itl/smallbusinesscyber/guidance-topic/ransomware* (last visited Sept. 19, 2022).

[17] *See, e.g.,* the following recent Joint Cybersecurity Advisories available at *https://www.cisa.gov/uscert/ncas/alerts: Iranian Government-Sponsored APT Cyber Actors Exploiting Microsoft Exchange and Fortinet Vulnerabilities in Furtherance of Malicious Activities,* Alert AA21–321A (Nov. 17, 2021); *Sophisticated Spearphishing Campaign Targets Government Organizations, IGOs, and NGOs,* Alert AA21–148A (May 28, 2021); *Tactics, Techniques, and Procedures of Indicted APT40 Actors Associated with China's MSS Hainan State Security Department,* Alert AA21–200A (July 19, 2021); and *Understanding and Mitigating Russian State-Sponsored Cyber Threats to U.S. Critical Infrastructure,* Alert AA22–011A (Jan. 11, 2022).

[18] *See* Joint Cybersecurity Advisory, *Tactics, Techniques, and Procedures of Indicted State-Sponsored Russian Cyber Actors Targeting the Energy Sector,* Alert AA22–083A (Mar. 25, 2022), available at: *https://www.cisa.gov/uscert/ncas/alerts/aa22-083a* (last visited Sep. 19, 2022).

[19] *See* Joint Cybersecurity Advisory, *Russian State Sponsored and Criminal Cyber Threat to Critical Infrastructure,* Alert AA22–110A (Apr. 20, 2022), available at: *https://www.cisa.gov/uscert/ncas/alerts/aa22-110a (last visited Sep. 19, 2022).*

[20] *See* CISA Fact Sheet, *Rising Ransomware Threat to Operational Technology Assets* (June 2021), available at *https://www.cisa.gov/sites/default/files/publications/CISA_Fact_Sheet-Rising_Ransomware_Threat_to_OT_Assets_508C.pdf* (last visited Sep. 19, 2022).

[21] *Id.*

to infect another. A stand-alone, unconnected (''air-gapped'') OT system is safer from outside threats than an OT system connected to one or more enterprise IT systems with external connectivity (no matter how secure the outside connections are thought to be).[22] By implementing a layered approach, owner/operators and their network administrators will enhance the defensive cybersecurity posture of their OT and IT systems, reducing the risk of compromise or severe operational degradation if their system is compromised by malicious cyber actors.[23]

E. TSA Surface-Related Security Directives and Information Circulars

TSA issued security directives in 2021 and 2022 [24] in response to the cybersecurity threat to surface transportation systems and associated infrastructure to protect against the significant harm to the national and economic security of the United States that could result from the ''degradation, destruction, or malfunction of systems that control this infrastructure.'' [25] The first pipeline security directive (SD) (the SD Pipeline–2021–01 series) requires several actions to enhance the security of critical pipeline systems [26] against cyber-attacks and provided that owners/operators must: (1) designate a primary and alternate Cybersecurity Coordinator; (2) report cybersecurity incidents to CISA within 24 hours of identification of a cybersecurity incident; [27] and (3) review TSA's pipeline guidelines,[28] assess their current cybersecurity posture, and identify remediation measures to address the vulnerabilities and cybersecurity gaps.[29] For purposes of this requirement, a ''cybersecurity incident'' is defined as ''an event that, without lawful authority, jeopardizes, disrupts or otherwise impacts, or is reasonably likely to jeopardize, disrupt or otherwise impact, the integrity, confidentiality, or availability of computers, information or communications systems or networks, physical or virtual infrastructure controlled by computers or information systems, or information residents on the system.'' The reports must (1) identify the affected systems or facilities; and (2) describe the threat, incident, and impact or potential impact on IT and OT systems and operations.

The second pipeline security directive (the SD Pipeline 2021–02 series), issued on July 26, 2021, required owner/operators to implement specific mitigation measures to protect against ransomware attacks and other known threats to IT and OT systems and conduct a cybersecurity architecture design review. This security directive also required owner/operators to develop and adopt a cybersecurity incident response plan to reduce the risk of operational disruption should their IT and/or OT systems be affected by a cybersecurity incident.[30]

In December 2021, TSA issued security directives to higher-risk freight railroads (the SD 1580–21–01 series) [31] and passenger rail and rail transit owner/operators (the SD 1582–21–01 series),[32] requiring that they also implement the following requirements previously imposed on pipeline systems and facilities: (1) designation of a cybersecurity coordinator; (2) reporting of cybersecurity incidents to CISA within 24 hours; (3) developing and implementing a cybersecurity incident response plan to reduce the risk of an operational disruption; and (4) completing a cybersecurity vulnerability assessment to identify potential gaps or vulnerabilities in their systems. For owner/operators not specifically covered under the SD 1580–21–01 or 1582–2021–02 series, TSA also issued an ''information circular'' (IC–2021–01), which included a non-binding recommendation for those surface owner/operators not subject to the security directives to voluntarily implement the same measures.[33]

In the year following issuance of the second pipeline SD, TSA determined that its prescriptive requirements limited the ability of owner/operators to adapt the requirements to their operational environment and apply innovative alternative measures and new capabilities. Because of this, TSA revised this security directive series, effective July 27, 2022 (SD Pipeline 2021–02C), to maintain the security objectives in the previous versions of the security directive but also provide more flexibility by imposing performance-based, rather than prescriptive, security measures. The revised directive allows covered owner/operators to choose how best to implement security measures for their specific systems and operations while mandating that they achieve critical security outcomes. This approach also affords these owner/operators with the ability to adopt new technologies and security capabilities as they become available, provided that TSA's mandated security outcomes are met.

The revised directive specifically requires the covered owner/operators of critical pipeline systems and facilities to take the following actions:

- Establish and implement a TSA-approved Cybersecurity Implementation Plan that describes the specific cybersecurity measures employed and the schedule for achieving the security outcomes identified by TSA.
- Develop and maintain an up-to-date Cybersecurity Incident Response Plan to reduce the risk of operational disruption, or the risk of other significant impacts on necessary capacity, as defined in the security directive, should the IT and/or OT systems of a gas or liquid pipeline and rail be affected by a cybersecurity incident.

[22] *See* National Security Agency Cybersecurity Advisory, *Stop Malicious Cyber Activity Against Connected Operational Technology* (PP–21–0601 | APR 2021 Ver 1.0), available at: *https://media.defense.gov/2021/Apr/29/2002630479/-1/-1/1/CSA_STOP-MCA-AGAINST-OT_UOO13672321.PDF* (last visited Sep. 19 2022).

[23] *See* Joint Cybersecurity Advisory, Alert AA21–200A, *supra* n. 17.

[24] *See https://www.tsa.gov/for-industry/surface-transportation-cybersecurity-toolkit* for links to the security directives. TSA issued these security directives under the specific authority of 49 U.S.C. 114(*l*)(2)(A). This provision states: ''Notwithstanding any other provision of law or executive order (including an executive order requiring a cost-benefit analysis), if the Administrator [of TSA] determines that a regulation or security directive must be issued immediately in order to protect transportation security, the Administrator shall issue the regulation or security directive without providing notice or an opportunity for comment and without prior approval of the Secretary.'' In addition, section 114(d) provides the Administrator authority for security of all modes of transportation; section 114(f) provides specific additional duties and powers to the Administrator; and section 114(m) provides authority for the Administrator to take actions that support other agencies.

[25] *See* National Security Memorandum on Improving Cybersecurity for Critical Infrastructure Control Systems (July 28, 2021).

[26] ''Critical pipeline systems'' are determined by TSA based on risk.

[27] As originally issued, the directive required notification within 12 hours of identification. In May 2022, TSA revised this requirement to require notifications within 24 hours of identification.

[28] *See* section I.F. for more information on TSA's guidelines for the pipeline owner/operators.

[29] TSA may also use the results of assessments to identify the need to impose additional security measures as appropriate or necessary. TSA and CISA may use the information submitted for vulnerability identification, trend analysis, or to generate anonymized indicators of compromise or other cybersecurity products to prevent other cybersecurity incidents.

[30] *See https://www.tsa.gov/sites/default/files/sd_pipeline-2021-01b_05-29-2022.pdf* (last visited Oct. 19, 2022) for a version of the SD with the prescriptive requirements initially imposed.

[31] *See https://www.tsa.gov/sites/default/files/sd-1580-21-01a.pdf* (last visited Oct. 19, 2022) for the most current version of this SD series.

[32] *See https://www.tsa.gov/sites/default/files/sd-1582-21-01a.pdf* (last visited Oct. 19, 2022) for the most current version of this SD series.

[33] *See https://www.tsa.gov/sites/default/files/20211201_surface-ic-2021–01.pdf* (last visited Oct. 19, 2022).

• Establish a Cybersecurity Assessment Program and submit an annual plan that describes how the owner/operator will proactively and regularly assess the effectiveness of cybersecurity measures and identify and resolve device, network, and/or system vulnerabilities.

The Cybersecurity Implementation Plans must identify how the owner/operators will meet the following primary security outcomes:

• Implement network segmentation policies and controls to ensure that the OT system can continue to safely operate in the event that an IT system has been compromised, or vice versa;

• Implement access control measures to secure and prevent unauthorized access to critical cyber systems;

• Implement continuous monitoring and detection policies and procedures to detect cybersecurity threats and correct anomalies that affect critical cyber system operations; and

• Reduce the risk of exploitation of unpatched systems through the application of security patches and updates for operating systems, applications, drivers, and firmware on critical cyber systems in a timely manner using a risk-based methodology.

As noted above, in addition to developing and implementing a TSA-approved Cybersecurity Implementation Plan, this directive requires the covered owner/operators to continually assess their cybersecurity posture. These owner/operators must develop and update a Cybersecurity Assessment Program and submit an annual plan to TSA that describes their program for the coming year, including details on the processes and techniques that they would be using to assess the effectiveness of cybersecurity measures. Techniques such as penetration testing of IT systems and the use of ''red'' and ''purple'' team (adversarial perspective) testing are referenced in the SD. At a minimum, the plan must include an architectural design review every two years.

The scope of the requirements in this directive apply to Critical Cyber Systems. TSA defined a Critical Cyber System to include ''any IT or OT system or data that, if compromised or exploited, could result in operational disruption. Critical Cyber Systems include business services that, if compromised or exploited, could result in operational disruption.'' [34]

On October 18, 2022, TSA issued a security directive imposing similar performance-based cybersecurity requirements on higher-risk freight railroads, passenger rail, and rail transit owner/operators (SD 1580/82–2022–01).[35] This security directive was also developed with extensive input from industry stakeholders and federal partners, including CISA and the FRA, to address issues unique to the rail industry.

F. TSA's Assessments, Guidelines, and Regulations Applicable to Pipeline and Rail Systems

Before issuance of the requirements discussed above, TSA primarily assessed the security posture of pipeline owner/operators by encouraging their voluntary implementation of security recommendations in TSA's Pipeline Security Guidelines. These guidelines were first developed in 2010 and 2011 in collaboration with industry and government members of the Pipeline Sector and Government Coordinating Councils and industry association representatives and included a range of recommended security measures covering all aspects of pipeline operations. The guidelines are used as the standard for TSA's Pipeline Security Program Corporate Security Reviews (CSRs) and Critical Facility Security Reviews (CFSRs) of the most critical pipeline systems. The CSR program has been in effect since 2003, during which time a total of approximately 260 CSRs have been completed industry-wide. Approximately 800 CFSRs have been completed since this program's inception in 2009.

In 2018, TSA published updated Pipeline Security Guidelines.[36] As part of this update, TSA added Section 7, ''Pipeline Cyber Asset Security Measures'', including pipeline cyber asset identification; security measures for pipeline cyber assets; and cybersecurity planning and implementation guidance.

While the 2018 guidelines are neither mandatory nor enforceable, the Implementing Recommendations of the 9/11 Commission Act of 2007 (9/11 Act) required the Secretary of Homeland Security (Secretary) to issue and update security recommendations for pipeline security; assess voluntary compliance; and, determine, after consultation with the Secretary of Transportation, whether regulations are appropriate based on the ''extent of risk and appropriate mitigation measures.'' [37] TSA also has general authorities, including its authority to issue regulations and security directives in order to protect transportation security.[38]

Consistent with theses authorities, TSA has issued cybersecurity SDs applicable to critical pipeline owner/operators, but has not issued regulations under the 9/11 Act's pipeline security provision or under TSA's general authorities, and has not imposed cybersecurity requirements on the full scope of pipeline owner/operators to which the guidelines apply. Although this rulemaking effort is focused specifically on cybersecurity measures, TSA intends to continue to conduct voluntary security assessments in areas where mandatory requirements do not exist (*e.g.,* the physical security measures recommended in the guidelines) as part of a ''structured oversight'' approach. As part of this approach, TSA assesses industry's voluntary adoption and adherence to non-regulatory guidelines, including Security Action Items and other security measures developed jointly with, and agreed to by, industry stakeholders to meet relevant security needs.

In 2008, TSA promulgated regulations imposing security requirements on owner/operators of rail transit systems, including passenger rail and commuter rail, heavy rail transit, light rail transit, automated guideway, cable car, inclined plane, funicular, and monorail systems. The rule, in pertinent part, covers appointment of security coordinators and security-related reporting requirements. For freight railroads, the 2008 rule also imposed requirements for the secure transport of Rail Security-Sensitive Materials.[39]

In addition to measures to enhance pipeline security, the 9/11 Act required TSA to issue regulations to enhance surface transportation security through security training of frontline employees. The 9/11 Act mandate includes prescriptive requirements for who must be trained, what the training must encompass, and how to submit and obtain approval for a training

[34] For purposes of this directive, ''operational disruption'' means a deviation from or interruption of necessary capacity that results from a compromise or loss of data, system availability, system reliability, or control of a TSA-designated critical pipeline and rail system or facility.'' Necessary capacity is determined by the owner/operator based on a ''determination of capacity to support its business-critical functions required for pipeline and rail operations and market expectations.''

[35] *See https://www.tsa.gov/sites/default/files/sd-1580-82-2022-01.pdf* (last visited Oct. 19, 2022).

[36] *See* Pipeline Security Guidelines (March 2018), with Change 1 (April 2021), available at: *https://www.tsa.gov/sites/default/files/pipeline_security_guidelines.pdf* (last visited Sep. 19, 2022).

[37] *See* section 1557 of Public Law 110–53 (121 Stat. 266; Aug. 3, 2007), as codified at 6 U.S.C. 1207.

[38] *See* 49 U.S.C. 114(*l*).

[39] *See* Rail Transportation Security Final Rule (Rail Security Rule), 73 FR 72130 (Nov. 26, 2008).

program.[40] The 9/11 Act also mandates regulations requiring higher-risk railroads and over-the-road buses (OTRBs) to appoint security coordinators.[41]

On March 23, 2020, TSA published the final rule, ''Security Training for Surface Transportation Employees.'' [42] This regulation requires owner/operators of higher-risk freight railroad carriers (as defined in 49 CFR 1580.101), public transportation agencies (including rail mass transit and bus systems and passenger railroad carriers (as defined in 49 CFR 1582.101), and OTRB companies (as defined in 49 CFR 1584.101)), to provide TSA-approved security training to employees performing security-sensitive functions. In addition to implementing these provisions, the final rule also defined Transportation Security-Sensitive Materials.[43]

The 9/11 Act also required TSA to issue regulations requiring certain public transportation agencies and rail carriers to conduct security assessments, vulnerability assessments, and security plans.[44] Such assessments and plans must entail, for instance, identification and evaluation of critical information systems [45] and redundant and backup systems needed to ensure continued operations in the event of an attack or other incident and identification of the vulnerabilities to these systems.[46] The vulnerability assessment applicable to high-risk rail carriers must also identify strengths and weaknesses in (1) programmable electronic devices, computers, or others automated systems used in providing transportation; (2) alarms, cameras, and other protection systems; (3) communications systems and utilities needed for railroad security purposes, including dispatching and notification systems; and (4) other matters determined appropriate by the Secretary.[47] For security plans, the statute requires regulations that address, among other things, the protection of passenger communication systems, emergency response, ensuring redundant and backup systems are in place to ensure continued operation of critical elements of the system in the event of a terrorist attack or other incident, and other actions or procedures as the Secretary determines are appropriate to address the security of the public transportation system or the security of railroad carriers, as appropriate.[48]

In short, the 9/11 Act provisions described above contain a combination of detailed requirements and grants of authority to the Secretary (and ultimately TSA) regarding the content of security training programs, vulnerability assessments, and security plans. Each of these provisions confirms and supplements TSA's authority to impose such requirements as are appropriate or necessary to ensure the security of the applicable systems.

G. Cyber Risk Management

CRM involves all activities designed to identify and mitigate risk-exposures to cyber technology, both informational and operational, to ensure safe, sustained operations of vital systems and associated infrastructure. DHS defines risk as the ''potential for an adverse outcome assessed as a function of threats, vulnerabilities, and consequences associated with an incident, event, or occurrence.'' [49] TSA's consideration of cybersecurity risks includes consideration of threat information similar to the information discussed above, emerging intelligence, the need to mitigate the consequences of a cyber-attack, and the inherent vulnerabilities of transportation systems and operations to cybersecurity incidents.

The cybersecurity risks to the transportation sector encompass both the vulnerabilities related to secure and safe operation of vital systems and the consequences of a direct attack or ancillary failure or shutdown of a system due to an inability to isolate and control the impact of a cyber-attack. Existing CRM standards—which are identified in the next section of this ANPRM—address identification, assessment, and mitigation of risk from a variety of sources. Strong CRM generally enhances both security and safety and facilitates operations, protects the sector's entities, and ensures the resiliency of these critical sectors.

H. Existing Standards and Requirements

Table 1 identifies industry and government standards and guidelines that could be used to develop a CRM program. This list is not exhaustive; incorporating CRM using other existing guidelines or standards may also be appropriate.

TABLE 1—CYBERSECURITY STANDARDS AND SOURCES

Standard	Source [1]
Standards developed by government and government-affiliated agencies:	
North American Electric Reliability Corporation's (NERC) Critical Infrastructure Protection (CIP) cybersecurity reliability standards, approved by the Federal Energy Regulatory Commission (FERC).	*https://www.nerc.com/pa/Stand/Pages/USRelStand.aspx.*
CISA's Chemical Facility Anti-Terrorism Standards (CFATS) [2]	*https://www.cisa.gov/chemical-facility-anti-terrorism-standards.*
CISA's Cross-Sector Cybersecurity Performance Goals (Common Bassline Controls and sector-specific controls and goals).	*https://www.cisa.gov/cpgs.*
DOE's Cybersecurity Capabilities Maturity Model (C2M2)	*https://www.energy.gov/ceser/cybersecurity-capability-maturity-model-c2m2.*
NIST Framework for Improving Critical Infrastructure Cybersecurity	*https://www.nist.gov/cyberframework/framework.*
NIST Special Publication 800–171, Protecting Controlled Unclassified Information in Nonfederal Systems and Organizations.	*https://csrc.nist.gov/publications/detail/sp/800-171/rev-2/final.*

[40] *See* secs. 1408, 1517, and 1534 of the 9/11 Act, as codified at 6 U.S.C. 1137, 1167, and 1184, respectively.

[41] *See* secs. 1512 and 1531 of the 9/11 Act, codified at 6 U.S.C. 1162 and 1181, respectively.

[42] 85 FR 16456.

[43] *See* sec. 1501(13) of the 9/11 Act, as codified at 6 U.S.C. 1151(13).

[44] *See* secs. 1405 and 1512, as codified at 6 U.S.C. 1134 and 1162, respectively. *See also* section 1521, as codified at 6 U.S.C. 1181 (which imposes similar requirements for OTRBs).

[45] *See* secs. 1405(a)(3) and 1512(d)(1)(A), as codified at 6 U.S.C. 1134(a)(3), 1162(d)(1)(A), respectively.

[46] *See* secs. 1405(c)(2), 1512(d)(1)(D), and 1512(e)(1)(G), as codified at 6 U.S.C. 1134(c)(2), 1162(d)(1)(D), 1162(e)(1)(G), respectively.

[47] *See* sec. 1512(d), as codified at 6 U.S.C. 1162(d).

[48] *See* secs. 1405(c)(2) and 1512(e), as codified at 6 U.S.C. 1134(c)(2), 1162(e), respectively.

[49] DHS Risk Lexicon, 2010 Edition, at 27, available at: *https://www.cisa.gov/sites/default/files/publications/dhs-risk-lexicon-2010_0.pdf* (last visited Sep. 19, 2022).

TABLE 1—CYBERSECURITY STANDARDS AND SOURCES—Continued

Standard	Source [1]
Federal Risk and Authorization Management Program (FedRAMP), for Cloud Service Offerings.	*https://www.fedramp.gov/.*
International Organization for Standardization/International Electrotechnical Commission 27000 family of standards.	*https://www.iso.org/standard/73906.html.*
Standards developed by associations, and private sector organizations:	
American Petroleum Institute	*https://www.api.org/news-policy-and-issues/cybersecurity.*
MITRE Adversarial Tactics, Techniques, and Common Knowledge (ATT&CK®).	*https://attack.mitre.org/.*
Standards developed for other sectors of the economy, both domestically and internationally, that could be models for requirements in the pipeline and rail sectors:	
New York State Department of Financial Service cybersecurity compliance requirements (23 NYCRR 500).	*https://www.governor.ny.gov/sites/default/files/atoms/files/Cybersecurity_Requirements_Financial_Services_23NYCRR500.pdf.*
Bank of England's "impact tolerance" for regulated firms and CBEST models.	Bank of England et al., Operational Resilience: Impact Tolerances for Important Business Services (March 2022), available at: *https://www.bankofengland.co.uk/-/media/boe/files/prudential-regulation/supervisory-statement/2021/ss121-march-22.pdf.* Information on CBEST is available at: *https://www.bankofengland.co.uk/financial-stability/operational-resilience-of-the-financial-sector/cbest-threat-intelligence-led-assessments-implementation-guide.*

[1] All citations listed in this table last accessed on Sept. 19, 2022.
[2] The CFATS Risk-Based Performance Standard (RBPS) 8 addresses cybersecurity.

II. Discussion of the Advance Notice of Proposed Rulemaking

In light of the critical role that pipelines and rail sectors play in our Nation's economic and national security, as well as the ongoing and growing cyber threats to such sectors, TSA has determined that it is appropriate to issue a regulation for CRM in these sectors. This ANPRM is the first step in this process.

A. Policy Priorities

TSA is issuing this ANPRM to solicit input to ensure this rulemaking effort adequately addresses the following policy priorities:

• *Assessing and improving the current baseline of operational resilience and incident response.* Prevention alone is not sufficient. An effective CRM program and regulatory regime must be based on the assumption that cyber-attacks will disrupt individual systems and processes that support important business services. Improving the capacity and ability to respond and recover swiftly when a cybersecurity incident occurs is key to mitigating disruption and ensuring resilient operations in today's cyber threat environment.

• *Maximizing the ability for owner/operators to be self-adaptive to meet evolving threats and technologies.* Traditionally, regulations prescribe generally static requirements, *i.e.,* particular control or performance requirements that endure until the regulator issues a modification. To ensure that cybersecurity requirements sustain their effectiveness, regulations should provide for a continuous assessment of the current threat environment and ensure timely adaptation of dynamic security controls based on identified tactics, techniques, and procedures of malicious cyber actors and adversaries, while at the same time allowing for implementation of emerging technologies and capabilities that provide security controls that may be more relevant and effective for their intended purpose.

• *Identifying opportunities for third-party experts to support compliance.* The use of third-party evaluators and certifiers of cybersecurity programs and cloud service providers can drive sustainable compliance at a scale that exceeds TSA's compliance resources.

• *Accounting for the differentiated cybersecurity maturity across the surface sector and regulated owner/operators.* Surface sub-sectors and owner/operators have varying degrees of capability and capacity to adopt cybersecurity standards. A regulatory regime that drives improvement to baseline thresholds and fosters resilience of the sector, even as adversaries adapt to target the weakest link, should, to the extent possible, leverage a maturity-based model to ensure required controls are commensurate with cyber risk.

• *Incentivizing cybersecurity adoption and compliance.* An effective regulatory regime is one that incentivizes and facilitates adoption and ensures that different components of the regime are reinforcing one another. While subsidies and grants may be the first incentives that come to mind, they also require a funding source that is beyond TSA's control.

• *Measurable outcomes.* To the greatest extent possible, quantifiable measures to assess performance should be built into a cybersecurity regulatory regime. Regulations should recognize the need for identifying expected performance outcomes up front, and then adjusting these measures over time through an iterative process that reflects the current operations, including organizational issues, IT and OT systems, and known cybersecurity risks.

• *Regulatory Harmonization.* TSA recognizes the importance of ensuring that cybersecurity requirements are risk-informed, outcome/performance-based rules and, to the extent practicable, are consistent and harmonized with other applicable cybersecurity regulatory requirements.

B. Core Elements of Cybersecurity Risk Management

Following a review of the standards and guidelines identified above, and others, TSA identified common core elements of effective CRM. In discussions with subject matter experts, TSA also identified areas where additional requirements not captured in many current regimes are needed.

Together, TSA believes that the following core elements would provide a bedrock of CRM for the pipeline and rail sectors.

- Designation of a responsible individual for cybersecurity;
- Access controls;
- Vulnerability assessments;
- Specific measures to gauge the implementation, effectiveness, efficiency, and impact of cybersecurity controls;
- Drills and exercises;
- Technical security controls (*e.g.,* multi-factor authentication, encryption, network segmentation, anti-virus/anti-malware scanning, patching, and transition to ''zero trust'' architecture);
- Physical security controls;
- Incident response plan and operational resilience;
- Incident reporting and information sharing;
- Personnel training and awareness;
- Supply chain/third-party risk management; and
- Recordkeeping and documentation.

C. Request for Input To Inform Rulemaking

TSA requests constructive input on current cybersecurity practices that reflect an understanding of both cybersecurity and the operational issues of applying CRM to pipeline and rail operations. As noted above, TSA is specifically interested in comments from the applicable owner/operators, their representative associations, labor unions, state, tribal, and local governments, and the general public who rely on these systems.

In addition to input on CRM and general operational issues, TSA is interested in understanding cost implications. Such input on costs is critical for understanding the potential impacts of a regulation, and specifically to inform proper accounting of associated costs and benefits.

For those pipeline and rail owner/operators subject to the requirements in recently issued security directives imposing cybersecurity requirements, we are not expecting re-submission of information that has already been provided to TSA pursuant to the security directives, such as information contained in the results of cybersecurity vulnerability assessments.

TSA believes that cybersecurity regulations should consider current voluntarily-implemented cybersecurity measures and related operational issues that affect implementation of these measures. Having a clear and comprehensive understanding of the current baseline will support TSA's efforts to provide more flexibility in meeting the desired security outcomes. To that end, TSA is seeking specific information, including information about the costs and additional staffing requirements associated with past cybersecurity-related efforts, to assist in developing effective regulatory policies, resources for implementation, and valid cost estimates.

As discussed below, TSA is aware of the diversity of surface transportation operations, including national-level companies, publicly-owned systems, and small businesses, and of the need to ensure that requirements do not have unintended consequences on operations. To ensure that regulatory requirements reflect this concern, TSA asks commenters to include information regarding the nature and size of their business, as well as any information that could help TSA avoid regulations that have the potential to result in preventable operational impacts. This information will help TSA better understand and analyze the information provided. Failure to include this specific information will not preclude the agency's consideration of the information submitted.

III. Specific Requests for Comments

A. Overview

Responses to the following questions will help TSA develop a more complete and carefully considered rulemaking or appropriate next step. The questions are not all-inclusive, and any supplemental information is welcome. In responding to each question, please explain the reasons for your answer. We encourage you to let us know your specific concerns with respect to any of the topics under consideration.

As noted above, input received from this ANPRM will allow TSA to better understand how the pipeline and rail sectors are implementing CRM in policies, planning, and operations, and assess the need to update existing or develop new regulations to address CRM. TSA may share this information with other U.S. Government agencies to help develop future policies, guidance, and regulations on cybersecurity in the pipeline and rail sectors.

TSA recognizes that the phrase ''cyber risk management'' may involve a wide range of applications related to cyber safety and security. We request relevant information on all issues and challenges related to CRM development and implementation for pipeline and rail owner/operators in the areas of the standards, regulatory barriers, economic burdens, training and education, and management and oversight.

If you note in your submission that the information you are providing is business confidential, proprietary, or SSI, we will not share it with the public to the extent allowed by law. TSA may consider this information, however, to inform policy decisions or cost estimates in developing a proposed rule regarding CRM.

When considering your comments and suggestions, we ask that you keep in mind TSA's mission to protect the nation's transportation systems to ensure freedom of movement for people and commerce and protect our national and economic security. Commenters should feel free to answer as many questions as desired, but please consider the principles below in responding. Whenever appropriate, commenters should provide the following as part of their responses:

- If the comment refers to a specific program, regulation, guidance, standard, or policy at issue, please provide a specific citations and a link to the relevant document, as applicable;
- If the comment raises specific concerns about application of an existing program, regulation, or policy, please provide specific suggestions that identify alternative way(s) for the agency to achieve its regulatory objectives; and
- Provide specific data that documents the costs, burdens, and benefits described in the comment submission.

B. Identifying Current Baseline of Operational Resilience and Incident Response

B.1. What cybersecurity measures does your organization currently maintain and what measures has your organization taken in the last 12 months to adapt your cybersecurity program to address the latest technologies and evolving cybersecurity threats? What are your plans to update your cybersecurity program in the next 12 months? How much does your organization spend on cybersecurity annually?

B.2. What assessments does your organization conduct to monitor and enhance cybersecurity (such as cybersecurity risk, vulnerability, and/or architecture design assessments, or any other type of assessment to information systems)? How often are they conducted? Who in your organization conducts and oversees them? What are the assessment components, and how are the results documented?

B.3. Do the assessments you discussed in your response to B.2. use specific cybersecurity metrics to measure security effectiveness? If so, please

provide information on the metrics that you use.

B.4. Are the actions you discussed in response to question B.1. based on any of the standards identified in section I.H. of this ANPRM? If so, please specify which standard. If your response is based on standards not identified in section I.H. of this ANPRM, please identify the standard and provide a link or other information to assist TSA in gaining a better understanding of the scope and benefits of the standard.

B.5. For any standards identified in response to question B.3.:

a. Are there fees associated with accessing copies of these standards?

b. Have you found these standards to be effective against cyber related threats? If your answer is no, please explain why.

c. Please provide any information on costs and benefits, if any, associated with implementing the standards.

d. Is adoption of these standards, or other cybersecurity measures, required or incentivized by insurance companies, existing commercial contracts, or contracts with the Federal Government? Please also provide any information on other incentives to encourage adoption of these or other standards.

B.6. ''Operational technology'' is a general term that encompasses several types of control systems, including ICS, SCADA, distributed control systems, and other control system configurations, such as programmable logic controllers, fire control systems, and physical access control systems, often found in the industrial sector and critical infrastructure. Such systems consist of combinations of programmable electrical, mechanical, hydraulic, pneumatic devices or systems that interact with the physical environment or manage devices that interact with the physical environment. If your OT systems are connected to an outside network (satellite, hardline internet, port wide computer network, *etc.*), what safeguards are you using to protect them from cyber threats? What are the costs to implement and maintain these safeguards? In addition, please provide details on cyber related standards or guidelines being used to guide actions assessing and mitigating threats to installed OT systems connected to vital operational equipment.

C. Identifying How CRM Is Implemented

The following questions apply to pipeline and rail owner/operators that have implemented CRM.

C.1. Please describe how your organization has implemented or plans to implement CRM. What frameworks, standards, or guidelines have informed your implementation of CRM for your pipeline and rail operations? Would you recommend any other standards or guidelines not mentioned in this ANPRM for application to pipeline or rail CRM programs? If possible, please provide any data available on the overall average cost to initially implement an owner/operator CRM and its annual costs to maintain (even if not a single action).

C.2. Does your CRM include aspects of system protection, system penetration testing, security monitoring, incident response, incident forensic analysis, and a plan for restoration of operations? If not, which features does your CRM address? What are the challenges for incorporating any missing facets? Are some parts of CRM developed in-house while a third-party develops other pieces? If so, why and what advantages do either of these approaches offer?

C.3. Does your CRM include any other core elements identified in Section II.B. or other measures not previously discussed? Are some aspects developed in-house while a third-party develops other facets? If so, why and what advantages do either of these approaches offer?

C.4. As part of implementing CRM, has your company developed or does it anticipate developing and maintaining CRM using in-house or newly acquired staff, or do you currently contract out developing and maintaining ongoing CRM to a third-party contractor or plan to do so? If your company uses a third-party or contractor to perform this function, please explain why. In addition, if you use a third-party contractor, do you have a vendor management program or framework in place? Do you have a vendor integrity audit program to ensure vendors are legitimate and have additional security measures, such as an insider threat program? Does your vendor also provide penetration testing? If CRM is or will be developed and managed in-house, what is the expected annual cost in terms of wage and hours of development and management? If CRM is or will be contracted out, what are the retainer and associated fees for the third-party? Do annual fees increase by the number of incidents they respond to and, if so, by how much?

C.5. What cybersecurity personnel training and security awareness and skills education should pipeline and rail owner/operators be required to provide, and to which employees (*i.e.,* should it apply to all employees or just those with specific responsibilities, such as cybersecurity personnel, those with access to certain systems, *etc.*)? Please provide relevant information regarding what CRM training courses are available and the duration of each course, as well as how much it costs you to develop and conduct or otherwise provide CRM training and update current courses and training requirements. This information should include costs for owner/operators to create or procure course content for the types of employees identified.

C.6. How does your company address, respond to, or modify business practices due to the cost impacts of a cybersecurity incident? Does your company maintain estimates of the cost impacts (with respect to your organization and external parties) of various types of cybersecurity incidents, including but not limited to ransomware, data breaches, and attacks on operational technology? If so, what is the range of these costs based on the type or severity of the incident? Does your company insure against these kinds of costs, and, if so, what is the annual cost of insurance, and what kind of coverage is offered? If your company does not have insurance coverage, please explain why.

D. Maximizing the Ability for Owner/Operators To Meet Evolving Threats and Technologies

D.1. In addition to the requirement to report cybersecurity incidents, should pipeline and rail owner/operators be required to make attempts to recover stolen information or restore information systems within a specific timeframe? If so, what would be an appropriate timeframe?

D.2. From a regulatory perspective, TSA is most interested in actions that could be taken to protect pipeline and rail systems by ensuring appropriate safeguards of critical cyber systems within IT and OT systems. What types of critical cyber systems do you recommend that regulations address and what would be the impact if the scope included systems that directly connect with these critical cyber systems? Please provide sufficient details to allow TSA to identify where and how your recommendations relate to our current requirements or recommendations, as discussed in Section I.E.

D.3. Recognizing that there are both evolving threats and emerging capabilities to address known threats, how could owner/operators adjust their vulnerability assessments and capabilities if TSA were to issue periodic benchmarks to pipeline and rail owner/operators on the scope of vulnerability assessments that are informed by the latest technologies and evolving threats? The purpose of the periodic guidance and assessments

would be to facilitate the owner/operator's evaluation of vulnerabilities and capabilities based on the most current technologies and threats.

D.4. What are some benefits and challenges for pipeline and rail owner/operators in building operational resilience by conducting the vulnerability assessments required/recommended by TSA (whether based on the directives and information circulars discussed in Section I.E. of this ANPRM or the guidelines and assessments discussed in Section I.H.) and any assessments offered by CISA? [50]

D.5. What would be the benefits and challenges for the pipeline and rail sectors if owner/operators were required to use an accredited third-party certifier to conduct audits/assessments to determine effectiveness of the owner/operator's cybersecurity measures and/or compliance with existing requirements? What would be the costs of implementing a requirement to use a third-party certifier?

D.6. What impacts (positive and negative) to the pipeline and rail sectors workforce do you anticipate regarding the implementation of CRM? Will there be a need to hire additional employees? If so, how many and at what level and occupation?

D.7. Should pipeline and rail owner/operators be required to conduct third-party penetration testing to identify weakness or gaps in CRM programs? Please address the identified costs and benefits of this action, and any legal, security, privacy, or other issues and concerns that may arise during the testing process or prevent third-party penetration testing.

D.8. How could TSA maximize implementation of CRM by providing for innovative, effective, and efficient ways to measure cybersecurity performance? Please provide specific references or resources available for any measurement options discussed, as available.

D.9. Should pipeline and rail owner/operators designate a single individual (such as a chief information security officer) with overall authority and responsibility for leading and managing implementation of the CRM? Or should they designate a group of individuals as responsible for implementation or parts thereof?

D.10. Should the individuals who you identified under D.8. be required to have certain qualifications or experience related to cybersecurity, and if so, what type of qualifications or experience should be required? If not, what specific requirements should there be for who would implement a pipeline and rail owner/operators' CRM program? Would implementing this type of requirement necessitate hiring additional staff? If so, how many and at what level and occupation?

D.11. Should pipeline and rail owner/operators be required to monitor and limit the access that individuals have to OT and IT systems in order to protect information and restrict access to those who have a demonstrated need for access to information and/or control? Actions include limiting user access privileges to control systems to individuals with a demonstrated need-to-know and using processes and tools to create, assign, manage, and revoke access credentials for user, administrator, and service accounts for enterprise assets and software. What would be the cost of implementing this type of requirement?

D.12. What CRM security controls should pipeline and rail owner/operators be required to maintain, and in what manner? Please address each of the following:

a. Defense-in-depth strategies (including physical and logical security controls);

b. Network segmentation;

c. Separation of IT and OT systems;

d. Multi-factor authentication;

e. Encrypting sensitive data both in transit over external networks and at rest;

f. Operating antivirus and anti-malware programs;

g. Testing and applying security patches and updates within a set timeframe for IT and OT systems; and

h. Implementing, integrating, and validating zero-trust policies and architecture.

D.13. Please provide information on the cost to implement and integrate the CRM security controls identified in your response to question D.12.

D.14. What baseline level of physical security of CRM architecture should pipeline and rail owner/operators be required to maintain, including ensuring that physical access to systems, facilities, equipment, and other infrastructure assets is limited to authorized users and secured against risks associated with the physical environment? How much would it cost to implement the baseline physical security measures you identified in your response? How many of the identified measures are currently maintained (if such information has not already been provided to TSA)?

D.15. What would the benefits and challenges be for pipeline or rail owner/operators to build operational resilience by adopting an ''impact tolerance'' framework to help ensure that important business services remain operational after a cybersecurity incident, as provided for in the Bank of England's *Operational Resilience: Impact Tolerances for Important Business Services*? [51]

D.16. What minimum cybersecurity practices should pipeline and rail owner/operators require that their third-party service providers meet in order to do business with pipeline and rail owner/operators? What due diligence with respect to cybersecurity is involved in selecting a third-party provider? For example, do pipeline and rail owner/operators include contractual provisions that specifically require third-party service providers to maintain an adequate CRM program? Should TSA require such provisions, and if so, for what pipeline and rail segments and under what circumstances?

D.17. How can pipeline and rail owner/operators develop a process to evaluate service providers who hold sensitive data, or are responsible for enterprise critical IT platforms or processes, to ensure that these providers are protecting those platforms and data appropriately?

D.18. Please address the extent to which pipeline and rail owner/operators should ensure that processes to procure control systems include physical security and cybersecurity in acquisition decisions and contract arrangements? In addition, please address the extent to which pipeline and rail owner/operators should ensure that vendors in the supply chain are vetted appropriately and that vendors vet their own personnel, service providers, and products and software.

D.19. Are there any new technologies in use or under development that may be relevant to the future of secure IT and OT systems, and how should these technologies be considered or used to establish an effective regulatory CRM regime?

D.20. How should pipeline and rail owner/operators address cybersecurity challenges or benefits posed by using a commercial cloud service provider? Please explain how pipeline and rail owner/operators can identify and mitigate risks associated with migration of data, services, or infrastructure to a public or shared cloud storage system and/or perspective on the security benefits and challenges that may arise from the use of commercial cloud infrastructure.

[50] Source: CISA Assessments: Cyber Resilience Review (CRR), accessible at *https://www.cisa.gov/uscert/resources/assessments*.

[51] *See, supra,* Table 1.

D.21. How can pipeline and rail owner/operators most effectively address the risks of using very small aperture terminals networks and commercial satellite communications for remote communications? Please address how pipeline and rail owner/operators can identify and mitigate risks associated with use of these systems, which were often built for speed of communication without security in mind or specific measures to address known vulnerabilities. What would be the cost of implementing the actions you recommend for identifying and mitigating risks associated with these systems? If cost data are provided, please break it down by unit and extent to which they are implemented (*e.g.,* isolated or system-wide).

D.22. What other regulatory or procurement regimes do pipeline and rail owners/operators need to comply with (*e.g.,* are you required to comply with Defense Federal Acquisition Regulation Supplement (DFARS) requirements)? What actions/documentation can pipeline and rail owner/operators take/provide to allow TSA to consider compliance with another state or federal requirement to establish full compliance with TSA's requirements? How could TSA validate that the other requirements are, in fact, being fully implemented and provide the same level of security as TSA's requirements? Are there other regulatory regimes, potentially in other sectors or other countries, that pipeline and rail owners/operators believe would be good references for TSA?

D.23. How can maturity-based cybersecurity frameworks, such as CISA's Cross-Sector Cybersecurity Performance Goals and the *NIST Framework for Improving Critical Infrastructure Cybersecurity,*[52] be leveraged in the pipeline and rail sectors to calibrate adoption in a manner that is tailored and feasible for these sectors?

D.24. What existing statutes, standards, or TSA-issued regulations, policies, or guidance documents may present a challenge or barrier to the implementation of CRM in the pipeline and rail sectors? How could these statutes, standards, regulations, policies, or guidance documents be changed to remove the barriers or challenges? Please be as detailed and specific as possible.

D.25. How could a future rulemaking implement risk-based and/or performance based requirements that achieve an effective cybersecurity baseline across the pipeline and rail industry?

E. Identifying Opportunities for Third-Party Experts To Support Compliance

The following questions are specifically related to the role of third-parties to establish compliance with requirements, such as verifications and validations. TSA has maximized the capability of third-party certifiers in other contexts and is interested in options for leveraging this capability for cybersecurity. In general, the concept would require some level of approval by the Federal Government that recognizes the qualifications of the third-parties, vetting to identify any potential conflicts of interest or other risks associated with an insider threat, and consistent standards to be applied.

E.1. How would you envision using third-party organizations to improve cyber safety and security in the pipeline and rail sectors? For example, should pipeline and rail owner/operators be able to use third parties to administer their CRM programs, and if so, to what extent and in what manner? Should pipeline and rail owner/operators use third-party certifiers to verify compliance and the adequacy of their CRM programs? Please explain the basis for your position and provide specific examples and, where possible, estimated costs.

E.2. What would the benefits and challenges be were TSA to require owner/operators to conduct compliance assessments by an accredited third-party certifier, similar to that described in the Bank of England's *CBEST Threat Intelligence-Led Assessments* (2021)? What features should be included in a compliance scheme that leverages third-party validators?

E.3. What minimum cybersecurity practices or experience should TSA require that third-party experts meet for them to do business with the pipeline and rail owner/operators?

F. Cybersecurity Maturity Considerations

F.1. What special considerations or potential impacts (*i.e.,* risks, costs, or practical limitations) would pipeline and rail owner/operators have to consider before implementing CRM in their respective operations? Are there differences between startup costs to implement and the ongoing costs to maintain CRM? Do small entities (including business owner/operators) face unique or disproportionate costs in implementing and maintaining CRM?

F.2. What is your estimate of the percentage of pipeline and rail owner/operators that have already implemented CRM within their organizations? If you do not know specifically, please provide us with your best estimate or any sources of data that TSA may use to determine this number. Does your organization currently have a CRM program? Do you think there are disparities between the percentages of large and small entities that have implemented CRM? If so, why and what are they?

F.3. Some sectors may have regulatory regimes in place imposing cybersecurity requirements. As some owner/operators may be subject to regulatory requirements imposed by multiple Federal, state, or local agencies, how should TSA most effectively achieve regulatory harmonization consistent with our transportation security responsibilities and relevant to pipeline and rail owner/operators?

G. Incentivizing Cybersecurity Adoption and Compliance

TSA is particularly interested in comments on types of incentives, such as liability protection, insurance, commercial contracts, or other private or public sector options, that would incentivize adoption of cybersecurity and resilience measures, and whether and how TSA might facilitate the development of such incentives.

G.1. If you have implemented CRM, was implementation required or incentivized by insurance companies, existing commercial contracts, or contracts with the Federal Government? How long did it take to implement CRM and what was the estimated cost of the implementation? What are the estimated annual costs of maintaining your CRM program?

G.2. Does your company insure against significant cybersecurity incidents? If so, what are the general terms of your insurance, and how does it factor into your decision on how to respond to significant cybersecurity incidents? What is the scope of review or audits that your insurer conducts, or requires you to conduct, in order to assess insurance worthiness?

G.3. What tools, technical assistance, or other resources could TSA provide to facilitate compliance with any specific federally-imposed cybersecurity requirement?

Dated: November 22, 2022.

David P. Pekoske,

Administrator.

[FR Doc. 2022–25941 Filed 11–29–22; 8:45 am]

BILLING CODE 9110–05–P

[52] *See* Table 1.

Notices

Federal Register
Vol. 87, No. 229
Wednesday, November 30, 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

Submission for OMB Review; Comment Request

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

Comments regarding this information collection received by December 30, 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.

Natural Resources and Conservation Service

Title: Volunteer Program—Earth Team.

OMB Control Number: 0578–0024.

Summary of Collection: Volunteers have been a valuable human resource to the Natural Resources Conservation Service (NRCS) since 1985. Collection of this information is necessary to document service of volunteers as required by 7 U.S.C. 2272: Volunteers for Department of Agriculture Programs and Departmental Regulation DR 4230–001—Volunteer Programs. Agencies are authorized to recruit, train and accept, with regard to Civil Service classification laws, rules, or regulations, the services of individuals to serve without compensation. Volunteers may assist in any agency program/project and may perform any activities which agency employees are allowed to do. Volunteers must be 14 years of age. NRCS will collect information using NRCS forms NRCS–Per–002 and NRCS–PER–004.

Need and Use of the Information: NRCS will collect information on the type of skills and type of work the volunteers are interested in doing. The collected information will be used by supervisors of volunteers and the International Program Division to evaluate potential international volunteers and evaluate the effectiveness of the volunteer program. Without the information, NRCS would not know which individuals are interested in volunteering.

Description of Respondents: Individuals or households; Business or other for-profit; State, Local, or Tribal Government.

Number of Respondents: 8,220.

Frequency of Responses: Reporting: Semi-Annually.

Total Burden Hours: 1,011.

Ruth Brown,

Departmental Information Collection Clearance Officer.

[FR Doc. 2022–26058 Filed 11–29–22; 8:45 am]

BILLING CODE 3410–16–P

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[B–29–2022]

Foreign-Trade Zone (FTZ) 57—Mecklenburg County, North Carolina; Authorization of Production Activity; Exela Pharma Sciences, LLC (Pharmaceutical Products), Lenoir, North Carolina

On July 28, 2022, the Charlotte Regional Business Alliance, grantee of FTZ 57, submitted a notification of proposed production activity to the FTZ Board on behalf of Exela Pharma Sciences, LLC, within Subzone 57D, in Lenoir, North Carolina.

The notification was processed in accordance with the regulations of the FTZ Board (15 CFR part 400), including notice in the **Federal Register** inviting public comment (87 FR 47962, August 5, 2022). On November 25, 2022, the applicant was notified of the FTZ Board's decision that no further review of the activity is warranted at this time. The production activity described in the notification was authorized, subject to the FTZ Act and the FTZ Board's regulations, including Section 400.14.

Dated: November 25, 2022.

Andrew McGilvray,

Executive Secretary.

[FR Doc. 2022–26100 Filed 11–29–22; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[B–32–2022]

Foreign-Trade Zone (FTZ) 27—Boston, Massachusetts; Authorization of Production Activity; Wyeth Pharmaceuticals, LLC (COVID–19 Vaccine), Andover, Massachusetts

On July 27, 2022, Wyeth Pharmaceuticals, LLC, submitted a notification of proposed production activity to the FTZ Board for its facility within Subzone 27R, in Andover, Massachusetts.

The notification was processed in accordance with the regulations of the FTZ Board (15 CFR part 400), including notice in the **Federal Register** inviting public comment (87 FR 47962, August 5, 2022). On November 25, 2022, the

applicant was notified of the FTZ Board's decision that no further review of the activity is warranted at this time. The production activity described in the notification was authorized, subject to the FTZ Act and the FTZ Board's regulations, including Section 400.14.

Dated: November 25, 2022.

Andrew McGilvray,

Executive Secretary.

[FR Doc. 2022–26101 Filed 11–29–22; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[B–30–2022]

Foreign-Trade Zone (FTZ) 167—Green Bay, Wisconsin; Authorization of Production Activity; Shipbuilders of Wisconsin, Inc. d/b/a Burger Boat Company (Construction and Repair of Vessels and Hulls), Manitowoc, Wisconsin

On July 28, 2022, Shipbuilders of Wisconsin, Inc. d/b/a Burger Boat Company submitted a notification of proposed production activity to the FTZ Board for its facility within FTZ 167, in Manitowoc, Wisconsin.

The notification was processed in accordance with the regulations of the FTZ Board (15 CFR part 400), including notice in the **Federal Register** inviting public comment (87 FR 47961, August 5, 2022). On November 25, 2022, the applicant was notified of the FTZ Board's decision that no further review of the activity is warranted at this time. The production activity described in the notification was authorized, subject to the FTZ Act and the FTZ Board's regulations, including Section 400.14.

Dated: November 25, 2022.

Andrew McGilvray,

Executive Secretary.

[FR Doc. 2022–26099 Filed 11–29–22; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[RTID 0648–XC403]

Fisheries of the Exclusive Economic Zone Off Alaska; Bering Sea and Aleutian Islands Management Area; Cost Recovery Fee Notice for the Western Alaska Community Development Quota and Trawl Limited Access Privilege Programs

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

ACTION: Notice of standard prices and fee percentage.

SUMMARY: NMFS publishes standard prices and fee percentages for cost recovery for the Amendment 80 Program, the American Fisheries Act (AFA) Program, the Aleutian Islands Pollock (AIP) Program, and the Western Alaska Community Development Quota (CDQ) Program in the Bering Sea Aleutian Islands (BSAI) management area. The fee percentages for 2022 are 0.87 percent for the Amendment 80 Program, 0.32 percent for the AFA inshore cooperatives, 0 percent for the AIP program, and 0.85 percent for the CDQ Program. This notice is intended to provide the 2022 standard prices and fee percentages to calculate the required payment for cost recovery fees due by December 31, 2022.

DATES: The standard prices and fee percentages are valid on November 30, 2022.

FOR FURTHER INFORMATION CONTACT: Charmaine Weeks, Fee Coordinator, 907–586–7231.

SUPPLEMENTARY INFORMATION:

Background

Section 304(d) of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act) authorizes and requires that NMFS collect cost recovery fees for limited access privilege programs and the CDQ Program. Cost recovery fees recover NMFS' actual costs directly related to its management, data collection, and enforcement of the programs. Section 304(d) of the Magnuson-Stevens Act mandates that cost recovery fees not exceed 3 percent of the annual ex-vessel value of fish harvested under any program subject to a cost recovery fee and that the fee be collected either at the time of landing, filing of a landing report, or sale of such fish during a fishing season or in the last quarter of the calendar year in which the fish is harvested.

NMFS manages the Amendment 80 Program, AFA Program, and AIP Program as limited access privilege programs. On January 5, 2016, NMFS published a final rule to implement cost recovery for these three limited access privilege programs and the CDQ program (81 FR 150, January 5, 2016). The designated representative (for the purposes of cost recovery) for each program is responsible for submitting the fee payment to NMFS on or before the due date of December 31 of the year in which the landings were made. The total dollar amount of the fee due is determined by multiplying the NMFS published fee percentage by the ex-vessel value of all landings under the program made during the fishing year. NMFS publishes this notice of the fee percentages for the Amendment 80, AFA, AIP, and CDQ programs in the **Federal Register** by December 1 each year.

Standard Prices

The fee liability is based on the ex-vessel value of fish harvested in each program. For purposes of calculating cost recovery fees, NMFS calculates a standard ex-vessel price (standard price) for each species. A standard price is determined using information on landings purchased (volume) and ex-vessel value paid (value). For most groundfish species, NMFS annually summarizes volume and value information for landings of all fishery species subject to cost recovery to estimate a standard price for each species. The standard prices are described in U.S. dollars per pound for landings made during the year. The standard prices for all species in the Amendment 80, AFA, AIP, and CDQ programs are provided in Table 1. Each landing made under each program is multiplied by the appropriate standard price to arrive at an ex-vessel value for each landing. These values are summed together to arrive at the ex-vessel value of each program (fishery value).

TABLE 1—STANDARD EX-VESSEL PRICES BY SPECIES FOR THE 2022 FISHING YEAR

Species	Gear type	Reporting period	Standard ex-vessel price per pound ($)
Arrowtooth flounder	All	January to December	0.23
Atka mackerel	All	January to December	0.23
Flathead sole	All	January to December	0.19
Greenland turbot	All	January to December	0.68
CDQ halibut	Fixed gear	January to December	6.86
Pacific cod	Fixed gear	January to December	0.48
	Trawl gear	January to December	0.45
Pacific ocean perch	All	January to December	0.18
Pollock	All	January to December	0.16
Rock sole	All	January to March	0.21
	All	April to December	0.18
Sablefish	Fixed gear	January to December	2.18
	Trawl gear	January to December	0.77
Yellowfin sole	All	January to December	0.19

Fee Percentage

NMFS calculates the fee percentage each year according to the factors and methods described at 50 CFR 679.33(c)(2), 679.66(c)(2), 679.67(c)(2), and 679.95(c)(2). NMFS determines the fee percentage that applies to landings made during the year by dividing the total costs directly related to the management, data collection, and enforcement of each program (direct program costs) during the year by the fishery value. NMFS captures direct program costs through an established accounting system that allows staff to track labor, travel, contracts, rent, and procurement. For 2022, the direct program costs were tracked from October 1, 2021 to September 30, 2022 (the end of the fiscal year). The 2022 fee percentages for the AFA and Western Alaska CDQ Programs are more than the fee percentages calculated for them in 2021. The 2022 fee percentage for the Amendment 80 Program is less than the fee percentage calculated for it in 2021. The 2022 percentage for the AIP Program is zero because there was no AIP fishery in 2022, thus no associated harvest.

NMFS will provide an annual report that summarizes direct program costs for each of the programs in early 2023. NMFS calculates the fishery value as described earlier under the Standard Prices section of this notice.

Amendment 80 Program Standard Prices and Fee Percentage

The Amendment 80 Program allocates total allowable catches (TACs) of groundfish species, other than Bering Sea pollock, to identified trawl catcher/processors in the BSAI. The Amendment 80 Program allocates a portion of the BSAI TACs of six species: Atka mackerel, Pacific cod, flathead sole, rock sole, yellowfin sole, and Aleutian Islands Pacific ocean perch. In recent years, participants in the Amendment 80 sector have established a cooperative to harvest these allocations. Each Amendment 80 cooperative is responsible for payment of the cost recovery fee for fish landed under the Amendment 80 Program. Cost recovery requirements for the Amendment 80 Program are at 50 CFR 679.95.

For most Amendment 80 species, NMFS annually summarizes volume and value information for landings of all fishery species subject to cost recovery in order to estimate a standard price for each fishery species. Regulations specify that for rock sole, NMFS shall calculate a separate standard price for two periods, January 1 through March 31 and April 1 through October 31, which has historically accounted for a substantial difference in estimated rock sole prices during the first quarter of the year relative to the remainder of the year. The volume and value information are obtained from the First Wholesale Volume and Value Report submitted by catcher/processors that harvested Amendment 80 or CDQ species, and the Pacific Cod Ex-Vessel Volume and Value Report submitted by shoreside processors and motherships that processed landings of BSAI or CDQ Pacific cod.

Using the fee percentage formula described generally above, the estimated percentage of direct program costs to fishery value for the 2022 calendar year is 0.87 percent for the Amendment 80 Program. For 2022, NMFS applied the fee percentage to each Amendment 80 species landing that was debited from an Amendment 80 cooperative quota allocation between January 1 and December 31 to calculate the Amendment 80 fee liability for each Amendment 80 cooperative. The 2022 fee payments must be submitted to NMFS on or before December 31, 2022. Payment must be made in accordance with the payment methods set forth in 50 CFR 679.95(a)(3)(iv).

AFA Standard Price and Fee Percentages

The AFA Program allocates the Bering Sea directed pollock fishery TAC to three sectors: catcher/processor, mothership, and inshore. Each sector has established cooperatives to harvest the sector's exclusive allocation. In 2022, each cooperative for the inshore sector is responsible for paying the fee for Bering Sea pollock landed under the AFA Program. Cost recovery requirements for the AFA sectors are found at 50 CFR 679.66.

NMFS calculates the standard price for pollock using the most recent annual value information reported to the Alaska Department of Fish and Game for the Commercial Operator's Annual Report and compiled in the Alaska Commercial Fisheries Entry Commission Gross Earnings data. Due to the time required to compile the data, there is a 1-year delay between the gross earnings data year and the fishing year to which it is applied. For example, NMFS used 2021 gross earnings data to calculate the standard price for 2022 pollock landings.

Under the fee percentage formula described above, the estimated percentage of direct program costs to fishery value for the 2022 calendar year is 0.32 percent for the AFA inshore sector. To calculate the 2022 fee liabilities, NMFS applied the respective fee percentages to the landings of Bering Sea pollock debited from each cooperative's fishery allocation that

occurred between January 1 and December 31. The 2022 fee payments must be submitted to NMFS on or before December 31, 2022. Payment must be made in accordance with the payment methods set forth in 50 CFR 679.66(a)(4)(iv).

AIP Program Standard Price and Fee Percentage

The AIP Program allocates the Aleutian Islands directed pollock fishery TAC to the Aleut Corporation, consistent with the Consolidated Appropriations Act of 2004 (Pub. L. 108–109) and implementing regulations. Annually, prior to the start of the pollock season, the Aleut Corporation provides NMFS with the identity of its designated representative for harvesting the Aleutian Islands directed pollock fishery TAC. The same individual is responsible for the submission of all cost recovery fees for pollock landed under the AIP Program. Cost recovery requirements for the AIP Program are at 50 CFR 679.67.

NMFS calculates the standard price for pollock using the most recent annual value information reported to the Alaska Department of Fish and Game for the Commercial Operator's Annual Report and compiled in the Alaska Commercial Fisheries Entry Commission Gross Earnings data for Aleutian Islands pollock. As explained above, due to the time required to compile the data, there is a 1-year delay between the gross earnings data year and the fishing year to which it is applied.

For the 2022 fishing year, the Aleut Corporation did not select any participants to harvest or process the Aleutian Islands directed pollock fishery TAC, and most of that TAC was reallocated to the Bering Sea directed pollock fishery TAC. Since there was no fishery for the AIP Program in 2022, the fee percentage is zero.

CDQ Standard Price and Fee Percentage

The CDQ Program was implemented in 1992 to provide access to BSAI fishery resources to villages located in Western Alaska. Section 305(i) of the Magnuson-Stevens Act identifies 65 villages eligible to participate in the CDQ Program and the six CDQ groups to represent these villages. CDQ groups receive exclusive harvesting privileges of the TACs for a broad range of crab species, groundfish species, and halibut. NMFS implemented a CDQ cost recovery program for the BSAI crab fisheries in 2005 (70 FR 10174, March 2, 2005) and published the cost recovery fee percentage for the 2021/2022 crab fishing year on July 12, 2022 (87 FR 41292, July 12, 2022). This notice provides the cost recovery fee percentage for the CDQ Program with respect to groundfish and halibut. Each CDQ group is subject to cost recovery fee requirements and the designated representative of each CDQ group is responsible for submitting payment for their CDQ group. Cost recovery requirements for the CDQ Program are at 50 CFR 679.33.

For most CDQ groundfish species, NMFS annually summarizes volume and value information for landings of all fishery species subject to cost recovery in order to estimate a standard price for each fishery species. The volume and value information are obtained from the First Wholesale Volume and Value Report and the Pacific Cod Ex-Vessel Volume and Value Report. For CDQ halibut and fixed-gear sablefish, NMFS calculates the standard prices using information from the Individual Fishing Quota (IFQ) Ex-Vessel Volume and Value Report, which collects information on both IFQ and CDQ volume and value.

Using the fee percentage formula described above, the estimated percentage of direct program costs to fishery value for the 2022 calendar year is 0.85 percent for the CDQ Program. For 2022, NMFS applied the calculated CDQ fee percentage to all CDQ groundfish and halibut landings made between January 1 and December 31 to calculate the CDQ fee liability for each CDQ group. The 2022 fee payments must be submitted to NMFS on or before December 31, 2022. Payment must be made in accordance with the payment methods set forth in 50 CFR 679.33(a)(3)(iv).

*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. 2022–26071 Filed 11–29–22; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF DEFENSE

Office of the Secretary

[Docket ID: DoD–2022–OS–0009]

Submission for OMB Review; Comment Request

AGENCY: The Office of the Under Secretary of Defense for Personnel and Readiness (OUSD(P&R)), Department of Defense (DoD).

ACTION: 30-Day information collection notice.

SUMMARY: The DoD has submitted to the Office of Management and Budget (OMB) for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act.

DATES: Consideration will be given to all comments received by December 30, 2022.

ADDRESSES: Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to *www.reginfo.gov/public/do/PRAMain*. Find this particular information collection by selecting ''Currently under 30-day Review—Open for Public Comments'' or by using the search function.

FOR FURTHER INFORMATION CONTACT: Angela Duncan, 571–372–7574, *whs.mc-alex.esd.mbx.dd-dod-information-collections@mail.mil.*

SUPPLEMENTARY INFORMATION:

Title; Associated Form; and OMB Number: Survey of Reserve Component Spouses; OMB Control Number 0704–RCSS.

Type of Request: New.

Number of Respondents: 72,700.

Responses per Respondent: 1.

Annual Responses: 72,700.

Average Burden per Response: 15 minutes.

Annual Burden Hours: 18,175.

Needs and Uses: The DoD Survey of Reserve Component Spouses (RCSS) is the primary source for reliable and generalizable data on the effects of military life on military spouses and their families and the effectiveness of current programs and policies related to military families. The survey is designed to enhance understanding of how spouse and family resilience impact Reserve component force readiness and retention, and is also an indicator informing the effectiveness of programs and policies under the purview of DoD's Military Community and Family Policy Department. Without this biennial survey, DoD would not have current data to guide limited resources to the appropriate programs, policies, and services related to reserve component spouses, their families and ultimately Service members. This survey provides an opportunity for military spouses to directly expand policy makers' knowledge by sharing opinions on issues that directly affect them. Success of current efforts, the impact of activations and deployments, and opportunities to identify areas of need are captured via this biennial survey. These survey results ensure that policy-making decisions are based on current and statistically reliable data regarding the lived experiences of Reserve component families.

Affected Public: Individuals or households.

Frequency: On occasion.

Respondent's Obligation: Voluntary.

OMB Desk Officer: Ms. Jasmeet Seehra.

You may also submit comments and recommendations, identified by Docket ID number and title, by the following method:

• *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.

Instructions: All submissions received must include the agency name, Docket ID number, and title for this **Federal Register** document. The general policy for comments and other submissions from members of the public is to make these submissions available for public viewing on the internet at *http://www.regulations.gov* as they are received without change, including any personal identifiers or contact information.

DOD Clearance Officer: Ms. Angela Duncan.

Requests for copies of the information collection proposal should be sent to Ms. Duncan at *whs.mc-alex.esd.mbx.dd-dod-information-collections@mail.mil.*

Dated: November 25, 2022.

Aaron T. Siegel,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 2022–26098 Filed 11–29–22; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Office of the Secretary

[Docket ID: DoD–2022–OS–0134]

Proposed Collection; Comment Request

AGENCY: Office of the Under Secretary of Defense for Personnel and Readiness (OUSD(P&R)), Department of Defense (DoD).

ACTION: 60-day information collection notice.

SUMMARY: In compliance with the *Paperwork Reduction Act of 1995,* the Office of the Under Secretary of Defense for Personnel and Readiness announces a proposed public information collection and seeks public comment on the provisions thereof. Comments are invited on: whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; the accuracy of the agency's estimate of the burden of the proposed information collection; ways to enhance the quality, utility, and clarity of the information to be collected; and ways to minimize the burden of the information collection on respondents, including through the use of automated collection techniques or other forms of information technology.

DATES: Consideration will be given to all comments received by January 30, 2023.

ADDRESSES: You may submit comments, identified by docket number and title, by any of the following methods:

Federal eRulemaking Portal: http://www.regulations.gov. Follow the instructions for submitting comments.

Mail: Department of Defense, Office of the Assistant to the Secretary of Defense for Privacy, Civil Liberties, and Transparency, Regulatory Directorate, 4800 Mark Center Drive, Mailbox #24, Suite 08D09, Alexandria, VA 22350–1700.

Instructions: All submissions received must include the agency name, docket number and title for this **Federal Register** document. The general policy for comments and other submissions from members of the public is to make these submissions available for public viewing on the internet at *http://www.regulations.gov* as they are received without change, including any personal identifiers or contact information.

FOR FURTHER INFORMATION CONTACT: To request more information on this proposed information collection or to obtain a copy of the proposal and associated collection instruments, please write to Defense State Liaison Office, 4800 Mark Center Drive, Suite 14E08, Alexandria, VA 22350, Jeremy Hinton, (703)-409–8878

SUPPLEMENTARY INFORMATION:

Title; Associated Form; and OMB Number: Evaluation of State Implementation of Supportive Policies to Improve Educational Experiences and Achievement for K–12 Military Children (SPEAK Military Children); OMB Control Number 0704–SPEK.

Needs and Uses: The purpose of this study is to investigate the implementation of four specific initiatives (*i.e.,* Advance Enrollment, Military Student Identifier, Purple Star Schools [or similar efforts], and the Interstate Compact on Educational Opportunity for Military Children) and other policies intended to support military-connected students' (*i.e.,* kindergarten through 12th grade) educational success (*e.g.,* academic performance, social-emotional development and well-being).

Each of these groups of people may have different perspectives on the implementation of the abovementioned four initiatives. Since little is known about the implementation or effectiveness of these initiatives, understanding different stakeholder's perspectives is critical. With a better understanding of how the programs and policies are being implemented and stakeholders' perceptions of the programs and policies, the Defense-State Liaison Office will be able to make informed recommendations for improvements in federal and state policies intended to support children in military families.

Affected Public: Individuals or households.

Annual Burden Hours: 168.75.

Number of Respondents: 225.

Responses per Respondent: 1.

Annual Responses: 225.

Average Burden per Response: 45 minutes.

Frequency: On occasion

Dated: November 25, 2022.

Aaron T. Siegel,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 2022–26105 Filed 11–29–22; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Department of the Navy

[Docket ID: USN–2022–HQ–0033]

Proposed Collection; Comment Request

AGENCY: Department of the Navy, Department of Defense (DoD).

ACTION: 60-day information collection notice.

SUMMARY: In compliance with the *Paperwork Reduction Act of 1995,* the Department of the Navy announces a proposed public information collection and seeks public comment on the provisions thereof. Comments are invited on: whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; the accuracy of the agency's estimate of the burden of the proposed information collection; ways to enhance the quality, utility, and clarity of the information to be collected; and ways to minimize the burden of the information collection on respondents, including through the use of automated collection techniques or other forms of information technology.

DATES: Consideration will be given to all comments received by January 30, 2023.

ADDRESSES: You may submit comments, identified by docket number and title, by any of the following methods:

Federal eRulemaking Portal: http://www.regulations.gov. Follow the instructions for submitting comments.

Mail: Department of Defense, Office of the Assistant to the Secretary of Defense for Privacy, Civil Liberties, and Transparency, Regulatory Directorate, 4800 Mark Center Drive, Mailbox #24, Suite 08D09, Alexandria, VA 22350–1700.

Instructions: All submissions received must include the agency name, docket number and title for this **Federal Register** document. The general policy for comments and other submissions from members of the public is to make these submissions available for public viewing on the internet at *http://www.regulations.gov* as they are received without change, including any personal identifiers or contact information.

FOR FURTHER INFORMATION CONTACT: To request more information on this proposed information collection or to obtain a copy of the proposal and associated collection instruments, please write to the Office of the Department of the Navy Information Management Control Officer, 2000 Navy Pentagon, Rm. 4E563, Washington, DC 20350, ATTN: Ms. Sonya Martin, or call 703–614–7585.

SUPPLEMENTARY INFORMATION:

Title; Associated Form; and OMB Number: Navy Child and Youth Programs Forms; OPNAV Forms 1700/1–1700/3, 1700/5, 1700/7–1700/15, and 1700/17–1700/23; OMB Control Number 0703–NCYP.

Needs and Uses: Navy Child and Youth Programs (CYP) collects information in order to facilitate accurate and efficient operation of all programs and activities as part of fulfilling CYP's mission to provide services to eligible patrons. Numerous forms are used by patrons to complete the enrollment/registration process to enroll children and youths into CYP programs and activities, establish patron fees, determine the general health status of CYP participants and ensure that all their needs are documented. Information is also collected to allow for the application and certification of family childcare providers, as well as to determine patron and provider eligibility for participation in Navy CYP fee assistance programs.

Affected Public: Individuals or households.

Registration Forms

Annual Burden Hours: 65,398.
Number of Respondents: 17,152.
Responses per Respondent: 5.25.
Annual Responses: 90,059.
Average Burden per Response: 43.57 minutes.

Medical Forms

Annual Burden Hours: 14,246.
Number of Respondents: 19,054.
Responses per Respondent: 1.
Annual Responses: 19,054.
Average Burden per Response: 44.86 minutes.

Family Child Care Forms

Annual Burden Hours: 338.
Number of Respondents: 325.
Responses per Respondent: 1.
Annual Responses: 325.
Average Burden Per Response: 62.4 minutes.

Fee Assistance Forms

Annual Burden Hours: 11,750.
Number of Respondents: 11,750.
Responses per Respondent: 1.
Annual Responses: 11,750.
Average Burden per Response: 60 minutes.

Total

Annual Burden Hours: 91,732.
Number of Respondents: 48,281.
Annual Responses: 121,188.
Frequency: On Occasion.

Dated: November 25, 2022.

Aaron T. Siegel,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 2022–26104 Filed 11–29–22; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF EDUCATION

[Docket No.: ED–2022–SCC–0102]

Agency Information Collection Activities; Submission to the Office of Management and Budget for Review and Approval; Comment Request; State Authorization

AGENCY: Federal Student Aid (FSA), Department of Education (ED).

ACTION: Notice.

SUMMARY: In accordance with the Paperwork Reduction Act (PRA) of 1995, the Department is proposing an extension without change of a currently approved information collection request (ICR).

DATES: Interested persons are invited to submit comments on or before December 30, 2022.

ADDRESSES: Written comments and recommendations for proposed information collection requests should be submitted within 30 days of publication of this notice. Click on this link *www.reginfo.gov/public/do/PRAMain* to access the site. Find this information collection request (ICR) by selecting ''Department of Education'' under ''Currently Under Review,'' then check the ''Only Show ICR for Public Comment'' checkbox. *Reginfo.gov* provides two links to view documents related to this information collection request. Information collection forms and instructions may be found by clicking on the ''View Information Collection (IC) List'' link. Supporting statements and other supporting documentation may be found by clicking on the ''View Supporting Statement and Other Documents'' link.

FOR FURTHER INFORMATION CONTACT: For specific questions related to collection activities, please contact Beth Grebeldinger, (202) 377–4018.

SUPPLEMENTARY INFORMATION: The Department is especially interested in public comment addressing the following issues: (1) is this collection necessary to the proper functions of the Department; (2) will this information be processed and used in a timely manner; (3) is the estimate of burden accurate; (4) how might the Department enhance the quality, utility, and clarity of the information to be collected; and (5) how might the Department minimize the burden of this collection on the respondents, including through the use of information technology. Please note that written comments received in response to this notice will be considered public records.

Title of Collection: State Authorization.

OMB Control Number: 1845–0144.

Type of Review: Extension without change of a currently approved ICR.

Respondents/Affected Public: Private; State, Local, and Tribal Governments.

Total Estimated Number of Annual Responses: 5,428.

Total Estimated Number of Annual Burden Hours: 2,714.

Abstract: The Department of Education (the Department) requests extension of this information collection regarding Institutional Eligibility regulations in § 600.9—State Authorization. These regulations were a result of negotiated rulemaking in early 2019 and the requirements to these regulations have not changed.

The regulations in § 600.9(c)(2)(i) require an institution to determine in accordance with the institution's policies and procedures in which State a student is located while enrolled in a distance education or correspondence course, under either State jurisdiction or when the institution participates in a State authorization reciprocity agreement under which it is covered.

The updates to the policies and procedures are not reported to the Department nor is there a specified format for such information.

The regulations in § 600.9(c)(2)(ii) require an institution, upon request from the Secretary, provide the written documentation of its determination of a student's location, including the basis for such determination. There is no specific form or format for the institutions to provide this information to the Department upon request. It is anticipated that an institution would provide the pertinent portions of the policy and procedures manual to respond to such a request from the Department, but it may provide the requested information in another method.

Dated: November 28, 2022.

Kun Mullan,

PRA Coordinator, Strategic Collections and Clearance, Governance and Strategy Division, Office of Chief Data Officer, Office of Planning, Evaluation and Policy Development.

[FR Doc. 2022–26183 Filed 11–29–22; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. AD22–12–000]

Joint FERC–DOE Supply Chain Risk Management, Technical Conference; Second Supplemental Notice of Technical Conference

Take notice that the Federal Energy Regulatory Commission (Commission) will convene a Joint Technical Conference with the U.S. Department of Energy in the above-referenced proceeding on December 7, 2022, from approximately 8:30 a.m. to 5:00 p.m. Eastern Time. The conference will be held in-person at the Commission's headquarters at 888 First Street NE, Washington, DC 20426 in the Commission Meeting Room.

The purpose of this conference is to discuss supply chain security challenges related to the Bulk-Power System, ongoing supply chain-related activities, and potential measures to secure the supply chain for the grid's hardware, software, computer, and networking equipment. FERC Commissioners and DOE's Office of Cybersecurity, Energy Security, and Emergency Response (CESER) Director will be in attendance, and panels will involve multiple DOE program offices, the North American Electric Reliability Corporation (NERC), trade associations, leading vendors and manufacturers, and utilities.

The conference will be open for the public to attend, and there is no fee for attendance. Information on this technical conference will also be posted on the Calendar of Events on the Commission's website, *www.ferc.gov,* prior to the event.

The conference will also be transcribed. Transcripts will be available for a fee from Ace Reporting, (202) 347–3700.

Commission conferences are accessible under section 508 of the Rehabilitation Act of 1973. For accessibility accommodations, please send an email to *accessibility@ferc.gov,* call toll-free (866) 208–3372 (voice) or (202) 208–8659 (TTY), or send a fax to (202) 208–2106 with the required accommodations.

For more information about this technical conference, please contact Simon Slobodnik at *Simon.Slobodnik@ferc.gov* or (202) 502–6707. For information related to logistics, please contact Lodie White at *Lodie.White@ferc.gov* or (202) 502–8453.

Dated: November 23, 2022.

Kimberly D. Bose,

Secretary.

Supply Chain Risk Management Technical Conference; Docket No. AD22–12–000 December 7, 2022; 8:30 a.m.–5:00 p.m.

8:30 a.m. Opening Remarks and Introductions

8:45 a.m. Panel I: Supply Chain Risks Facing the Bulk-Power System

The U.S. energy sector procures products and services from a globally distributed, highly complex, and increasingly interconnected set of supply chains. Information Technology (IT) and Operational Technology (OT) systems enable increased interconnectivity, process automation, and remote control. As a result, supply chain risks will continue to evolve and likely increase.[1] This panel will discuss the state of supply chain risks from a national and geopolitical perspective. Specifically, the panel will explore current supply chain risks to the security of grid's hardware, software, computer, and networking equipment and how well-resourced campaigns perpetrated by nation states, such as the SolarWinds incident, affect supply chain risk for the electric sector. Panelists will discuss the origins of these risks, their pervasiveness, the possible impacts they could have on Bulk-Power System reliability, and approaches to mitigating them. The panelists will also discuss challenges associated with supply chain visibility and covert embedded spyware or other compromising software or hardware in suppliers' products, parts, or services.

This panel may include a discussion of the following topics and questions:

1. Describe the types of challenges and risks associated with globally distributed, highly complex, and increasingly interconnected supply chains.
2. Describe the difficulties associated with supply chain visibility and how origins of products or components may be obscured.
3. How are foreign-supplied Bulk-Power System components being manipulated and is there a particular phase in the product lifecycle where the product is manipulated for nefarious intent?
4. How are these supply chain challenges and risks currently being managed?
5. How has the current geopolitical landscape impacted the energy sector's ability to manage supply chain challenges and risks?
6. How can Sector Risk Management Agencies and Regulators promote and/or incentivize supply chain transparency at the earlier stages of product development and manufacturing?
7. Discuss the pathways (*e.g.,* voluntary best practices and guidelines, mandatory standards) that together could address the current supply chain challenges and risks?
8. What actions can government take, both formal regulatory actions and coordination, to help identify and mitigate risks from the global supply chain for the energy sector?

[1] *See* U.S. Dep't. of Energy, *America's Strategy to Secure the Supply Chain for a Robust Clean Energy Transition: Response to Executive Order 14017, America's Supply Chains,* 42, (Feb. 24, 2022), *https://www.energy.gov/sites/default/files/2022-02/America's%20Strategy%20to%20Secure%20the%20Supply%20Chain%20for%20a%20Robust%20Clean%20Energy%20Transition%20FINAL.docx_0.pdf.*

Panelists

- Eric Goldstein, Executive Assistant Director for Cybersecurity, Department of Homeland Security Cybersecurity & Infrastructure Security Agency (DHS CISA)
- Mara Winn, Deputy Director, Preparedness, Policy, and Risk Analysis, DOE CESER
- Jeanette McMillian, Assistant Director, Supply Chain and Cyber Directorate, National Counterintelligence and Security Center
- Manny Cancel, Senior Vice President, NERC and CEO, Electricity Information Sharing and Analysis Center
- Marty Edwards, Deputy Chief Technical Officer—OT/IoT, Tenable
- Bonnie Titone, Senior Vice President and Chief Information Officer, Duke Energy
- Representative of the U.S. Department of Commerce, Bureau of Industry and Security (*invited*)

10:30 a.m. Break

10:45 a.m. Panel II: Current Supply Chain Risk Management (SCRM) Reliability Standards, Implementation Challenges, Gaps, and Opportunities for Improvement

It has now been more than six years since the Commission directed the development of mandatory standards to address supply chain risks, and more than two years since the first set of those standards became effective. As discussed in Panel 1, supply chain risks have continued to grow in that time. In light of that evolving threat, panelists will discuss the existing SCRM Reliability Standards, including: (1) their effectiveness in securing the Bulk-Power System; (2) lessons learned from implementation of the current SCRM Reliability Standards; and (3) possible gaps in the currently effective SCRM Reliability Standards. This panel will also provide an opportunity to discuss any Reliability Standards in development, and how these new standards will help enhance security and help address some of the emerging supply chain threats.

This panel may include a discussion of the following topics and questions:

1. Are the currently effective SCRM Reliability Standards sufficient to successfully ensure Bulk-Power System reliability and security in light of existing and emerging risks?

2. What requirements in the SCRM Reliability Standards present implementation challenges for registered entities and for vendors?

3. How are implementation challenges being addressed for utilities and for vendors?

4. Are there alternative methods for implementing the SCRM Reliability Standards that could eliminate challenges or enhance effectiveness moving forward?

5. Based on the current and evolving threat landscape, would the currently effective SCRM Reliability Standards benefit from additional mandatory security control requirements and how would these additional controls improve the security of the Bulk-Power System?

6. Are there currently effective SCRM criteria or standards that manufacturers must adhere to in foreign countries that may be prudent to adopt in the U.S.?

Panelists

- Howard Gugel, Vice President, Engineering and Standards, NERC
- Adrienne Lotto, Senior Vice President of Grid Security, Technical & Operations Services, American Public Power Association
- Jeffrey Sweet, Director of Security Assessments, American Electric Power
- Shari Gribbin, Managing Partner, CNK Solutions
- Scott Aaronson, Senior Vice President of Security and Preparedness, Edison Electric Institute

12:15 p.m. Lunch

1:15 p.m. Panel III: The U.S. Department of Energy's Energy Cyber Sense Program

Through the Energy Cyber Sense Program, DOE will provide a comprehensive approach to securing the nation's critical energy infrastructure and supply chains from cyber threats with this voluntary program. The Energy Cyber Sense Program will build upon direction in Section 40122 of the Bipartisan Infrastructure Law, as well as multiple requests from industry, leveraging existing programs and technologies, while also initiating new efforts. Through Energy Cyber Sense, DOE aims to work with manufacturers and asset owners to discover, mitigate, and engineer out cyber vulnerabilities in digital components in the Energy Sector Industrial Base critical supply chains. This program will provide a better understanding of the impacts and dependencies of software and systems used in the energy sector; illuminate the digital provenance of subcomponents in energy systems, hardware, and software; apply best-in-class testing to discover and address common mode vulnerabilities; and provide education and awareness, across the sector and the broader supply chain community to optimize management of supply chain risks. This panel will discuss specific supply chain risks that Energy Cyber Sense will address as well as some of the programs and technologies DOE will bring to bear under the program to address the risks.

This panel may include a discussion of the following topics and questions:

1. How are emerging orders, standards, and process guidance, such as Executive Order 14017, Executive Order 14028, NIST Special Publication 800–161r1, ISA 62443, CIP–013–1, and others, changing how we assess our digital supply chain?

2. Given the dependence of OT on application-specific hardware, how could the inclusion and linkage of Hardware Bill of Materials (HBOMs) with Software Bill of Materials (SBOMs) increase our ability to accurately and effectively assess and mitigate supply chain risk? To what degree is this inclusion and linkage of HBOMs with SBOMs taking place today and what steps should be taken to fill any remaining gaps?

3. Given that much of the critical technology used in the energy sector is considered legacy technology, how can manufacturers, vendors, asset owners and operators, aided by the federal government, national laboratories, and other organizations, manage the supply chain risk from legacy technology? How can this risk management be coordinated with newer technologies that are more likely to receive SBOMs, HBOMs, and attestations?

4. Where does testing, for example Cyber Testing for Resilient Industrial Control Systems (CyTRICS) and third-party testing, fit in the universe of ''rigorous and predictable mechanisms for ensuring that products function securely, and as intended?'' [2]

5. More than ever, developers are building applications on open-source software libraries. How can developers address the risks inherent with open-source software and how can asset owners work with vendors to validate that appropriate open-source risk management measures have been taken?

6. U.S. energy systems have significant dependencies on hardware components, including integrated

[2] See Exec. Order No. 14028, 86 FR 26,633, 26,646 (May 12, 2021) (The Executive Order declared that the security of software used by the Federal Government is ''vital to the Federal Government's ability to perform its critical functions.'' The Executive Order further cited a ''pressing need to implement more rigorous and predictable mechanisms for ensuring that products function securely, and as intended.'')

circuits and semiconductors, most of which are manufactured outside of the U.S. What tools and technologies are needed to understand the provenance of hardware components used in U.S. energy systems and the risks from foreign manufacture? How will the newly passed CHIPS and Science Act change the risk landscape? What is needed in terms of regulation, standards, and other guidance to strengthen the security of the hardware component supply chain from cyber and other risks?

Panelists

- Steven Kunsman, Director Product Management and Applications, Hitachi Energy
- Ron Brash, Vice President Technical Research & Integrations, aDolus
- Zachary Tudor, Associate Laboratory Director, National and Homeland Security
- Allan Friedman, Senior Advisor and Strategist, DHS CISA
- Brian Barrios, Vice President, Cybersecurity & IT Compliance, Southern California, Edison
- Representative of Amazon Web Services (*invited*)

2:45 p.m. Break

3:00 p.m. Panel IV: Enhancing the Supply Chain Security Posture of the Bulk-Power System

This panel will discuss forward-looking initiatives that can be used to improve the supply chain security posture of the Bulk-Power System. These initiatives could include vendor accreditation programs, product and service verification, improved internal supply chain security capability, third party services, and private and public partnerships.

Vendor accreditation can be established in various ways. One of the more prominent ways is currently being explored by the North American Transmission Forum through its Supply Chain Security Assessment model and the associated questionnaire.[3] The panel will also explore certain programs and practices used by utilities to verify the authenticity and effectiveness of products and services. Internal supply chain security capabilities include hiring people with the appropriate background and knowledge, while also developing relevant skills internally, through training on broad supply chain topics and applying them to the specific needs of the organization. Finally, this panel will address private and public partnerships on supply chain security and how they can facilitate timely access to information that will help better identify current and future supply chain threats to the Bulk-Power System and best practices to address those risks.

This panel may include a discussion of the following topics and questions:

1. What vendor accreditation programs currently exist or are in development? How can entities vet a vendor in the absence of a vendor accreditation program?

2. What are the challenges, benefits, and risks associated with utilizing third-party services for maintaining a supply chain risk management program?

3. What are the best practices and other guidance for security evaluation of vendors?

4. What programs and practices are currently in use to ensure product and service integrity?

5. What processes are used to test products prior to implementation?

6. What is the right balance between vendor and product security and cost? Is there a point of diminishing returns?

7. What are effective strategies for recruiting personnel with the appropriate background and SCRM skills to strengthen internal security practices? How do you provide the training necessary to further develop the skills specific to your unique organizational challenges?

8. What are the best ways to meaningfully assimilate SBOM information and what subsequent analyses can be done to strengthen internal security practices?

9. How can the industry keep informed of the latest supply chain compromises? How do entities currently respond to these compromises to keep their systems secure? Are there ways to improve these responses? What actions can government take, both formal regulatory actions and coordination, to help keep industry informed of supply chain compromises and to facilitate effective responses?

10. What key risk factors do entities need to consider prior to leveraging third party services and how should those risk factors be balanced with an entity's organizational policy? What SCRM controls do you have in place to ensure your systems and products have a reduced risk of compromise? Please discuss any challenges that you have experienced as well as successes.

11. How should government and industry prioritize and coordinate federal cross-agency and private sector collaboration and activities regarding SCRM?

Panelists

- Tobias Whitney, Vice President of Strategy and Policy, Fortress Information Security
- Valerie Agnew, General Counsel, North American Transmission Forum
- David Schleicher, President and CEO, Northern Virginia Electric Cooperative
- Ron Schoff, Director, Research & Development, Electric Power Research Institute
- Representative of the National Risk Management Center, DHS CISA (*invited*)
- Representative of the Office of National Cyber Director (*invited*)
- Representative of the National Association of Regulatory Utility Commissioners (*invited*)

4:45 p.m. Closing Remarks

5:00 p.m. Adjourn

[FR Doc. 2022–26092 Filed 11–29–22; 8:45 am]

BILLING CODE 6717–01–P

[3] *https://www.natf.net/industry-initiatives/supply-chain-industry-coordination.*

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP23–3–000]

Tres Palacios Gas Storage LLC; Notice of Scoping Period Requesting Comments on Environmental Issues for the Proposed Tres Palacios Cavern 4 Expansion Project

The staff of the Federal Energy Regulatory Commission (FERC or Commission) will prepare an environmental document that will discuss the environmental impacts of the Tres Palacios Cavern 4 Expansion Project (Expansion Project) involving construction and operation of facilities by Tres Palacios Gas Storage LLC (Tres Palacios) in Matagorda County, Texas. The Commission will use this environmental document in its decision-making process to determine whether the project is in the public convenience and necessity.

This notice announces the opening of the scoping process the Commission will use to gather input from the public and interested agencies regarding the Expansion Project. As part of the National Environmental Policy Act (NEPA) review process, the Commission takes into account concerns the public may have about proposals and the environmental impacts that could result from its action whenever it considers the issuance of a Certificate of Public Convenience and Necessity. This gathering of public input is referred to

as ''scoping.'' The main goal of the scoping process is to focus the analysis in the environmental document on the important environmental issues. Additional information about the Commission's NEPA process is described below in the NEPA Process and Environmental Document section of this notice.

By this notice, the Commission requests public comments on the scope of issues to address in the environmental document. To ensure that your comments are timely and properly recorded, please submit your comments so that the Commission receives them in Washington, DC on or before 5 p.m. Eastern Time on December 23, 2022. Details on how to submit comments are provided in the Public Participation section of this notice.

Your comments should focus on the potential environmental effects, reasonable alternatives, and measures to avoid or lessen environmental impacts. Your input will help the Commission staff determine what issues they need to evaluate in the environmental document. Commission staff will consider all written comments during the preparation of the environmental document.

If you submitted comments on this project to the Commission before the opening of this docket on October 26, 2022, you will need to file those comments in Docket No. CP23–3–000 to ensure they are considered as part of this proceeding.

This notice is being sent to the Commission's current environmental mailing list for this project. State and local government representatives should notify their constituents of this proposed project and encourage them to comment on their areas of concern.

Tres Palacios provided landowners with a fact sheet prepared by the FERC entitled ''An Interstate Natural Gas Facility On My Land? What Do I Need To Know?'' which addresses typically asked questions, including how to participate in the Commission's proceedings. This fact sheet along with other landowner topics of interest are available for viewing on the FERC website (*www.ferc.gov*) under the Natural Gas, Landowner Topics link.

Public Participation

There are three methods you can use to submit your comments to the Commission. Please carefully follow these instructions so that your comments are properly recorded. The Commission encourages electronic filing of comments and has staff available to assist you at (866) 208–3676 or *FercOnlineSupport@ferc.gov.*

(1) You can file your comments electronically using the eComment feature, which is located on the Commission's website (*www.ferc.gov*) under the link to FERC Online. Using eComment is an easy method for submitting brief, text-only comments on a project;

(2) You can file your comments electronically by using the eFiling feature, which is located on the Commission's website (*www.ferc.gov*) under the link to FERC Online. With eFiling, you can provide comments in a variety of formats by attaching them as a file with your submission. New eFiling users must first create an account by clicking on ''eRegister.'' You will be asked to select the type of filing you are making; a comment on a particular project is considered a ''Comment on a Filing''; or

(3) You can file a paper copy of your comments by mailing them to the Commission. Be sure to reference the project docket number (CP23–3–000) on your letter. Submissions sent via the U.S. Postal Service must be addressed to: Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 888 First Street NE, Room 1A, Washington, DC 20426. Submissions sent via any other carrier must be addressed to: Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 12225 Wilkins Avenue, Rockville, MD 20852.

Additionally, the Commission offers a free service called eSubscription which makes it easy to stay informed of all issuances and submittals regarding the dockets/projects to which you subscribe. These instant email notifications are the fastest way to receive notification and provide a link to the document files which can reduce the amount of time you spend researching proceedings. Go to *https://www.ferc.gov/ferc-online/overview* to register for eSubscription.

Summary of the Proposed Project

Tres Palacios proposes to expand its certificated natural gas storage capacity [1] at its existing natural gas storage facility (the Storage Facility) in Matagorda County, Texas. The Expansion Project would add approximately 6.5 billion cubic feet (Bcf) of new working gas capacity and 3.5 Bcf of base gas at the Storage Facility. According to Tres Palacios, its project would help satisfy market demand for incremental natural gas storage in the previously developed area located near the Storage Facility. Tres Palacios also states the Expansion Project is needed to provide critical natural gas grid reliability, and to help reduce price volatility and physical supply and demand imbalances in the Gulf Coast natural gas market.

The Expansion Project would consist of the following facilities and activities:

- Conversion of an existing third-party brine production well (Trull 11) into a natural gas storage cavern (Cavern 4);
- Development of the Trull 11 well pad site for Cavern 4 (Cavern 4 Well Pad);
- Construction of a 0.6-mile-long, 16-inch-diameter pipeline (New Cavern 4 Pipeline) connecting Cavern 4 to the existing certificated facilities at the Storage Facility;
- Abandonment in place of a 15,300 horsepower electric-motor driven centrifugal compressor unit;
- Installation of a new 5,500 horsepower electric-motor driven reciprocating compressor unit;
- Addition of a new 2.5 million British thermal units per hour dehydration unit;
- Construction of various related facilities, including a new permanent access road for the Cavern 4 Well Pad; and
- Non-jurisdictional facilities consisting of a new electric service line to the Cavern 4 Well Pad and a new fiber optic line from the Cavern 4 Well Pad to the Storage Facility.

The general location of the Expansion Project facilities is shown in appendix 1.[2]

Land Requirements for Construction

Construction of the proposed facilities would disturb about 22.3 acres of land. Following construction, Tres Palacios would maintain about 3.0 acres for permanent operation of the project's facilities; the remaining acreage would be restored and revert to former uses. About 31 percent of the proposed pipeline route parallels existing pipeline, utility, or road rights-of-way. Tres Palacios states that it has acquired all easements and other land rights needed for the Expansion Project.

[1] September 20, 2007 *Order Issuing Certificates* in Docket No. CP07–90–000, et al., as amended on December 14, 2010, in Docket No. CP10–499–000, on August 10, 2011, in Docket No. CP11–507–000, and on September 21, 2017, in Docket CP16–145–000.

[2] The appendices referenced in this notice will not appear in the **Federal Register**. Copies of the appendices were sent to all those receiving this notice in the mail and are available at *www.ferc.gov* using the link called ''eLibrary.'' For instructions on connecting to eLibrary, refer to the last page of this notice. At this time, the Commission has suspended access to the Commission's Public Reference Room due to the proclamation declaring a National Emergency concerning the Novel Coronavirus Disease (COVID–19), issued by the President on March 13, 2020. For assistance, contact FERC at *FERCOnlineSupport@ferc.gov* or call toll free, (886) 208–3676 or TTY (202) 502–8659.

NEPA Process and the Environmental Document

Any environmental document issued by the Commission will discuss impacts that could occur as a result of the construction and operation of the proposed project under the relevant general resource areas:

- Geology and soils;
- Water resources and wetlands;
- Vegetation and wildlife;
- Threatened and endangered species;
- Cultural resources;
- Land use;
- Environmental justice
- Air quality and noise; and
- Reliability and safety.

Commission staff will also evaluate reasonable alternatives to the proposed project or portions of the project and make recommendations on how to lessen or avoid impacts on the various resource areas. Your comments will help Commission staff identify and focus on the issues that might have an effect on the human environment and potentially eliminate others from further study and discussion in the environmental document.

Following this scoping period, Commission staff will determine whether to prepare an Environmental Assessment (EA) or an Environmental Impact Statement (EIS). The EA or the EIS will present Commission staff's independent analysis of the issues. If Commission staff prepares an EA, a *Notice of Schedule for the Preparation of an Environmental Assessment* will be issued. The EA may be issued for an allotted public comment period. The Commission would consider timely comments on the EA before making its decision regarding the proposed project. If Commission staff prepares an EIS, a *Notice of Intent to Prepare an EIS/Notice of Schedule* will be issued, which will open up an additional comment period. Staff will then prepare a draft EIS which will be issued for public comment. Commission staff will consider all timely comments received during the comment period on the draft EIS and revise the document, as necessary, before issuing a final EIS. Any EA or draft and final EIS will be available in electronic format in the public record through eLibrary [3] and the Commission's natural gas environmental documents web page (*https://www.ferc.gov/industries-data/natural-gas/environment/environmental-documents*). If eSubscribed, you will receive instant email notification when the environmental document is issued.

With this notice, the Commission is asking agencies with jurisdiction by law and/or special expertise with respect to the environmental issues of this project to formally cooperate in the preparation of the environmental document.[4] Agencies that would like to request cooperating agency status should follow the instructions for filing comments provided under the Public Participation section of this notice.

Consultation Under Section 106 of the National Historic Preservation Act

In accordance with the Advisory Council on Historic Preservation's implementing regulations for section 106 of the National Historic Preservation Act, the Commission is using this notice to initiate consultation with the applicable State Historic Preservation Office(s), and to solicit their views and those of other government agencies, interested Indian tribes, and the public on the project's potential effects on historic properties.[5] The environmental document for this project will document findings on the impacts on historic properties and summarize the status of consultations under section 106.

Environmental Mailing List

The environmental mailing list includes federal, state, and local government representatives and agencies; elected officials; environmental and public interest groups; Native American Tribes; other interested parties; and local libraries and newspapers. This list also includes all affected landowners (as defined in the Commission's regulations) who are potential right-of-way grantors, whose property may be used temporarily for project purposes, or who own homes within certain distances of aboveground facilities, and anyone who submits comments on the project and includes a mailing address with their comments. Commission staff will update the environmental mailing list as the analysis proceeds to ensure that Commission notices related to this environmental review are sent to all individuals, organizations, and government entities interested in and/or potentially affected by the proposed project.

If you need to make changes to your name/address, or if you would like to remove your name from the mailing list, please complete one of the following steps:

(1) Send an email to *GasProjectAddressChange@ferc.gov* stating your request. You must include the docket number CP23–3–000 in your request. If you are requesting a change to your address, please be sure to include your name and the correct address. If you are requesting to delete your address from the mailing list, please include your name and address as it appeared on this notice. This email address is unable to accept comments. OR

(2) Return the attached ''Mailing List Update Form'' (appendix 2).

Additional Information

Additional information about the project is available from the Commission's Office of External Affairs, at (866) 208–FERC, or on the FERC website at *www.ferc.gov* using the eLibrary link. Click on the eLibrary link, click on ''General Search'' and enter the docket number in the ''Docket Number'' field. Be sure you have selected an appropriate date range. For assistance, please contact FERC Online Support at *FercOnlineSupport@ferc.gov* or (866) 208–3676, or for TTY, contact (202) 502–8659. The eLibrary link also provides access to the texts of all formal documents issued by the Commission, such as orders, notices, and rulemakings.

Public sessions or site visits will be posted on the Commission's calendar located at *https://www.ferc.gov/news-events/events* along with other related information.

Dated: November 23, 2022.

Kimberly D. Bose,

Secretary.

[FR Doc. 2022–26093 Filed 11–29–22; 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: EC23–32–000.

Applicants: Brookfield Smoky Mountain Hydropower LP, Smoky Mountain Transmission LLC, AMF Kimble Holdings, LLC.

[3] For instructions on connecting to eLibrary, refer to the last page of this notice.

[4] The Council on Environmental Quality regulations addressing cooperating agency responsibilities are at title 40, Code of Federal Regulations, section 1501.8.

[5] The Advisory Council on Historic Preservation's regulations are at title 36, Code of Federal Regulations, part 800. Those regulations define historic properties as any prehistoric or historic district, site, building, structure, or object included in or eligible for inclusion in the National Register of Historic Places.

Description: Joint Application for Authorization Under Section 203 of the Federal Power Act of Brookfield Smoky Mountain Hydropower LP et al.
Filed Date: 11/22/22.
Accession Number: 20221122–5226.
Comment Date: 5 pm ET 12/9/22.

Take notice that the Commission received the following exempt wholesale generator filings:

Docket Numbers: EG23–26–000.
Applicants: Yellow Pine Solar Interconnect, LLC.
Description: Yellow Pine Solar Interconnect, LLC Notice of Self-Certification of Exempt Wholesale Generator Status.
Filed Date: 11/21/22.
Accession Number: 20221121–5219.
Comment Date: 5 pm ET 12/9/22.

Take notice that the Commission received the following electric rate filings:

Docket Numbers: ER21–2454–000.
Applicants: Rainbow Energy Marketing Corporation.
Description: Refund Report for August 2020 of Rainbow Energy Marketing Corporation.
Filed Date: 11/16/22.
Accession Number: 20221116–5188.
Comment Date: 5 pm ET 12/7/22.

Docket Numbers: ER22–2933–000.
Applicants: Nevada Power Company, Sierra Pacific Power Company.
Description: Supplement to September 26, 2022 Nevada Power Company tariff filing.
Filed Date: 11/21/22.
Accession Number: 20221121–5110.
Comment Date: 5 pm ET 12/9/22.

Docket Numbers: ER23–375–001.
Applicants: Colice Hall Solar, LLC.
Description: Tariff Amendment: Supplement to Application for Market-Based Rate Authority to be effective 12/15/2022.
Filed Date: 11/23/22.
Accession Number: 20221123–5102.
Comment Date: 5 pm ET 12/14/22.

Docket Numbers: ER23–480–000.
Applicants: Savion, LLC, Madison Fields Solar Project, LLC, Shell Energy North America (US), L.P.
Description: Savion, LLC, Madison Fields Solar Project, LLC, et al. Request a One Time Limited Waiver of a Procedural Deadline set forth in Sec. 5.14(h-2)(1)(A) of Attachment DD to the PJM Interconnection, L.L.C. Tariff.
Filed Date: 11/18/22.
Accession Number: 20221118–5276.
Comment Date: 5 pm ET 11/28/22.

Docket Numbers: ER23–483–000.
Applicants: PJM Interconnection, L.L.C.
Description: § 205(d) Rate Filing: Amendment to ISA No. 5071; Queue No. AB1–132 to be effective 4/16/2018.
Filed Date: 11/23/22.
Accession Number: 20221123–5006.
Comment Date: 5 pm ET 12/9/22.

Docket Numbers: ER23–484–000.
Applicants: Unitil Energy Systems, Inc.
Description: Tariff Amendment: Partial cancellation Hydro Wheeling Agreement to be effective 10/1/2022.
Filed Date: 11/23/22.
Accession Number: 20221123–5015.
Comment Date: 5 pm ET 12/14/22.

Docket Numbers: ER23–485–000.
Applicants: Public Service Company of Colorado.
Description: § 205(d) Rate Filing: WAPA Ault-Husky Con Agrmt Amnd 1–567–0.1.0 to be effective 11/24/2022.
Filed Date: 11/23/22.
Accession Number: 20221123–5027.
Comment Date: 5 pm ET 12/14/22.

Docket Numbers: ER23–486–000.
Applicants: Arizona Public Service Company.
Description: § 205(d) Rate Filing: Rate Schedule No. 217, Exhibit B.SGR to be effective 1/23/2023.
Filed Date: 11/23/22.
Accession Number: 20221123–5029.
Comment Date: 5 pm ET 12/14/22.

Docket Numbers: ER23–487–000.
Applicants: Rivercrest Power-South, LLC
Description: Compliance filing: Baseline refile to be effective 9/29/2022.
Filed Date: 11/23/22.
Accession Number: 20221123–5032.
Comment Date: 5 pm ET 12/14/22.

Docket Numbers: ER23–488–000.
Applicants: ISO New England Inc., Eversource Energy Service Company (as agent).
Description: § 205(d) Rate Filing: ISO New England Inc. submits tariff filing per 35.13(a)(2)(iii): ISO–NE/Eversource; First Revised Service Agreement No. LGIA–ISONE/NSTAR–20–01 to be effective 11/4/2022.
Filed Date: 11/23/22.
Accession Number: 20221123–5033.
Comment Date: 5 pm ET 12/14/22.

Docket Numbers: ER23–489–000.
Applicants: Neptune Energy Center, LLC.
Description: Baseline eTariff Filing: Neptune Energy Center, LLC Application for Market-Based Rate Authorization to be effective 1/23/2023.
Filed Date: 11/23/22.
Accession Number: 20221123–5054.
Comment Date: 5 pm ET 12/14/22.

Docket Numbers: ER23–490–000.
Applicants: Louisville Gas and Electric Company.
Description: Compliance filing: Order No. 676–J Compliance Filing to be effective 1/27/2023.
Filed Date: 11/23/22.
Accession Number: 20221123–5055.
Comment Date: 5 pm ET 12/14/22.

Docket Numbers: ER23–491–000.
Applicants: Power Authority of the State of New York, New York Independent System Operator, Inc.
Description: § 205(d) Rate Filing: Power Authority of the State of New York submits tariff filing per 35.13(a)(2)(iii): Section 205 Filing of NYPA: Proposed Formula Rate Amendments to be effective 1/24/2023.
Filed Date: 11/23/22.
Accession Number: 20221123–5059.
Comment Date: 5 pm ET 12/14/22.

Docket Numbers: ER23–492–000.
Applicants: Tri-State Generation and Transmission Association, Inc.
Description: § 205(d) Rate Filing: Initial Filing of Service Agreement FERC No. 909 to be effective 11/17/2022.
Filed Date: 11/23/22.
Accession Number: 20221123–5070.
Comment Date: 5 pm ET 12/14/22.

Docket Numbers: ER23–493–000.
Applicants: Thunder Wolf Energy Center, LLC.
Description: Baseline eTariff Filing: Thunder Wolf Energy Center, LLC Application for Market-Based Rate Authorization to be effective 1/23/2023.
Filed Date: 11/23/22.
Accession Number: 20221123–5099.
Comment Date: 5 pm ET 12/14/22.

Docket Numbers: ER23–494–000.
Applicants: Goose Creek Wind, LLC.
Description: Baseline eTariff Filing: Reactive Power Tariff Application to be effective 12/31/9998.
Filed Date: 11/23/22.
Accession Number: 20221123–5165.
Comment Date: 5 pm ET 12/14/22.

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 23, 2022.

Kimberly D. Bose,

Secretary.

[FR Doc. 2022–26096 Filed 11–29–22; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 9282–039]

Pine Valley Hydroelectric Power Company, LLC; Notice of Intent To File License Application, Filing of Pre-Application Document, and Approving Use of The Traditional Licensing Process

a. *Type of Filing:* Notice of Intent to File License Application and Request to Use the Traditional Licensing Process.

b. *Project No.:* 9282–039.

c. *Date Filed:* September 27, 2022.

d. *Submitted by:* Pine Valley Hydroelectric Power Company, LLC (Pine Valley Hydro).

e. *Name of Project:* Pine Valley Hydroelectric Project (project).

f. *Location:* On the Souhegan River in Hillsborough County, New Hampshire. No federal lands are occupied by the project works or located within the project boundary.

g. *Filed Pursuant To:* 18 CFR 5.3 and 5.5 of the Commission's regulations.

h. *Potential Applicant Contact:* Mr. Jonathan DiCesare, Pine Valley Hydroelectric Power Company, LLC; 10 Roberts Lane, Suite 201, Ridgefield, CT 06877; (518) 657–9012; or email at *info@dichotomypower.com*.

i. *FERC Contact:* Michael Watts at (202) 502–6123; or email at *michael.watts@ferc.gov.*

j. Pine Valley Hydro filed its request to use the Traditional Licensing Process on September 27, 2022, and provided public notice of its request on September 20, 2022. In a letter dated November 23 2022, the Director of the Division of Hydropower Licensing approved Pine Valley Hydro's request to use the Traditional Licensing Process.

k. With this notice, we are initiating informal consultation with the U.S. Fish and Wildlife Service and NOAA Fisheries under section 7 of the Endangered Species Act and the joint agency regulations thereunder at 50 CFR, Part 402; and NOAA Fisheries under section 305(b) of the Magnuson-Stevens Fishery Conservation and Management Act and implementing regulations at 50 CFR 600.920. We are also initiating consultation with the New Hampshire State Historic Preservation Officer, as required by section 106 of the National Historic Preservation Act, and the implementing regulations of the Advisory Council on Historic Preservation at 36 CFR 800.2.

l. With this notice, we are designating Pine Valley Hydro as the Commission's non-federal representative for carrying out informal consultation pursuant to section 7 of the Endangered Species Act and consultation pursuant to section 106 of the National Historic Preservation Act.

m. On September 27, 2022, Pine Valley Hydro filed a Pre-Application Document (PAD; including a proposed process plan and schedule) with the Commission, pursuant to 18 CFR 5.6 of the Commission's regulations.

n. A copy of the PAD may be viewed and/or printed on the Commission's website (*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, contact FERC Online Support at *FERCOnlineSupport@ferc.gov,* (866) 208–3676 (toll free), or (202) 502–8659 (TTY). At this time, the Commission has suspended access to the Commission's Public Reference Room due to the proclamation declaring a National Emergency concerning the Novel Coronavirus Disease (COVID–19) issued on March 13, 2020.

o. The licensee states its unequivocal intent to submit an application for a subsequent license for Project No. 9282. Pursuant to 18 CFR 16.20, each application for a subsequent license and any competing license applications must be filed with the Commission at least 24 months prior to the expiration of the existing license. All applications for license for this project must be filed by September 30, 2027.

p. Register online at *https://ferconline.ferc.gov/FERCOnline.aspx* to be notified via email of new filings and issuances related to this or other pending projects. For assistance, contact FERC Online Support.

Dated: November 23, 2022.

Kimberly D. Bose,

Secretary.

[FR Doc. 2022–26090 Filed 11–29–22; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP23–14–000]

Wyoming Interstate Company, LLC; Notice of Application and Establishing Intervention Deadline

Take notice that on November 10, 2022, Wyoming Interstate Company, LLC (WIC), Post Office Box 1087, Colorado Springs, Colorado 80944, filed in Docket No. CP23–14–000, an application under section 7(b) of the Natural Gas Act (NGA), and Part 157 of the Commission's regulations requesting authority to abandon, in place, the Diamond Mountain Compressor Station (Diamond Mountain Abandonment Project) located at approximate Milepost 54.8 on WIC's 24-inch diameter Kanda Lateral in Uintah County, Utah, all as more fully set forth in the request which is on file with the Commission and open to public inspection with the Commission and open for public inspection.

In addition to publishing the full text of this document in the **Federal Register**, the Commission provides all interested persons an opportunity to view and/or print the contents of this document via the internet through the Commission's Home Page (*www.ferc.gov*) using the ''eLibrary'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. At this time, the Commission has suspended access to the Commission's Public Reference Room, due to the proclamation declaring a National Emergency concerning the Novel Coronavirus Disease (COVID–19), issued by the President on March 13, 2020. For assistance, contact the Federal Energy Regulatory Commission at *FERCOnlineSupport@ferc.gov* or call toll-free, (886) 208–3676 or TYY, (202) 502–8659.

Any questions regarding the application should be directed to Francisco Tarin, Director, Regulatory, Wyoming Interstate Company, LLC; P.O. Box 1087, Colorado Springs, Colorado 80944, by phone at (719) 667–7517, or via email at *Francisco_Tarin@kindermorgan.com.*

Pursuant to section 157.9 of the Commission's Rules of Practice and Procedure,[1] within 90 days of this Notice the Commission staff will either: complete its environmental review and place it into the Commission's public record (eLibrary) for this proceeding; or

[1] 18 CFR (Code of Federal Regulations) 157.9.

issue a Notice of Schedule for Environmental Review. If a Notice of Schedule for Environmental Review is issued, it will indicate, among other milestones, the anticipated date for the Commission staff's issuance of the final environmental impact statement (FEIS) or environmental assessment (EA) for this proposal. The filing of an EA in the Commission's public record for this proceeding or the issuance of a Notice of Schedule for Environmental Review will serve to notify federal and state agencies of the timing for the completion of all necessary reviews, and the subsequent need to complete all federal authorizations within 90 days of the date of issuance of the Commission staff's FEIS or EA.

Public Participation

There are two ways to become involved in the Commission's review of this project: you can file comments on the project, and you can file a motion to intervene in the proceeding. There is no fee or cost for filing comments or intervening. The deadline for filing a motion to intervene is 5:00 p.m. Eastern Time on December 14, 2022.

Comments

Any person wishing to comment on the project may do so. Comments may include statements of support or objections to the project as a whole or specific aspects of the project. The more specific your comments, the more useful they will be. To ensure that your comments are timely and properly recorded, please submit your comments on or before December 14, 2022.

There are three methods you can use to submit your comments to the Commission. In all instances, please reference the Project docket number CP23–14–000 in your submission.

(1) You may file your comments electronically by using the eComment feature, which is located on the Commission's website at *www.ferc.gov* under the link to Documents and Filings. Using eComment is an easy method for interested persons to submit brief, text-only comments on a project;

(2) You may file your comments electronically by using the eFiling feature, which is located on the Commission's website (*www.ferc.gov*) under the link to Documents and Filings. With eFiling, you can provide comments in a variety of formats by attaching them as a file with your submission. New eFiling users must first create an account by clicking on ''eRegister.'' You will be asked to select the type of filing you are making; first select ''General'' and then select ''Comment on a Filing''; or

(3) You can file a paper copy of your comments by mailing them to the following address below.[2] Your written comments must reference the Project docket number (CP23–14–000).

To mail via USPS, use the following address: Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 888 First Street NE, Washington, DC 20426

To mail via any other courier, use the following address: Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 12225 Wilkins Avenue, Rockville, Maryland 20852

The Commission encourages electronic filing of comments (options 1 and 2 above) and has eFiling staff available to assist you at (202) 502–8258 or *FercOnlineSupport@ferc.gov*.

Persons who comment on the environmental review of this project will be placed on the Commission's environmental mailing list and will receive notification when the environmental documents (EA or EIS) are issued for this project and will be notified of meetings associated with the Commission's environmental review process.

The Commission considers all comments received about the project in determining the appropriate action to be taken. However, the filing of a comment alone will not serve to make the filer a party to the proceeding. To become a party, you must intervene in the proceeding. For instructions on how to intervene, see below.

Interventions

Any person, which includes individuals, organizations, businesses, municipalities, and other entities,[3] has the option to file a motion to intervene in this proceeding. Only intervenors have the right to request rehearing of Commission orders issued in this proceeding and to subsequently challenge the Commission's orders in the U.S. Circuit Courts of Appeal.

To intervene, you must submit a motion to intervene to the Commission in accordance with Rule 214 of the Commission's Rules of Practice and Procedure[4] and the regulations under the NGA[5] by the intervention deadline for the project, which is December 14, 2022. As described further in Rule 214, your motion to intervene must state, to the extent known, your position regarding the proceeding, as well as your interest in the proceeding. For an individual, this could include your status as a landowner, ratepayer, resident of an impacted community, or recreationist. You do not need to have property directly impacted by the project in order to intervene. For more information about motions to intervene, refer to the FERC website at *https://www.ferc.gov/resources/guides/how-to/intervene.asp*.

There are two ways to submit your motion to intervene. In both instances, please reference the Project docket number CP23–14–000 in your submission.

(1) You may file your motion to intervene by using the Commission's eFiling feature, which is located on the Commission's website (*www.ferc.gov)* under the link to Documents and Filings. New eFiling users must first create an account by clicking on ''eRegister.'' You will be asked to select the type of filing you are making; first select ''General'' and then select ''Intervention.'' The eFiling feature includes a document-less intervention option; for more information, visit *https://www.ferc.gov/docs-filing/efiling/document-less-intervention.pdf.*; or

(2) You can file a paper copy of your motion to intervene, along with three copies, by mailing the documents to the address below.[6] Your motion to intervene must reference the Project docket number CP23–14–000.

Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 888 First Street NE, Washington, DC 20426

The Commission encourages electronic filing of motions to intervene (option 1 above) and has eFiling staff available to assist you at (202) 502–8258 or *FercOnlineSupport@ferc.gov*.

Protests and motions to intervene must be served to the applicant either by mail or email (with a link to the document) at: Francisco Tarin, Director, Regulatory, Wyoming Interstate Company, LLC; P.O. Box 1087, Colorado Springs, Colorado 80944, by phone at (719) 667–7517, or via email at *Francisco_Tarin@kindermorgan.com*. Any subsequent submissions by an intervenor must be served to the applicant and all other parties to the proceeding. Contact information for parties can be downloaded from the service list at the eService link on FERC Online.

[2] Hand delivered submissions in docketed proceedings should be delivered to Federal Energy Regulatory Commission, 12225 Wilkins Avenue, Rockville, Maryland 20852.

[3] 18 CFR 385.102(d).

[4] 18 CFR 385.214.

[5] 18 CFR 157.10.

[6] Hand delivered submissions in docketed proceedings should be delivered to Federal Energy Regulatory Commission, 12225 Wilkins Avenue, Rockville, Maryland 20852.

All timely, unopposed [7] motions to intervene are automatically granted by operation of Rule 214(c)(1).[8] Motions to intervene that are filed after the intervention deadline are untimely, and may be denied. Any late-filed motion to intervene must show good cause for being late and must explain why the time limitation should be waived and provide justification by reference to factors set forth in Rule 214(d) of the Commission's Rules and Regulations.[9] A person obtaining party status will be placed on the service list maintained by the Secretary of the Commission and will receive copies (paper or electronic) of all documents filed by the applicant and by all other parties.

Tracking the Proceeding

Throughout the proceeding, additional information about the project will be available from the Commission's Office of External Affairs, at (866) 208–FERC, or on the FERC website at *http://www.ferc.gov* using the ''eLibrary'' link as described above. The eLibrary link also provides access to the texts of all formal documents issued by the Commission, such as orders, notices, and rulemakings.

In addition, the Commission offers a free service called eSubscription which allows you to keep track of all formal issuances and submittals in specific dockets. This can reduce the amount of time you spend researching proceedings by automatically providing you with notification of these filings, document summaries, and direct links to the documents. For more information and to register, go to *www.ferc.gov/docs-filing/esubscription.asp*.

Intervention Deadline: 5:00 p.m. Eastern Time on December 14, 2022.

Dated: November 23, 2022.

Kimberly D. Bose,

Secretary.

[FR Doc. 2022–26094 Filed 11–29–22; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings

Take notice that the Commission has received the following Natural Gas Pipeline Rate and Refund Report filings:

Filings Instituting Proceedings

Docket Numbers: PR23–9–000.
Applicants: Gulf Coast Express Pipeline LLC.
Description: § 284.123(g) Rate Filing: 12.01.2022 GCX Fuel Filing to be effective 12/1/2022.
Filed Date: 11/23/22.
Accession Number: 20221123–5005.
Comment Date: 5 pm ET 12/14/22.
184.123(g) Protest: 5 pm ET 1/23/23.

Docket Numbers: RP23–200–000.
Applicants: Texas Eastern Transmission, LP.
Description: § 4(d) Rate Filing: Negotiated Rates—Cleanup Filing eff 12–1–22 to be effective 12/18/2022.
Filed Date: 11/18/22.
Accession Number: 20221118–5199.
Comment Date: 5 pm ET 11/30/22.

Docket Numbers: RP23–201–000.
Applicants: Guardian Pipeline, L.L.C.
Description: § 4(d) Rate Filing: Removal of Non-Conforming Agreements from Volume 1, Pt 8.0, Sec 38 to be effective 12/22/2022.
Filed Date: 11/21/22.
Accession Number: 20221121–5020.
Comment Date: 5 pm ET 12/5/22.

Docket Numbers: RP23–202–000.
Applicants: El Paso Natural Gas Company, L.L.C.
Description: § 4(d) Rate Filing: Annual Fuel and L&U Filing 2023 to be effective 1/1/2023.
Filed Date: 11/22/22.
Accession Number: 20221122–5077.
Comment Date: 5 pm ET 12/5/22.

Any person desiring to intervene or protest in any of the above proceedings must file in accordance with Rules 211 and 214 of the Commission's Regulations (18 CFR 385.211 and 385.214) on or before 5:00 p.m. Eastern time on the specified comment date. Protests may be considered, but intervention is necessary to become a party to the proceeding.

Filings in Existing Proceedings

Docket Numbers: PR23–1–001.
Applicants: Acacia Natural Gas, L.L.C.
Description: Amendment Filing: Amended Statement of Operating Conditions to be effective 10/1/2022.
Filed Date: 11/22/22.
Accession Number: 20221122–5053.
Comment Date: 5 pm ET 12/6/22.
184.123(g) Protest: 5 pm ET 12/6/22.

Docket Numbers: RP11–1591–000.
Applicants: Golden Pass Pipeline LLC.
Description: Refund Report: 2022 Penalty and Revenue Costs Report of Golden Pass Pipeline LLC to be effective N/A.
Filed Date: 11/22/22.
Accession Number: 20221122–5057.
Comment Date: 5 pm ET 12/5/22.

Any person desiring to protest in any the above proceedings must file in accordance with Rule 211 of the Commission's Regulations (18 CFR 385.211) on or before 5:00 p.m. Eastern time on the specified comment date.

The filings are accessible in the Commission's eLibrary system (*https://elibrary.ferc.gov/idmws/search/fercgensearch.asp*) by querying the docket number.

eFiling is encouraged. More detailed information relating to filing requirements, interventions, protests, service, and qualifying facilities filings can be found at: *http://www.ferc.gov/docs-filing/efiling/filing-req.pdf.* For other information, call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Dated: November 23, 2022.

Kimberly D. Bose,

Secretary.

[FR Doc. 2022–26088 Filed 11–29–22; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 2327–049]

Great Lakes Hydro America. LLC; Notice of Application Accepted for Filing and Soliciting Comments, Motions To Intervene, and Protests

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection:

a. *Application Type:* Temporary Variance from Reservoir Elevation.
b. *Project No:* P–2327–049.
c. *Date Filed:* November 15, 2022.
d. *Applicant:* Great Lakes Hydro America. LLC.
e. *Name of Project:* Cascade Project.
f. *Location:* The project is located on the Androscoggin River, in Coos County, New Hampshire.
g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791a–825r.
h. *Applicant Contact:* Kyle Murphy, Brookfield Renewable, 150 Main Street, Lewiston, Maine 04240, (207) 458–5861.
i. *FERC Contact:* Zeena Aljibury, (202) 502–6065, *zeena.aljibury@ferc.gov.*
j. Deadline for filing comments, motions to intervene, and protests is 30 days from the issuance date of this notice by the Commission.

The Commission strongly encourages electronic filing. Please file motions to intervene, protests, comments, or recommendations using the

[7] The applicant has 15 days from the submittal of a motion to intervene to file a written objection to the intervention.

[8] 18 CFR 385.214(c)(1).

[9] 18 CFR 385.214(b)(3) and (d).

Commission's eFiling system at *http://www.ferc.gov/docs-filing/efiling.asp.* Commenters can submit brief comments up to 6,000 characters, without prior registration, using the eComment system at *http://www.ferc.gov/docs-filing/ecomment.asp.* You must include your name and contact information at the end of your comments. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov,* (866) 208–3676 (toll free), or (202) 502–8659 (TTY). In lieu of electronic filing, you may submit a paper copy. Submissions sent via the U.S. Postal Service must be addressed to: Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 888 First Street NE, Room 1A, Washington, DC 20426. Submissions sent via any other carrier must be addressed to: Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 12225 Wilkins Avenue, Rockville, Maryland 20852. The first page of any filing should include the docket number P–2327–049. Comments emailed to Commission staff are not considered part of the Commission record.

The Commission's Rules of Practice and Procedure require all intervenors filing documents with the Commission to serve a copy of that document on each person whose name appears on the official service list for the project. Further, if an intervenor files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency.

k. *Description of Request:* Great Lakes Hydro America LLC. (applicant) requests Commission approval for a temporary variance from the normal reservoir elevation to conduct concrete repairs to the forebay headgate structure which were identified in the 11th (2019) Part 12 Inspection Recommendations. The applicant requests to draw down the head pond from elevation of 901.4 feet to 897.2 feet (*i.e.,* 4.2 feet from normal operating level) for a period of approximately twelve weeks beginning in June 2023 to dewater the concrete areas in need of repair. The applicant would lower the head pond at a rate not to exceed 3 inches per hour to avoid potential fish stranding and maintain the minimum required bypass flow of 6 cubic feet per second via leakage (consistent with operations during routine flashboard replacement). Once the repairs are completed, the head pond will be refilled at a rate not to exceed 3 inches per hour. The applicant requests the temporary variance to remain into effect until the end of September 2023.

l. *Locations of the Application:* This filing may be viewed on the Commission's website at *http://www.ferc.gov* using the ''eLibrary'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. You may also register online at *http://www.ferc.gov/docs-filing/esubscription.asp* to be notified via email of new filings and issuances related to this or other pending projects. For assistance, call 1–866–208–3676 or email *FERCOnlineSupport@ferc.gov,* for TTY, call (202) 502–8659. Agencies may obtain copies of the application directly from the applicant.

m. Individuals desiring to be included on the Commission's mailing list should so indicate by writing to the Secretary of the Commission.

n. *Comments, Protests, or Motions to Intervene:* Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, 211, 214, respectively. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

o. *Filing and Service of Documents:* Any filing must (1) bear in all capital letters the title ''COMMENTS'', ''PROTEST'', or ''MOTION TO INTERVENE'' as applicable; (2) set forth in the heading the name of the applicant and the project number of the application to which the filing responds; (3) furnish the name, address, and telephone number of the person commenting, protesting or intervening; and (4) otherwise comply with the requirements of 18 CFR 385.2001 through 385.2005. All comments, motions to intervene, or protests must set forth their evidentiary basis. Any filing made by an intervenor must be accompanied by proof of service on all persons listed in the service list prepared by the Commission in this proceeding, in accordance with 18 CFR 385.2010.

Dated: November 23, 2022.

Kimberly D. Bose,

Secretary.

[FR Doc. 2022–26091 Filed 11–29–22; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP23–17–000]

National Fuel Gas Supply Corporation; Notice of Request Under Blanket Authorization and Establishing Intervention and Protest Deadline

Take notice that on November 18, 2022, National Fuel Gas Supply Corporation (National Fuel) 6363 Main Street, Williamsville, New York 14221, filed in the above referenced docket, a prior notice request pursuant to sections 157.205, 157.208 and 157.216 of the Federal Energy Regulatory Commission's regulations under the Natural Gas Act (NGA) and National Fuel's blanket certificate issued in Docket No. CP83–4–000, requesting authorization to abandon and replace 11.55 miles of 12-inch-diameter bare steel pipeline (Line Z20) with 20-inch coated steel pipeline and construct certain related natural gas facilities located in Potter County, Pennsylvania. National Fuel states the proposed replacement is part of a modernization program to enhance the reliability and safety of its system and upsizing the pipeline will enable it to provide additional firm transportation service. The proposed construction is estimated to cost $33.4 million as more fully described in the application which is on file with the Commission and open to public inspection.

In addition to publishing the full text of this document in the **Federal Register**, the Commission provides all interested persons an opportunity to view and/or print the contents of this document via the internet through the Commission's Home Page (*http://ferc.gov*) using the ''eLibrary'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. At this time, the Commission has suspended access to the Commission's Public Reference Room, due to the proclamation declaring a National Emergency concerning the Novel Coronavirus Disease (COVID–19), issued by the President on March 13, 2020. For assistance, contact the Federal Energy Regulatory Commission at *FERCOnlineSupport@ferc.gov.or* call toll-free, (886) 208–3676 or TYY, (202) 502–8659.

Any questions concerning this application should be directed to Meghan M. Emes, Senior Attorney National Fuel Gas Supply Corporation, 6363 Main Street, Williamsville, New York 14221, by telephone at (716) 857–

7004, or by email at *emesm@natfuel.com*.

Public Participation

There are three ways to become involved in the Commission's review of this project: you can file a protest to the project, you can file a motion to intervene in the proceeding, and you can file comments on the project. There is no fee or cost for filing protests, motions to intervene, or comments. The deadline for filing protests, motions to intervene, and comments is 5:00 p.m. Eastern Time on January 23, 2023. How to file protests, motions to intervene, and comments is explained below.

Protests

Pursuant to section 157.205 of the Commission's regulations under the NGA,[1] any person [2] or the Commission's staff may file a protest to the request. If no protest is filed within the time allowed or if a protest is filed and then withdrawn within 30 days after the allowed time for filing a protest, the proposed activity shall be deemed to be authorized effective the day after the time allowed for protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request for authorization will be considered by the Commission.

Protests must comply with the requirements specified in section 157.205(e) of the Commission's regulations,[3] and must be submitted by the protest deadline, which is January 23, 2023. A protest may also serve as a motion to intervene so long as the protestor states it also seeks to be an intervenor.

Interventions

Any person has the option to file a motion to intervene in this proceeding. Only intervenors have the right to request rehearing of Commission orders issued in this proceeding and to subsequently challenge the Commission's orders in the U.S. Circuit Courts of Appeal.

To intervene, you must submit a motion to intervene to the Commission in accordance with Rule 214 of the Commission's Rules of Practice and Procedure [4] and the regulations under the NGA [5] by the intervention deadline for the project, which is January 23, 2023. As described further in Rule 214, your motion to intervene must state, to the extent known, your position regarding the proceeding, as well as your interest in the proceeding. For an individual, this could include your status as a landowner, ratepayer, resident of an impacted community, or recreationist. You do not need to have property directly impacted by the project in order to intervene. For more information about motions to intervene, refer to the FERC website at *https://www.ferc.gov/resources/guides/how-to/intervene.asp*.

All timely, unopposed motions to intervene are automatically granted by operation of Rule 214(c)(1). Motions to intervene that are filed after the intervention deadline are untimely and may be denied. Any late-filed motion to intervene must show good cause for being late and must explain why the time limitation should be waived and provide justification by reference to factors set forth in Rule 214(d) of the Commission's Rules and Regulations. A person obtaining party status will be placed on the service list maintained by the Secretary of the Commission and will receive copies (paper or electronic) of all documents filed by the applicant and by all other parties.

Comments

Any person wishing to comment on the project may do so. The Commission considers all comments received about the project in determining the appropriate action to be taken. To ensure that your comments are timely and properly recorded, please submit your comments on or before January 23, 2023. *The filing of a comment alone will not serve to make the filer a party to the proceeding. To become a party, you must intervene in the proceeding.*

How To File Protests, Interventions, and Comments

There are two ways to submit protests, motions to intervene, and comments. In both instances, please reference the Project docket number CP23–17–000 in your submission.

(1) You may file your protest, motion to intervene, and comments by using the Commission's eFiling feature, which is located on the Commission's website (*www.ferc.gov*) under the link to Documents and Filings. New eFiling users must first create an account by clicking on ''eRegister.'' You will be asked to select the type of filing you are making; first select ''General'' and then select ''Protest'', ''Intervention'', or ''Comment on a Filing''; or [6]

(2) You can file a paper copy of your submission by mailing it to the address below. Your submission must reference the Project docket number CP23–17–000.

To mail via USPS, use the following address: Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 888 First Street NE, Washington, DC 20426.

To mail via any other courier, use the following address: Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 12225 Wilkins Avenue, Rockville, Maryland 20852.

The Commission encourages electronic filing of submissions (option 1 above) and has eFiling staff available to assist you at (202) 502–8258 or *FercOnlineSupport@ferc.gov*.

Protests and motions to intervene must be served on the applicant either by mail or email (with a link to the document) at: Meghan M. Emes, Senior Attorney National Fuel Gas Supply Corporation, 6363 Main Street, Williamsville, New York 14221, or by email at *emesm@natfuel.com*. Any subsequent submissions by an intervenor must be served on the applicant and all other parties to the proceeding. Contact information for parties can be downloaded from the service list at the eService link on FERC Online.

Tracking the Proceeding

Throughout the proceeding, additional information about the project will be available from the Commission's Office of External Affairs, at (866) 208–FERC, or on the FERC website at *www.ferc.gov* using the ''eLibrary'' link as described above. The eLibrary link also provides access to the texts of all formal documents issued by the Commission, such as orders, notices, and rulemakings.

In addition, the Commission offers a free service called eSubscription which allows you to keep track of all formal issuances and submittals in specific dockets. This can reduce the amount of time you spend researching proceedings by automatically providing you with notification of these filings, document summaries, and direct links to the documents. For more information and to register, go to *www.ferc.gov/docs-filing/esubscription.asp*.

[1] 18 CFR 157.205.

[2] Persons include individuals, organizations, businesses, municipalities, and other entities. 18 CFR 385.102(d).

[3] 18 CFR 157.205(e).

[4] 18 CFR 385.214.

[5] 18 CFR 157.10.

[6] Additionally, you may file your comments electronically by using the eComment feature, which is located on the Commission's website at *www.ferc.gov* under the link to Documents and Filings. Using eComment is an easy method for interested persons to submit brief, text-only comments on a project.

Dated: November 23, 2022.

Kimberly D. Bose,

Secretary.

[FR Doc. 2022–26095 Filed 11–29–22; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. IC22–28–000]

Commission Information Collection Activities (FERC–511); Comment Request; Extension

AGENCY: Federal Energy Regulatory Commission, Department of Energy.

ACTION: Notice of information collection and request for comments.

SUMMARY: In compliance with the requirements of the Paperwork Reduction Act of 1995, the Federal Energy Regulatory Commission FERC–511 (Transfer of Hydropower License), which will be submitted to the Office of Management and Budget (OMB) for review. No Comments were received on the 60-day notice published on September 21, 2022.

DATES: Comments on the collection of information are due December 30, 2022.

ADDRESSES: Send written comments on FERC–511 to OMB through *www.reginfo.gov/public/do/PRAMain.* Attention: Federal Energy Regulatory Commission Desk Officer. Please identify the OMB Control Number (1902–0069) in the subject line of your comments. Comments should be sent within 30 days of publication of this notice to *www.reginfo.gov/public/do/PRAMain.*

Please submit copies of your comments to the Commission. You may submit copies of your comments (identified by Docket No. IC22–28–000) by one of the following methods:

Electronic filing through *https://www.ferc.gov,* is preferred.

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

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

○ *Hand (including courier) delivery:* Deliver to: Federal Energy Regulatory Commission, Secretary of the Commission, 12225 Wilkins Avenue, Rockville, MD 20852.

Instructions: OMB submissions must be formatted and filed in accordance with submission guidelines at *www.reginfo.gov/public/do/PRAMain.* Using the search function under the ''Currently Under Review'' field, select Federal Energy Regulatory Commission; click ''submit,'' and select ''comment'' to the right of the subject collection. *FERC submissions* must be formatted and filed in accordance with submission guidelines at: *https://www.ferc.gov.* For user assistance, contact FERC Online Support by email at *ferconlinesupport@ferc.gov,* or by phone at: (866) 208–3676 (toll-free).

Docket: Users interested in receiving automatic notification of activity in this docket or in viewing/downloading comments and issuances in this docket may do so at *https://www.ferc.gov/ferc-online/overview.*

FOR FURTHER INFORMATION CONTACT: Ellen Brown may be reached by email at *DataClearance@FERC.gov,* telephone at (202) 502–8663.

SUPPLEMENTARY INFORMATION:

Title: FERC–511, Transfer of Hydropower License.[1]

OMB Control No.: 1902–0069.

Type of Request: Three-year extension of the FERC–511 information collection requirements with no changes to the current reporting and recordkeeping requirements.

Abstract: The purpose of FERC–511 is to implement the information collections pursuant to Section 8 of the Federal Power Act (FPA) and Code of Federal Regulations (CFR) under Title 18 CFR part 9 (Transfer of License) Sections 9.1 through 9.3 and Section 131.20 of the 18 CFR. Section 8 of the FPA stipulates that no voluntary transfer of any license, or the rights thereunder granted, shall be made without the written approval of the Commission. Sections 9.1 through 9.3 of the 18 CFR states that any licensee (transferor) desiring to transfer a license and the person, association, corporation, State, or municipality (transferee) desiring to acquire the same must jointly file an application for Commission's approval of such transfer.

The application must show that the transfer is in the public interest and provide the qualifications of the transferee to hold such license and to operate the property under the license. Approval of the transfer is contingent upon the transfer of title to the properties under the license, transfer of all project files including all dam safety related documents, and delivery of all license instruments. The application for approval of transfer of license must conform to the requirements of Sections 131.20 of the 18 CFR, which must include the following: application statement by all parties; verification statement; proof of citizenship; evidence of compliance by the transferor with all applicable state laws or how the transferee proposes to comply; and qualifications of the transferee to hold the license and operate the project.

The Commission uses the information collected under the requirements of FERC–511 to implement the statutory provisions of Sections 8 of the Federal Power Act (FPA) and 18 CFR part 9 and 18 CFR 131.20 of the Commission's regulations. The information filed with the Commission is in the format of a written application for transfer of license, executed jointly by the parties of the proposed transfer. The Commission uses the information collected to determine the qualifications of the proposed transferee to hold the license and to prepare the transfer of the license order to make its determination.

Type of Respondent: Existing Hydropower Project Licensees and those entities wishing to have a Hydropower Project License transferred to them.

Estimate of Annual Burden:[2] The Commission estimates the annual burden and cost[3] for the information collection as follows.

[1] The title is being updated to Transfer of Hydropower License (rather than Transfer of Electric License).

[2] Burden is defined as the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a federal agency. See 5 CFR 1320 for additional information on the definition of information collection burden.

[3] The FERC 2022 average salary plus benefits for one FERC full-time equivalent (FTE) is $188,922/year (or $91.00/hour). Commission staff estimates that the industry's skill set (wages and benefits) for completing and filing FERC–511 is comparable to the Commission's skill set.

FERC–511—TRANSFER OF HYDROPOWER LICENSE

	Number of respondents	Annual number of responses per respondent	Total number of responses	Average burden hrs. & cost per response	Total annual burden hours & total annual cost	Cost per respondent ($)
	(1)	(2)	(1) * (2) = (3)	(4)	(3) * (4) = (5)	(5) ÷ (1)
Hydropower Project Licensees.	[4] 13	1	13	40 hrs.; $3,640	520 hrs.; $47,320	[5] $3,640

Comments: Comments are invited on: (1) whether the collection of information is necessary for the proper performance of the functions of the Commission, including whether the information will have practical utility; (2) the accuracy of the agency's estimate of the burden and cost of the collection of information, including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility and clarity of the information collection; and (4) 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.

Dated: November 23, 2022.

Kimberly D. Bose,

Secretary.

[FR Doc. 2022–26089 Filed 11–29–22; 8:45 am]

BILLING CODE 6717–01–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–10396–01–R9]

Delegations of the Prevention of Significant Deterioration Air Permitting Program to the Maricopa County Air Quality Department and the Pima County Department of Environmental Quality

AGENCY: United States Environmental Protection Agency (EPA).

ACTION: Notice of delegations of authority.

SUMMARY: This notice announces that the Environmental Protection Agency (EPA), Region 9, has revised its delegation agreements with the Maricopa County Air Quality Department (MCAQD) and Pima County Department of Environmental Quality (PCDEQ) for implementation of the federal Clean Air Act Prevention of Significant Deterioration (PSD) permitting program. The revised and updated delegation agreements authorize these air pollution agencies in Arizona to continue to conduct PSD review for proposed new and modified major stationary sources, issue initial federal PSD permits, and revise existing federal PSD permits, subject to the terms and conditions of the applicable delegation agreement.

DATES: The revised PSD delegation agreements with the MCAQD and the PCDEQ became effective on October 2, 2022, and June 5, 2018, respectively. Pursuant to section 307(b)(1) of the Clean Air Act, 42 U.S.C. 7607(b)(1), judicial review of these final agency actions, to the extent it is available, may be sought by filing a petition for review in the United States Court of Appeals for the Ninth Circuit within 60 days of November 30, 2022.

ADDRESSES: The revised delegation agreements are available on Region 9's website at *https://www.epa.gov/caa-permitting/air-permit-delegation-and-psd-sip-approval-status-epas-pacific-southwest-region-9.* For additional information, please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section.

FOR FURTHER INFORMATION CONTACT: Gerardo Rios, EPA Region 9, 75 Hawthorne Street (AIR–3–1), San Francisco, California 94105. By phone at (415) 972–3974, or by email at *rios.gerardo@epa.gov.*

SUPPLEMENTARY INFORMATION: Pursuant to 40 CFR 52.21(u), the EPA signed revised PSD delegation agreements with the MCAQD and PCDEQ. The EPA signed a greenhouse gas (GHG) PSD delegation agreement with the MCAQD on October 2, 2022. The EPA also signed a PSD delegation agreement that applies to all PSD pollutants, including both attainment/unclassifiable pollutants and GHGs, with the PCDEQ on June 5, 2018. The delegation agreements authorize these Arizona air pollution agencies to implement the PSD program under sections 160–169 of the Clean Air Act (CAA) and 40 CFR 52.21 for the applicable pollutants, including conducting PSD review and the issuance and revision of PSD permits.

The delegation agreements set forth the terms and conditions according to which the agencies will implement the PSD regulations at 40 CFR 52.21. Under the PSD program, major stationary sources of air pollutants must apply for and receive a permit prior to construction of new facilities or certain modifications to existing facilities.

While the abovementioned Arizona air pollution agencies have been delegated the authority to implement and enforce the PSD program, nothing in the delegation agreements prohibits the EPA from enforcing the PSD provisions of the CAA, the PSD regulations, or the conditions of any PSD permit issued by the air pollution agencies.

Dated: November 23, 2022.

Elizabeth J. Adams,

Director, Air and Radiation Division, Region IX.

[FR Doc. 2022–26086 Filed 11–29–22; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OECA–2013–0547; FRL—10383–01–OECA]

Proposed Information Collection Request; Comment Request; Performance Evaluation Studies on Wastewater Laboratories (Renewal)

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: The Environmental Protection Agency (EPA) is planning to submit an information collection request (ICR), ''Performance Evaluation Studies on Wastewater Laboratories'' (EPA ICR No. 0234.14, OMB Control No. 2080–0021) to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act. Before doing so, EPA is soliciting public comments on specific aspects of the proposed information collection as described below. This is a proposed extension of the ICR, which is

[4] The number of respondents has been reduced from 46 to 13 for this renewal; this is based on the average number of filings made in the past three years.

[5] The cost per respondent has not actually increased between this renewal and the previous renewal, but a mathematical error has been corrected. We estimate the cost per response to be the same: $3,640.

currently approved through May 31, 2023. 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 January 30, 2023.

ADDRESSES: Submit your comments, referencing Docket ID No. EPA–HQ–OECA–2013–0547, online using *www.regulations.gov* (our preferred method), by email to *docket.oeca@epa.gov,* or by mail to: EPA Docket Center, Environmental Protection Agency, Mail Code 28221T, 1200 Pennsylvania Ave. NW, Washington, DC 20460.

EPA's policy is that all comments received will be included in the public docket without change including any personal information provided, unless the comment includes profanity, threats, information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute.

FOR FURTHER INFORMATION CONTACT: Gregory Savitske, Monitoring, Assistance, and Media Programs Division, Office of Compliance, (2227A), Environmental Protection Agency, 1200 Pennsylvania Ave. NW, Washington, DC 20460; telephone number: (202) 564–2601; fax number: (202) 564–0050; email address: *Savitske.Gregory@epa.gov.*

SUPPLEMENTARY INFORMATION: Supporting documents which explain in detail the information that the EPA will be collecting are available in the public docket for this ICR. The docket can be viewed online at *www.regulations.gov* or in person at the EPA Docket Center, WJC West, Room 3334, 1301 Constitution Ave. NW, Washington, DC. The telephone number for the Docket Center is 202–566–1744. For additional information about EPA's public docket, visit *https://www.epa.gov/dockets.*

Pursuant to section 3506(c)(2)(A) of the Paperwork Reduction Act, EPA is soliciting comments and information to enable it to: (i) evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the Agency, including whether the information will have practical utility; (ii) evaluate the accuracy of the Agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (iii) enhance the quality, utility, and clarity of the information to be collected; and (iv) minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses. EPA will consider the comments received and amend the ICR as appropriate. The final ICR package will then be submitted to OMB for review and approval. At that time, EPA will issue another **Federal Register** notice to announce the submission of the ICR to OMB and the opportunity to submit additional comments to OMB.

Abstract: Discharge Monitoring Report-Quality Assurance (DMR–QA) study program participation is mandatory for Major and selected Minor National Pollutant Discharge Elimination System (NPDES) permit holders in accordance with Clean Water Act Section 308. The DMR–QA study program is designed to evaluate the analytic ability of laboratories that perform chemical, microbiological and whole effluent toxicity (WET) analyses required in NPDES permits for reporting results in the Discharge Monitoring Reports (DMR). Under DMR–QA, the permit holder is responsible for having their in-house and/or contract laboratories analyze proficiency test samples and submit results to proficiency testing (PT) providers for grading. Graded results are transmitted by either the permit holder or PT provider to the appropriate federal or state NPDES permitting authority. Permit holders are responsible for submitting corrective action reports to the appropriate permitting authority.

Form Numbers: 6400–01.

Respondents/affected entities: Major and selected Minor permit holders under the Clean Water Act's National Pollutant Discharge Elimination System (NPDES).

Respondent's obligation to respond: Major permit holders must participate annually. Minor permit holders must participate if selected by the state or EPA DMR–QA coordinator.

Estimated number of respondents: 5,500 (total).

Frequency of response: Major permit holders must participate annually. Minor permit holders must participate if selected by the state or EPA DMR–QA coordinator.

Total estimated burden: 36,300 hours (per year). Burden is defined at 5 CFR 1320.03(b).

Total estimated cost: $5,240,070 (per year), includes $3,243,350 annualized capital or operation & maintenance costs.

Changes in estimates: The total estimated respondent burden is projected to remain the same as the ICR currently approved by OMB; this is attributed to the estimated number of respondents receiving this ICR remaining stable over the past three years. Labor costs will likely increase to account for changes in employee benefit and compensation costs as well as inflation. Non-labor costs for obtaining proficiency test samples will also likely increase.

Dated: November 23, 2022.

Elizabeth Vizard,

Acting Director, Monitoring, Assistance, and Media Programs Division, Office of Compliance.

[FR Doc. 2022–26087 Filed 11–29–22; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[Docket No. CDC–2022–0136]

Advisory Committee on Immunization Practices; Cancellation of Meeting

AGENCY: Centers for Disease Control and Prevention (CDC), Department of Health and Human Services (HHS).

ACTION: Notice.

SUPPLEMENTARY INFORMATION: Notice is hereby given of a change in the meeting of the Advisory Committee on Immunization Practices (ACIP); December 9, 2022, from 10 a.m. to 5 p.m., EST. The virtual meeting was published in the **Federal Register** on November 23, 2022, Volume 87, Number 225, pages 71641–71642. This meeting is being canceled in its entirety.

FOR FURTHER INFORMATION CONTACT: Stephanie Thomas, ACIP Committee Management Specialist, Centers for Disease Control and Prevention, National Center for Immunization and Respiratory Diseases, 1600 Clifton Road NE, Mailstop H24–8, Atlanta, Georgia 30329–4027; Telephone: 404–639–8836; Email: *ACIP@cdc.gov.*

The Director, Strategic Business Initiatives Unit, Office of the Chief Operating Officer, Centers for Disease Control and Prevention, has been delegated the authority to sign Federal Register notices pertaining to announcements of meetings and other committee management activities, for both the Centers for Disease Control and

Prevention and the Agency for Toxic Substances and Disease Registry.

Kalwant Smagh,

Director, Strategic Business Initiatives Unit, Office of the Chief Operating Officer, Centers for Disease Control and Prevention.

[FR Doc. 2022–26084 Filed 11–29–22; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Community Living

[OMB Control No. 0985–0029]

Agency Information Collection Activities: Proposed Collection; Public Comment Request of the State Councils on Developmental Disabilities (Councils) State Plan

AGENCY: Administration for Community Living, Department of Health and Human Services.

ACTION: Notice.

SUMMARY: The Administration for Community Living (ACL) is announcing an opportunity for the public to comment on the proposed collection of information listed above. Under the Paperwork Reduction Act of 1995 (PRA), Federal agencies are required to publish a notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of an existing collection of information, and to allow 60 days for public comment in response to the notice. This Information Collection (IC) Revision solicits comments on the information collection requirements relating to the Developmental Disabilities State Plan OMB control number 0985–0029.

DATES: Comments on the collection of information must be submitted electronically by 11:59 p.m. (EST) or postmarked by January 30, 2023.

ADDRESSES: Submit comments on the collection of information via email to *Sara.Newell-Perez@acl.hhs.gov* or to Administration for Community Living, 330 C Street SW, Washington, DC 20201, Attention: Sara Newell-Perez.

FOR FURTHER INFORMATION CONTACT: Sara Newell-Perez, 202–795–7413 or *Sara.Newell-Perez@acl.hhs.gov.*

SUPPLEMENTARY INFORMATION: Under the PRA (44 U.S.C. 3501–3520), Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. ''Collection of information'' is defined in 44 U.S.C. 3502(3) and 5 CFR 1320.3(c) and includes agency requests or requirements that members of the public submit reports, keep records, or provide information to a third party. The PRA requires Federal agencies to provide a 60-day notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of an existing collection of information, before submitting the collection to OMB for approval. To comply with this requirement, ACL is publishing a notice of the proposed collection of information set forth in this document.

With respect to the following collection of information, ACL invites comments on our burden estimates or any other aspect of this collection of information, including:

(1) whether the proposed collection of information is necessary for the proper performance of ACL's functions, including whether the information will have practical utility;

(2) the accuracy of ACL's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used to determine burden estimates;

(3) ways to enhance the quality, utility, and clarity of the information to be collected; and

(4) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques when appropriate, and other forms of information technology.

The State Councils on Developmental Disabilities (Councils) are authorized in Subtitle B, of the Developmental Disabilities Assistance and Bill of Rights Act of 2000 (DD Act), as amended, [42 U.S.C. 15001 *et seq.*] (The DD Act). The DD Act requires Councils to submit a five-year State plan. Section 124(a) [42 U.S.C. 15024(a)], states that: *Any State desiring to receive assistance under this subtitle shall submit to the Secretary, and obtain approval of, a 5-year strategic State plan under this section.* The DD Act regulations outlines additional guiding requirements in 45 CFR part 1326.30(a), which states that: *In order to receive Federal financial assistance under this subpart, each State Developmental Disabilities Council must prepare and submit to the Secretary, and have in effect, a State plan which meets the requirements of sections 122 and 124 of the Act (42 U.S.C. 6022 and 6024) and these regulations.*

The Council is responsible for the development, and submission of the State plan as well as implementation of the activities described in the plan. The Council updates the Sate plan annually during the five years. The State plan provides information on individuals with developmental disabilities in the State, and a description of the services available to them and their families. The State plan sets forth the goals and specific objectives to be achieved by the State Council in pursuing systems change and capacity building that result in empowering people with developmental disabilities to lead independent lives within the community. It describes State priorities, strategies, and actions, and the allocation of funds to meet these goals and objectives. Additionally, the data collected in the State plan and submitted to ACL is also used to comply with the GPRA Modernization Act of 2010 (GPRAMA).

The State Plan is used in three ways. First, it provides a framework for citizens, State governments, and other key stakeholder to provide input and comments to help shape the goals and objectives during the development stage. Secondly, it is used by each Council as a planning document to operationalize its goals and strategies. Finally, it provides information the Department needs for monitoring and providing technical assistance to ensure the Council is compliant.

This is a revision of a currently approved information collect that expires March 30, 2023. To ensure the DD Council State plan is consistent with the Executive Order on Advancing Racial Equity and Support for Underserved Communities Through the Federal Government and the Executive Order on Advancing Equality for Lesbian, Gay, Bisexual, Transgender, Queer, and Intersex Individuals, ACL intends to determine whether sexual orientation and gender identity (SOGI) data elements need to be adapted prior to adding them to ensure accessibility of the questions for individuals with intellectual and developmental disabilities.

The proposed data collection tool may be found on the ACL website for review at: *https://www.acl.gov/about-acl/public-input.*

Estimated Program Burden: ACL estimates the burden of this collection of information as follows:

Respondent/data collection activity	Number of respondents	Responses per respondent	Hours per response	Total annual burden hours
State Councils on Developmental Disabilities State plan	56	1	367	20,522
Total	56	1	367	20,522

Dated: November 23, 2022.

Alison Barkoff,

Acting Administrator and Assistant Secretary for Aging.

[FR Doc. 2022–26077 Filed 11–29–22; 8:45 am]

BILLING CODE 4154–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2022–D–2899]

Effectiveness of Anthelmintics: Specific Recommendations for Products Proposed for the Prevention of Heartworm Disease in Dogs; Draft Guidance for Industry; Availability

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice of availability.

SUMMARY: The Food and Drug Administration (FDA or Agency) is announcing the availability of a draft guidance for industry (GFI) #276 entitled ''Effectiveness of Anthelmintics: Specific Recommendations for Products Proposed for the Prevention of Heartworm Disease in Dogs.'' This draft guidance is intended for sponsors and potential sponsors who may be interested in pursuing approval of investigational new animal drugs for the prevention of heartworm disease in dogs. The draft guidance provides recommendations for the effectiveness evaluation of drugs indicated for the prevention of heartworm disease caused by *Dirofilaria immitis* in dogs. These recommendations should be read in conjunction with related Agency Veterinary International Conference on Harmonization (VICH) guidance documents and are intended to provide additional detail to elements of study design and interpretation under the recommendations laid out in the VICH guidances.

DATES: Submit either electronic or written comments on the draft guidance by January 30, 2023 to ensure that the Agency considers your comment on this draft guidance before it begins work on the final version of the guidance.

ADDRESSES: You may submit comments on any guidance at any time as follows:

Electronic Submissions

Submit electronic comments in the following way:

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

Written/Paper Submissions

Submit written/paper submissions as follows:

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

Instructions: All submissions received must include the Docket No. FDA–2022–D–2899 for ''Effectiveness of Anthelmintics: Specific Recommendations for Products Proposed for the Prevention of Heartworm Disease in Dogs.'' Received comments will be placed in the docket and, except for those submitted as ''Confidential Submissions,'' publicly viewable at *https://www.regulations.gov* or at the Dockets Management Staff between 9 a.m. and 4 p.m., Monday through Friday, 240–402–7500.

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

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

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

Submit written requests for single copies of the guidance to the Policy and Regulations Staff (HFV–6), Center for Veterinary Medicine, Food and Drug Administration, 7500 Standish Pl., Rockville, MD 20855. Send one self-addressed adhesive label to assist that office in processing your requests. See

the **SUPPLEMENTARY INFORMATION** section for electronic access to the draft guidance document.

FOR FURTHER INFORMATION CONTACT: Steven Fleischer, Center for Veterinary Medicine (HFV–110), Food and Drug Administration, 7500 Standish Pl., Rockville, MD 20855, 240–402–0809, *Steven.Fleischer@fda.hhs.gov.*

SUPPLEMENTARY INFORMATION:

I. Background

FDA is announcing the availability of draft GFI #276 entitled ''Effectiveness of Anthelmintics: Specific Recommendations for Products Proposed for the Prevention of Heartworm Disease in Dogs.'' The recommended approach to demonstrate substantial evidence of effectiveness of an investigational new animal drug intended for the prevention of heartworm disease in dogs is for the sponsor to conduct two laboratory dose confirmation studies and one multisite field effectiveness study in accordance with the principles of good clinical practice as described in GFI #85 (VICH GL9), ''Good Clinical Practice.'' This draft guidance provides detail regarding FDA's recommendations for the effectiveness evaluation of drugs indicated for the prevention of heartworm disease caused by *Dirofilaria immitis* in dogs. This guidance is informed by comments FDA received in response to the ''Evaluation of Approaches To Demonstrate Effectiveness of Heartworm Preventatives for Dogs; Request for Comments,'' which published in the **Federal Register** on May 24, 2018 (83 FR 24122).

This level 1 draft guidance is being issued consistent with FDA's good guidance practices regulation (21 CFR 10.115). The draft guidance, when finalized, will represent the current thinking of FDA on ''Effectiveness of Anthelmintics: Specific Recommendations for Products Proposed for the Prevention of Heartworm Disease in Dogs.'' It does not establish any rights for any person and is not binding on FDA or the public. You can use an alternative approach if it satisfies the requirements of the applicable statutes and regulations.

II. Paperwork Reduction Act of 1995

While this guidance contains no collection of information, it does refer to previously approved FDA collections of information. Therefore, clearance by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3501–3521) is not required for this guidance. The previously approved collections of information are subject to review by OMB under the PRA. The collections of information in 21 CFR part 514 have been approved under OMB control number 0910–0032.

III. Electronic Access

Persons with access to the internet may obtain the draft guidance at *https://www.fda.gov/animal-veterinary/guidance-regulations/guidance-industry, https://www.fda.gov/regulatory-information/search-fda-guidance-documents,* or *https://www.regulations.gov.*

Dated: November 22, 2022.

Lauren K. Roth,

Associate Commissioner for Policy.

[FR Doc. 2022–26059 Filed 11–29–22; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2022–N–2855]

Mylan Institutional, Inc.; Withdrawal of Approval of a New Drug Application for SULFAMYLON® (Mafenide Acetate, USP) Powder for 5% Topical Solution

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is withdrawing approval of new drug application (NDA) 019832 for SULFAMYLON® (Mafenide Acetate, USP) Powder for 5% Topical Solution, held by Mylan Institutional, Inc., a Viatris company (Mylan). Mylan has voluntarily requested withdrawal of this application and has waived its opportunity for a hearing.

DATES: Applicable November 30, 2022.

FOR FURTHER INFORMATION CONTACT: Kristiana Brugger, Office of Regulatory Policy, Center for Drug Evaluation and Research, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 51, Rm. 6262, Silver Spring, MD 20993, 301–796–3601.

SUPPLEMENTARY INFORMATION: On June 5, 1998, the Food and Drug Administration (FDA) approved NDA 019832 for SULFAMYLON® (Mafenide Acetate, USP) Powder for 5% Topical Solution, under the Agency's accelerated approval regulations (see generally 21 CFR subpart H). It was approved for ''for use as an adjunctive topical antimicrobial agent to control bacterial infection when used under moist dressings over meshed autografts on excised burn wounds.''

NDA 019832's accelerated approval was ''subject to the requirement that the applicant study the drug further, to verify and describe its clinical benefit, where there is uncertainty as to the relation of the surrogate endpoint to clinical benefit, or of the observed clinical benefit to ultimate outcome'' (21 CFR 314.510). To date, however, Mylan has not completed the required confirmatory study. Mylan acknowledged in its December 10, 2021, letter requesting withdrawal of approval that a successful confirmatory study was necessary to fulfill the accelerated approval requirements, but stated that conducting such a study is not feasible. Mylan thus requested that NDA 019832 be withdrawn under 21 CFR 314.150(d), and waived its right to a hearing.

Thus, for the reasons discussed above, under 21 CFR 314.150(d), approval of NDA 019832 for SULFAMYLON® (Mafenide Acetate, USP) Powder for 5% Topical Solution, and all amendments and supplements thereto, is withdrawn. Distribution of SULFAMYLON® (Mafenide Acetate, USP) Powder for 5% Topical Solution in interstate commerce without an approved application is illegal and subject to regulatory action (see sections 505(a) and 301(d) of the FD&C Act (21 U.S.C. 355(a) and 331(d)).

Dated: November 22, 2022.

Lauren K. Roth,

Associate Commissioner for Policy.

[FR Doc. 2022–26057 Filed 11–29–22; 8:45 am]

BILLING CODE P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2022–D–0099]

Questions and Answers Regarding Food Allergens, Including the Food Allergen Labeling Requirements of the Federal Food, Drug, and Cosmetic Act (Edition 5): Draft Guidance for Industry; Availability; Agency Information Collection Activities; Proposed Collection; Comment Request; and Questions and Answers Regarding Food Allergens, Including the Food Allergen Labeling Requirements of the Federal Food, Drug, and Cosmetic Act (Edition 5): Final Guidance for Industry

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice of availability.

SUMMARY: The Food and Drug Administration (FDA or we) is announcing the availability of a draft

guidance for industry entitled ''Questions and Answers Regarding Food Allergens, Including the Food Allergen Labeling Requirements of the Federal Food, Drug, and Cosmetic Act (Edition 5): Draft Guidance for Industry.'' The draft guidance, when finalized, will explain FDA's current thinking on a number of issues related to the labeling of food allergens, including requirements in the Food Allergen Labeling and Consumer Protection Act of 2004 (FALCPA) and the Food Allergy Safety, Treatment, Education, and Research Act of 2021 (FASTER Act). The draft guidance is a revision of a currently issued guidance, entitled ''Questions and Answers Regarding Food Allergens, Including the Food Allergen Labeling and Consumer Protection Act of 2004 (Edition 4).'' This draft guidance is not final nor is it in effect at this time. In addition, the FDA is announcing availability of a final guidance entitled ''Questions and Answers Regarding Food Allergens, Including the Food Allergen Labeling Requirements of the Federal Food, Drug, and Cosmetic Act (Edition 5): Final Guidance for Industry.'' This final guidance includes the questions and answers from the currently issued guidance that remain substantively unchanged.

DATES: Submit either electronic or written comments on the draft guidance by January 30, 2023 to ensure that we consider your comment on the draft guidance before we begin work on the final version of the guidance. Submit electronic or written comments on the proposed collection of information in the draft guidance by January 30, 2023.

ADDRESSES: You may submit comments on any guidance at any time as follows:

Electronic Submissions

Submit electronic comments in the following way:

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

Written/Paper Submissions

Submit written/paper submissions as follows:

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

Instructions: All submissions received must include the Docket No. FDA–2022–D–0099 for ''Questions and Answers Regarding Food Allergens, Including the Food Allergen Labeling Requirements of the Federal Food, Drug, and Cosmetic Act (Edition 5): Draft 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.'' 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.

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 documents to the Office of Nutrition and Food Labeling, Division of Food Labeling and Standards, Center for Food Safety and Applied Nutrition, Food and Drug Administration, 5001 Campus Dr., College Park, MD 20740. Send two self-addressed adhesive labels to assist that office in processing your request. See the **SUPPLEMENTARY INFORMATION** section for electronic access to the guidance documents.

FOR FURTHER INFORMATION CONTACT:

With regard to the guidance documents: Carol D'Lima, Office of Nutrition and Food Labeling (HFS–800), Center for Food Safety and Applied Nutrition, Food and Drug Administration, 5001 Campus Dr., College Park, MD 20740, 240–402–2371; or Denise See, Office of Regulations and Policy (HFS–024), Center for Food Safety and Applied Nutrition, Food and Drug Administration, 5001 Campus Dr., College Park, MD 20740, 240–402–2378.

With regard to the proposed collection of information: Domini Bean, Office of Operations, Food and Drug Administration, Three White Flint North, 10A–12M, 11601 Landsdown St., North Bethesda, MD 20852, 301–796–5733, *PRAStaff@fda.hhs.gov*.

SUPPLEMENTARY INFORMATION:

I. Background

FALCPA (Pub. L. 108–282) was enacted in August 2004 and, in part, amended the Federal Food, Drug, and Cosmetic Act (the FD&C Act) by defining the term ''major food allergen'' and requiring that the presence of any major food allergen be declared on the labels of FDA-regulated foods. FALCPA defined a major food allergen as milk, egg, fish (*e.g.,* bass, flounder, or cod), crustacean shellfish (*e.g.,* crab, lobster,

or shrimp), tree nuts (*e.g.,* almonds, pecans, or walnuts), wheat, peanuts, and soybeans and as a food ingredient that contains protein derived from these foods (section 201(qq) (21 U.S.C. 321(qq)) of the FD&C Act). In addition, the FASTER Act (Pub. L. 117–11) was enacted in April 2021 and, in part, amended the definition of major food allergen in the FD&C Act to include sesame, effective January 1, 2023. Exceptions to the definition include highly refined oil derived from a major food allergen and any ingredient derived from the highly refined oil. FALCPA also amended the FD&C Act to include provisions to request an exemption from the food allergen labeling requirements through a petition process when a food ingredient is demonstrated to not cause an allergic response that poses a risk to human health or through a notification process when processing of a food ingredient results in the removal of the allergenic protein (section 403(w)(6) and (7) of the FD&C Act (21 U.S.C. 343(w)(6) and (7))).

Since the passage of FALCPA, FDA has received numerous questions about food allergen labeling requirements. To explain FALCPA's requirements as well as FDA's current thinking on issues relating to the regulation of food allergens, on October 5, 2005, FDA issued the first edition of a guidance entitled ''Guidance for Industry: Questions and Answers Regarding Food Allergens, including the Food Allergen Labeling and Consumer Protection Act of 2004.'' We subsequently updated the guidance in December 2005 (Edition 2), April 2006 (Edition 3), and October 2006 (Edition 4).

FDA is issuing a draft guidance for industry entitled ''Questions and Answers Regarding Food Allergens, Including the Food Allergen Labeling Requirements of the Federal Food, Drug, and Cosmetic Act (Edition 5).'' The draft guidance is a revision of Edition 4 originally entitled ''Questions and Answers Regarding Food Allergens, Including the Food Allergen Labeling and Consumer Protection Act of 2004'' that contains revised and new questions and answers relating to food allergens, including questions and answers about FALCPA and the FASTER Act. Editorial changes, such as renumbering and organizational changes have also been made in this revision.

FDA is also issuing a final guidance, ''Questions and Answers Regarding Food Allergens, Including the Food Allergen Labeling Requirements of the Federal Food, Drug, and Cosmetic Act (Edition 5),'' that contains the questions and answers from Edition 4 that remain unchanged, with the exception of editorial changes such as renumbering and organizational changes, and are therefore being reissued as final guidance. FDA is issuing the draft guidance document to receive comments on the new or revised questions and answers, and, as appropriate, will move the questions and answers to the final guidance document, after reviewing comments and incorporating any changes to the questions and answers, when appropriate. Note that some questions and answers that were in Edition 4 of the final guidance have been withdrawn and moved to the draft guidance document if FDA determined that the question and answer should be revised in some respect and reissued in draft for comment. For ease of reference, a question retains the same number when it moves from the draft guidance to the final guidance and we use the term ''RESERVED'' after some question numbers, where appropriate, to facilitate this process.

We are issuing these guidance documents consistent with our good guidance practices regulation (21 CFR 10.115). The guidance documents do not establish any rights for any person and are not binding on FDA or the public. You can use an alternate approach if it satisfies the requirements of the applicable statutes and regulations.

The draft guidance (''Questions and Answers Regarding Food Allergens, Including the Food Allergen Labeling Requirements of the Federal Food, Drug, and Cosmetic Act (Edition 5)'' responds to new questions about food allergen labeling requirements, including, but not limited to, the labeling of sesame, milk, eggs, incidental additives, highly refined oils, dietary supplement products, and certain specific packing and labeling situations (*e.g.,* individual units within a multiunit package). For example, we have included draft questions and answers regarding our historical interpretation of the terms ''milk'' and ''eggs;'' for purposes of the definition of a ''major food allergen'' under section 201(qq) of the FD&C Act and complying with the food allergen labeling requirements of the FD&C Act. FDA has historically interpreted ''milk'' as milk from the domesticated cow and ''eggs'' as eggs from the domesticated chicken.

Since 2005, when we first issued the guidance document, there have been changes in our laws as well as in the overall food marketplace. For example, in 2011, the FDA Food Safety Modernization Act (FSMA) added new allergen control provisions for major food allergens. We are also aware that, while the market in the United States for milk and eggs from species other than domesticated cows and chickens remains limited, it has increased in recent years. Given that, we are considering whether we should modify our historical interpretations of ''milk'' and ''eggs'' for purposes of the definition of ''major food allergen'' under 201(qq) of the FD&C Act and complying with the food allergen labeling requirements of the FD&C Act as set forth in the guidance document.

For example, for ''milk,'' we note that our regulation, at 21 CFR 131.110, defines ''milk'' as the lacteal secretion, practically free from colostrum, obtained by the complete milking of one or more healthy cows, and our historical interpretation of ''milk'' in the context of a major food allergen under the FD&C Act has been consistent with this definition. However, we are aware that foods from ruminant species such as goat's milk, sheep's milk and buffalo's milk are sold or used in human food, and that allergic reactions associated with consumption of milk from other ruminants have been reported in some individuals. While consumption of such foods in the United States is limited, in light of the risk of allergic reactions associated with consumption of milk from other ruminants, we invite comment on whether we should revise our interpretation of ''milk'' for this guidance, what a revised interpretation should be, and the potential implications or impact of a revised interpretation.

Similarly, some FDA documents interpret ''eggs'' as coming solely from chickens, and our historical interpretation in the context of a major food allergen under the FD&C Act has been to consider eggs as coming from chickens. However, we are aware that eggs from various bird species (such as turkey, duck, goose, and guinea) can be purchased and are used as human food. In addition, we are aware that allergic reactions associated with eggs from birds other than chickens have been reported in some individuals. Thus, we invite comment on whether we should revise our interpretation of ''eggs'' for this guidance, what a revised interpretation should be, and the potential implications or impact of a revised interpretation.

We also have revised several questions and answers to update and clarify information presented in previous editions, including, among other things, questions related to the labeling of tree nuts, fish, and crustacean shellfish. We also invite comments on these draft questions and answers.

II. Paperwork Reduction Act of 1995

Under the Paperwork Reduction Act of 1995 (PRA) (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. ''Collection of information'' is defined in 44 U.S.C. 3502(3) and 5 CFR 1320.3(c) and includes Agency requests or requirements that members of the public submit reports, keep records, or provide information to a third party. Section 3506(c)(2)(A) of the PRA (44 U.S.C. 3506(c)(2)(A)) requires Federal Agencies to provide a 60-day notice in the **Federal Register** concerning each proposed collection of information before submitting the collection to OMB for approval. To comply with this requirement, FDA is publishing notice of the proposed collection of information set forth in this document.

With respect to the following collection of information, FDA invites comments on these topics: (1) whether the proposed collection of information is necessary for the proper performance of FDA's functions, including whether the information will have practical utility; (2) the accuracy of FDA's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques, when appropriate, and other forms of information technology.

Questions and Answers Regarding Food Allergens, Including the Food Allergen Labeling Requirements of the Federal Food, Drug, and Cosmetic Act (Edition 5): Guidance for Industry

OMB Control Number 0910–0792—Revision

The draft guidance, when finalized, will explain FDA's current thinking on the labeling requirements in FALCPA and the FASTER Act. The draft guidance will assist food manufacturers to comply with new requirements under the FASTER Act for treating sesame as a major allergen and declaring sesame on the label of food products, effective January 1, 2023.

Description of respondents: The respondents to this collection of information are manufacturers and packers of packaged foods sold in the United States.

We estimate the burden of this collection of information as follows:

TABLE 1—ESTIMATED ANNUAL THIRD-PARTY DISCLOSURE BURDEN [1]

FD&C act section; activity	Number of respondents	Number of disclosures per respondent	Total annual disclosures	Average burden per disclosure	Total hours	Total capital costs
403(w)(1) (FALCPA); Review labels to comply with sesame labeling requirements pursuant to the FASTER Act	77,500	1	77,500	1	77,500	0
403(w)(1) (FALCPA); Redesign labels to comply with sesame labeling requirements pursuant to the FASTER Act	775	1	775	16	12,400	$1,414,375
Total					89,900	1,414,375

[1] There are no operating and maintenance costs associated with this collection of information.

We base these estimates from our experience with our food allergen labeling program and our labeling cost model. We estimate that there are approximately 775,000 Universal Product Codes (UPCs) of FDA-regulated foods. Using FDA's labeling cost model, we estimate the entry rate of new UPCs to be approximately 8 percent per year. Based on the approximate entry rate of new UPCs, we estimate the rate of new or reformulated UPCs to be approximately 10 percent per year, or 77,500 products (775,000 × 10 percent). Thus, we estimate that 77,500 new or reformulated products are sold annually in the United States. Assuming an association of one respondent to each of the 77,500 new or reformulated products, we estimate that 77,500 respondents will each review the label of one of the 77,500 new or reformulated products, as reported in table 1, row 1. We have no data on how many label reviews would identify the need to redesign the label. Therefore, we further estimate, for the purposes of this analysis, that 1 percent of the reviewed labels of new or reformulated products, or 775 labels (77,500 × 1 percent) would need to be redesigned to comply with the labeling requirements of the FASTER Act. Assuming an association of one respondent to each of the 775 labels, we estimate that 775 respondents will each redesign one label. Using our labeling cost model, we estimate that it will take an average of 16 hours to complete the administration and internal design work for the redesign of a label to comply with the labeling requirements of the FASTER Act. Consequently, the burden of redesigning the 775 labels of new or reformulated products is 12,400 hours, as reported in table 1, row 2. Thus, the total third-party disclosure burden would be 89,900 hours.

TABLE 2—ESTIMATED ANNUAL REPORTING BURDEN [1]

FD&C act section; activity	Number of respondents	Number of responses per respondent	Total annual responses	Average burden per response	Total hours
403(w)(6) (FALCPA); petition for exemption for sesame	1	1	1	100	100
403(w)(7) (FALCPA); notification for sesame	1	1	1	68	68
Total					168

[1] There are no operating and maintenance costs associated with this collection of information.

Based on the number of petitions and notifications under FALCPA received in recent years, we estimate that we will receive one additional petition and one additional notification annually for sesame, over the next 3 years. We base

our estimate of the average burdens per response reported in table 2 on our experience with the existing FALCPA petition process. We estimate that a petition would take, on average, 100 hours to develop and submit.

The burden of a notification involves collecting documentation that a food ingredient does not pose an allergen risk. Either we can make a determination that the ingredient does not cause an allergic response that poses a risk to human health under a premarket approval or notification program under section 409 of the FD&C Act (21 U.S.C. 348), or the respondent would submit scientific evidence demonstrating that the ingredient when manufactured as described does not contain allergenic protein. Based on the existing FALCPA notification process, we estimate that the average time to prepare and submit a notification for sesame is approximately 68 hours. Thus, the total annual reporting burden would be 168 hours over the next 3 years.

III. Electronic Access

Persons with access to the internet may obtain the guidance documents at *https://www.fda.gov/regulatory-information/search-fda-guidance-documents, https://www.fda.gov/FoodGuidances,* or *https://www.regulations.gov.* Use the FDA website listed in the previous sentence to find the most current version of the guidances.

Dated: November 23, 2022.

Lauren K. Roth,

Associate Commissioner for Policy.

[FR Doc. 2022–26110 Filed 11–29–22; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Office of the Director; Notice of Charter Renewal

In accordance with title 42 of the U.S. Code of Federal Regulations, section 217a, notice is hereby given that the Charter for the National Toxicology Program Board of Scientific Counselors was renewed for an additional two-year period on November 9, 2022.

It is determined that the National Toxicology Program Board of Scientific Counselors is in the public interest in connection with the performance of duties imposed on the National Institutes of Health by law, and that these duties can best be performed through the advice and counsel of this group.

Inquiries may be directed to Claire Harris, Director, Office of Federal Advisory Committee Policy, Office of the Director, National Institutes of Health, 6701 Democracy Boulevard, Suite 1000, Bethesda, Maryland 20892 (Mail Stop Code 4875), Telephone (301) 496–2123, or *harriscl@mail.nih.gov.*

Dated: November 23, 2022.

David W. Freeman,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2022–26061 Filed 11–29–22; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Center for Scientific Review; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended, notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Center for Scientific Review Special Emphasis Panel; Special Topics in Nephrology.

Date: December 6, 2022.

Time: 1:00 p.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Rockledge II, 6701 Rockledge Drive, Bethesda, MD 20892 (Virtual Meeting).

Contact Person: Stacey Nicole Williams, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (301) 867–5309, *stacey.williams@nih.gov.*

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

(Catalogue of Federal Domestic Assistance Program Nos. 93.306, Comparative Medicine; 93.333, Clinical Research, 93.306, 93.333, 93.337, 93.393–93.396, 93.837–93.844, 93.846–93.878, 93.892, 93.893, National Institutes of Health, HHS)

Dated: November 23, 2022.

David W. Freeman,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2022–26063 Filed 11–29–22; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Neurological Disorders and Stroke; Amended Notice of Meeting

Notice is hereby given of a change in the meeting of the National Institute of Neurological Disorders and Stroke Special Emphasis Panel, which was published in the **Federal Register** on November 03, 2022, FR Doc 2022–23900, 87 FR 66315.

This notice is being amended to change the dates of this two-day meeting from November 28–29, 2022, to December 20–21, 2022. The meeting time remains the same. The meeting is closed to the public.

Dated: November 23, 2022.

Tyeshia M. Roberson-Curtis,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2022–26062 Filed 11–29–22; 8:45 am]

BILLING CODE 4140–01–P

INTERNATIONAL TRADE COMMISSION

[USITC SE–22–051]

Sunshine Act Meetings

Agency Holding the Meeting: United States International Trade Commission.

TIME AND DATE: December 1, 2022 at 2:00 p.m.

PLACE: Room 101, 500 E Street SW, Washington, DC 20436, Telephone: (202) 205–2000.

STATUS: Open to the public.

MATTERS TO BE CONSIDERED:

1. *Agendas for future meetings:* none.
2. Minutes.
3. Ratification List.
4. Commission vote on Inv. Nos. 731–TA–1082–1083 (Third Review) (Chlorinated Isocyanurates from China and Spain). The Commission currently is scheduled to complete and file its determinations and views of the Commission on December 19, 2022.
5. *Outstanding action jackets:* none.

CONTACT PERSON FOR MORE INFORMATION: William Bishop, Supervisory Hearings and Information Officer, 202–205–2595.

The Commission is holding the meeting under the Government in the

Sunshine Act, 5 U.S.C. 552(b). In accordance with Commission policy, subject matter listed above, not disposed of at the scheduled meeting, may be carried over to the agenda of the following meeting.

By order of the Commission.

Issued: November 23, 2022.

William Bishop,

Supervisory Hearings and Information Officer.

[FR Doc. 2022–26123 Filed 11–28–22; 4:15 pm]

BILLING CODE 7020–02–P

INTERNATIONAL TRADE COMMISSION

Notice of Receipt of Complaint; Solicitation of Comments Relating to the Public Interest

AGENCY: U.S. International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that the U.S. International Trade Commission has received a complaint entitled *Certain Cabinet X-ray and Optical Camera Systems and Components Thereof, DN 3656;* the Commission is soliciting comments on any public interest issues raised by the complaint or complainant's filing pursuant to the Commission's Rules of Practice and Procedure.

FOR FURTHER INFORMATION CONTACT: Katherine M. Hiner, Acting Secretary to the Commission, U.S. International Trade Commission, 500 E Street SW, Washington, DC 20436, telephone (202) 205–2000. The public version of the complaint can be accessed on the Commission's Electronic Document Information System (EDIS) at *https://edis.usitc.gov.* For help accessing EDIS, please email *EDIS3Help@usitc.gov.* General information concerning the Commission may also be obtained by accessing its internet server at United States International Trade Commission (USITC) at *https://www.usitc.gov* . The public record for this investigation may be viewed on the Commission's Electronic Document Information System (EDIS) at *https://edis.usitc.gov.* Hearing-impaired persons are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on (202) 205–1810.

SUPPLEMENTARY INFORMATION: The Commission has received a complaint and a submission pursuant to § 210.8(b) of the Commission's Rules of Practice and Procedure filed on behalf of KUB Technologies, Inc. on November 25, 2022. The complaint alleges violations of section 337 of the Tariff Act of 1930 (19 U.S.C. 1337) in the importation into the United States, the sale for importation, and the sale within the United States after importation of regarding certain cabinet x-ray and optical camera systems and components thereof. The complainant names as respondents: CompAI Healthcare (Shenzhen) Co., Ltd. Of China; CompAI Healthcare (Suzhou) Co., Ltd. of China; Kangpai Medical Technology (Changchun) Co., Ltd. of China; Kangpai (Beijing) Medical Equipment Co., Ltd. of China; and Dilon Technologies, Inc. of Newport News, VA. The complainant requests that the Commission issue a limited exclusion order and cease and desist orders, and impose a bond upon respondent's alleged infringing articles during the 60-day Presidential review period pursuant to 19 U.S.C. 1337(j).

Proposed respondents, other interested parties, and members of the public are invited to file comments on any public interest issues raised by the complaint or § 210.8(b) filing. Comments should address whether issuance of the relief specifically requested by the complainant in this investigation would affect the public health and welfare in the United States, competitive conditions in the United States economy, the production of like or directly competitive articles in the United States, or United States consumers.

In particular, the Commission is interested in comments that:

(i) explain how the articles potentially subject to the requested remedial orders are used in the United States;

(ii) identify any public health, safety, or welfare concerns in the United States relating to the requested remedial orders;

(iii) identify like or directly competitive articles that complainant, its licensees, or third parties make in the United States which could replace the subject articles if they were to be excluded;

(iv) indicate whether complainant, complainant's licensees, and/or third party suppliers have the capacity to replace the volume of articles potentially subject to the requested exclusion order and/or a cease and desist order within a commercially reasonable time; and

(v) explain how the requested remedial orders would impact United States consumers.

Written submissions on the public interest must be filed no later than by close of business, eight calendar days after the date of publication of this notice in the **Federal Register**. There will be further opportunities for comment on the public interest after the issuance of any final initial determination in this investigation. Any written submissions on other issues must also be filed by no later than the close of business, eight calendar days after publication of this notice in the **Federal Register**. Complainant may file replies to any written submissions no later than three calendar days after the date on which any initial submissions were due. No other submissions will be accepted, unless requested by the Commission. Any submissions and replies filed in response to this Notice are limited to five (5) pages in length, inclusive of attachments.

Persons filing written submissions must file the original document electronically on or before the deadlines stated above. Submissions should refer to the docket number (''Docket No. 3656'') in a prominent place on the cover page and/or the first page. (*See* Handbook for Electronic Filing Procedures, Electronic Filing Procedures [1]). Please note the Secretary's Office will accept only electronic filings during this time. Filings must be made through the Commission's Electronic Document Information System (EDIS, *https://edis.usitc.gov.*) No in-person paper-based filings or paper copies of any electronic filings will be accepted until further notice. Persons with questions regarding filing should contact the Secretary at *EDIS3Help@usitc.gov.*

Any person desiring to submit a document to the Commission in confidence must request confidential treatment. All such requests should be directed to the Secretary to the Commission and must include a full statement of the reasons why the Commission should grant such treatment. *See* 19 CFR 201.6. Documents for which confidential treatment by the Commission is properly sought will be treated accordingly. All information, including confidential business information and documents for which confidential treatment is properly sought, submitted to the Commission for purposes of this Investigation may be disclosed to and used: (i) by the Commission, its employees and Offices, and contract personnel (a) for developing or maintaining the records of this or a related proceeding, or (b) in internal investigations, audits, reviews, and evaluations relating to the programs, personnel, and operations of the Commission including under 5

[1] Handbook for Electronic Filing Procedures: *https://www.usitc.gov/documents/handbook_on_filing_procedures.pdf.*

U.S.C. Appendix 3; or (ii) by U.S. government employees and contract personnel,[2] solely for cybersecurity purposes. All nonconfidential written submissions will be available for public inspection at the Office of the Secretary and on EDIS.[3]

This action is taken under the authority of section 337 of the Tariff Act of 1930, as amended (19 U.S.C. 1337), and of §§ 201.10 and 210.8(c) of the Commission's Rules of Practice and Procedure (19 CFR 201.10, 210.8(c)).

By order of the Commission.

Issued: November 25, 2022.

Jessica Mullan,

Acting Supervisory Attorney.

[FR Doc. 2022–26107 Filed 11–29–22; 8:45 am]

BILLING CODE 7020–02–P

DEPARTMENT OF LABOR

Employment and Training Administration

Notice of the Federal Unemployment Tax Act (FUTA) Credit Reductions Applicable for 2022

Sections 3302(c)(2)(A) and 3302(d)(3) of FUTA provide that employers in a state that has outstanding advances under Title XII of the Social Security Act on January 1 of two or more consecutive years are subject to a reduction in credits otherwise available against the FUTA tax for the calendar year in which the most recent such January 1 occurs, if advances remain on November 10 of that year. Further, Section 3302(c)(2)(C) of FUTA provides for an additional credit reduction for a year if a state has outstanding advances on five or more consecutive January 1 and has a balance on November 10 for such years. Section 3302(c)(2)(C) provides for waiver of this additional credit reduction and substitution of the credit reduction provided in Section 3302(c)(2)(B) if a state meets certain conditions.

California, Connecticut, Illinois, Massachusetts, Minnesota, New Jersey, New York, Pennsylvania, and the U.S. Virgin Islands (USVI) had outstanding advances on January 1 for two or more consecutive years and employers in these states were potentially subject to a FUTA credit reduction in 2022. However, Colorado, Massachusetts, Minnesota, New Jersey, and Pennsylvania repaid their outstanding advances before November 10, 2022. As a result, employers in these states are not subject to a FUTA credit reduction for 2022. California, Connecticut, Illinois, and New York did not repay their outstanding advances before November 10, 2022. Therefore, employers in these states are subject to a FUTA credit reduction of 0.3 percent for 2022.

Employers in USVI were potentially liable for the additional credit reduction under Section 3302(c)(2)(C) of FUTA. The jurisdiction applied for the waiver of this additional credit reduction and the Employment and Training Administration determined that USVI met each of the criteria necessary to qualify for the waiver of the additional credit reduction. Therefore, employers in USVI will have no additional credit reduction applied for calendar year 2022. However, because USVI has had an outstanding advance on each January 1 from 2010 through 2022, and maintained an outstanding balance on November 10, 2022, employers in USVI are subject to a FUTA credit reduction of 3.6 percent in 2022.

Brent Parton,

Acting Assistant Secretary for Employment and Training.

[FR Doc. 2022–26085 Filed 11–29–22; 8:45 am]

BILLING CODE P

DEPARTMENT OF LABOR

Veterans' Employment and Training Service

Advisory Committee on Veterans' Employment, Training and Employer Outreach (ACVETEO); Meeting

AGENCY: Veterans' Employment and Training Service (VETS), Department of Labor (DOL).

ACTION: Notice of open meeting.

SUMMARY: This notice sets forth the schedule and proposed agenda of a forthcoming meeting of the ACVETEO. The ACVETEO will discuss the DOL core programs and services that assist veterans seeking employment and raise employer awareness as to the advantages of hiring veterans. There will be an opportunity for individuals or organizations to address the committee. Any individual or organization that wishes to do so should contact Mr. Gregory Green at *ACVETEO@dol.gov*. Additional information regarding the Committee, including its charter, current membership list, annual reports, meeting minutes, and meeting updates may be found at *https://www.dol.gov/agencies/vets/about/advisorycommittee*. This notice also describes the functions of the ACVETEO. Notice of this meeting is required under the Federal Advisory Committee Act. This document is intended to notify the general public.

DATES: Tuesday, December 20, 2022 beginning at 9 a.m. and ending at approximately 11 a.m. (EDT).

ADDRESSES: This ACVETEO meeting will be held via TEAMS and teleconference. Meeting information will be posted at the link below under the Meeting Updates tab. *https://www.dol.gov/agencies/vets/about/advisorycommittee*.

Notice of Intent To Attend the Meeting: All meeting participants should submit a notice of intent to attend by Friday, December 9, 2022, via email to Mr. Gregory Green at *ACVETEO@dol.gov,* subject line ''December 2022 ACVETEO Meeting.'' Individuals who will need accommodations for a disability in order to attend the meeting (*e.g.,* interpreting services, assistive listening devices, and/or materials in alternative format) should notify the Advisory Committee no later than Friday, December 9, 2022, by contacting Mr. Gregory Green at *ACVETEO@dol.gov*.

Requests made after this date will be reviewed, but availability of the requested accommodations cannot be guaranteed.

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FOR FURTHER INFORMATION CONTACT: Mr. Gregory Green, Designated Federal Official for the ACVETEO, *ACVETEO@dol.gov,* (202) 693–4734.

SUPPLEMENTARY INFORMATION: The ACVETEO is a Congressionally mandated advisory committee authorized under Title 38, U.S. Code, Section 4110 and subject to the Federal Advisory Committee Act, 5 U.S.C. App. 2, as amended. The ACVETEO is responsible for: assessing employment and training needs of veterans; determining the extent to which the programs and activities of the U.S.

[2] All contract personnel will sign appropriate nondisclosure agreements.

[3] Electronic Document Information System (EDIS): *https://edis.usitc.gov.*

Department of Labor meet these needs; assisting to conduct outreach to employers seeking to hire veterans; making recommendations to the Secretary, through the Assistant Secretary for Veterans' Employment and Training Service, with respect to outreach activities and employment and training needs of veterans; and carrying out such other activities necessary to make required reports and recommendations. The ACVETEO meets at least quarterly.

Agenda

9 a.m. Welcome and remarks, James D. Rodriguez, Assistant Secretary, Veterans' Employment and Training Service
9:10 a.m. Administrative Business, Gregory Green, Designated Federal Official
9:15 a.m. Briefing on VETS' Customer Experience (CX) initiative, Margarita Devlin, Deputy Assistant Secretary, Veterans' Employment and Training Service
9:45 a.m. Briefing on Transition Assistance Program (TAP), Tim Winter, Director, TAP
10:15 a.m. Discussion and review of Fiscal Year 2022 Annual Report Recommendations Chairman, Darrell Roberts
10:45 p.m. Public Forum, Gregory Green, Designated Federal Official
11 p.m. Adjourn

Signed in Washington, DC, this 25th day of November 2022.

James D. Rodriquez,

Assistant Secretary, Veterans' Employment and Training Service.

[FR Doc. 2022–26109 Filed 11–29–22; 8:45 am]

BILLING CODE 4510–79–P

SECURITIES AND EXCHANGE COMMISSION

[Investment Company Act Release No. 34759]

Notice of Applications for Deregistration Under Section 8(f) of the Investment Company Act of 1940

November 25, 2022.

AGENCY: Securities and Exchange Commission (''Commission'' or ''SEC'')

ACTION: Notice of applications for deregistration under section 8(f) of the Investment Company Act of 1940.

The following is a notice of applications for deregistration under section 8(f) of the Investment Company Act of 1940 for the month of November 2022. A copy of each application may be obtained via the Commission's website by searching for the applicable file number listed below, or for an applicant using the Company name search field, on the SEC's EDGAR system. The SEC's EDGAR system may be searched at *https://www.sec.gov/edgar/searchedgar/legacy/companysearch.html*. You may also call the SEC's Public Reference Room at (202) 551–8090. An order granting each application will be issued unless the SEC 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 relevant applicant 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 SEC by 5:30 p.m. on December 20, 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 writing to the Commission's Secretary at *Secretarys-Office@sec.gov*.

ADDRESSES: The Commission: *Secretarys-Office@sec.gov*.

FOR FURTHER INFORMATION CONTACT: Shawn Davis, Assistant Director, at (202) 551–6413 or Chief Counsel's Office at (202) 551–6821; SEC, Division of Investment Management, Chief Counsel's Office, 100 F Street NE, Washington, DC 20549–8010.

Angel Oak Dynamic Financial Strategies Income Term Trust [File No. 811–23491]

Summary: Applicant, a closed-end investment company, seeks an order declaring that it has ceased to be an investment company. The applicant has transferred its assets to Angel Oak Financial Strategies Income Term Trust, and on August 1, 2022 made a final distribution to its shareholders based on net asset value. Expenses of $470,158.07 incurred in connection with the reorganization were paid by the applicant and the acquiring fund.

Filing Date: The application was filed on September 27, 2022.

Applicant's Address: Dory.Black@angeloakcapital.com.

Barings Funds Trust [File No. 811–22845]

Summary: Applicant seeks an order declaring that it has ceased to be an investment company. The applicant has transferred its assets to Mass Mutual Advantage Funds, and MassMutual Premier Funds, and on December 13, 2021 made a final distribution to its shareholders based on net asset value. Expenses of $2,048,237.20 incurred in connection with the reorganization were paid by the applicant's investment adviser and the acquiring fund's investment adviser.

Filing Dates: The application was filed on May 10, 2022, and amended on September 23, 2022, and November 18, 2022.

Applicant's Address: yana.guss@ropesgray.com.

Capital Cash Management Trust [File No. 811–02481]

Summary: Applicant seeks an order declaring that it has ceased to be an investment company. On November 1, 2022, applicant made a liquidating distribution to its shareholders based on net asset value. No expenses were incurred in connection with the liquidation.

Filing Date: The application was filed on November 4, 2022.

Applicant's Address: jeremy.kantrowitz@morganlewis.com.

Dreyfus BASIC Money Market Fund, Inc. [File No. 811–06604]

Summary: Applicant seeks an order declaring that it has ceased to be an investment company. On May 26, 2021, applicant made a liquidating distribution to its shareholders based on net asset value. Expenses of $5,161 incurred in connection with the liquidation were paid by the applicant's investment advisor.

Filing Date: The application was filed on August 31, 2022.

Applicant's Address: James.Bitetto@bnymellon.com.

MONY Variable Account S [File No. 811–06217]

Summary: Applicant, a unit investment trust, seeks an order declaring that it has ceased to be an investment company. On August 4, 2020, applicant made a liquidating distribution to its shareholders, based on net asset value. Expenses of $7,500 incurred in connection with the liquidation were paid by MONY Life Insurance Company.

Filing Dates: The application was filed on July 29, 2022, and amended on November 4, 2022.

Applicant's Address: brad.rodgers@protective.com.

New Age Alpha Trust [File No. 811–23461]

Summary: Applicant seeks an order declaring that it has ceased to be an investment company. On July 18, 2022, applicant made a liquidating distribution to its shareholders based on net asset value. Expenses of $11,549.87 incurred in connection with the liquidation were paid by the applicant's investment advisor.

Filing Date: The application was filed on November 7, 2022.

Applicant's Address: msemack@newagealpha.com.

Uncommon Investment Funds Trust [File No. 811–23464]

Summary: Applicant seeks an order declaring that it has ceased to be an investment company. On July 29, 2022, applicant made a liquidating distribution to its shareholders based on net asset value. Expenses of $56,477.17 incurred in connection with the liquidation were paid by the applicant's investment advisor.

Filing Date: The application was filed on October 11, 2022.

Applicant's Address: Eric@uncommoninvestments.com.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Sherry R. Haywood,

Assistant Secretary.

[FR Doc. 2022–26106 Filed 11–29–22; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–96383; File No. 4–551]

Program for Allocation of Regulatory Responsibilities Pursuant to Rule 17d–2; Notice of Filing and Order Approving and Declaring Effective an Amendment to the Plan for the Allocation of Regulatory Responsibilities Among NYSE American LLC, Cboe BZX Exchange, Inc., the Cboe EDGX Exchange, Inc., Cboe C2 Exchange, Inc., Cboe Exchange, Inc., Nasdaq ISE, LLC, Financial Industry Regulatory Authority, Inc., NYSE Arca, Inc., The Nasdaq Stock Market LLC, BOX Exchange LLC, Nasdaq BX, Inc., Nasdaq PHLX LLC, Miami International Securities Exchange, LLC, Nasdaq GEMX, LLC, Nasdaq MRX, LLC, MIAX PEARL, LLC, MIAX Emerald, LLC, and MEMX LLC Concerning Options-Related Market Surveillance

November 23, 2022.

Notice is hereby given that the Securities and Exchange Commission (''Commission'') has issued an Order, pursuant to Section 17(d) of the Securities Exchange Act of 1934 (''Act''),[1] approving and declaring effective an amendment to the plan for allocating regulatory responsibility (''Plan'') filed on October 26, 2022, pursuant to Rule 17d–2 of the Act,[2] by NYSE American LLC (''NYSE American''), Cboe BZX Exchange, Inc., (''BZX''), the Cboe EDGX Exchange, Inc. (''EDGX''), Cboe C2 Exchange, Inc. (''C2''), Cboe Exchange, Inc. (''Cboe''), Nasdaq ISE, LLC (''ISE''), Financial Industry Regulatory Authority, Inc. (''FINRA''), NYSE Arca, Inc. (''Arca''), The NASDAQ Stock Market LLC (''Nasdaq''), BOX Exchange LLC (''BOX''), NASDAQ BX, Inc. (''BX''), NASDAQ PHLX LLC (''PHLX''), Miami International Securities Exchange, LLC (''MIAX''), Nasdaq GEMX, LLC (''Gemini''), Nasdaq MRX, LLC (''Mercury''), MIAX PEARL, LLC (''MIAX PEARL''), and MIAX Emerald, LLC (MIAX Emerald), and MEMX LLC (''MEMX'') (collectively, ''Participating Organizations'' or ''parties'').

I. Introduction

Section 19(g)(1) of the Act,[3] among other things, requires every self-regulatory organization (''SRO'') registered as either a national securities exchange or national securities association to examine for, and enforce compliance by, its members and persons associated with its members with the Act, the rules and regulations thereunder, and the SRO's own rules, unless the SRO is relieved of this responsibility pursuant to Section 17(d)[4] or Section 19(g)(2)[5] of the Act. Without this relief, the statutory obligation of each individual SRO could result in a pattern of multiple examinations of broker-dealers that maintain memberships in more than one SRO (''common members''). Such regulatory duplication would add unnecessary expenses for common members and their SROs.

Section 17(d)(1) of the Act[6] was intended, in part, to eliminate unnecessary multiple examinations and regulatory duplication.[7] With respect to a common member, Section 17(d)(1) authorizes the Commission, by rule or order, to relieve an SRO of the responsibility to receive regulatory reports, to examine for and enforce compliance with applicable statutes, rules, and regulations, or to perform other specified regulatory functions.

To implement Section 17(d)(1), the Commission adopted two rules: Rule 17d–1 and Rule 17d–2 under the Act.[8] Rule 17d–1 authorizes the Commission to name a single SRO as the designated examining authority (''DEA'') to examine common members for compliance with the financial responsibility requirements imposed by the Act, or by Commission or SRO rules.[9] When an SRO has been named as a common member's DEA, all other SROs to which the common member belongs are relieved of the responsibility to examine the firm for compliance with the applicable financial responsibility rules. On its face, Rule 17d–1 deals only with an SRO's obligations to enforce member compliance with financial responsibility requirements. Rule 17d–1 does not relieve an SRO from its obligation to examine a common member for compliance with its own rules and provisions of the federal securities laws governing matters other than financial responsibility, including sales practices and trading activities and practices.

To address regulatory duplication in these and other areas, the Commission

[1] 15 U.S.C. 78q(d).

[2] 17 CFR 240.17d–2.

[3] 15 U.S.C. 78s(g)(1).

[4] 15 U.S.C. 78q(d).

[5] 15 U.S.C. 78s(g)(2).

[6] 15 U.S.C. 78q(d)(1).

[7] *See* Securities Act Amendments of 1975, Report of the Senate Committee on Banking, Housing, and Urban Affairs to Accompany S. 249, S. Rep. No. 94–75, 94th Cong., 1st Session 32 (1975).

[8] 17 CFR 240.17d–1 and 17 CFR 240.17d–2, respectively.

[9] *See* Securities Exchange Act Release No. 12352 (April 20, 1976), 41 FR 18808 (May 7, 1976).

adopted Rule 17d–2 under the Act.[10] Rule 17d–2 permits SROs to propose joint plans for the allocation of regulatory responsibilities with respect to their common members. Under paragraph (c) of Rule 17d–2, the Commission may declare such a plan effective if, after providing for notice and comment, it determines that the plan is necessary or appropriate in the public interest and for the protection of investors, to foster cooperation and coordination among the SROs, to remove impediments to, and foster the development of, a national market system and a national clearance and settlement system, and is in conformity with the factors set forth in Section 17(d) of the Act. Commission approval of a plan filed pursuant to Rule 17d–2 relieves an SRO of those regulatory responsibilities allocated by the plan to another SRO.

II. The Plan

On December 11, 2007, the Commission declared effective the Participating Organizations' Plan for allocating regulatory responsibilities pursuant to Rule 17d–2.[11] On April 11, 2008, the Commission approved an amendment to the Plan to include NASDAQ as a participant.[12] On October 9, 2008, the Commission approved an amendment to the Plan to clarify that the term Regulatory Responsibility for options position limits includes the examination responsibilities for the delta hedging exemption.[13] On February 25, 2010, the Commission approved an amendment to the Plan to add Bats and C2 as SRO participants and to reflect the name changes of the American Stock Exchange LLC to the NYSE Amex LLC, and the Boston Stock Exchange, Inc. to the NASDAQ OMX BX, Inc.[14] On May 11, 2012, the Commission approved an amendment to the Plan to add BOX as a participant to the Plan.[15] On December 5, 2012, the Commission approved an amendment to the Plan to add MIAX as a participant to the Plan.[16] On July 26, 2013, the Commission approved an amendment to the Plan to add Topaz Exchange, LLC as a Participant to the Plan.[17] On October 29, 2015, the Commission approved an amendment to add EDGX as a Participant to the Plan and to change the name of Topaz Exchange, LLC to ISE Gemini, LLC.[18] On February 16, 2016, the Commission approved an amendment to add ISE Mercury, LLC as a Participant to the Plan.[19] On February 2, 2017, the Commission approved an amendment to add MIAX PEARL as a Participant to the Plan.[20] On February 11, 2019, the Commission approved an amendment to add MIAX Emerald as a Participant to the Plan.[21]

The Plan is designed to reduce regulatory duplication for common members by allocating regulatory responsibility for certain options-related market surveillance matters among the Participating Organizations. Generally, under the Plan, a Participating Organization will serve as the Designated Options Surveillance Regulator (''DOSR'') for each common member assigned to it and will assume regulatory responsibility with respect to that common member's compliance with applicable common rules for certain accounts. When an SRO has been named as a common member's DOSR, all other SROs to which the common member belongs will be relieved of regulatory responsibility for that common member, pursuant to the terms of the Plan, with respect to the applicable common rules specified in Exhibit A to the Plan.

III. Proposed Amendment to the Plan

On October 26, 2022, the parties submitted a proposed amendment to the Plan. The primary purpose of the amendment is to add MEMX as a Participant to the Plan, to reflect name changes of certain Participating Organizations, and update rule references. The text of the proposed amended 17d–2 plan is as follows (additions are *italicized;* deletions are [bracketed]):

* * * * *

AGREEMENT BY AND AMONG NYSE AMERICAN LLC, CBOE BZX EXCHANGE, INC., CBOE EDGX EXCHANGE INC., BOX EXCHANGE LLC, NASDAQ BX, INC., CBOE C2 EXCHANGE, INC., CBOE EXCHANGE, INC., NASDAQ ISE, LLC, NASDAQ GEMX, LLC, NASDAQ MRX, LLC, FINANCIAL INDUSTRY REGULATORY AUTHORITY, INC., NYSE ARCA, INC., THE NASDAQ STOCK MARKET LLC, NASDAQ PHLX LLC, MIAMI INTERNATIONAL SECURITIES EXCHANGE, LLC, MIAX PEARL, LLC, [AND] MIAX EMERALD*,*** *LLC, AND MEMX LLC* **PURSUANT TO RULE 17d–2 UNDER THE SECURITIES EXCHANGE ACT OF 1934**

This agreement (this ''Agreement''), by and among NYSE American LLC (''NYSE American''), Cboe BZX Exchange, Inc., (''BZX''), the Cboe EDGX Exchange, Inc. (''EDGX''), Cboe C2 Exchange, Inc. (''C2''), Cboe Exchange, Inc. (''Cboe''), Nasdaq ISE, LLC (''ISE''), Financial Industry Regulatory Authority, Inc. (''FINRA''), NYSE Arca, Inc. (''Arca''), The N*asdaq*[ASDAQ] Stock Market LLC (''Nasdaq''), BOX Exchange LLC (''BOX''), N*asdaq*[ASDAQ] BX, Inc. (''BX''), N*asdaq*[ASDAQ] PHLX LLC (''PHLX''), Miami International Securities Exchange, LLC (''MIAX''), Nasdaq GEMX, LLC (''*GEMX*[Gemini]''), Nasdaq MRX, LLC (''*MRX*[Mercury]''), MIAX PEARL, LLC (''MIAX PEARL''), [and] MIAX Emerald, LLC (''MIAX Emerald''), *and MEMX LLC (''MEMX'')*, is made the[is] 10*th*[th] day of October 2007, and as amended the 31st day of March 2008, the 1st day of October 2008, the 3rd day of February 2010, the 25*th*[th] day of April 2012, [and]the 19th day of November 2012, [and]the 30th day of May 2013, [and]the 16*th*[th] day of October 2015, [and]the 29th day of January 2016, the 23*rd*[rd] day of January 2017, [and]the 8th day of January 2019, *and the 18th day of October 2022,* pursuant to Section 17(d) of the Securities Exchange Act of 1934, as amended (the ''Exchange Act''), and Rule 17d–2 thereunder (''Rule 17d–2''), which allows for a joint plan among self-regulatory organizations (''SROs'') to allocate regulatory obligations with respect to brokers or dealers that are members of two or more of the parties to this Agreement (''Common Members''). NYSE American, BZX, C2, Cboe, EDGX, Gemini, ISE, Mercury, FINRA, Arca, Nasdaq, BOX, BX, PHLX, MIAX, MIAX PEARL, [and]MIAX

[10] *See* Securities Exchange Act Release No. 12935 (October 28, 1976), 41 FR 49091 (November 8, 1976).

[11] *See* Securities Exchange Act Release No. 56941 (December 11, 2007), 72 FR 71723 (December 18, 2007) (File No. 4–551).

[12] *See* Securities Exchange Act Release No. 57649 (April 11, 2008), 73 FR 20976 (April 17, 2008) (File No. 4–551).

[13] *See* Securities Exchange Act Release No. 58765 (October 9, 2008), 73 FR 62344 (October 20, 2008) (File No. 4–551).

[14] *See* Securities Exchange Act Release No. 61588 (February 25, 2010), 75 FR 9970 (March 4, 2010) (File No. 4–551).

[15] *See* Securities Exchange Act Release No. 66975 (May 11, 2012), 77 FR 29712 (May 18, 2010) (File No. 4–551).

[16] *See* Securities Exchange Act Release No. 68362 (December 5, 2012), 77 FR 73719 (December 11, 2012) (File No. 4–551).

[17] *See* Securities Exchange Act Release No. 70052 (July 26, 2013), 78 FR 46665 (August 1, 2013) (File No. 4–551).

[18] *See* Securities Exchange Act Release No. 76310 (October 29, 2015), 80 FR 68354 (November 4, 2015) (File No. 4–551).

[19] *See* Securities Exchange Act Release No. 77149 (February 16, 2016), 81 FR 8781 (February 22, 2016) (File No. 4–551).

[20] *See* Securities Exchange Act Release No. 79930 (February 2, 2017), 82 FR 9807 (February 8, 2017) (File No. 4–551).

[21] *See* Securities Exchange Act Release No. 85097 (February 11, 2019), 84 FR 4871 (February 19, 2019) (File No. 4–551).

Emerald, *and MEMX,* are collectively referred to herein as the ''Participants'' and individually, each a ''Participant.'' This Agreement shall be administered by a committee known as the Options Surveillance Group (the ''OSG'' or ''Group''), as described in Section V hereof. Unless defined in this Agreement or the context otherwise requires, the terms used herein shall have the meanings assigned thereto by the Exchange Act and the rules and regulations thereunder.

Whereas, the Participants desire to eliminate regulatory duplication with respect to SRO market surveillance of Common Member [1] activities with regard to certain common rules relating to listed options (''Options''); and

Whereas, for this purpose, the Participants desire to execute and file this Agreement with the Securities and Exchange Commission (the ''SEC'' or ''Commission'') pursuant to Rule 17d–2.

Now, Therefore, in consideration of the mutual covenants contained in this Agreement, the Participants agree as follows:

I. Except as otherwise provided in this Agreement, each Participant shall assume Regulatory Responsibility (as defined below) for the Common Members that are allocated or assigned to such Participant in accordance with the terms of this Agreement and shall be relieved of its Regulatory Responsibility as to the remaining Common Members. For purposes of this Agreement, a Participant shall be considered to be the Designated Options Surveillance Regulator (''DOSR'') for each Common Member that is allocated to it in accordance with Section VII.

II. As used in this Agreement, the term ''Regulatory Responsibility'' shall mean surveillance, investigation and enforcement responsibilities relating to compliance by the Common Members with such Options rules of the Participants as the Participants shall determine are substantially similar and shall approve from time to time, insofar as such rules relate to market surveillance (collectively, the ''Common Rules''). For the purposes of this Agreement the list of Common Rules is attached as Exhibit A hereto, which may only be amended upon unanimous written agreement by the Participants. The DOSR assigned to each Common Member shall assume Regulatory Responsibility with regard to that Common Member's compliance with the applicable Common Rules for certain accounts.[2] A DOSR may perform its Regulatory Responsibility or enter an agreement to transfer or assign such responsibilities to a national securities exchange registered with the SEC under Section 6(a) of the Exchange Act or a national securities association registered with the SEC under Section 15A of the Exchange Act. A DOSR may not transfer or assign its Regulatory Responsibility to an association registered for the limited purpose of regulating the activities of members who are registered as brokers or dealers in security futures products.

The term ''Regulatory Responsibility'' does not include, and each Participant shall retain full responsibility with respect to:

(a) surveillance, investigative and enforcement responsibilities other than those included in the definition of Regulatory Responsibility;

(b) any aspects of the rules of a Participant that are not substantially similar to the Common Rules or that are allocated for a separate surveillance purpose under any other

(c) agreement made pursuant to Rule 17d–2. Any such aspects of a Common Rule will be noted as excluded on Exhibit A.

With respect to options position limits, the term Regulatory Responsibility shall include examination responsibilities for the delta hedging exemption. Specifically, the Participants intend that FINRA will conduct examinations for delta hedging for all Common Members that are members of FINRA notwithstanding the fact that FINRA's position limit rule is, in some cases, limited to only firms that are not members of an options exchange (*i.e.,* access members). In such cases, FINRA's examinations for delta hedging options position limit violations will be for the identical or substantively similar position limit rule(s) of the other Participant(s). Examinations for delta hedging for Common Members that are non-FINRA members will be conducted by the same Participant conducting position limit surveillance. The allocation of Common Members to DOSRs for surveillance of compliance with options position limits and other agreed to Common Rules is provided in Exhibit B. The allocation of Common Members to DOSRs for examinations of the delta hedging exemption under the options position limits rules is provided in Exhibit C.

III. Each year within 30 days of the anniversary date of the commencement of operation of this Agreement, or more frequently if required by changes in the rules of a Participant, each Participant shall submit to the other Participants, through the Chair of the OSG, an updated list of Common Rules for review. This updated list may add Common Rules to Exhibit A, shall delete from Exhibit A rules of that Participant that are no longer identical or substantially similar to the Common Rules, and shall confirm that the remaining rules of the Participant included on Exhibit A continue to be identically or substantially similar to the Common Rules. Within 30 days from the date that each Participant has received revisions to Exhibit A from the Chair of the OSG, each Participant shall confirm in writing to the Chair of the OSG whether that Participant's rules listed in Exhibit A are Common Rules.

IV. Apparent violation of another Participant's rules discovered by a DOSR, but which rules are not within the scope of the discovering DOSR's Regulatory Responsibility, shall be referred to the relevant Participant for such action as is deemed appropriate by that Participant.

Notwithstanding the foregoing, nothing contained herein shall preclude a DOSR in its discretion from requesting that another Participant conduct an investigative or enforcement proceeding (''Proceeding'') on a matter for which the requesting DOSR has Regulatory Responsibility. If such other Participant agrees, the Regulatory Responsibility in such case shall be deemed transferred to the accepting Participant and confirmed in writing by the Participants involved. Additionally, nothing in this Agreement shall prevent another Participant on whose market potential violative activity took place from conducting its own Proceeding on a matter. The Participant conducting the Proceeding shall advise the assigned DOSR. Each Participant agrees, upon request, to make available promptly all relevant files, records and/or witnesses necessary to assist another Participant in a Proceeding.

V. The OSG shall be composed of one representative designated by each of the Participants (a ''Representative''). Each Participant shall also designate one or more persons as its alternate representative(s) (an ''Alternate Representative''). In the absence of the Representative, the Alternate Representative shall assume the powers, duties and responsibilities of the Representative. Each Participant may at any time replace its Representative and/or its Alternate Representative to the

[1] In the case of the BX and BOX, members are those persons who are Options Participants (as defined in the BOX Exchange LLC Rules and NASDAQ BX, Inc. Rules).

[2] Certain accounts shall include customer (''C'' as classified by the Options Clearing Corporation (''OCC'')) and firm (''F'' as classified by OCC) accounts, as well as other accounts, such as market maker accounts as the Participants shall, from time to time, identify as appropriate to review.

Group.[3] A majority of the OSG shall constitute a quorum and, unless otherwise required, the affirmative vote of a majority of the Representatives present (in person, by telephone or by written consent) shall be necessary to constitute action by the Group.

The Group will have a Chair, Vice Chair and Secretary. A different Participant will assume each position on a rotating basis for a one-year term. In the event that a Participant replaces a Representative who is acting as Chair, Vice Chair or Secretary, the newly appointed Representative shall assume the position of Chair, Vice Chair, or Secretary (as applicable) vacated by the Participant's former Representative. In the event a Participant cannot fulfill its duties as Chair, the Participant serving as Vice Chair shall substitute for the Chair and complete the subject unfulfilled term. All notices and other communications for the OSG are to be sent in care of the Chair and, as appropriate, to each Representative.

VI. The OSG shall determine the times and locations of Group meetings, provided that the Chair, acting alone, may also call a meeting of the Group in the event the Chair determines that there is good cause to do so. To the extent reasonably possible, notice of any meeting shall be given at least ten business days prior to the meeting date. Representatives shall always be given the option of participating in any meeting telephonically at their own expense rather than in person.

VII. No less frequently than every two years, in such manner as the Group deems appropriate, the OSG shall allocate Common Members that conduct an Options business among the Participants (''Allocation''), and the Participant to which a Common Member is allocated will serve as the DOSR for that Common Member. Any Allocation shall be based on the following principles, except to the extent all affected Participants consent to one or more different principles:

(a) The OSG may not allocate a Common Member to a Participant unless the Common Member is a member of that Participant.

(b) To the extent practicable, Common Members that conduct an Options business shall be allocated among the Participants of which they are members in such manner as to equalize as nearly as possible the allocation among such Participants, provided that no Common Members shall be allocated to FINRA. For example, if sixteen Common Members that conduct an Options business are members only of three Participants, none of which is FINRA, those Common Members shall be allocated among the three Participants such that no Participant is allocated more than six such members and no Participant is allocated less than five such members. If, in the previous example, one of the three Participants is FINRA, the sixteen Common Members would be allocated evenly between the remaining Participants, so that the two non-FINRA Participants would be allocated eight Common Members each.

(c) To the extent practicable, Allocation shall take into account the amount of Options activity conducted by each Common Member in order to most evenly divide the Common Members with the largest amount of activity among the Participants of which they are members. Allocation will also take into account similar allocations pursuant to other plans or agreements to which the Common Members are party to maintain consistency in oversight of the Common Members.[4]

(d) To the extent practicable, Allocation of Common Members to Participants will be rotated among the applicable Participants such that a Common Member shall not be allocated to a Participant to which that Common Member was allocated within the previous two years. The assignment of DOSRs pursuant to the Allocation is attached as Exhibit B hereto, and will be updated from time to time to reflect Common Member Allocation changes.

(e) The Group may reallocate Common Members from time-to-time, as it deems appropriate.

(f) Whenever a Common Member ceases to be a member of its DOSR, the DOSR shall promptly inform the Group, which shall review the matter and allocate the Common Member to another Participant.

(g) A DOSR may request that a Common Member to which it is assigned be reallocated to another Participant by giving 30 days written notice to the Chair of the OSG. The Group, in its discretion, may approve such request and reallocate the Common Member to another Participant.

(h) All determinations by the Group with respect to Allocation shall be made by the affirmative vote of a majority of the Participants that, at the time of such determination, share the applicable Common Member being allocated; a Participant shall not be entitled to vote on any Allocation relating to a Common Member unless the Common Member is a member of such Participant.

VIII. Each DOSR shall conduct routine surveillance reviews to detect violations of the applicable Common Rules by each Common Member allocated to it with a frequency (daily, weekly, monthly, quarterly, semi-annually or annually as noted on Exhibit A) not less than that determined by the Group. The other Participants agree that, upon request, relevant information in their respective files relative to a Common Member will be made available to the applicable DOSR. In addition, each Participant shall provide, to the extent not otherwise already provided, information pertaining to its surveillance program that would be relevant to FINRA or the Participant(s) conducting routine examinations for the delta hedging exemption.

At each meeting of the OSG, each Participant shall be prepared to report on the status of its surveillance program for the previous quarter and any period prior thereto that has not previously been reported to the Group. In the event a DOSR believes it will not be able to complete its Regulatory Responsibility for its allocated Common Members, it will so advise the Group in writing promptly. The Group will undertake to remedy this situation by reallocating the subject Common Members among the remaining Participants. In such instance, the Group may determine to impose a regulatory fee for services provided to the DOSR that was unable to fulfill its Regulatory Responsibility.

IX. Each Participant will, upon request, promptly furnish a copy of the report or applicable portions thereof relating to any investigation made pursuant to the provisions of this Agreement to each other Participant of which the Common Member under investigation is a member.

X. Each Participant will routinely populate a common database, to be accessed by the Group relating to any formal regulatory action taken during the course of a Proceeding with respect to the Common Rules concerning a Common Member.

XI. Any written notice required or permitted to be given under this Agreement shall be deemed given if sent by certified mail, return receipt requested, to any Participant to the attention of that Participant's Representative, to the Participant's principal place of business or by email at such address as the Representative shall have filed in writing with the Chair.

XII. The costs incurred by each Participant in discharging its Regulatory Responsibility under this Agreement are

[3] A Participant must give notice to the Chair of the Group of such a change.

[4] For example, if one Participant was allocated a Common Member by another regulatory group that Participant would be assigned to be the DOSR of that Common Member, unless there is good cause not to make that assignment.

not reimbursable. However, any of the Participants may agree that one or more will compensate the other(s) for costs incurred.

XIII. The Participants shall notify the Common Members of this Agreement by means of a uniform joint notice approved by the Group. Each Participant will notify the Common Members that have been allocated to it that such Participant will serve as DOSR for that Common Member.

XIV. This Agreement shall be effective upon approval of the Commission. This Agreement may only be amended in writing duly approved by each Participant. All amendments to this Agreement, excluding changes to Exhibits A, B and C, must be filed with and approved by the Commission.

XV. Any Participant may manifest its intention to cancel its participation in this Agreement at any time upon providing written notice to (i) the Group six months prior to the date of such cancellation, or such other period as all the Participants may agree, and (ii) the Commission. Upon receipt of the notice the Group shall allocate, in accordance with the provisions of this Agreement, those Common Members for which the canceling Participant was the DOSR. The canceling Participant shall retain its Regulatory Responsibility and other rights, privileges and duties pursuant to this Agreement until the Group has completed the reallocation as described above, and the Commission has approved the cancellation.

XVI. The cancellation of its participation in this Agreement by any Participant shall not terminate this Agreement as to the remaining Participants. This Agreement will only terminate following notice to the Commission, in writing, by the then Participants that they intend to terminate the Agreement and the expiration of the applicable notice period. Such notice shall be given at least six months prior to the intended date of termination, or such other period as all the Participants may agree. Such termination will become effective upon Commission approval.

XVII. Participation in the Group shall be strictly limited to the Participants and no other party shall have any right to attend or otherwise participate in the Group except with the unanimous approval of all Participants. Notwithstanding the foregoing, any national securities exchange registered with the SEC under Section 6(a) of the Act or any national securities association registered with the SEC under section 15A of the Act may become a Participant to this Agreement provided that: (i) such applicant has adopted rules substantially similar to the Common Rules, and received approval thereof from the SEC; (ii) such applicant has provided each Participant with a signed statement whereby the applicant agrees to be bound by the terms of this Agreement to the same effect as though it had originally signed this Agreement and (iii) an amended agreement reflecting the addition of such applicant as a Participant has been filed with and approved by the Commission.

XVIII. This Agreement is wholly separate from the multiparty Agreement made pursuant to Rule 17d–2 by and among the NYSE [MKT]*American* LLC, the *Cboe*[Bats] BZX Exchange, Inc., BOX [Options]Exchange[,] LLC, the C2 [Options]Exchange, Inc., the *Cboe Exchange*[Chicago Board Options Exchange], Inc., the [International Securities Exchange]*Nasdaq* ISE, LLC, Financial Industry Regulatory Authority, The *Nasdaq*[ASDAQ] Stock Market LLC, the New York Stock Exchange, LLC, the NYSE Arca, Inc., the *Nasdaq*[ASDAQ] BX, Inc., the *Nasdaq*[ASDAQ] PHLX LLC, Miami International Securities Exchange, LLC, *Nasdaq GEMX*[ISE Gemini], LLC, *Nasdaq MRX*[ISE Mercury], LLC, *Cboe*[Bats] EDGX Exchange, Inc., [and]MIAX PEARL, LLC, *and MIAX Emerald, LLC,* involving the allocation of regulatory responsibilities with respect to common members for compliance with common rules relating to the conduct by broker-dealers of accounts for listed options or index warrants [entered into on January 23, 2017]*approved by the SEC on February 12, 2019,* and as may be amended from time to time.

Limitation of Liability

No Participant nor the Group nor any of their respective directors, governors, officers, employees or representatives shall be liable to any other Participant in this Agreement for any liability, loss or damage resulting from or claimed to have resulted from any delays, inaccuracies, errors or omissions with respect to the provision of Regulatory Responsibility as provided hereby or for the failure to provide any such Regulatory Responsibility, except with respect to such liability, loss or damages as shall have been suffered by one or more of the Participants and caused by the willful misconduct of one or more of the other Participants or its respective directors, governors, officers, employees or representatives. No warranties, express or implied, are made by the Participants, individually or as a group, or by the OSG with respect to any Regulatory Responsibility to be performed hereunder.

Relief From Responsibility

Pursuant to Section 17(d)(1)(A) of the Exchange Act and Rule 17d–2, the Participants join in requesting the Commission, upon its approval of this Agreement or any part thereof, to relieve the Participants that are party to this Agreement and are not the DOSR as to a Common Member of any and all Regulatory Responsibility with respect to the matters allocated to the DOSR.

* * * * *

This Agreement may be executed in any number of counterparts, each of which shall be deemed to be an original, but all such counterparts shall together constitute one and the same Agreement.

In Witness Whereof, the Participants hereto have executed this Agreement as of the date and year first above written.

Exhibit A

Options Surveillance Group 17d–2 Agreement

Common Rules as of [January 8, 2019] *October 18, 2022*

VIOLATION I: EXPIRING EXERCISE DECLARATIONS (EED)—FOR LISTED AND FLEX EQUITY OPTIONS

SRO	Description of rule	Exchange rule number	Frequency of review
BZX	Exercise of Options Contracts	Rule 23.1	At Expiration.
BOX	Exercise of Options Contracts	Rule 9000	At Expiration.
C2	Exercise of Options Contracts	[Rule 11.1] *Ch. 6, Sec. B*	At Expiration.
Cboe	Exercise of Options Contracts	[Rule 11.1] *Rule 6.20(a)–(d), I&P .01–.07.*	At Expiration.
EDGX	Exercise of Options Contracts	Rule 23.1	At Expiration.
FINRA	Exercise of Options Contracts	Rule 2360(b)(23)	At Expiration.
ISE	Exercise of Options Contracts	[Rule 1100] *Options 6B, Section 1*	At Expiration.

VIOLATION I: EXPIRING EXERCISE DECLARATIONS (EED)—FOR LISTED AND FLEX EQUITY OPTIONS—Continued

SRO	Description of rule	Exchange rule number	Frequency of review
GEMX	Exercise of Options Contracts	[Rule 1100] *Options 6B, Section 1*	At Expiration.
MRX	Exercise of Options Contracts	[Rule 1100] *Options 6B, Section 1*	At Expiration.
MIAX	Exercise of Options Contracts	Rule 700	At Expiration.
MIAX PEARL	Exercise of Options Contracts	Rule 700	At Expiration.
MIAX Emerald	Exercise of Options Contracts	Rule 700	At Expiration.
MEMX	*Exercise of Options Contracts*	*Rule 23.1*	*At Expiration.*
Nasdaq	Exercise of Options Contracts	[Options 5, Section 100] *Options 6B, Section 1.*	At Expiration.
Nasdaq BX	Exercise of Options Contracts	[Options 5, Section 100] *Options 6B, Section 1.*	At Expiration.
Nasdaq PHLX	Exercise of Equity Options Contracts	[Rule 1042] *Options 6B, Section 1*	At Expiration.
NYSE Arca	Exercise of Options Contracts	Rule 6.24–O	At Expiration.
NYSE American	Exercise of Options Contracts	Rule 980	At Expiration.

VIOLATION II: POSITION LIMITS (PL)—FOR LISTED EQUITY OPTIONS

SRO	Description of rule (for review as they apply to PL)	Exchange rule number	Frequency of review
BZX	Position Limits	Rule 18.7	Daily.
	Exemptions from Position	Rule 18.8	As Needed.
	Liquidation Positions	Rule 18.11	As Needed.
BOX	Position Limits	Rule 3120	Daily.
	Exemptions from Position Limits	Rule 3130	As Needed.
	Liquidation Positions	Rule 3160	As Needed.
C2	Position Limits	*Ch. 8* [Rule 4.11]	Daily.
	Liquidation of Positions	*Ch. 8* [Rule 4.14]	As Needed.
Cboe	Position Limits	*Rule 8.30* [Rule 4.11]	Daily.
	Liquidation of Positions	*Rule 8.44* [Rule 4.14]	As Needed.
EDGX	Position Limits	Rule 18.7	Daily.
	Exemptions from Position	Rule 18.8	As Needed.
	Liquidation Positions	Rule 18.11	As Needed.
FINRA	Position Limits	Rule 2360(b)(3)	Daily.
	Liquidation of Positions and Restrictions on Access.	Rule 2360(b)(6)	As Needed.
ISE	Position Limits	*ISE Options 9, Section 13* [Rule 412]	Daily.
	Exemptions from Position Limits	*ISE Options 9, Section 14* [Rule 413]	As Needed.
	Liquidating Positions	*ISE Options 9, Section 17* [Rule 416]	As Needed.
GEMX	Position Limits	*GEMX Options 9, Section 13* [Rule 412].	Daily.
	Exemptions from Position Limits	*GEMX Options 9, Section 14* [Rule 413].	As Needed.
	Liquidating Positions	*GEMX Options 9, Section 17* [Rule 416].	As Needed.
MRX	Position Limits	*MRX Options 9, Section 13* [Rule 412]	Daily.
	Exemptions from Position Limits	*MRX Options 9, Section 14* [Rule 413]	As Needed.
	Liquidating Positions	*MRX Options 9, Section 17* [Rule 416]	As Needed.
MIAX	Position Limits	Rule 307	Daily.
	Exemptions from Position Limits	Rule 308	As Needed.
	Liquidating Positions	Rule 311	As Needed.
MIAX Pearl	Position Limits	Rule 307	Daily.
	Exemptions from Position Limits	Rule 308	As Needed.
	Liquidating Positions	Rule 311	As Needed.
MIAX Emerald	Position Limits	Rule 307	Daily.
	Exemptions from Position Limits	Rule 308	As Needed.
	Liquidating Positions	Rule 311	As Needed.
MEMX	*Position Limits*	*Rule 18.7*	*Daily.*
	Exemptions from Position	*Rule 18.8*	*As Needed.*
	Liquidation Positions	*Rule 18.11*	*As Needed.*
Nasdaq	Position Limits	*NOM Options 9, Section 13* [Ch. III, Sect. 7].	Daily.
	Exemptions from Position Limits	*NOM Options 9, Section 14* [Ch. III, Sect. 8].	As Needed.
	Liquidation Positions	*NOM Options 9, Section 17* [Ch. III, Sect. 11].	As Needed.
Nasdaq BX	Position Limits	*BX Options 9, Section 13* [Ch. III, Sect. 7].	Daily.
	Exemptions from Position Limits	*BX Options 9, Section 14* [Ch. III, Sect. 8].	As Needed.
	Liquidation Positions	*BX Options 9, Section 17* [Ch. III, Sect. 11].	As Needed.

VIOLATION II: POSITION LIMITS (PL)—FOR LISTED EQUITY OPTIONS—Continued

SRO	Description of rule (for review as they apply to PL)	Exchange rule number	Frequency of review
Nasdaq PHLX	Position Limits	*PHLX Options 9, Section 13* [Rule 1001].	Daily.
	Liquidation of Position	*PHLX Options 9, Section 17* [Rule 1004].	As Needed.
NYSE Arca	Position Limits	Rule 6.8–O	Daily.
	Liquidation of Position	Rule 6.7–O	As Needed.
NYSE American	Position Limits	Rule 904	Daily.
	Liquidating Positions	Rule 907	As Needed.

VIOLATION III: LARGE OPTIONS POSITION REPORT (LOPR)—FOR LISTED AND FLEX EQUITY OPTIONS AND ETF OPTIONS

SRO	Description of rule (for review as they apply to LOPR)	Exchange rule number	Frequency of review
BZX	Reports Related to Position Limits	Rule 18.10	Yearly.
BOX	Reports Related to Position Limits	Rule 3150	Yearly.
C2	Reports Related to Position Limits	*Ch. 8*[Rule 4.13(a)]	Yearly.
	Reports Related to Position Limits	*Ch. 8* [Rule 4.13(b)]	Yearly.
	Reports Related to Position Limits	*Ch. 8* [Rule 4.13(d)]	Yearly.
Cboe	Reports Related to Position Limits	*Rule 8.43(a)* [Rule 4.13(a)]	Yearly.
	Reports Related to Position Limits	*Rule 8.43(b)* [Rule 4.13(b)]	Yearly.
	Reports Related to Position Limits	*Rule 8.43(d)* [Rule 4.13(d)]	Yearly.
EDGX	Reports Related to Position Limits	Rule 18.10	Yearly.
FINRA	Options	Rule 2360(b)(5)	Yearly.
ISE	Reports Related to *Options* Position Limits.	*ISE Options 9, Section 16—Reports Related to Options Position Limits* [Rule 415].	Yearly.
GEMX	Reports Related to *Options* Position Limits.	*GEMX Options 9, Section 16—Reports Related to Options Position Limits* [Rule 415].	Yearly.
MRX	Reports Related to *Options* Position Limits.	*MRX Options 9, Section 16—Reports Related to Options Position Limits* [Rule 415].	Yearly.
MIAX	Reports Related to Position Limits	Rule 310	Yearly.
MIAX PEARL	Reports Related to Position Limits	Rule 310	Yearly.
MIAX Emerald	Reports Related to Position Limits	Rule 310	Yearly.
MEMX	*Reports Related to Position Limits*	*Rule 18.10*	*Yearly.*
Nasdaq	Reports Related to *Options* Position Limits.	*NOM Options 9, Section 16—Reports Related to Options Position Limits* [Ch. III, Sect. 10].	Yearly.
Nasdaq BX	Reports Related to *Options* Position Limits.	*BX Options 9, Section 16—Reports Related to Options Position Limits* [Ch. III, Sect. 10].	Yearly.
Nasdaq PHLX	Reporting of Options Positions	*PHLX Options 6E, Section 2—Reporting of Options Positions, PHLX Options 9, Section 13—Position Limits* [Rule 1003].	Yearly.
NYSE Arca	Reporting of Options Positions	Rule 6.6–O	Yearly.
NYSE American	Reporting of Options Positions	Rule 906	Yearly.

VIOLATION IV: OPTIONS CLEARING CORPORATION (OCC) ADJUSTMENT PROCESS

SRO	Description of rule (as they apply to OCC adjustments/by-laws article V, section 1 .01(a) and .02))	Exchange rule number	Frequency of review
BZX	Adherence to Law	Rule 18.1	Yearly.
BOX	Adherence to Law	Rule 3010	Yearly.
C2	Adherence to Law	*Ch. 8* [Rule 4.2]	Yearly.
Cboe	Adherence to Law	Rule *8.2* [4.2]	Yearly.
EDGX	Adherence to Law	Rule 18.1	Yearly.
FINRA	Violation of By-Laws and Rules of FINRA or The OCC.	Rule 2360(b)(21)	Yearly.
ISE	Adherence to Law	*ISE Options 9, Section 2* [Rule 401]	Yearly.
GEMX	Adherence to Law	*GEMX Options 9, Section 2* [Rule 401]	Yearly.
MRX	Adherence to Law	*MRX Options 9, Section 2* [Rule 401]	Yearly.
MIAX	Adherence to Law	Rule 300	Yearly.
MIAX PEARL	Adherence to Law	Rule 300	Yearly.
MIAX Emerald.	Adherence to Law	Rule 300	Yearly.

VIOLATION IV: OPTIONS CLEARING CORPORATION (OCC) ADJUSTMENT PROCESS—Continued

SRO	Description of rule (as they apply to OCC adjustments/by-laws article V, section 1 .01(a) and .02))	Exchange rule number	Frequency of review
MEMX	*Adherence to Law*	*Rule 18.1*	*Yearly.*
Nasdaq	Adherence to Law	*NOM Options 9, Section 2* [Ch. III, Sect. 1].	Yearly.
Nasdaq BX	Adherence to Law	*BX Options 9, Section 2* [Ch. III, Sect. 1].	Yearly.
Nasdaq PHLX	Violation of By-Laws And Rules Of OCC.	*PHLX Options 9, Section 24* [Rule 1050].	Yearly.
NYSE Arca	Adherence to Law and Good Business Practice.	Rule 11.1	Yearly.
NYSE American	Business Conduct	Rule 16	Yearly.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing. 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 4–551 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 4–551. 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 plan that are filed with the Commission, and all written communications relating to the proposed plan 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 plan also will be available for inspection and copying at the principal offices of NYSE American, BZX, C2, Cboe, EDGX, Gemini, ISE, Mercury, FINRA, Arca, Nasdaq, BOX, BX, PHLX, MIAX, MIAX PEARL, MIAX Emerald, and MEMX. 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 4–551 and should be submitted on or before December 21, 2022.

V. Discussion

The Commission finds that the proposed Amended Plan is consistent with the factors set forth in Section 17(d) of the Act [22] and Rule 17d–2(c) thereunder [23] in that the proposed Amended Plan is necessary or appropriate in the public interest and for the protection of investors, fosters cooperation and coordination among SROs, and removes impediments to and fosters the development of the national market system. The Commission continues to believe that the Plan, as proposed to be amended, is an achievement in cooperation among the SRO participants. The Plan, as amended, will reduce unnecessary regulatory duplication by allocating to the designated SRO the responsibility for certain options-related market surveillance matters that would otherwise be performed by multiple SROs. The Plan promotes efficiency by reducing costs to firms that are members of more than one of the SRO participants. In addition, because the SRO participants coordinate their regulatory functions in accordance with the Plan, the Plan promotes, and will continue to promote, investor protection. Under paragraph (c) of Rule 17d–2, the Commission may, after appropriate notice and comment, declare a plan, or any part of a plan, effective. In this instance, the Commission believes that appropriate notice and comment can take place after the proposed amendment is effective. The primary purpose of the amendment is to add MEMX as a Participant and to reflect the name changes of certain Participating Organizations. By declaring it effective today, the amended Plan can become effective and be implemented without undue delay. In addition, the Commission notes that the prior version of this Plan was published for comment, and the Commission did not receive any comments thereon.[24] Finally, the Commission does not believe that the amendment to the Plan raises any new regulatory issues that the Commission has not previously considered.

VI. Conclusion

This order gives effect to the amended Plan submitted to the Commission that is contained in File No. 4–551.

It is further ordered that those SRO participants that are not the DOSR as to a particular common member are relieved of those regulatory responsibilities allocated to the common member's DOSR under the amended Plan to the extent of such allocation.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[25]

J. Matthew DeLesDernier,

Deputy Secretary.

[FR Doc. 2022–26076 Filed 11–29–22; 8:45 am]

BILLING CODE 8011–01–P

[22] 15 U.S.C. 78q(d).

[23] 17 CFR 240.17d–2(c).

[24] *See* Securities Exchange Act Release No. 85097 (February 11, 2019), 84 FR 4871 (February 19, 2019) (File No. 4–551).

[25] 17 CFR 200.30–3(a)(34).

DEPARTMENT OF STATE

[Public Notice: 11927]

30-Day Notice of Proposed Information Collection: Request for Commodity Jurisdiction Determination

ACTION: Notice of request for public comment and submission to OMB of proposed collection of information.

SUMMARY: The Department of State has submitted the information collection described below to the Office of Management and Budget (OMB) for approval. In accordance with the Paperwork Reduction Act of 1995 we are requesting comments on this collection from all interested individuals and organizations. The purpose of this Notice is to allow 30 days for public comment.

DATES: Submit comments up to December 30, 2022.

ADDRESSES: Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to *www.reginfo.gov/public/do/PRAMain.* Find this particular information collection by selecting ''Currently under 30-day Review—Open for Public Comments'' or by using the search function.

FOR FURTHER INFORMATION CONTACT: Direct requests for additional information regarding the collection listed in this notice, including requests for copies of the proposed collection instrument and supporting documents, to Andrea Battista, who may be reached at *battistaal@state.gov* via email and 202–992–0973 via phone.

SUPPLEMENTARY INFORMATION:

- *Title of Information Collection:* Request for Commodity Jurisdiction Determination.
- *OMB Control Number:* 1405–0163.
- *Type of Request:* Revision of a currently approved collection.
- *Originating Office:* Directorate of Defense Trade Controls (PM/DDTC).
- *Form Number:* DS–4076.
- *Respondents:* Any person requesting a commodity jurisdiction determination.
- *Estimated Number of Responses:* 400.
- *Average Time per Response:* 4 hours.
- *Total Estimated Burden Time:* 1,600 hours.
- *Frequency:* On occasion.
- *Obligation to Respond:* Voluntary.

We are soliciting public comments to permit the Department to:

- Evaluate whether the proposed information collection is necessary for the proper functions of the Department.
- Evaluate the accuracy of our estimate of the time and cost burden for this proposed collection, including the validity of the methodology and assumptions used.
- Enhance the quality, utility, and clarity of the information to be collected.
- Minimize the reporting burden on those who are to respond, including the use of automated collection techniques or other forms of information technology.
- Please note that comments submitted in response to this Notice are public record. Before including any detailed personal information, you should be aware that your comments as submitted, including your personal information, will be available for public review.

Abstract of Proposed Collection

Pursuant to ITAR section 120.4, a person, as defined by ITAR section 120.14, may request a written determination from the Department of State stating whether a particular article or defense service is covered by the United States Munitions List (USML). Form DS–4076 is the means by which respondents may submit this request. Information submitted via DS–4076 will be shared with the Department of Defense, Department of Commerce, and other USG agencies, as needed, during the commodity jurisdiction process. Determinations will be made on a case-by-case basis based on the commodity's form, fit, function, and performance capability.

Methodology

Respondents must generally submit the DS–4076 electronically through DDTC's electronic system. Respondents may access the DS–4076 on DDTC's website, *www.pmddtc.state.gov,* under ''Commodity Jurisdictions (CJs).'' Respondents who are unable to access DDTC's website may mail a signed DS–4076, along with a brief cover letter explaining their inability to file the electronic DS–4076, to the Office of Defense Trade Controls Policy, Department of State, 2401 E St. NW, Suite H1304, Washington, DC 20522.

Kevin E Bryant,

Deputy Director, Office of Directives Management, Department of State.

[FR Doc. 2022–26103 Filed 11–29–22; 8:45 am]

BILLING CODE 4710–25–P

DEPARTMENT OF STATE

[Public Notice: 11926]

30-Day Notice of Proposed Information Collection: Technology Security/ Clearance Plans, Screening Records, and Non-Disclosure Agreements

ACTION: Notice of request for public comment and submission to OMB of proposed collection of information.

SUMMARY: The Department of State has submitted the information collection described below to the Office of Management and Budget (OMB) for approval. In accordance with the Paperwork Reduction Act of 1995 we are requesting comments on this collection from all interested individuals and organizations. The purpose of this Notice is to allow 30 days for public comment.

DATES: Submit comments up to December 30, 2022.

ADDRESSES: Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to *www.reginfo.gov/public/do/PRAMain.* Find this particular information collection by selecting ''Currently under 30-day Review—Open for Public Comments'' or by using the search function.

FOR FURTHER INFORMATION CONTACT: Direct requests for additional information regarding the collection listed in this notice, including requests for copies of the proposed collection instrument and supporting documents, to Andrea Battista, who may be reached at *battistaal@state.gov* via email and 202–992–0973 via phone.

SUPPLEMENTARY INFORMATION:

- *Title of Information Collection:* Technology Security/Clearance Plans, Screening Records, and Non-Disclosure Agreements Pursuant to 22 CFR 126.18(c)(2).
- *OMB Control Number:* 1405–0195.
- *Type of Request:* Extension of Currently Approved Collection.
- *Originating Office:* Bureau of Political-Military Affairs, Directorate of Defense Trade Controls (PM/DDTC).
- *Form Number:* No form.
- *Respondents:* Business and Nonprofit Organizations.
- *Estimated Number of Respondents:* 10,000.
- *Estimated Number of Responses:* 10,000.
- *Average Time per Response:* 10 hours.
- *Total Estimated Burden Time:* 100,000 hours.
- *Frequency:* On occasion.

• *Obligation to Respond:* Mandatory.

We are soliciting public comments to permit the Department to:

• Evaluate whether the proposed information collection is necessary for the proper functions of the Department.

• Evaluate the accuracy of our estimate of the time and cost burden for this proposed collection, including the validity of the methodology and assumptions used.

• Enhance the quality, utility, and clarity of the information to be collected.

• Minimize the reporting burden on those who are to respond, including the use of automated collection techniques or other forms of information technology.

Please note that comments submitted in response to this Notice are public record. Before including any detailed personal information, you should be aware that your comments as submitted, including your personal information, will be available for public review.

Abstract of Proposed Collection

The export, temporary import, and brokering of defense articles, defense services, and related technical data are licensed by the Directorate of Defense Trade Controls (DDTC) in accordance with the International Traffic in Arms Regulations (''ITAR,'' 22 CFR parts 120 through 130) and section 38 of the Arms Export Control Act.

ITAR section126.18 eliminates, subject to certain conditions, the requirement for an approval by DDTC of the transfer of unclassified defense articles, which includes technical data, to or within a foreign business entity, foreign governmental entity, or international organization that is an authorized end-user or consignee (including transfers to approved sub-licensees) for defense articles, including the transfer to dual nationals or third-country nationals who are bona fide regular employees directly employed by the foreign consignee or end-user.

To use ITAR section126.18, effective procedures must be in place to prevent diversion to any destination, entity, or for purposes other than those authorized by the applicable export license or other authorization. Those conditions can be met by requiring a security clearance approved by the host nation government for its employees, or by the end-user or consignee having in place a process to screen all its employees and to have executed a Non-Disclosure Agreement that provides assurances that the employee will not transfer any defense articles to persons or entities unless specifically authorized by the consignee or end-user. ITAR section126.18(c)(2) also provides that the technology security/clearance plans and screening records shall be made available to DDTC or its agents for law enforcement purposes upon request.

Methodology

When information kept on file pursuant to this recordkeeping requirement is required to be sent to the Directorate of Defense Trade Controls, it may be sent electronically or by mail according to guidance given by DDTC.

Kevin E Bryant,

Deputy Director, Office of Directives Management, Department of State.

[FR Doc. 2022–26102 Filed 11–29–22; 8:45 am]

BILLING CODE 4710–25–P

SURFACE TRANSPORTATION BOARD

[Docket No. FD 36646]

R. J. Corman Railroad Group, LLC and R. J. Corman Railroad Company, LLC—Continuance in Control Exemption—Raleigh and Fayetteville Railroad, LLC

R. J. Corman Railroad Group, LLC (RJCG), and R. J. Corman Railroad Company, LLC (RJCRC), noncarrier holding companies (collectively, Applicants), filed a verified notice of exemption under 49 CFR 1180.2(d)(2) to continue in control of the Raleigh and Fayetteville Railroad, LLC (RFCC), upon RFCC's becoming a Class III rail carrier.

This notice of exemption is related to a concurrently filed notice of exemption in *Raleigh & Fayetteville Railroad—Acquisition, Lease & Operation Exemption with Interchange Commitment—Norfolk Southern Railway,* Docket No. FD 36645, in which RFCC seeks to acquire approximately 42.38 miles of rail line from Norfolk Southern Railway Company (NSR), lease approximately 19.88 miles of rail line from NSR, assume NSR's trackage rights over 0.59 miles of rail line owned by CSX Transportation, Inc., totaling approximately 62.85 miles, and to operate those lines, which form a contiguous rail line between Raleigh and Fayetteville in Wake, Harnett, and Cumberland Counties, N.C. (the Line).

The transaction may be consummated on or after December 14, 2022, the effective date of the exemption (30 days after the verified notice was filed).

According to the verified notice, Applicants control two non-operating Class III rail carriers, R. J. Corman Railroad Property, LLC, and R. J. Corman Railroad Company/Ashland, LLC, and 17 other operating Class III rail carriers, collectively operating in 13 states (collectively, RJC Railroads). For a complete list of these rail carriers and the states in which they operate, see the November 14, 2022 verified notice of exemption at pages 2–3 for a list of carriers and pages 5–6 for a list of states. The verified notice is available on the Board's website at *www.stb.gov.*

Applicants certify that: (1) RFCC and RJC Railroads would not connect with each other or any other railroad in the corporate family; (2) the continuance in control is not part of a series of anticipated transactions that would connect the carriers with each other or any railroad in the corporate family; and (3) the transaction does not involve a Class I rail carrier. Therefore, the proposed transaction is exempt from the prior approval requirements of 49 U.S.C. 11323. *See* 49 CFR 1180.2(d)(2).

Under 49 U.S.C. 10502(g), the Board may not use its exemption authority to relieve a rail carrier of its statutory obligation to protect the interests of its employees. However, 49 U.S.C. 11326(c) does not provide for labor protection for transactions under 49 U.S.C. 11324 and 11325 that involve only Class III rail carriers. Because this transaction involves Class III rail carriers only, the Board, under the statute, may not impose labor protective conditions for this transaction.

If the verified notice contains false or misleading information, the exemption is void ab initio. Petitions to revoke the exemption under 49 U.S.C. 10502(d) may be filed at any time. The filing of a petition to revoke will not automatically stay the effectiveness of the exemption. Petitions to stay must be filed no later than December 7, 2022 (at least seven days before the exemption becomes effective).

All pleadings, referring to Docket No. FD 36646, must be filed with the Surface Transportation Board either via e-filing on the Board's website or in writing addressed to 395 E Street SW, Washington, DC 20423–0001. In addition, a copy of each pleading must be served on Applicants' representative, Catherine S. Wright, Jackson Kelly PLLC, 100 West Main Street, Suite 700, Lexington, KY 40588–2150.

According to Applicants, this action is categorically excluded from environmental review under 49 CFR 1105.6(c) and from historic preservation reporting requirements under 49 CFR 1105.8(b).

Board decisions and notices are available at *www.stb.gov.*

Decided: November 23, 2022.

By the Board, Mai T. Dinh, Director, Office of Proceedings.

Tammy Lowery,

Clearance Clerk.

[FR Doc. 2022–26068 Filed 11–29–22; 8:45 am]

BILLING CODE 4915–01–P

SURFACE TRANSPORTATION BOARD

[Docket No. FD 36645]

Raleigh and Fayetteville Railroad, LLC—Acquisition, Lease and Operation Exemption With Interchange Commitment—Norfolk Southern Railway Company

Raleigh and Fayetteville Railroad, LLC (RFCC), a noncarrier, has filed a verified notice of exemption under 49 CFR 1150.31 to: (1) acquire approximately 42.38 miles of rail line from Norfolk Southern Railway Company (NSR), (2) lease approximately 19.88 miles of rail line from NSR, and (3) assume NSR's trackage rights over 0.59 miles of a rail line owned by CSX Transportation, Inc. (CSXT), totaling approximately 62.85 miles, and to operate over those lines, which form a contiguous line between Raleigh and Fayetteville in Wake, Harnett, and Cumberland Counties, N.C. (the Line).

According to the verified notice, RFCC and R.J. Corman Railroad Group, LLC (RJCG),[1] entered into an agreement with NSR, under which RFCC will acquire and operate approximately 42.38 miles of rail line, from the convergence of the NS-Line and VF-Line at approximately milepost VF 0.13 at Fuquay-Varina to milepost VF 42.29 at Fayetteville, and, also in Fayetteville, from milepost VF 42.88 to milepost VF 43.1. As part of that agreement, RFCC will also assume NSR's trackage rights over, and operate over, the CSXT line in Fayetteville between milepost VF 42.29 to milepost VF 42.88. RFCC and RJCG will also obtain operating rights over NSR's rail line at milepost NS 233.25 to milepost NS 231.0 solely for the purpose of interchanging traffic with NSR at NSR's Glenwood Yard at Raleigh. RFCC has also entered into a lease agreement with NSR, pursuant to which RFCC will lease and operate approximately 19.75 miles of rail line from the southern boundary of the North Carolina Railroad right of way at milepost NS 233.25 at Raleigh to milepost NS 253.0 at Fuquay-Varina, and 0.13 miles of rail line from the junction of NSR's NS-Line in Fuquay-Varina at milepost VF 0.0 to the beginning of RFCC's line at milepost VF 0.13.

This transaction is related to a verified notice of exemption filed concurrently in *R.J. Corman Railroad—Continuance in Control Exemption—Raleigh & Fayetteville Railroad,* Docket No. FD 36646, in which RJCG and RJCRC (collectively, Applicants) filed a verified notice of exemption under 49 CFR 1180.2(d)(2) to continue in control of RFCC upon RFCC's becoming a Class III rail carrier.

RFCC certifies that its projected annual revenues from this transaction will not result in its becoming a Class I or Class II rail carrier and will not exceed $5 million. RFCC also certifies that the agreements with NSR contain a provision that would limit future interchange with third-party connecting carriers at Raleigh and Fayetteville. RJCC has provided additional information regarding the interchange commitment, as required by 49 CFR 1150.43(h).[2]

The transaction may be consummated on or after December 14, 2022, the effective date of the exemption (30 days after the verified notice was filed).

If the verified notice contains false or misleading information, the exemption is void ab initio. Petitions to revoke the exemption under 49 U.S.C. 10502(d) may be filed at any time. The filing of a petition to revoke will not automatically stay the effectiveness of the exemption. Petitions for stay must be filed no later than December 7, 2022 (at least seven days before the exemption becomes effective).

All pleadings, referring to Docket No. FD 36645, must be filed with the Surface Transportation Board either via e-filing on the Board's website or in writing addressed to 395 E Street SW, Washington, DC 20423–0001. In addition, a copy of each pleading must be served on RFCC's representative, Catherine S. Wright, Jackson Kelly PLLC, 100 West Main Street, Suite 700, Lexington, KY 40588–2150.

According to RFCC, this action is categorically excluded from environmental review under 49 CFR 1105.6(c) and from historic preservation reporting requirements under 49 CFR 1105.8(b).

Board decisions and notices are available at *www.stb.gov.*

Decided: November 23, 2022.

[1] According to the verified notice, RFCC is wholly owned by noncarrier holding company R.J. Corman Railroad Company, LLC (RJCRC), and RJCRC is wholly owned by noncarrier RJCG.

[2] RFCC filed a copy of the agreements under seal with the verified notice. *See* 49 CFR 1150.43(h)(1).

By the Board, Mai T. Dinh, Director, Office of Proceedings.

Tammy Lowery,

Clearance Clerk.

[FR Doc. 2022–26067 Filed 11–29–22; 8:45 am]

BILLING CODE 4915–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Commercial Space Transportation Advisory Committee; Notice of Public Meeting

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

ACTION: Notice of virtual public meeting.

SUMMARY: This notice announces a meeting of the Commercial Space Transportation Advisory Committee (COMSTAC).

DATES: The meeting will take place on December 15, 2022, from 12:30 p.m. to 4 p.m.

ADDRESSES: Instructions on how to virtually attend the meeting, copies of meeting minutes, and a detailed agenda will be posted on the COMSTAC website at: *https://www.faa.gov/space/additional_information/comstac/.*

FOR FURTHER INFORMATION CONTACT: James Hatt, Designated Federal Officer, U.S. Department of Transportation, at *james.a.hatt@faa.gov.* Any committee-related request should be sent to the person listed in this section.

SUPPLEMENTARY INFORMATION:

I. Background

The Commercial Space Transportation Advisory Committee was created under the Federal Advisory Committee Act (FACA) in accordance with Public Law 92–463. Since its inception, industry-led COMSTAC has provided information, advice, and recommendations to the U.S. Department of Transportation through FAA regarding technology, business, and policy issues relevant to oversight of the U.S. commercial space transportation sector.

II. Proposed Agenda

DOT/FAA Welcome Remarks
AST Update to COMSTAC
Discussion and report out on tasksings:
  Human Space Flight Safety Framework Report Development
  Science, Technology, Engineering, and Mathematics (STEM)
New Tasks
Public Comments
Adjournment

III. Public Participation

The meeting listed in this notice will be open to the public virtually. Please see the website not later than five working days before the meeting for details on viewing the meeting on YouTube.

If you are in need of assistance or require reasonable accommodation for this meeting, please contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section at least ten calendar days before the meeting. Sign and oral interpretation can be made available if requested ten calendar days before the meeting.

Interested members of the public may submit relevant written statements for the COMSTAC members to consider under the advisory process. Statements may concern the issues and agenda items mentioned above and/or additional issues that may be relevant to the U.S. commercial space transportation industry. Interested parties wishing to submit written statements should contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section in writing (mail or email) 10 DAYS IN ADVANCE OF THE MEETING so that the information can be made available to COMSTAC members for their review and consideration before the meeting. Written statements should be supplied in the following formats: One hard copy with the original signature and/or one electronic copy via email. Portable Document Format (PDF) attachments are preferred for email submissions. A detailed agenda will be posted on the FAA website at *https://www.faa.gov/space/additional_information/comstac/.*

Issued in Washington, DC.

James A. Hatt,

Designated Federal Officer, Commercial Space Transportation Advisory Committee, Federal Aviation Administration, Department of Transportation.

[FR Doc. 2022–26078 Filed 11–29–22; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

[2022–61]

Prevailing Wage and Apprenticeship Initial Guidance Under Section 45(b)(6)(B)(ii) and Other Substantially Similar Provisions

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice of initial guidance.

SUMMARY: This notice provides guidance on the prevailing wage and apprenticeship requirements that generally apply to certain provisions of the Internal Revenue Code (Code), as amended by the Inflation Reduction Act of 2022. This notice also serves as the published guidance establishing the 60-day period described in those provisions of the Code with respect to the applicability of the prevailing wage and apprenticeship requirements. Finally, this notice provides guidance for determining the beginning of construction of a facility for certain credits allowed under the Code, and the beginning of installation of certain property with respect to the energy efficient commercial buildings deduction under the Code. This notice affects facilities the construction of which began, or certain property the installation of which began, on or after January 30, 2023. The Department of the Treasury (Treasury Department) and the IRS anticipate issuing proposed regulations and other guidance with respect to the prevailing wage and apprenticeship requirements.

DATES: January 30, 2023 is the date that is 60 days after the Secretary of the Treasury or her delegate (Secretary) publishes the guidance described in 26 U.S.C. 30C(g)(1)(C)(i), 45(b)(6)(B)(ii), 45Q(h)(2), 45V(e)(2)(A)(i), 45Y(a)(2)(B)(ii), 48(a)(9)(B)(ii), 48E(a)(2)(A)(ii)(II) and (a)(2)(B)(ii)(II), and 179D(b)(3)(B)(i).

FOR FURTHER INFORMATION CONTACT: Alexander Scott, CC:PSI:6, Internal Revenue Service, 1111 Constitution Avenue NW, Washington, DC 20224, at (202) 317–6853 (not a toll-free call).

SUPPLEMENTARY INFORMATION:

Section 1. Purpose

Public Law 117–169, 136 Stat. 1818 (August 16, 2022), commonly known as the Inflation Reduction Act of 2022 (IRA), amended §§ 30C, 45, 45L, 45Q, 45U, 45V, 45Y, 45Z, 48, 48C, 48E, and 179D of the Internal Revenue Code (Code) to add prevailing wage and apprenticeship requirements to qualify for increased credit or deduction amounts.[1] This notice provides guidance on the prevailing wage and apprenticeship requirements that generally apply to those sections of the Code. This notice also serves as the published guidance under §§ 30C(g)(1)(C)(i), 45(b)(6)(B)(ii), 45Q(h)(2), 45V(e)(2)(A)(i), 45Y(a)(2)(B)(ii), 48(a)(9)(B)(ii), 48E(a)(2)(A)(ii)(II) and (a)(2)(B)(ii)(II), and 179D(b)(3)(B)(i) establishing the 60-day period described in such sections with respect to the applicability of the prevailing wage and apprenticeship requirements. Finally, this notice provides guidance for determining the beginning of construction under §§ 30C, 45, 45Q, 45V, 45Y, 48, and 48E, and the beginning of installation under § 179D solely for purposes of § 179D(b)(3)(B)(i).

The Department of the Treasury (Treasury Department) and the Internal Revenue Service (IRS) anticipate issuing proposed regulations and other guidance with respect to the prevailing wage and apprenticeship requirements.

Section 2. Background

.01 *Increased Tax Benefits For Satisfying Certain Prevailing Wage and Apprenticeship or Construction and Installation Requirements.*

(1) *In General.* Increased credit amounts are available under §§ 30C, 45, 45Q, 45V, 45Y, 45Z, 48, 48C, and 48E, and an increased deduction is available under § 179D, for taxpayers satisfying certain prevailing wage and apprenticeship requirements. Increased credit amounts are available under §§ 45L and 45U for taxpayers satisfying certain prevailing wage requirements. The general concepts and provisions relating to the increased tax benefits under § 45(b)(6), (7), and (8) are similar to those under each of these other Code sections. Therefore, only the relevant provisions under § 45(b)(6), (7), and (8) are discussed in section 2.01(2) and (3) of this notice.

(2) *Prevailing Wage Requirements.* Section 45(b)(7)(A) provides that to meet the prevailing wage requirements with respect to any qualified facility, a taxpayer must ensure that any laborers and mechanics employed by the taxpayer or any contractor or subcontractor in: (i) the construction of such facility, and (ii) the alteration or repair of such facility (with respect to any taxable year, for any portion of such taxable year that is within the 10-year period beginning on the date the qualified facility is originally placed in service), are paid wages at rates not less than the prevailing rates for construction, alteration, or repair of a similar character in the locality in which such facility is located as most recently determined by the Secretary of Labor, in accordance with subchapter IV of chapter 31 of title 40, United States Code (Prevailing Wage Rate Requirements). Section 45(b)(7)(B) provides correction and penalty mechanisms for a taxpayer's failure to satisfy the requirements under § 45(b)(7)(A).

[1] See §§ 13101(f), 13102(k), 13104(d), 13105(a), 13204(a)(1), 13303(a)(1), 13304(d), 13404(d), 13501(a), 13701(a), 13702(a), and 13704(a) of the IRA.

(3) *Apprenticeship Requirements.* Section 45(b)(8)(A)(i) provides that to meet the apprenticeship requirements taxpayers must ensure that, with respect to the construction of any qualified facility, not less than the applicable percentage of the total labor hours of the construction, alteration, or repair work (including such work performed by any contractor or subcontractor) with respect to such facility is, subject to § 45(b)(8)(B), performed by qualified apprentices (Apprenticeship Labor Hour Requirements). Under § 45(b)(8)(A)(ii), for purposes of § 45(b)(8)(A)(i), the applicable percentage is: (i) in the case of a qualified facility the construction of which begins before January 1, 2023, 10 percent, (ii) in the case of a qualified facility the construction of which begins after December 31, 2022, and before January 1, 2024, 12.5 percent, and (iii) in the case of a qualified facility the construction of which begins after December 31, 2023, 15 percent.

Section 45(b)(8)(B) provides that the requirement under § 45(b)(8)(A)(i) is subject to any applicable requirements for apprentice-to-journeyworker ratios of the Department of Labor or the applicable State Apprenticeship Agency (Apprenticeship Ratio Requirements). Section 45(b)(8)(C) provides that each taxpayer, contractor, or subcontractor who employs 4 or more individuals to perform construction, alteration, or repair work with respect to the construction of a qualified facility must employ 1 or more qualified apprentices to perform such work (Apprenticeship Participation Requirements).

Under § 45(b)(8)(D)(i), a taxpayer is not treated as failing to satisfy the requirements of § 45(b)(8) if: (i) the taxpayer satisfies the requirements described in § 45(b)(8)(D)(ii) (Good Faith Effort Exception), or (ii) subject to § 45(b)(8)(D)(iii) (Intentional Disregard Provision), in the case of any failure by the taxpayer to satisfy the requirement under § 45(b)(8)(A) and (C) with respect to the construction, alteration, or repair work on any qualified facility to which § 45(b)(8)(D)(i)(I) does not apply, the taxpayer makes payment to the Secretary of the Treasury or her delegate (Secretary) of a penalty in an amount equal to the product of $50 multiplied by the total labor hours for which the requirement described in § 45(b)(8)(A) and (C) was not satisfied with respect to the construction, alteration, or repair work on such qualified facility.

Under the Good Faith Effort Exception described in § 45(b)(8)(D)(ii), a taxpayer is deemed to have satisfied the apprenticeship requirements with respect to a qualified facility if the taxpayer has requested qualified apprentices from a registered apprenticeship program, as defined in § 3131(e)(3)(B), and: (i) such request has been denied, provided that such denial is not the result of a refusal by the taxpayer or any contractors or subcontractors engaged in the performance of construction, alteration, or repair work with respect to such qualified facility to comply with the established standards and requirements of the registered apprenticeship program, or (ii) the registered apprenticeship program fails to respond to such request within 5 business days after the date on which such registered apprenticeship program received such request.

Under the Intentional Disregard Provision, if the Secretary determines that any failure described in § 45(b)(8)(D)(i)(II) is due to intentional disregard of the requirements under § 45(b)(8)(A) and (C), § 45(b)(8)(D)(i)(II) is applied by substituting ''$500'' for ''$50.''

Under § 45(b)(8)(E)(i), the term ''labor hours'' means the total number of hours devoted to the performance of construction, alteration, or repair work by any individual employed by the taxpayer or by any contractor or subcontractor. This term excludes any hours worked by foremen, superintendents, owners, or persons employed in a bona fide executive, administrative, or professional capacity (within the meaning of those terms in part 541 of title 29, Code of Federal Regulations).

Under § 45(b)(8)(E)(ii), the term ''qualified apprentice'' means an individual who is employed by the taxpayer or by any contractor or subcontractor and who is participating in a registered apprenticeship program, as defined in § 3131(e)(3)(B).

Section 3131(e)(3)(B) defines a registered apprenticeship program as an apprenticeship registered under the Act of August 16, 1937 (commonly known as the National Apprenticeship Act, 50 Stat. 664, chapter 663, 29 U.S.C. 50 *et seq.*) that meets the standards of subpart A of part 29 and part 30 of title 29 of the Code of Federal Regulations.[2]

.02 *Beginning of Construction.*

(1) *In General.* A qualified facility, property, project, or equipment, are hereafter referred to as a ''facility'' in this notice. A facility generally must meet the prevailing wage and apprenticeship requirements to receive the increased credit or deduction amounts under §§ 30C, 45, 45Q, 45V, 45Y, 48, 48E, and 179D if construction (or installation for purposes of § 179D) of the facility begins on or after the date 60 days after the Secretary publishes guidance with respect to the prevailing wage and apprenticeship requirements of the Code.[3] The IRS has issued notices under §§ 45,[4] 45Q,[5] and 48[6] (collectively, IRS Notices) that provide guidance for determining when construction begins for purposes of §§ 45, 45Q, and 48, respectively, including a safe harbor regarding the continuity requirement (described in section 2.02(3) of this notice).

(2) *Establishing Beginning of Construction.* The IRS Notices describe two methods that a taxpayer may use to establish that construction of a facility begins: (i) by starting physical work of a significant nature (Physical Work Test), and (ii) by paying or incurring five percent or more of the total cost of the facility (Five Percent Safe Harbor).

(i) *Physical Work Test.* Under the Physical Work Test, construction of a facility begins when physical work of a significant nature begins, provided that the taxpayer maintains a continuous program of construction. This test focuses on the nature of the work performed, not the amount or the costs. Assuming the work performed is of a significant nature, there is no fixed minimum amount of work or monetary or percentage threshold required to satisfy the Physical Work Test. Physical work of significant nature does not include preliminary activities, even if the cost of those preliminary activities is properly included in the depreciable basis of the facility.[7] For purposes of the Physical Work Test, preliminary activities include, but are not limited to, planning or designing, securing financing, exploring, researching,

[2] Effective November 25, 2022, 29 CFR part 29 is no longer divided into subparts A and B because subpart B (Industry Recognized Apprenticeship Programs) was rescinded in a final rule published on September 26, 2022. *See* 87 FR 58269.

[3] Certain facilities are exempt from the prevailing wage and apprenticeship requirements. *See, for example,* § 45(b)(6)(B)(i).

[4] Notice 2013–29, 2013–20 I.R.B. 1085; *clarified by* Notice 2013–60, 2013–44 I.R.B. 431; *clarified and modified by* Notice 2014–46, 2014–36 I.R.B. 520; *updated by* Notice 2015–25, 2015–13 I.R.B. 814; *clarified and modified by* Notice 2016–31, 2016–23 I.R.B. 1025; *updated, clarified, and modified by* Notice 2017–04, 2017–4 I.R.B. 541; Notice 2018–59, 2018–28 I.R.B. 196; *modified by* Notice 2019–43, 2019–31 I.R.B. 487; *modified by* Notice 2020–41, 2020–25 I.R.B. 954; *clarified and modified by* Notice 2021–5, 2021–3 I.R.B. 479; *clarified and modified by* Notice 2021–41, 2021–29 I.R.B. 17.

[5] Notice 2020–12, 2020–11 I.R.B. 495.

[6] Notice 2018–59, 2018–28 I.R.B. 196; *modified by* Notice 2019–43; *modified by* Notice 2020–41; *clarified and modified by* Notice 2021–5; *clarified and modified by* Notice 2021–41.

[7] For § 45, see Notice 2013–29, section 4.02(1); Notice 2016–31, section 5.03; for § 45Q, see Notice 2020–12, section 5.03; and for § 48, see Notice 2018–59, section 4.03.

obtaining permits, licensing, conducting surveys, environmental and engineering studies, or clearing a site.[8]

Work performed by the taxpayer and work performed for the taxpayer by other persons under a binding written contract [9] that is entered into prior to the manufacture, construction, or production of the property for use by the taxpayer in the taxpayer's trade or business (or for the taxpayer's production of income) is taken into account in determining whether construction has begun.[10] Both on-site and off-site work (performed either by the taxpayer or by another person under a binding written contract) may be taken into account for purposes of demonstrating that physical work of a significant nature has begun. Physical work of a significant nature does not include work (performed either by the taxpayer or by another person under a binding written contract) to produce property that is either in existing inventory or is normally held in inventory by a vendor.[11]

(ii) *Five Percent Safe Harbor.* Under the Five Percent Safe Harbor, construction of a facility will be considered as having begun if: (i) a taxpayer pays or incurs (within the meaning of § 1.461–1(a)(1) and (2)) five percent or more of the total cost of the facility, and (ii) thereafter, the taxpayer makes continuous efforts to advance towards completion of the facility. All costs properly included in the depreciable basis of the facility are taken into account to determine whether the Five Percent Safe Harbor has been met.[12] For property that is manufactured, constructed, or produced for the taxpayer by another person under a binding written contract with the taxpayer, costs incurred with respect to the property by the other person before the property is provided to the taxpayer are deemed incurred by the taxpayer when the costs are incurred by the other person under the principles of § 461.[13]

(3) *Continuity Requirement and Continuity Safe Harbor.* The IRS Notices, as clarified and modified by Notice 2021–41, provide that for purposes of the Physical Work Test and Five Percent Safe Harbor, taxpayers must demonstrate either continuous construction or continuous efforts (Continuity Requirement) regardless of whether the Physical Work Test or the Five Percent Safe Harbor was used to establish the beginning of construction. Whether a taxpayer meets the Continuity Requirement under either test is determined by the relevant facts and circumstances. The IRS will closely scrutinize a facility and may determine that the beginning of construction is not satisfied with respect to a facility if a taxpayer does not meet the Continuity Requirement.

The IRS Notices, as subsequently modified and clarified, also provide for a ''Continuity Safe Harbor'' under which a taxpayer will be deemed to satisfy the Continuity Requirement provided a qualified facility is placed in service no more than four calendar years after the calendar year during which construction of the qualified facility began for purposes of §§ 45 [14] and 48,[15] and no more than six calendar years after the calendar year during which construction of the qualified facility or carbon capture equipment began for purposes of § 45Q.[16] Certain offshore projects and projects built on federal land under §§ 45 and 48 satisfy the Continuity Requirement if such a project is placed into service no more than 10 calendar years after the calendar year during which construction of the project began.[17]

.03 *Recordkeeping.*

Section 6001 provides that every person liable for any tax imposed by the Code, or for the collection thereof, must keep such records as the Secretary may from time to time prescribe. Section 1.6001–1(a) provides that any person subject to income tax must keep such permanent books of account or records, including inventories, as are sufficient to establish the amount of gross income, deductions, credits, or other matters required to be shown by such person in any return of such tax. Section 1.6001–1(e) provides that the books and records required by § 1.6001–1 must be retained so long as the contents thereof may become material in the administration of any internal revenue law.

Section 45(b)(12) authorizes the Secretary to issue such regulations or other guidance as the Secretary determines necessary to carry out the purposes of § 45(b), including regulations or other guidance that provide requirements for recordkeeping or information reporting for purposes of administering the requirements of § 45(b).[18]

Section 3. Guidance With Respect to Prevailing Wage Rate Requirements

.01 *How to Satisfy Prevailing Wage Rate Requirements.* The Prevailing Wage Rate Requirements under § 45(b)(7)(A) and the substantially similar provisions set forth in §§ 30C, 45L, 45Q, 45U, 45V, 45Y, 45Z, 48, 48C, 48E, and 179D will be satisfied if:

(1) The taxpayer satisfies the Prevailing Wage Rate Requirements with respect to any laborer or mechanic employed in the construction, alteration, or repair of a facility, property, project, or equipment by the taxpayer or any contractor or subcontractor of the taxpayer; and

(2) The taxpayer maintains and preserves sufficient records, including books of account or records for work performed by contractors or subcontractors of the taxpayer, to establish that such laborers and mechanics were paid wages not less than such prevailing rates, in accordance with the general recordkeeping requirements under § 6001 and § 1.6001–1, *et seq.*

.02 *Prevailing Wage Determinations.* If the Secretary of Labor has published on *www.sam.gov* a prevailing wage determination for the geographic area and type or types of construction applicable to the facility, including all labor classifications for the construction, alteration, or repair work that will be done on the facility by laborers or mechanics, that wage determination contains the prevailing rates for the laborers or mechanics who perform work on the facility as most recently determined by the Secretary of Labor in accordance with subchapter IV of chapter 31 of title 40, United States Code, as identified in § 45(b)(7)(A). The following procedures described in section 3.02 of this notice are designed to be used to request an unlisted classification only in the limited circumstance when no labor classification on the applicable

[8] For § 45, see Notice 2013–29, section 4.02(1); Notice 2016–31, section 5.03; for § 45Q, see Notice 2020–12, section 5.03; and for § 48, see Notice 2018–59, section 4.03.

[9] For § 45, see Notice 2013–29, section 4.03(1); for § 45Q, see Notice 2020–12, section 8.02(1); for § 48, see Notice 2018–59, section 7.03(1).

[10] For § 45, see Notice 2013–29, sections 4.01 and 4.03; for § 45Q, see Notice 2020–12, section 8.02; and for § 48, see Notice 2018–59, section 7.03.

[11] For § 45, see Notice 2013–29, section 4.02(2); for § 45Q, see Notice 2020–12, section 5.04; and for § 48, see Notice 2018–59, section 4.04.

[12] For § 45, see Notice 2013–29, section 5.01(1); for § 48, see Notice 2018–59, section 5.02; and for § 45Q, see Notice 2020–12, section 6.02.

[13] For § 45, see Notice 2013–29, section 5.01(2); for § 48, see Notice 2018–59, section 7.03; for § 45Q, see Notice 2020–12, section 8.02.

[14] Notice 2016–31, section 3.

[15] Notice 2018–59, section 6.05.

[16] Notice 2020–12, section 7.05.

[17] Notice 2021–5. Projects under §§ 45 and 48 may also be eligible for the extended Continuity Safe Harbors provided for in Notices 2020–41 and 2021–41 due to the COVID–19 pandemic depending on when construction began with respect to those projects.

[18] *See also* §§ 30C(g)(4), 45L(g)(3), 45Q(h)(5), 45U(d)(3), 45V(e)(5), 45Y(f), 45Z(e), 48(a)(16), 48E(i), and 179D(b)(6).

prevailing wage determination applies to the planned work.

If the Secretary of Labor has not published a prevailing wage determination for the geographic area and type of construction for the facility on *www.sam.gov,* or the Secretary of Labor has issued a prevailing wage determination for the geographic area and type of construction, but one or more labor classifications for the construction, alteration, or repair work that will be done on the facility by laborers or mechanics is not listed, then the taxpayer can rely on the procedures established by the Secretary of Labor for purposes of the requirement to pay prevailing rates determined by the Secretary of Labor in accordance with subchapter IV of chapter 31 of title 40, United States Code.[19] To rely on the procedures to request a wage determination or wage rate, and to rely on the wage determination or rate provided in response to the request, the taxpayer must contact the Department of Labor, Wage and Hour Division via email at *IRAprevailingwage@dol.gov* and provide the Wage and Hour Division with the type of facility, facility location, proposed labor classifications, proposed prevailing wage rates, job descriptions and duties, and any rationale for the proposed classifications. The taxpayer may use these procedures to request a wage determination, or wage rates for the unlisted classifications, applicable to the construction, alteration, or repair of the facility. After review, the Department of Labor, Wage and Hour Division will notify the taxpayer as to the labor classifications and wage rates to be used for the type of work in question in the area in which the facility is located.

Questions regarding the applicability of a wage determination or its listed classifications and wage rates should be directed to the Department of Labor, Wage and Hour Division via email at *IRAprevailingwage@dol.gov.*

For purposes of the Prevailing Wage Rate Requirements, the prevailing rate for qualified apprentices hired through a registered apprenticeship program may be less than the corresponding prevailing rate for journeyworkers of the same classification, as described in 29 CFR 5.5(a)(4)(i).

For purposes of the Prevailing Wage Requirements for the § 179D deduction, the prevailing wage rate for installation of energy efficient commercial building property, energy efficient building retrofit property, or property installed pursuant to a qualified retrofit plan, is determined with respect to the prevailing wage rate for construction, alteration, or repair of a similar character in the locality in which such property is located, as most recently determined by the Secretary of Labor, in accordance with subchapter IV of chapter 31 of title 40, United States Code.

.03 *Definitions.* For purposes of the Prevailing Wage Rate Requirement and the associated recordkeeping requirements the following definitions apply.

(1) A taxpayer, contractor, or subcontractor is considered to ''employ'' an individual if the individual performs services for the taxpayer, contractor, or subcontractor in exchange for remuneration, regardless of whether the individual would be characterized as an employee or an independent contractor for other Federal tax purposes.

(2) The terms ''wage'' and ''wages'' means ''wages'' as defined under 29 CFR 5.2(p), including any bona fide fringe benefits as defined therein.

(3) The term ''laborer or mechanic'' means ''laborer or mechanic'' as defined under 29 CFR 5.2(m).

(4) The term ''construction, alteration, or repair'' means ''construction, prosecution, completion, or repair'' as defined under 29 CFR 5.2(j).

(5) The term ''prevailing wage'' means the wage listed for a particular classification of laborer or mechanic on the applicable wage determination for the type of construction and the geographic area or other applicable wage as determined by the Secretary of Labor.

(6) The term ''prevailing wage determination'' means a wage determination issued by the Department of Labor and published on *www.sam.gov.*[20]

.04 *Examples.*

(1) *Example 1.* A taxpayer employs laborers and mechanics to construct a facility. The taxpayer also uses a contractor and subcontractor to construct the facility. The Department of Labor has issued a prevailing wage determination that applies to the type of construction that the laborers and mechanics perform for the county in which the facility is located. The taxpayer ensures that the taxpayer, contractor, and subcontractor pay each laborer and mechanic a wage rate equal to the applicable rates for their respective labor classifications listed in this prevailing wage determination. The taxpayer maintains records that are sufficient to establish that the taxpayer and the taxpayer's contractor and subcontractor paid wages not less than such prevailing wage rates. Such records include but are not limited to, identifying the applicable wage determination, the laborers and mechanics who performed construction work on the facility, the classifications of work they performed, their hours worked in each classification, and the wage rates paid for the work. Under these facts, the taxpayer will be considered to have satisfied the Prevailing Wage Rate Requirements with respect to the facility.

(2) *Example 2.* The facts are the same as in Example 1, except that the Department of Labor has not issued an applicable prevailing wage determination for the relevant type of construction and geographic area in which the facility is being constructed. The taxpayer contacts the Department of Labor, Wage and Hour Division under the procedures described in section 3.02 of this notice. After review, the Department of Labor, Wage and Hour Division notifies the taxpayer as to the labor classifications and wage rates to be used for the type of construction work in question in the area in which the facility is located. The taxpayer ensures that the taxpayer, contractor, and subcontractor pay each laborer and mechanic a wage rate equal to the applicable rates for the respective classifications listed in this wage determination.

The taxpayer maintains records, which include the additional prevailing wage rates provided by the Department of Labor to establish that the taxpayer and the taxpayer's contractor and subcontractor paid wages not less than such prevailing wage rates. Under these facts, the taxpayer will be considered to have satisfied the Prevailing Wage Rate Requirements with respect to the facility.

(3) *Example 3.* The facts are the same as in Example 1, except that the Department of Labor has issued a prevailing wage determination that applies to the type of construction that the laborers and mechanics are hired to perform for the county in which the facility is located, but that wage determination does not include a classification of laborer or mechanic that will be used to complete the construction work on the facility (for example, electrician, carpenter, laborer, etc.). The taxpayer contacts the Department of Labor, Wage and Hour Division under the procedures

[19] The taxpayer is not required to follow any other procedure to request a wage determination or a wage rate under § 45(b)(7)(A), including submission of the Form SF–1444.

[20] Prevailing wage determinations and the applicable procedures are described in section 3.02 of this notice, above.

described in section 3.02 of this notice. After review, including confirming that no labor classification on the applicable prevailing wage determination that applies to the work exists, the Department of Labor, Wage and Hour Division notifies the taxpayer as to the wage rate to be paid regarding the additional classification. The taxpayer ensures that the taxpayer, contractor, and subcontractor pay each laborer and mechanic a wage rate equal to the applicable rates for their respective labor classifications listed in the prevailing wage determination, including the additional wage rates provided by the Department of Labor.

The taxpayer maintains records, which include the additional wage rates provided by the Department of Labor to establish that the taxpayer and taxpayer's contractor and subcontractor paid wages not less than prevailing wage rates. Under these facts, the taxpayer will be considered to have satisfied the Prevailing Wage Rate Requirements with respect to the facility.

Section 4. Guidance With Respect to Apprenticeship Requirements

.01 *How to Satisfy Apprenticeship Requirements.* A taxpayer satisfies the apprenticeship requirements described in § 45(b)(8) if:

(1) The taxpayer satisfies the Apprenticeship Labor Hour Requirements, subject to any applicable Apprenticeship Ratio Requirements;

(2) The taxpayer satisfies the Apprenticeship Participation Requirements; and

(3) The taxpayer complies with the general recordkeeping requirements under § 6001 and § 1.6001–1, including maintaining books of account or records for contractors or subcontractors of the taxpayer, as applicable, in sufficient form to establish that the Apprenticeship Labor Hour and the Apprenticeship Participation Requirements have been satisfied.

Under the Good Faith Effort Exception,[21] the taxpayer will be considered to have made a good faith effort in requesting qualified apprentices if the taxpayer requests qualified apprentices from a registered apprenticeship program in accordance with usual and customary business practices for registered apprenticeship programs in a particular industry.[22] Pursuant to § 6001 and § 1.6001–1, the taxpayer must maintain sufficient books and records establishing the taxpayer's request of qualified apprentices from a registered apprenticeship program and the program's denial of such request or non-response to such request, as applicable.

.02 *Definitions.* For purposes of the apprenticeship requirements the following definitions apply.

(1) A taxpayer, contractor, or subcontractor is considered to ''employ'' an individual if the individual performs services for the taxpayer, contractor, or subcontractor in exchange for remuneration, regardless of whether the individual would be characterized as an employee or an independent contractor for other Federal tax purposes.[23]

(2) The term ''journeyworker'' means ''journeyworker'' as defined under 29 CFR 29.2.

(3) The term ''apprentice-to-journeyworker ratio'' means the ratio described under 29 CFR 29.5(b)(7).

(4) The term ''construction, alteration, or repair'' means ''construction, prosecution, completion, or repair'' as defined under 29 CFR 5.2(j).

(5) The term ''State Apprenticeship Agency'' means ''State Apprenticeship Agency'' as defined under 29 CFR 29.2.

.03 *Example.* A taxpayer employs workers and qualified apprentices to construct a new facility. Construction of the facility begins in calendar year 2023, and the construction of the facility is completed in calendar year 2023. To satisfy the apprenticeship labor hour requirement, the percentage of total labor hours to be performed by qualified apprentices is 12.5 percent for 2023. The total labor hours, as defined in § 45(b)(8)(E)(i), for the construction of the facility is 10,000 labor hours. The taxpayer employed qualified apprentices that performed a total of 1,150 hours of construction on the facility. On each day that a qualified apprentice performed construction work on the facility for the taxpayer, the applicable requirements for apprentice-to-journeyworker ratios of the Department of Labor or the applicable State Apprenticeship Agency were met.

The taxpayer also hired a contractor to assist with construction of the facility for 1,000 labor hours of the 10,000 total labor hours. The contractor employed qualified apprentices that performed a total of 100 hours of construction on the facility. On each day that a qualified apprentice performed construction work on the facility for the contractor, the applicable requirements for apprentice-to-journeyworker ratios of the Department of Labor or the applicable State Apprenticeship Agency were met.

The taxpayer ensured that the taxpayer and the contractor each employed 1 or more qualified apprentices because the taxpayer and contractor each employed 4 or more individuals to perform construction work on the qualified facility.

The taxpayer maintained sufficient records to establish that the taxpayer and the contractor hired by the taxpayer satisfied the Apprenticeship Labor Hour Requirement of 1,250 total labor hours for the facility (12.5% of 10,000 labor hours), and the Apprenticeship Ratio and Apprenticeship Participation Requirements. Under these facts, the taxpayer will be considered to have satisfied the Apprenticeship Labor Hour, Apprenticeship Ratio, and Apprenticeship Participation Requirements of the statute with respect to the facility.

Section 5. Determining When Construction or Installation Begins

To determine when construction begins for purposes of §§ 30C, 45V, 45Y, and 48E, principles similar to those under Notice 2013–29 regarding the Physical Work Test and Five Percent Safe Harbor apply, and taxpayers satisfying either test will be considered to have begun construction. In addition, principles similar to those provided in the IRS Notices regarding the Continuity Requirement for purposes of §§ 30C, 45V, 45Y, and 48E apply. Whether a taxpayer meets the Continuity Requirement under either test is determined by the relevant facts and circumstances.

Similar principles to those under section 3 of Notice 2016–31 regarding the Continuity Safe Harbor also apply for purposes of §§ 30C, 45V, 45Y, and 48E. Taxpayers may rely on the Continuity Safe Harbor provided the facility is placed in service no more than four calendar years after the calendar year during which construction began.

For purposes of § 179D, the IRS will accept that installation has begun if a taxpayer generally satisfies principles similar to the two tests described in section 2.02 of this notice, above, regarding the beginning of construction under Notice 2013–29 (Physical Work Test and Five Percent Safe Harbor). The relevant facts and circumstances will ultimately be determinative of whether a taxpayer has begun installation.

[21] Described in section 2.01(3) of this notice, above.

[22] Registered apprenticeship programs can be located using the Office of Apprenticeship's partner finder tool, available at *https://www.apprenticeship.gov/partner-finder* and through the applicable State Apprenticeship Agency, *https://www.apprenticeship.gov/about-us/state-offices.*

[23] This definition does not alter any of the existing legal requirements pertaining to the proper classification of qualified apprentices in registered apprenticeship programs as employees for purposes of certain Federal laws and regulations.

For purposes of §§ 45, 45Q, and 48, the IRS Notices will continue to apply under each respective Code section, including application of the Physical Work Test and Five Percent Safe Harbor, and the rules regarding the Continuity Requirement and Continuity Safe Harbors.[24]

Section 6. Paperwork Reduction Act

The Paperwork Reduction Act of 1995 (PRA), 44 U.S.C. 3501 *et seq.,* and its attendant regulations, 5 CFR part 1320, require an agency to consider the impact of paperwork and other information collection burdens imposed on the public. The IRA allows taxpayers to take certain increased credit amounts or an increased deduction if they satisfy the Prevailing Wage Requirements, and Apprenticeship Requirements, where applicable. The Department of Labor will collect the data needed to issue wage rates for taxpayers in connection with facilities whose construction, alteration, or repair is not subject to one or more Davis-Bacon and Related Acts (DBRA), as facilities subject to the DBRA are already accounted for in an existing collection approved by OMB.[25] DOL data collections needed to register apprentices and apprenticeship programs are accounted for in an existing collection approved by OMB.[26]

Under the PRA, an agency may not collect or sponsor an information collection requirement unless it displays a currently valid Office of Management and Budget (OMB) control number.[27] This collection of information is approved under OMB Control Number 1235–0034. The Department of Labor estimates that it will take an average of 15 minutes for respondents to complete this collection of information, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. The information that the Department of Labor will collect, as discussed in section 3.02 of this notice, includes the type of facility, facility location, proposed labor classifications, proposed prevailing wage rates, job descriptions and duties, and any rationale for the proposed classifications. After review, the Department of Labor will notify the taxpayer as to the labor classifications and wage rates to be used for the type of work in question in the area in which the facility is located. You may view the Department of Labor's web page instruction here: *https://www.dol.gov/agencies/whd/IRA.*

Section 7. Drafting Information

The principal authors of this notice are Alexander Scott and Jeremy Milton of Associate Chief Counsel (Passthroughs & Special Industries). However, other personnel from the Treasury Department and the IRS participated in its development. For further information regarding this notice contact Mr. Scott at (202) 317–6853 (not a toll-free call).

Melanie R. Krause,

Acting Deputy Commissioner for Services and Enforcement.

Approved: November 23, 2022.

Krishna P. Vallabhaneni,

Tax Legislative Counsel.

[FR Doc. 2022–26108 Filed 11–29–22; 4:15 pm]

BILLING CODE 4830–01–P

[24] Described in section 2.02 of this notice, above.

[25] OMB Control Number 1235–0023.

[26] OMB Control Number 1205–0223.

[27] *See* 5 CFR 1320.8(b)(3)(vi).

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–0572]

Agency Information Collection Activity: Application for Benefits for Qualifying Veteran's Child Born With Disabilities

AGENCY: Veterans Benefits Administration, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: Veterans Benefits Administration, 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 revision 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 Nancy J. Kessinger, Veterans Benefits Administration (20M33), Department of Veterans Affairs, 810 Vermont Avenue NW, Washington, DC 20420 or email to *nancy.kessinger@va.gov.* Please refer to ''OMB Control No. 2900–0572'' 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. 2900–0572'' 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, VBA invites comments on: (1) whether the proposed collection of information is necessary for the proper performance of VBA's functions, including whether the information will have practical utility; (2) the accuracy of VBA's estimate of the burden of the proposed collection of information; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or the use of other forms of information technology.

Authority: 38 U.S.C. 1805, 1815, 1821, and 1822.

Title: Application for Benefits for Qualifying Veteran's Child Born with Disabilities (VA Form 21–0304).

OMB Control Number: 2900–0572.

Type of Review: Revision of a currently approved collection.

Abstract: VA Form 21–0304 is used to determine the monetary allowance for a child born with Spina Bifida or certain birth defects who is the natural child of a Vietnam and certain Thailand or Korea service veterans. Without this information, VA would be unable to effectively administer 38 U.S.C. 1805, 1815, 1821, and 1822.

No substantive changes have been made to this form. The respondent burden has increased due to the estimated number of receivables averaged over the past year.

Affected Public: Individuals or Households.

Estimated Annual Burden: 115.

Estimated Average Burden per Respondent: 10 minutes.

Frequency of Response: One time.

Estimated Number of Respondents: 688.

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. 2022–26060 Filed 11–29–22; 8:45 am]

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FEDERAL REGISTER

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Part II

Department of the Interior

Bureau of Land Management

43 CFR Parts 3160 and 3170
Waste Prevention, Production Subject to Royalties, and Resource Conservations; Proposed Rule

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

43 CFR Parts 3160 and 3170

[212.LLHQ300000.L13100000.PP0000]

RIN 1004–AE79

Waste Prevention, Production Subject to Royalties, and Resource Conservation

AGENCY: Bureau of Land Management, Interior.

ACTION: Proposed rule.

SUMMARY: The Bureau of Land Management (BLM) is proposing new regulations to reduce the waste of natural gas from venting, flaring, and leaks during oil and gas production activities on Federal and Indian leases. The proposed regulations would be codified in the Code of Federal Regulations and would replace the BLM's current requirements governing venting and flaring, which are more than four decades old.

DATES: Send your comments on this proposed rule to the BLM on or before January 30, 2023. The BLM is not obligated to consider any comments received after this date in making its decision on the final rule.

If you wish to comment on the information collection requirements in this proposed rule, please note that the Office of Management and Budget (OMB) is required to make a decision concerning the collection of information contained in this proposed rule between 30 and 60 days after publication of this proposed rule in the **Federal Register**. Therefore, comments should be submitted to OMB by December 30, 2022.

ADDRESSES:

Mail, personal, or messenger delivery: U.S. Department of the Interior, Director (630), Bureau of Land Management, 1849 C St. NW, Room 5646, Washington, DC 20240, Attention: 1004–AE79.

Federal eRulemaking Portal: https://www.regulations.gov. In the Searchbox, enter ''RIN 1004–AE79 and click the ''Search'' button. Follow the instructions at this website.

For Comments on Information-Collection Requirements: Written comments and recommendations for the information collection requirements should be sent within 30 days of publication of this notice to *www.reginfo.gov/public/do/PRAMain.* Find this particular information collection by selecting ''Currently under Review—Open for Public Comments'' or by using the search function. You may also provide a copy of your comments to the BLM's Information Collection Clearance Officer to the above address with ''Attention PRA Office,'' or by email to *BLM_HQ_PRA_Comments@blm.gov.* Please reference OMB Control Number 1004–0211 and RIN 1004–AE79 in the subject line of your comments.

FOR FURTHER INFORMATION CONTACT: Lonny Bagley, Acting Division Chief, Fluid Minerals Division, telephone: 307–622–6956, or email: *lbagley@blm.gov,* for information regarding the substance of this proposed rule or information about the BLM's Fluid Minerals program. For questions relating to regulatory process issues, contact Faith Bremner at email: *fbremner@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 Mr. Bagley. 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. Executive Summary

This proposed regulation aims to reduce the waste of natural gas from oil and gas leases administered by the BLM. This gas is lost during oil and gas exploration and production activities through venting, flaring, and leaks. Although some losses of gas may be unavoidable, the law requires that operators take reasonable steps to prevent the waste of gas through venting, flaring and leakage. The proposed rule describes the reasonable steps that operators of Federal and Indian oil and gas leases must take to avoid the waste of natural gas. The proposed rule would also ensure that, when Federal or Indian gas is wasted, the public and Indian mineral owners are compensated through royalty payments.

The BLM conducts a Federal onshore oil and gas leasing program pursuant to the requirements of various statutes, including the Mineral Leasing Act (MLA), the Federal Oil and Gas Royalty Management Act (FOGRMA), the Inflation Reduction Act of 2022, and the Federal Land Policy and Management Act (FLPMA). The MLA requires lessees to ''use all reasonable precautions to prevent waste of oil or gas developed in the land,'' [1] and further requires oil and gas lessees to observe ''such rules . . . for the prevention of undue waste as may be prescribed by [the] Secretary.'' [2] Under FOGRMA, oil and gas lessees are liable for royalty payments on gas wasted from the lease site.[3] In addition, as discussed further later, a provision of the Inflation Reduction Act (''IRA''), Public Law 117–169, provides that, for leases issued after August 16, 2022, royalties are owed on all gas produced from Federal land, subject to certain exceptions for gas lost during emergency situations, gas used for the benefit of lease operations, and gas that is ''unavoidably lost.'' FLPMA authorizes the BLM to ''regulate'' the ''use, occupancy, and development'' of the public lands via ''published rules,'' while mandating that the Secretary, ''[i]n managing the public lands . . . shall, by regulation or otherwise, take any action necessary to prevent unnecessary or undue degradation of the lands.''

In addition to managing the leasing and production of oil and gas from Federal lands, the BLM also oversees operations on many Indian and Tribal oil and gas leases pursuant to a delegation of authority from the Secretary of the Interior.[4] The Secretary's management and regulation of Indian mineral interests carries with it the duty to act as a trustee for the benefit of the Indian mineral owners.

This proposed rule would replace the BLM's current requirements governing venting and flaring, which are contained in Notice to Lessees and Operators of Onshore Federal and Indian Oil and Gas Leases: Royalty or Compensation for Oil and Gas Lost (''NTL–4A'').[5] NTL–4A was issued more than 40 years ago and its policies and requirements have become outdated. To begin, NTL–4A is ill-suited to address the large volume of flaring associated with the rapid development of unconventional tight oil and gas resources that has occurred in recent years. In addition, NTL–4A does not account for technological and operational advancements that can reduce losses of gas from oil storage tanks, pneumatic equipment, and equipment leaks.

In 2016, the BLM issued a final rule replacing NTL–4A with new regulations intended to reduce the waste of gas from

[1] 30 U.S.C. 225.

[2] 30 U.S.C. 187.

[3] 30 U.S.C. 1756.

[4] Department of the Interior, Departmental Manual, 235 DM 1.1K.

[5] 44 FR 76600 (Dec. 27, 1979).

venting, flaring, and leaks.[6] However, industry groups and a set of States immediately challenged that rule in Federal court, and the BLM never fully implemented the rule due to that litigation.[7] In September 2018, the BLM issued a final rule effectively rescinding the 2016 Rule.[8] Environmental groups and a different set of States then challenged that rule in Federal court. Eventually, a U.S. District Court vacated the 2018 rescission of the 2016 Rule on various grounds, including that the resulting regulatory regime would fail to meet the BLM's statutory mandate to prevent waste.[9] Then a different U.S. District Court vacated the 2016 Rule on the grounds that, among other things: (1) the MLA's ''delegation of authority does not allow and was not intended to authorize the enactment of rules justified primarily upon the ancillary benefit of a reduction in air pollution''; and (2) ''BLM acted arbitrarily and capriciously in failing to fully assess the impacts of the [2016 Rule] on marginal wells, failing to adequately explain and support the [2016 Rule's] capture requirements, and failing to separately consider the domestic costs and benefits of the [2016 Rule].'' [10] The end result of these rulemakings and court decisions is that NTL–4A continues to govern venting and flaring from BLM-managed oil and gas leases.

These recent rulemakings and the related litigation have provided the BLM with two important lessons. First, there are opportunities for the BLM to reduce the waste of natural gas through improved regulatory requirements pertaining to venting, flaring, and leaks. Second, courts disagreed as to whether the BLM's regulatory authority allows for all of the 2016 Rule provisions. The BLM, therefore, has chosen an approach that seeks to improve upon NTL–4A in a variety of significant ways while eschewing certain elements of the 2016 Rule that were the focus of an unfavorable court ruling.

In brief, the primary components of this proposed rule are as follows:

- The proposed rule would establish the general rule that ''operators must use all reasonable precautions to prevent the waste of oil or gas developed from the lease.'' It notes that the BLM may specify reasonable measures to prevent waste as conditions of approval of an Application for Permit to Drill and, after an Application for Permit to Drill is approved, the BLM may order an operator to implement, within a reasonable time, additional reasonable measures to prevent waste at ongoing exploration and production operations. Reasonable measures to prevent waste may reflect factors including, but not limited to, relevant advances in technology and changes in industry practice.
- The proposed rule would require operators to submit a waste minimization plan with all applications for permits to drill oil wells. This plan would provide the BLM with information on anticipated associated gas production, the operator's capacity to capture that gas production for sale or use, and other steps the operator commits to take to reduce or eliminate gas losses. Where the available information indicates that the plan does not take reasonable steps to avoid wasting gas, the BLM may delay action on the permit until the operator adequately addresses the plan's deficiencies to the BLM's satisfaction.
- The proposed rule would recognize, and clarify, that oil or gas can be ''unavoidably lost'' in connection with certain oil and gas operations. Unavoidably lost oil or gas will not be considered wasted and therefore not be subjected to royalty payments. In particular, if the operator has not been negligent; has taken ''prudent and reasonable steps to avoid waste;'' complied fully with applicable laws, lease terms, regulations, provisions of a previously approved operating plan, and other written orders of the BLM; and the loss is within the time or volume limits applicable to the particular situation; then the lost oil or gas will qualify as ''unavoidably lost'' waste gas for which no royalties are owed.
- The proposed rule would lay out a number of specific circumstances in which lost oil or gas would be considered ''unavoidably lost,'' including during well completions, production testing, and emergencies. The proposed rule would also establish a monthly volume limit on royalty-free flaring due to pipeline capacity constraints, midstream processing failures, or other similar events that may prevent produced gas from being transported to market.
- The proposed rule would include a number of specific affirmative obligations that operators must take to avoid wasting oil or gas. In particular:
  - For certain operators on Federal or Indian leases, or Indian Mineral Development Act (IMDA) agreements, the proposed rule would prohibit the use of natural-gas-activated pneumatic controllers or pneumatic diaphragm pumps with a bleed rate that exceeds 6 standard cubic feet (scf)/hour.
  - The proposed rule would, where technically and economically feasible, require oil storage tanks on Federal or Indian leases to be equipped with a vapor recovery system or other mechanism that avoids the loss of natural gas from the tank.
  - The proposed rule would require operators on Federal or Indian leases to maintain a leak detection and repair (LDAR) program designed to prevent the unreasonable and undue waste of Federal or Indian gas. An operator's LDAR program must provide for regular inspections of all oil and gas production, processing, treatment, storage, and measurement equipment on the lease site.

The requirements of this proposed rule are explained in detail in sections III and IV that follow.

As detailed in the Regulatory Impact Analysis (RIA) prepared for this proposed rule, the BLM estimates that this rule would have the following economic impacts:

- Costs to industry of around $122 million per year (annualized at 7 percent);
- Benefits to industry in recovered gas of $55 million per year (annualized at 7 percent);
- Increases in royalty revenues from recovered and flared gas of $39 million per year; and
- Benefits to society of $427 million per year from reduced greenhouse gas emissions.

II. Public Comment Procedures

If you wish to comment on this proposed rule, you may submit your comments to the BLM by mail, personal or messenger delivery, or through *https://www.regulations.gov* (see the **ADDRESSES** section).

Please make your comments on the proposed rule as specific as possible, confine them to issues pertinent to the proposed rule, explain the reason for any changes you recommend, and include any supporting documentation. Where possible, your comments should reference the specific section or paragraph of the proposal that you are addressing. The BLM is not obligated to consider or include in the Administrative Record for the final rule comments that we receive after the close of the comment period (see **DATES**) or comments delivered to an address other than those listed previously (see **ADDRESSES**).

Comments, including names and street addresses of respondents, will be

[6] 81 FR 83008 (Nov. 18, 2016).

[7] *See Wyoming* v. *U.S. Dept. of the Interior,* 493 F. Supp. 3d 1046, 1052–1057 (D. Wyo. 2020).

[8] 83 FR 49184 (Sept. 28, 2018).

[9] *California* v. *Bernhardt,* 472 F. Supp. 3d 573 (N.D. Cal. 2020).

[10] *See Wyoming* v. *U.S. Dept. of the Interior,* 493 F. Supp. 3d 1046, 1086–87 (D. Wyo. 2020).

available for public review at the address listed under ''**ADDRESSES**: Personal or messenger delivery'' during regular hours (7:45 a.m. to 4:15 p.m.), Monday through Friday, except holidays. 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.

As explained later, this proposed rule would include revisions to information collection requirements that must be approved by the Office of Management and Budget (OMB). If you wish to comment on the revised information collection requirements in this proposed rule, please note that such comments must be sent directly to the OMB in the manner described in the **DATES** and **ADDRESSES** sections. Please note that due to COVID–19, electronic submission of comments is recommended.

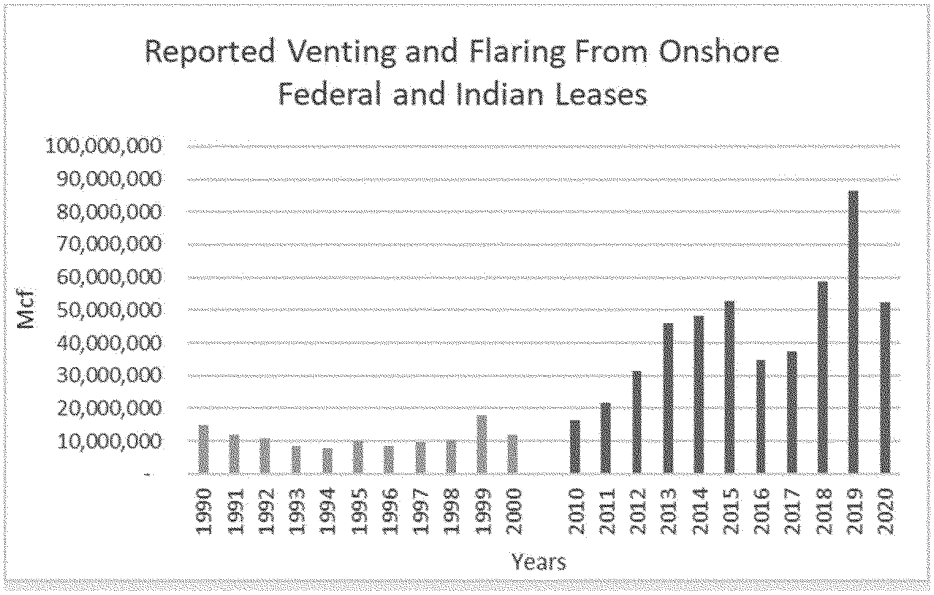
III. Background

A. Waste of Natural Gas During the Development of Federal and Indian Oil and Gas Resources

The BLM is responsible for managing more than 245 million acres of land and 700 million acres of subsurface mineral estate—the latter being nearly a third of the nation's total land mass. The BLM maintains a program for leasing these lands for oil and gas development and regulates oil and gas production operations on Federal leases. While the BLM does not manage the leasing of Indian and Tribal lands for oil and gas production, the BLM does regulate oil and gas operations on many Indian and Tribal leases as part of its Tribal trust responsibilities.

The BLM's onshore oil and gas management program is a major contributor to the nation's oil and gas production. Domestic production from 88,887 Federal onshore oil and gas wells [11] accounts for approximately 8 percent of the Nation's natural gas supply and 9 percent of its oil.[12] In Fiscal Year (FY) 2021, operators produced 473 million barrels of oil and 3.65 trillion cubic feet (Tcf) of natural gas from onshore Federal and Indian oil and gas leases. The production of this oil and gas generated more than $4.2 billion in royalties. Approximately $3.2 billion of these royalties were split between the United States and the States in which the production occurred. Approximately $1 billion of these royalties went directly to Tribes and Indian allottees for production from Indian lands.[13]

In recent years, the United States has experienced a significant increase in oil and natural gas production due to technological advances, such as hydraulic fracturing combined with directional drilling. This increase in production has been accompanied by a significant waste of natural gas through venting and flaring. As the following graph illustrates, the amount of venting and flaring from Federal and Indian leases has increased dramatically from the 1990s to the 2010s, and the upward trend in flaring suggests that it will continue to be a problem in the coming years. Between 1990 and 2000, the total venting and flaring reported by Federal and Indian onshore lessees averaged approximately 11 billion cubic feet (Bcf) per year. Between 2010 and 2020, in contrast, the total venting and flaring reported by Federal and Indian onshore lessees averaged approximately 44.2 Bcf per year.[14]



Assuming a $3 per thousand cubic feet (Mcf) price of gas,[15] the Federal and Indian gas that was vented and flared from 2010 to 2020 would be valued at $1.46 billion. The BLM notes that vented and flared volumes have not

[11] BLM Public Lands Statistics, Table 9 (FY 2021 data), available at *https://www.blm.gov/programs-energy-and-minerals-oil-and-gas-oil-and-gas-statistics.*

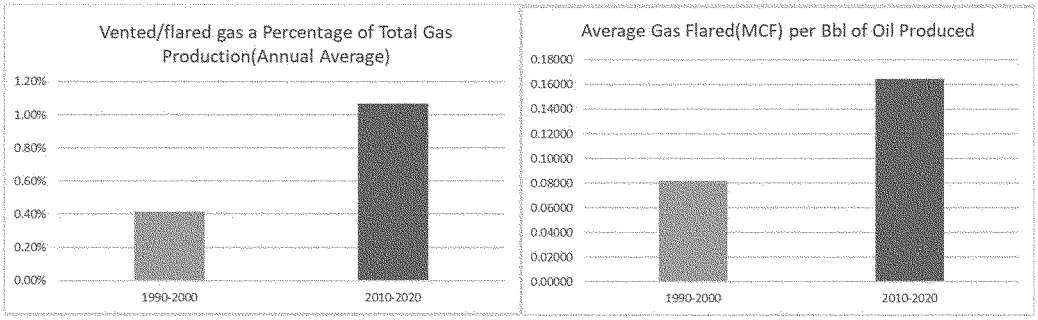
[12] Bureau of Land Management Budget Justifications and Performance Information Fiscal Year 2023, p. V–79, available at *https://www.doi.gov/sites/doi.gov/files/fy2023-blm-greenbook.pdf.*

[13] Production and revenue number derived from data maintained by the Office of Natural Resources Revenue at *https://revenuedata.doi.gov/.*

[14] BLM analysis of ONRR Oil and Gas Operations Report Part B (OGOR–B) data provided for 1990–2000 and 2010–2020.

[15] The average annual Henry Hub spot price for natural gas from 2010 through 2020 was $3.19. U.S. Energy Information Administration (EIA), Henry Hub Natural Gas Spot Price, *available at https://www.eia.gov/dnav/ng/hist/rngwhhda.htm.*

increased linearly with production. According to data maintained by the Office of Natural Resources Revenue (ONRR), the average volume of vented and flared gas as a percentage of total gas production was 0.42 percent from 1990–2000. From 2010–2020, however, vented and flared gas averaged 1.07 percent of total gas production. This metric indicates a 157 percent increase in the waste of gas during oil and gas production from Federal and Indian lands. Furthermore, the average amount of vented and flared gas (Mcf) per barrel (bbl) of oil production was 0.8148 Mcf/bbl from 1990 to 2000, while it rose to 1.6418 Mcf/bbl from 2010 to 2020—a 102 percent increase in the waste of gas per barrel of oil produced.



In addition to the venting and flaring tracked by the ONRR, recent studies have identified three other major sources of gas losses during the oil and gas production process: emissions from natural-gas-activated pneumatic equipment, venting from oil storage tanks, and equipment leaks.[16] The Environmental Protection Agency (EPA) estimates that, overall, 36.2 Bcf of methane was emitted from pneumatic controllers and 4.9 Bcf of methane was emitted from equipment leaks at upstream oil and gas production sites in the United States in 2019.[17] The BLM estimates that 13 Bcf of natural gas was lost from pneumatic devices on Federal and Indian lands in 2019. The BLM estimates that an additional 0.86 Bcf of gas was lost due to equipment leaks from Federal natural gas production operations not subject to existing State or EPA leak detection and repair requirements. Notably, the problem of leakage appears to be exacerbated in areas where there is insufficient infrastructure for natural gas gathering, processing, and transportation [18]—a known issue in basins such as the Permian and Bakken, where substantial BLM-managed oil and gas production occurs. Finally, the BLM estimates that 17.9 Bcf of natural gas was emitted from storage tanks on Federal and Indian lands in 2019. These losses from pneumatic equipment, leaks and storage tanks would be valued at $53.7 million dollars (at $3/Mcf) in 2019.

Excessive venting, flaring, and leaks by Federal oil and gas lessees is wasting valuable publicly owned resources that could be put to productive use, and depriving American taxpayers, Tribes, and States of substantial royalty revenues. In addition, the wasted gas may harm local communities and surrounding areas through visual and noise impacts from flaring, while also contributing to local and regional exposure to smog and other harmful air pollutants such as small particulates and benzene. Vented or leaked gas also contributes to climate change, because the primary constituent of natural gas is methane, an especially powerful greenhouse gas, with climate impacts roughly 28–36 times those of carbon dioxide (CO_2), if measured over a 100-year period, or 84 times those of CO_2 if measured over a 20-year period.[19] Thus, regulatory measures that encourage operators to conserve gas and avoid waste could also significantly benefit public health and the environment as well as provide additional benefits to local communities.[20]

To be clear, as the BLM has consistently recognized during its many decades of implementing the MLA, not every loss of natural gas during oil and gas production constitutes waste under the MLA. Indeed, some amount of venting and flaring is unavoidable and expected to occur during oil and gas exploration and production operations. For example, an operator may need to flare gas on a short-term basis as part of drilling operations, well completion, or production testing, among other situations. Longer-term flaring may occur in exceptional circumstances, which might include the drilling of and production from a wildcat well in a new field, where gas pipelines have not yet been built due to a lack of information regarding expected gas production.[21] In some fields, the overall quantity of gas produced may be so small that the development of gas pipeline infrastructure may not be economically justified.

Although at least some venting or flaring may be unavoidable (and thus not wasteful under the relevant statutes) under some circumstances, operators have an affirmative obligation under the law to use reasonable precautions to prevent the waste of oil or gas developed from a lease. Measures that are considered reasonable to prevent waste may shift over time with advances in technology and changes in industry practice.

Further, operators' immediate economic interests may not always be served by minimizing the loss of natural gas, and BLM regulation is necessary to discourage operators from venting or flaring more gas than is operationally necessary. A prime example is the

[16] Alvarez, et al., ''Assessment of methane emissions from the U.S. oil and gas supply chain,'' *Science* 361 (2018); *see also* 81 FR 83015–17.

[17] EPA, Inventory of U.S. Greenhouse Gas Emissions and Sinks: 1990–2019 at 3–73 (2019).

[18] Zhang, et al., ''Quantifying methane emissions from the largest oil-producing basin in the United States from space,'' *Science Advances* 6 (2020).

[19] See Intergovernmental Panel on Climate Change, Climate Change 2013: The Physical Science Basis, Chapter 8, *Anthropogenic and Natural Radiative Forcing,* at 714 (Table 8.7), *available at https://www.ipcc.ch/pdf/assessment-report/ar5/wg1/WG1AR5_Chapter08_FINAL.pdf.*

[20] The BLM notes that the BLM did not rely on such ancillary benefits in developing or selecting the waste prevention/resource conservation provisions presented in this proposed rule. Rather, with the exception of the safety provisions in proposed § 3179.6, the requirements of this proposed rule are independently justified as reasonable measures to prevent waste that would be expected of a prudent operator, regardless of ancillary benefits to public health or the environment.

[21] The BLM notes that, even in such exceptional circumstances, operators should be expected to take measures to avoid excessive flaring and this proposed rule would place limitations on royalty-free flaring from exploratory (wildcat) wells.

flaring of oil-well gas due to pipeline capacity constraints. Oil wells in certain fields are known to produce relatively large volumes of associated gas. Accordingly, natural-gas-capture infrastructure—including pipelines—has been built out in those fields and operators are expected to capture and sell the associated gas they produce. However, it is not uncommon for the rate of oil-well development to outpace the capacity of the related gas-capture infrastructure. When the existing gas-capture infrastructure is overwhelmed, an operator is faced with a choice: flare the associated gas in order to continue oil production unabated, or curtail oil production in order to conserve the associated gas. Absent clear requirements, an operator might conclude that the former course of action best serves its immediate economic interests by providing immediate revenue from the relatively more valuable production stream. But the latter course of action may often best serve the public's interest by maximizing overall energy production (considering both production streams) and royalty revenues. (This proposed rule would incentivize better communication and coordination among operators and midstream companies, which is expected to result in more deliberate development with greater volumes of production sent to market in the long run.) Similar to the problem of inadequate pipelines, maximizing the recovery of gas by investing in vapor-recovery units for oil storage tanks, upgrading pneumatic equipment, and regularly inspecting for leaks may not always maximize the operator's profits, especially when the operator examines the investment on a short time horizon. It is in these circumstances—where an operator's interest in maximizing profits diverges from the public's interest in maximizing resource recovery—that BLM regulation is necessary and appropriate to ensure that operators take reasonable measures to prevent waste.

B. Legal Authority

Pursuant to a delegation of Secretarial authority, the BLM is authorized to regulate oil and gas exploration and production activities on Federal and Indian lands under a variety of statutes, including the MLA, the Mineral Leasing Act for Acquired Lands (MLAAL), the IRA, FOGRMA, FLPMA, the Indian Mineral Leasing Act of 1938, the IMDA, and the Act of March 3, 1909.[22] These statutes authorize the Secretary of the Interior to promulgate such rules and regulations as may be necessary to carry out the statutes' various purposes.[23]

1. Authority Regarding the Waste of Natural Gas

The MLA rests on the fundamental principle that the public should benefit from mineral production on public lands.[24] An important means of ensuring that the public benefits from mineral production on public lands is minimizing and deterring the waste of oil and gas produced from the Federal mineral estate. To this end, the MLA requires that oil and gas lessees ''use all reasonable precautions to prevent waste of oil or gas developed in the land.'' [25] The MLA requires lessees to exercise ''reasonable diligence, skill, and care'' in their operations and also requires oil and gas lessees to observe ''such rules . . . for the prevention of undue waste as may be prescribed by [the] Secretary.'' [26] Lessees are not only responsible for taking measures to prevent waste, but also for making royalty payments on wasted oil and gas when waste does occur, elaborating on the MLA's assessment of royalties on all production ''removed or sold from the lease,'' [27] FOGRMA expressly made lessees ''liable for royalty payments on oil or gas lost or wasted from a lease site when such loss or waste is due to negligence on the part of the operator of the lease, or due to the failure to comply with any rule or regulation, order or citation issued under [FOGRMA] or any mineral leasing law.'' [28]

In addition, on August 16, 2022, President Biden signed the IRA into law. Public Law 117–169. Section 50263 of the IRA, which is entitled, ''Royalties on All Extracted Methane,'' provides that, for leases issued after August 16, 2022, royalties are owed on all gas produced from Federal land, including gas that is consumed or lost by venting, flaring, or negligent releases through any equipment during upstream operations. Section 50263 further provides three exceptions to the general obligation to pay royalties on produced gas, namely: (1) gas that is vented or flared for not longer than 48 hours in an emergency situation that poses a danger to human health, safety, or the environment; (2) gas used or consumed within a lease, unit, or communitized area for the benefit of the lease, unit, or communitized area; and (3) gas that is unavoidably lost.

The BLM's authority to regulate the waste of Federal oil and gas is not limited to operations that occur on Federal lands, but also extends to operations on non-Federal lands where Federal oil and gas is produced under a unit or communitization agreement (CA). ''For the purpose of more properly conserving the natural resources of any oil or gas pool, field, or like area,'' the MLA authorizes lessees to operate their leases under a cooperative or unit plan of development and operation, if the Secretary of the Interior determines such an arrangement to be necessary or advisable in the public interest.[29] The Secretary is authorized, with the consent of the lessees involved, to establish or alter drilling, producing, and royalty requirements and to make such regulations with respect to the leases as she may deem necessary and proper to protect the public interest.[30] The MLA states that a cooperative or unit plan of development may contain a provision authorizing the Secretary to regulate the rate of development and the rate of production.[31] Accordingly, the BLM's standard form unit agreement provides that the BLM may regulate the quantity and rate of production in the interest of conservation.[32] The BLM's standard form CA provides that the BLM ''shall have the right of supervision over all fee and state mineral operations within the communitized area to the extent necessary to monitor production and measurement, and to assure that no avoidable loss of hydrocarbons occurs . . . .'' [33] As noted earlier, FOGRMA authorizes the BLM to assess royalties on gas lost or wasted from a ''lease site.'' The term ''lease site'' is broadly defined in FOGRMA,[34] extending the BLM's

[22] Mineral Leasing Act, 30 U.S.C. 188–287; Mineral Leasing Act for Acquired Lands, 30 U.S.C. 351–360; Federal Oil and Gas Royalty Management Act, 30 U.S.C. 1701–1758; Federal Land Policy and Management Act of 1976, 43 U.S.C. 1701–1785; Indian Mineral Leasing Act of 1938, 25 U.S.C. 396a–g; Indian Mineral Development Act of 1982, 25 U.S.C. 2101–2108; Act of March 3, 1909, 25 U.S.C. 396.

[23] 30 U.S.C. 189 (MLA); 30 U.S.C. 359 (MLAAL); 30 U.S.C. 1751(a) (FOGRMA); 43 U.S.C. 1740 (FLPMA); 25 U.S.C. 396d (IMLA); 25 U.S.C. 2107 (IMDA); 25 U.S.C. 396.

[24] *See, e.g., California Co.* v. *Udall,* 296 F.2d 384, 388 (D.C. Cir. 1961) (noting that the MLA was ''intended to promote wise development of . . . natural resources and to obtain for the public a reasonable financial return on assets that 'belong' to the public'').

[25] 30 U.S.C. 225.

[26] 30 U.S.C. 187.

[27] 30 U.S.C. 226(b).

[28] 30 U.S.C. 1756.

[29] 30 U.S.C. 226(m).

[30] *Id.*.

[31] *Id.*.

[32] 43 CFR 3186.1, ¶ 21.

[33] See ''BLM Manual 3160–9—Communitization,'' Appendix 1, ¶ 12.

[34] See 30 U.S.C. 1702(6); *Maralex Resources, Inc.* v. *Bernhardt,* 913 F.3d 1189, 1200 (10th Cir. 2019) (''the statutory definition of 'lease site' necessarily includes any lands, including privately-owned lands, on which [production] of oil or gas is

authority to assess royalties on wasted gas to the Federal or Indian portion of gas wasted from operations on non-Federal tracts committed to a Federal unit or communitization agreement. Thus, even where the production of Federal oil and gas occurs on State- or privately owned tracts, the BLM maintains the authority to regulate the waste of Federal minerals from operations on those lands by requiring royalty payments and setting appropriate rates of development and production.[35]

2. Authority Regarding Environmental Impacts to the Public Lands

In addition to ensuring that the public receives a pecuniary benefit from oil and gas production from public lands, the BLM is also tasked with regulating the physical impacts of oil and gas development on public lands. The MLA directs the Secretary to ''regulate all surface-disturbing activities conducted pursuant to any lease'' and to ''determine reclamation and other actions as required in the interest of conservation of surface resources.'' [36] The MLA requires oil and gas leases to include provisions ''for the protection of the interests of the United States . . . and for the safeguarding of the public welfare,'' which includes lease terms for the prevention of environmental harm.[37] The Secretary may suspend lease operations ''in the interest of conservation of natural resources,'' a phrase that encompasses not just conservation of mineral deposits, but also preventing environmental harm.[38] The Secretary also may refuse to lease lands in order to protect the public's interest in other natural resources and the environment.[39] The MLA additionally requires oil and gas leases to contain ''a provision that such rules for the safety and welfare of the miners . . . as may be prescribed by the Secretary shall be observed . . . .'' [40] Accordingly, the BLM's regulations governing oil and gas operations on the public lands have long required operators to conduct operations in a manner that is protective of natural resources, environmental quality, and public health and safety.[41]

FLPMA authorizes the BLM to ''regulate'' the ''use, occupancy, and development'' of the public lands via ''published rules.'' [42] FLPMA also mandates that the Secretary, ''[i]n managing the public lands . . . shall, by regulation or otherwise, take any action necessary to prevent unnecessary or undue degradation of the lands.'' [43] FLPMA expressly declares a policy that the BLM should balance the need for domestic sources of minerals against the need to ''protect the quality of scientific, scenic, historical, ecological, environmental, air and atmospheric, water resources, and archeological values; . . . [and] provide for outdoor recreation and human occupancy and use.'' [44]

FLPMA requires the BLM to manage public lands under principles of multiple use and sustained yield.[45] The statutory definition of ''multiple use'' explicitly includes the consideration of environmental resources. ''Multiple use'' is a ''combination of balanced and diverse resource uses that takes into account the long-term needs of future generations for renewable and nonrenewable resources . . . .'' [46] ''Multiple use'' also requires resources to be managed in a ''harmonious and coordinated'' manner ''without permanent impairment to the productivity of the land and the quality of the environment.'' [47] Significantly, FLPMA directs the Secretary to consider ''the relative values of the resources and not necessarily . . . the combination of uses that will give the greatest economic return or the greatest unit output.'' [48]

3. Indian Oil and Gas Production

The Secretary's management and regulation of Indian mineral interests carries with it the duty to act as a trustee for the benefit of the Indian mineral owners.[49] Congress has directed the Secretary to ''aggressively carry out [her] trust responsibility in the administration of Indian oil and gas.'' [50] In furtherance of her trust obligations, the Secretary has delegated regulatory authority for administering operations on Indian oil and gas leases to the BLM,[51] which has developed specialized expertise through regulating the production of oil and gas from public lands administered by the Department. In choosing from among reasonable regulatory alternatives for Indian mineral development, the BLM is obligated to adopt the alternative that is in the best interest of the Tribe and individual Indian mineral owners.[52] What is in the best interest of the Tribe and individual Indian mineral owners is determined by a consideration of all relevant factors, including economic considerations as well as potential environmental and social effects.[53]

C. Regulatory History

The BLM has a long history of regulating venting and flaring from onshore oil and gas operations. This section summarizes the BLM's historic practices, as well as the BLM's experience in two recent rulemakings related to venting and flaring.

1. Early Regulation of Surface Waste of Gas

The Department of the Interior has maintained regulations addressing the waste of gas through venting and flaring from onshore oil and gas leases since 1938. At that time, the Department's regulations required the United States to be compensated ''at full value'' for ''all

occurring pursuant to a communitization agreement''). Additionally, FOGRMA defines ''oil and gas'' broadly to mean ''any oil or gas originating from, *or allocated to,* the Outer Continental Shelf, Federal, or Indian lands.'' 30 U.S.C. 1702(9) (emphasis added).

[35] This conclusion is consistent with the assessment of the BLM's authority expressed by the court that vacated the 2016 Waste Prevention Rule. *See Wyoming* v. *U.S. Dept. of the Interior,* 493 F. Supp. 3d 1046, 1081–85 (D. Wyo. 2020).

[36] 30 U.S.C. 226(g).

[37] *See Natural Resources Defense Council, Inc.* v. *Berklund,* 458 F. Supp. 925, 936 n.17 (D.D.C. 1978). The BLM acknowledges that the court that vacated the 2016 Waste Prevention Rule stated that ''it is not a reasonable interpretation of BLM's general authority under the MLA to 'safeguard[ ] the public welfare' as empowering the agency to regulate air emissions, particularly when Congress expressly delegated such authority to the EPA under the [Clean Air Act].'' *Wyoming,* 493 F. Supp. 3d at 1067. The BLM further notes that the court that vacated the BLM's rescission of the 2016 Waste Prevention Rule found that the rescission failed to satisfy the BLM's ''statutory obligation'' to ''safeguard[] the public welfare,'' and stated that the MLA's ''public welfare'' provision supports BLM's consideration of air emissions in promulgating its waste prevention regulations. *See California* v. *Bernhardt,* 472 F. Supp. 3d 573, 616 (N.D. Cal. 2020). The BLM need not elaborate on the meaning of the MLA's ''public welfare'' provision in this rulemaking, as the BLM is proposing requirements that are independently justified as waste prevention measures and are not proposed for environmental purposes. The one exception is proposed § 3179.6, which does serve an environmental purpose, but is an exercise of the Secretary's authority to prescribe ''rules for the safety and welfare of the miners'' under 30 U.S.C. 187.

[38] 30 U.S.C. 209; *see also, e.g., Copper Valley Machine Works* v. *Andrus,* 653 F.2d 595, 601 & nn.7–8 (D.C. Cir. 1981); *Hoyl* v. *Babbitt,* 129 F.3d 1377, 1380 (10th Cir. 1997); *Getty Oil Co.* v. *Clark,* 614 F. Supp. 904, 916 (D. Wyo. 1985).

[39] *Udall* v. *Tallman,* 380 U.S. 1, 4 (1965); *Duesing* v. *Udall,* 350 F.2d 748, 751–52 (1965).

[40] 30 U.S.C. 187.

[41] *See* 43 CFR 3162.5–1, 3162.5–3.

[42] 43 U.S.C. 1732(b).

[43] *Id.*

[44] *Id.* at 1701(a)(8).

[45] *Id.* at 1702(c), 1732(a).

[46] 43 U.S.C. 1702(c).

[47] *Id.*

[48] *Id.*

[49] *See Woods Petroleum Corp.* v. *Department of Interior,* 47 F.3d 1032, 1038 (10th Cir. 1995) (*en banc*).

[50] 30 U.S.C. 1701(a)(4).

[51] 235 DM 1.1.K.

[52] *See Jicarilla Apache Tribe* v. *Supron Energy Corp.,* 728 F.2d 1555, 1567 (10th Cir. 1984) (Seymour, J., concurring in part and dissenting in part), adopted as majority opinion as modified *en banc,* 782 F.2d 855 (10th Cir. 1986).

[53] *See* 25 CFR 211.3.

gas wasted by blowing, release, escape into the air, or otherwise,'' except where such disposal was authorized under the laws of the United States and the State in which it occurred.[54] The regulations further provided that the production of oil or gas from the lease was to be restricted to such amounts as could be put to beneficial use and that, in order to avoid the excessive production of oil or gas, the Secretary could limit the rate of production based on the market demand for oil or the market demand for gas.[55]

By 1942, the Department's regulations contained a definition of ''waste of oil or gas.'' This definition included the ''physical waste of oil or gas,'' which was defined as ''the loss or destruction of oil or gas after recovery thereof such as to prevent proper utilization and beneficial use thereof, and the loss of oil or gas prior to recovery thereof by isolation or entrapment, by migration, by premature release of natural gas from solution in oil, or in any other manner such as to render impracticable the recovery of such oil or gas.'' [56] The regulations stated that a lessee was ''obligated to prevent the waste of oil or gas'' and, in order to avoid the physical waste of gas, the lessee was required to ''consume it beneficially or market it or return it to the productive formation.'' [57] The regulations stated that ''unavoidably lost'' gas was not subject to royalty, though the regulations did not define ''unavoidably lost.'' [58]

In 1974, the Secretary issued NTL–4, which established the following policy for royalties on gas production:

> Gas production subject to royalty shall include (1) that gas (both dry and casing-head) which is produced and sold either on a lease basis or that which is allocated to a lease under the terms of an approved communitization or unitization agreement; (2) that gas which is vented or flared in well tests (drill-stem, completion, or production) on a lease, communitized tract, or unitized area; and (3) that gas which is otherwise vented or flared on a lease, communitized tract, or unitized area with the prior written authorization of the Area Oil and Gas Supervisor (Supervisor).

NTL–4 thus effectively required onshore oil and gas lessees to pay royalties on *all* gas produced, including gas that was unavoidably lost or used for production purposes. Various oil and gas companies sought judicial review of NTL–4. In 1978, the U.S. District Court for the District of Wyoming overturned NTL–4, holding that the MLA does not authorize the collection of royalties on gas production that is unavoidably lost or used in lease operations.[59]

2. NTL–4A

From January 1980 to January 2017, the Department of the Interior's instructions governing the venting and flaring of gas from onshore oil and gas leases were contained in ''Notice to Lessees and Operators of Onshore Federal and Indian Oil and Gas Leases: Royalty or Compensation for Oil and Gas Lost'' (''NTL–4A'').[60] NTL–4A was issued by the U.S. Geological Survey (USGS), which was the Interior bureau tasked with oversight of Federal onshore oil and gas production at the time.

Under NTL–4A, operators were required to pay royalties on ''avoidably lost'' gas—*i.e.,* gas lost due to the operator's negligence, failure to take reasonable precautions to prevent or control the loss, or failure to comply with lease terms, regulations, or BLM orders. NTL–4A expressly authorized royalty-free venting and flaring ''on a short-term basis'' during emergencies, well purging and evaluation tests, initial production tests, and routine and special well tests. NTL–4A prohibited the flaring of gas from gas wells under any other circumstances. For gas produced from oil wells, however, NTL–4A authorized (but did not mandate) the BLM to approve flaring where conservation of the gas was not ''economically justified'' because it would ''lead to the premature abandonment of recoverable oil reserves and ultimately to a greater loss of equivalent energy than would be recovered if the venting or flaring were permitted to continue.'' NTL–4A stated that, ''when evaluating the feasibility of requiring conservation of the gas, the total leasehold production, including oil and gas, as well as the economics of a field-wide plan,'' must be considered. Finally, under NTL–4A, the loss of gas vapors from storage tanks was considered ''unavoidably lost,'' unless the BLM ''determine[d] that the recovery of such vapors would be warranted.''

Soon after issuing NTL–4A, the USGS issued guidelines and procedures for implementing NTL–4A, which were published in the Conservation Division Manual (CDM) Part 644, Chapter 5. Among other things, the CDM provided guidance regarding applications to flare oil-well gas based on economics. Specifically, the CDM addressed how to respond to a lessee's contention ''that reserves of casinghead gas are inadequate to support the installation of facilities for gas collection and sale.'' The CDM explained that ''[f]rom an economic basis, all leasehold production must be considered; the major concern is profitable operation of the lease, not just profitable disposition of the gas.'' The CDM further explained that the ''economics of conserving gas must be on a field-wide basis, and the Supervisor must consider the feasibility of a joint operation between all other lessees/operators in the field or area.'' Thus, the economic standard for obtaining approval to flare oil-well gas under NTL–4A was intended to be a demanding one. The fact that the capture and sale of oil-well gas from an individual lease would not pay for itself was not sufficient to justify royalty-free flaring of the gas.

The CDM also provided guidance for venting and flaring situations involving both Federal and non-Federal lands. In such cases, the BLM was directed to contact the appropriate State agency in order to work jointly to effect optimum gas conservation. However, where such a cooperative effort was not possible, the BLM was directed to ''proceed unilaterally to take action to prevent unnecessary venting or flaring from Federal lands.''

Under the plain terms of NTL–4A, flaring without prior approval (outside of the short-term circumstances specified in Sections II and III of NTL–4A) constituted a royalty-bearing loss of gas, regardless of the economic circumstances. The BLM originally applied NTL–4A to that effect, and this practice was upheld by the Interior Board of Land Appeals. *See Lomax Exploration Co.,* 105 IBLA 1 (1988). However, the BLM changed this policy in Instruction Memorandum No. 87–652 (Aug. 17, 1987), which required the BLM to give an operator an opportunity to demonstrate, after the fact, that capturing the gas was not economically justified. *See Ladd Petroleum Corp.,* 107 IBLA 5 (1989).

The number of applications for royalty-free flaring received by the BLM increased dramatically between 2005 and 2016: in 2005, the BLM received just 50 applications to vent or flare gas, while in 2015 it received 4,181 flaring applications, with another 3,539 flaring applications submitted in 2016. (Both the 2016 Waste Prevention Rule and the 2018 Revision Rule dispensed with case-by-case flaring approvals, and so post-2016 flaring application data does not provide a useful comparison.) Most of the applications to flare royalty-free were submitted to the New Mexico and

[54] 30 CFR 221.5(h) (1938).

[55] *Id.* at 221.27.

[56] 30 CFR 221.6(n) (1942).

[57] *Id.* at 221.35.

[58] *Id.* at 221.44.

[59] *Marathon Oil Co.* v. *Andrus,* 452 F. Supp. 548, 553 (D. Wyo. 1978).

[60] 44 FR 76,600 (Dec. 27, 1979).

Montana-Dakotas State Offices, which oversee Federal and Indian mineral interests in unconventional plays where oil production is accompanied by large volumes of associated gas. Notably, the vast majority of these applications involved wells that were connected to a gas pipeline but flared due to pipeline capacity constraints.

3. 2016 Waste Prevention Rule

On November 18, 2016, the BLM issued a final rule intended to reduce the waste of Federal and Indian gas through venting, flaring, and leaks (''Waste Prevention Rule'').[61] The Waste Prevention Rule replaced NTL–4A and became effective on January 17, 2017. The BLM's development of the Waste Prevention Rule was prompted by a combination of factors, including the substantial increase in flaring over the previous decade, the growing number of applications to flare royalty-free, new information regarding the quantities of gas lost through venting and leaks, and concerns expressed by oversight entities such as the U.S. Government Accountability Office (GAO).[62]

The Waste Prevention Rule applied to all onshore Federal and Indian oil and gas leases, units, and communitized areas. The key components of the Waste Prevention Rule were:

- A requirement that applications for permits to drill (APDs) be accompanied by a ''waste minimization plan'' that would detail anticipated gas production and opportunities to conserve the gas;
- A provision specifying the various circumstances under which a loss of oil or gas would be ''avoidably lost,'' and therefore royalty-bearing;
- A requirement that operators capture (rather than flare) a certain percentage of the gas they produce;
- Equipment requirements for pneumatic controllers, pneumatic diaphragm pumps, and storage vessels (tanks); and
- LDAR provisions requiring semiannual lease site inspections, the use of specified instruments and methods, and recordkeeping and reporting.

The rule's ''capture percentage'' requirements were intended to address the routine flaring of gas from oil wells. The rule required an operator to capture, rather than flare, a certain percentage of the gas produced from the operator's ''development oil wells.'' The required capture percentage would increase over a 10-year period, starting at 85 percent in 2018 and ultimately reaching 98 percent in 2026. Gas flared in excess of the capture requirements would be royalty bearing.

The BLM recognized that the EPA had promulgated emissions limitations for pneumatic equipment and storage tanks as well as LDAR requirements for new and modified sources in the oil and gas production sector pursuant to its authority under the Clean Air Act. The BLM further recognized that these analogous EPA requirements would have the effect of reducing the waste of gas from leases subject to those requirements. So, in order to avoid unnecessary duplication or conflict, the Waste Prevention Rule allowed for operators to comply with the analogous EPA regulations as an alternative means of compliance with the BLM's requirements.[63]

The capture percentage, pneumatic equipment, storage tanks, and LDAR requirements were each subject to phase-in periods, and the rule allowed operators to obtain exemptions or reduced requirements where compliance would ''cause the operator to cease production and abandon significant recoverable oil reserves under the lease.'' The BLM's RIA for the Waste Prevention Rule estimated that the rule would impose costs of between $110 million and $275 million per year, while generating benefits of between $20 million and $157 million per year worth of additional gas captured and between $189 million and $247 million per year in quantified social benefits (in the form of forgone methane emissions).

Industry groups and certain States[64] filed petitions for judicial review of the Waste Prevention Rule in the U.S. District Court for the District of Wyoming. *Wyoming* v. *DOI,* Case No. 2:16–cv–00285–SWS (D. Wyo.). A coalition of environmental groups and other States intervened in the case in defense of the rule. Following the change in Administration in January 2017, the litigation was effectively paused in response to the BLM's administrative actions to suspend the rule. After those actions were invalidated by a different court, the *Wyoming* court stayed implementation of the capture percentage, pneumatic equipment, storage tank, and LDAR requirements, and stayed the litigation pending finalization of the BLM's voluntary revision of the Waste Prevention Rule.

4. 2018 Revision of Waste Prevention Rule

On September 28, 2018, the BLM issued a final rule substantially revising the Waste Prevention Rule (''Revision Rule'').[65] In the Revision Rule, the BLM rescinded the waste minimization plan, gas capture percentage, pneumatic equipment, storage tank, and LDAR requirements of the 2016 Rule. The BLM also revised the remaining provisions of the rule to largely reflect the language of NTL–4A. Finally, the BLM established a new policy of deferring to State regulations for determining when the routine flaring of oil-well gas is royalty-free.

In the Revision Rule, the BLM stated that the Waste Prevention Rule exceeded the BLM's statutory authority by imposing requirements with compliance costs that exceed the value of the gas that would be conserved, thus violating the ''prudent operator'' standard implicitly incorporated into the MLA when it was adopted in 1920. The BLM also stated that the 2016 Rule created a risk of premature shut-ins of marginal wells, as the compliance costs associated with the 2016 Rule would represent a significant proportion of a marginal well's revenue. Contrary to what the BLM had found in 2016, the BLM stated in the Revision Rule that existing State flaring regulations provided sufficient assurance against excessive flaring.

The RIA for the Revision Rule found that the economic benefits of the Revision Rule (*i.e.,* reduced compliance costs) would significantly outweigh its economic costs (*i.e.,* forgone gas production and additional methane emissions). This result was based in large part on the use of a ''domestic'' social cost of methane metric that was not based on the best available science[66] and drastically reduced the monetized climate benefits of the 2016 Rule relative to what had been estimated in the RIA for the 2016 Rule.

5. Judicial Review of the Revision Rule

In September of 2018, a coalition of environmental groups and the States of California and New Mexico filed lawsuits challenging the Revision Rule in the U.S. District Court for the Northern District of California. On July 15, 2020, the district court ruled in favor of the plaintiffs. *California* v. *Bernhardt,*

[61] 81 FR 83008 (Nov. 18, 2016).

[62] 81 FR 83014–83017; GAO, ''Federal Oil and Gas Leases—Opportunities Exist to Capture Vented and Flared Gas, Which Would Increase Royalty Payments and Reduce Greenhouse Gases'' (Oct. 2010); GAO, ''OIL AND GAS—Interior Could Do More to Account for and Manage Natural Gas Emissions'' (July 2016).

[63] See 83 FR 83018–19, 83085–89.

[64] The States of North Dakota, Texas, Wyoming, and Montana joined the litigation in opposition to the rule.

[65] 83 FR 49184 (Sept. 28, 2018).

[66] *See California* v. *Bernhardt,* 472 F. Supp. 3d 573, 611 (N.D. Cal. 2020).

472 F. Supp. 3d 573 (N.D. Cal. 2020). The court's key findings were:

- The BLM's interpretation of its statutory authority in the Revision Rule was unjustifiably limited, failed to require lessees to use all reasonable precautions to prevent waste, and failed to meet the BLM's statutory mandate to protect the public welfare;
- The BLM's decision to defer to State flaring regulations was not supported by sufficient analysis or record evidence;
- The record did not support the BLM's claims that the 2016 Rule posed excessive regulatory burdens and that the 2016 Rule's costs outweighed its benefits; and
- The BLM's cost-benefit analysis underlying the rule was flawed for a variety of reasons, including that the use of a ''domestic'' social cost of methane was unreasonable and not based on the best available science.

The court ordered that the Revision Rule be vacated in its entirety. However, the court stayed vacatur until October 13, 2020.

6. Judicial Review of the 2016 Waste Prevention Rule

Following the *California* v. *Bernhardt* decision, the district court in Wyoming lifted the stay on the litigation over the Waste Prevention Rule. In the briefing, the Department confessed error on the grounds that the BLM exceeded its statutory authority and was ''arbitrary and capricious'' in promulgating the rule. In October 2020, the district court ruled in favor of the plaintiffs, finding that the BLM had exceeded its statutory authority and had been arbitrary and capricious in promulgating the Waste Prevention Rule. *Wyoming* v. *DOI,* 493 F. Supp. 3d 1046 (D. Wyo. 2020). Specifically, the court found that the Waste Prevention Rule was essentially an air quality regulation and that the BLM had usurped the authority to regulate air emissions that Congress had granted to EPA and the States in the Clean Air Act. The court found that the rule was not independently justified as a waste-prevention measure under the MLA. Rather, in the court's view, the record reflected that the BLM's primary concern was regulating methane emissions from existing oil and gas sources. The court faulted the BLM's rulemaking for imposing requirements beyond what could be expected of a ''prudent operator'' that develops the lease for the mutual profit of lessee and lessor. Finally, the court faulted the BLM for applying air quality regulations—as opposed to waste-prevention regulations—to unit and CA operations on non-Federal lands. The court ordered that the Waste Prevention Rule be vacated, thereby reinstating NTL–4A as the BLM's standard for managing venting and flaring from Federal oil and gas leases.

7. The Inflation Reduction Act

As discussed earlier, on August 16, 2022, President Biden signed the IRA into law. Public Law 117–169. The IRA is designed to ''make a historic down payment on deficit reduction to fight inflation, invest in domestic energy production and manufacturing, and reduce carbon emissions by roughly 40 percent by 2030.'' Summary: The Inflation Reduction Act of 2022, available at *https://www.democrats.senate.gov/imo/media/doc/inflation_reduction_act_one_page_summary.pdf.* The Act authorizes, among other things, massive and unprecedented investments to enhance energy security and combat the climate crisis.

Of particular relevance here, the IRA contains a suite of provisions addressing onshore and offshore oil and gas development under Federal leases. For example, Section 50265 requires, *inter alia,* the Department to maintain a certain level of onshore oil and gas leasing activity as a prerequisite to approving renewable energy rights-of-way on Federal lands. Importantly, that provision of the IRA is accompanied by other provisions that serve to ensure that lessees pay fair and appropriate compensation to the Federal Government in exchange for the opportunity to conduct their industrial activities under Federal leases.

One such provision of the Act is Section 50263, which is entitled, ''Royalties on All Extracted Methane.'' Consistent with the MLA's assessment of royalties on all gas ''removed or sold from the lease'' [67] and FOGRMA's requirement that lessees pay royalties on lost or wasted gas,[68] Section 50263 of the IRA provides that, for leases issued after the date of enactment of the Act, royalties are owed on all gas produced from Federal land, including gas that is consumed or lost by venting, flaring, or negligent releases through any equipment during upstream operations. Section 50263 further provides three exceptions to the general obligation to pay royalties on produced gas, namely: (1) gas that is vented or flared for not longer than 48 hours in an emergency situation that poses a danger to human health, safety, or the environment; (2) gas used or consumed within a lease, unit, or communitized area for the benefit of the lease, unit, or communitized area; and (3) gas that is unavoidably lost.

The BLM has for decades assessed royalties on upstream production and has exempted from royalties gas lost in emergency situations, ''beneficial use'' gas, and ''unavoidably lost'' gas. IRA Section 50263 is consistent with the BLM's prior agency practice regarding emergency situations and the unavoidable loss of gas, and it provides additional support for the approach set forth in this proposed rule. Importantly, IRA Section 50263 confirms that the concepts of ''avoidable'' and ''unavoidable'' loss are appropriate for assessing royalties. Section 50263 also confirms that the BLM's pecuniary interest in regulating losses extends to those from upstream equipment. But the IRA leaves certain questions open, such as what losses qualify as ''unavoidably lost'' and what qualifies as an ''emergency situation.'' Congress thus has left it to the BLM, as an exercise of the agency's expertise and judgment, to determine answers to the specific questions the IRA leaves open. As set forth later, this proposed rule addresses these issues in a manner that is consistent with the IRA's focus (and the MLA's and FOGRMA's pre-existing emphasis) on ensuring that Federal lessees pay fair and appropriate compensation to the Federal Government in exchange for the opportunity to conduct their industrial activities under Federal leases.

D. A New Approach

The BLM has authority under the MLA to promulgate such rules and regulations as may be necessary ''for the prevention of undue waste'' [69] and to ensure that lessees ''use all reasonable precautions to prevent waste of oil or gas.'' [70] For many years, the BLM has implemented this authority through restrictions on the venting and flaring of gas from onshore Federal oil and gas leases. However, as illustrated by the judicial decisions noted previously, courts have disagreed (prior to enactment of the IRA) as to the full scope of the BLM's authority to regulate venting and flaring. Requirements that one court might consider necessary for the BLM to meet its statutory mandates might be seen as regulatory overreach by another court. In this proposed rulemaking, the BLM has chosen to focus on improving upon NTL–4A in a variety of ways without advancing elements of the 2016 Waste Prevention

[67] 30 U.S.C. 226(b).

[68] 30 U.S.C. 1756.

[69] 30 U.S.C. 187.

[70] 30 U.S.C. 225.

Rule that were the subject of certain judicial criticism.

As explained in more detail later and in the section-by-section discussion, this proposed rule would make substantial improvements in addressing the waste of Federal and Indian gas while also addressing the criticisms of the 2016 Rule that were raised by the *Wyoming* court. First, the proposed requirements more clearly constitute reasonable waste prevention measures that should be expected of a prudent operator. The proposed requirements should impose fewer overall costs than those of the 2016 Rule and would ensure either actual conservation of gas that would otherwise be wasted or compensation to the public and Indian mineral owners through royalty payments when gas is wasted. (This contrasts with certain provisions in the 2016 Rule that would have reduced pollution—but not necessarily reduced waste—by allowing operators to comply with analogous EPA standards in place of the BLM requirements.) Second, in order to address the *Wyoming* court's concern with the BLM's limited authority regarding unit and CA operations on non-Federal/Indian lands, certain requirements in this proposed rule are narrower in scope than similar requirements in the 2016 Rule. Specifically, the proposed rule's requirements pertaining to safety, pneumatic equipment, storage tanks, and leak detection and repair would apply only to operations on a Federal or Indian lease. Third, the proposed requirements are consistent with the ''prudent operator'' standard as that term has been applied in the oil and gas jurisprudence. Fourth, the proposed rule was developed with an eye towards avoiding excessive compliance burdens on marginal wells. Finally, the BLM is expressly excluding the social cost of greenhouse gases from the considerations underpinning any of the proposed waste prevention requirements, thereby addressing the *Wyoming* court's concern that the 2016 Rule was inappropriately supported by ''climate change benefits.''

The provisions of this proposed rule serve straightforward waste prevention objectives by promoting gas conservation. In order to avoid situations where oil-well development outpaces the capacity of the available gas capture infrastructure, the BLM is proposing to require operators to submit a waste minimization plan with oil-well APDs and is also proposing to establish a process for delaying action on an APD where undue waste of Federal gas is expected to result from approving the permit. The BLM recognizes that not all venting and flaring can be prevented. In the circumstances in which some venting or flaring cannot be prevented (*e.g.,* initial production tests or emergencies), the BLM is proposing to set appropriate time or volume limits on royalty-free venting or flaring. The BLM is proposing to address the problem of intermittent flaring due to pipeline capacity constraints by setting a monthly volume limit on royalty-free flaring caused by inadequate capture infrastructure. Requiring royalty payments on venting and flaring that exceeds the appropriate volume limits would both discourage waste and ensure that Federal and Indian royalty revenues are not harmed by an operator's wasteful practices. The BLM estimates that the royalty-free flaring limits of the proposed rule would generate $32.9 million a year in additional royalties. See section 7.6 of the RIA for more information.

This proposed rule also contains provisions intended to reduce losses of natural gas from pneumatic equipment, oil storage tanks, and equipment leaks. Unlike the 2016 Waste Prevention Rule—which extended these requirements to State and private lands in certain situations [71]—the requirements now proposed by the BLM would apply only to operations on Federal or Indian lands, where the BLM has express authority and responsibility to regulate both for the prevention of waste and for the protection of the environment. These requirements would not apply to operations that occur on State or private tracts committed to a Federal unit or CA. The BLM estimates that the requirements of this proposed rule regarding pneumatic equipment, oil storage tanks, and LDAR would result in the conservation of up to 15.3 Bcf of gas each year.

The BLM acknowledges that the contents of this proposed rule may differ in some regards from the Revision Rule's unnecessarily narrow interpretation of the BLM's statutory authority and the similarly narrow interpretation reflected in the confession of error related to the 2016 Waste Prevention Rule.[72] Consistent with the BLM's understanding of its authority prior to 2018, the BLM has reconsidered the relevant conclusions of the Revision Rule and its related confession of error and now rejects those conclusions for the following reasons. To begin, nothing in the MLA's plain text, which requires lessees to take ''all reasonable precautions to prevent waste'' and to abide by rules and regulations issued ''for the prevention of undue waste,'' suggests that the BLM's authority is limited to the promulgation of rules that effectively pay for themselves (as measured by balancing compliance costs against the value of the recovered gas). Consistent with this text, the BLM's longstanding policy governing venting and flaring has assessed the economic feasibility of gas conservation in the context of ''the total leasehold production, including oil and gas, as well as the economics of a field-wide plan.'' *See supra,* Part III.C.2. As the CDM made clear, the BLM's concern under the MLA for nearly four decades prior to the Revision Rule was ''profitable operation of the lease, not just profitable disposition of the gas.''

Despite suggestions to the contrary in the 2018 Revision Rule, the BLM's longstanding emphasis on *overall* ultimate resource recovery, not lessee profits vis-à-vis wasted gas, is entirely consistent with the ''prudent operator'' standard in oil and gas law. While the prudent operator standard rests on an expectation of ''mutually profitable development of the lease's mineral resources,'' [73] it does not follow that lessees can maximize their profit by wasting recoverable hydrocarbon resources without regard for the lessor's lost royalty revenues or the lessor's interest in conserving the gas for future disposition. To the contrary, lessees have an obligation of reasonable diligence in the development of the leased resources, rooted in due regard for the interests of both the lessee and the lessor.[74] And in the MLA, FOGRMA, and the IRA, Congress enshrined the United States' interest, as a mineral lessor, in avoiding waste and maximizing royalty revenues.[75] The

[71] *Cf. Wyoming* v. *DOI,* 493 F. Supp. 3d 1046, 1083–85 (D. Wyo. 2020).

[72] See 83 FR 49185–86.

[73] *Wyoming* v. *DOI,* 493 F. Supp. 3d 1046, 1072 (D. Wyo. 2020).

[74] *See id.; see also Sinclair Oil & Gas Co.* v. *Bishop,* 441 P.2d 436, 447 (Okla. 1967) (''Necessarily, we determine the lessee was acting prudently when he ascertained that it was illegal and improper to flare gas in the quantities shown by the evidence, in order to produce the unallocated allowable of oil.''); *Tr. Co. of Chicago* v. *Samedan Oil Corp.,* 192 F.2d 282, 284 (10th Cir. 1951) (''A first consideration is the precept that a prudent operator may not act only for his self interest. He must not forget that the primary consideration to the lessor for the lease is royalty from the production of the lease free of cost of development and operation.'').

[75] *See* 30 U.S.C. 187, 225, 226(m), 1756; *see also California Co.* v. *Udall,* 296 F.2d 384, 388 (DC Cir. 1961) (''[The Secretary] has a responsibility to insure that these resources are not physically wasted and that their extraction accords with prudent principles of conservation. To protect the public's royalty interest he may determine that minerals are being sold at less than reasonable value. Under existing regulations he can restrict a lessee's production to an amount commensurate

Continued

BLM, in managing oil and gas resources on behalf of the United States, may value more production—considering both oil and gas production—over a longer time period more highly than does an operator, who might be more focused on generating near-term profits. None of the authorities previously relied upon by the BLM to interpret the ''prudent operator'' standard foreclose any Secretarial action that might marginally affect lessee profits.[76]

In contrast to NTL–4A, this proposed rule would not allow operators to request that flared oil-well gas be deemed royalty-free based on case-by-case economic assessments. There are a number of reasons for this change. In the first instance, there is no statutory requirement that the public forgo royalties on wasted gas based on an operator's individual economic circumstances. Although it was the BLM's practice to engage in case-by-case economic assessments under NTL–4A, that approach is no longer appropriate, as the practical realities of oilfield development have changed dramatically since 1980. As the U.S. Department of Energy explained in a recent report, ''flaring has become more of an issue with the rapid development of unconventional tight oil and gas resources over the past two decades'' that has ''brought online hydrocarbon resources that vary in their characteristics and proportions of natural gas, natural gas liquids and crude oil.'' [77] As explained earlier, the BLM has witnessed a massive increase in the amount of venting and flaring from the 1990's to the 2010's. The average amount of annual venting and flaring from Federal and Indian leases between 1990 and 2000 was 11 Bcf but quadrupled to an average of 44.2 Bcf per year, between 2010 and 2020; and, as noted earlier, the upward trend in flaring suggests it will continue to be a problem in the coming years. The related increase in the number of royalty-free flaring applications—from 50 in 2005 to 4,181 in 2015—has created a significant administrative burden for the BLM as well as an estimated information collection burden of approximately 33,488 total annual burden hours potentially incurred by operators, and significant uncertainty for operators as hundreds of applications wait to be processed. Finally, it is important to note that the bulk of the recent royalty-free flaring applications have concerned flaring from wells that are actually connected to pipeline infrastructure. Although the capacity of that infrastructure may be overwhelmed from time to time, these are not the situations that the NTL–4A economic standard was designed to accommodate. The purpose of the economic inquiry under NTL–4A was to determine whether the volumes of associated gas production would make the installation of gas-capture infrastructure economically viable. Where the gas-capture infrastructure has already been built out, its economic viability is not in question.

One of the primary concerns underlying the BLM's promulgation of the Revision Rule in 2018 was the compliance burden on ''marginal wells,'' *i.e.,* wells that produce approximately 10 barrels of oil or 60 Mcf of natural gas per day or less.[78] The court that vacated the Revision Rule rejected that concern as unfounded.[79] However, the court that vacated the Waste Prevention Rule faulted the BLM for failing to adequately assess the impact of that rule on marginal wells.[80] The BLM does not wish to impose requirements that inadvertently cause recoverable oil or gas resources to be stranded due to premature lease abandonment. Simultaneously, even the operators of marginal wells are capable of taking reasonable precautions to prevent waste, as they must under the MLA. (For example, there is no real risk of premature abandonment by requiring the operator of a marginal gas well to minimize the loss of gas during liquids unloading operations, as required in this proposed rule.)

The BLM developed this proposed rule to avoid excessive compliance burdens on marginal wells when balanced against the need to reduce waste. In the Revision Rule, the BLM noted that the provisions of the 2016 Waste Prevention Rule that placed a particular burden on marginal wells were those pertaining to pneumatic controllers, pneumatic diaphragm pumps, and LDAR. In this proposed rule, the requirements for pneumatic equipment would apply only where a lease, unit PA, or CA is producing a quantity of oil or gas (120 Mcf of gas or 20 barrels of oil per month) that would offset the compliance costs within a reasonable payout period. And, as explained in more detail in the following section-by-section discussion, the LDAR provisions of this proposed rule are more flexible than those in the 2016 Waste Prevention Rule, reducing the potential burden on marginal wells. The BLM requests comment on the proposed approach to marginal wells, the point at which additional regulatory burdens might result in stranded resources from marginal wells, and whether the proposed rule is sufficient to prevent avoidable waste from marginal wells.

The BLM acknowledges that, in the Revision Rule, the BLM asserted that additional restrictions on flaring were unnecessary because the States with the most significant BLM-managed oil and gas production maintain regulatory restrictions on flaring from oil wells, and that these State regulations ''provide[d] a reasonable assurance . . . that the waste of associated gas will be controlled.'' [81] This assertion was in direct conflict with the BLM's prior findings during the promulgation of the 2016 Waste Prevention Rule, and a U.S. District Court found that the BLM's decision to rely on State flaring regulations was unjustified based on the record evidence.[82]

For this rulemaking, the BLM analyzed the State regulations governing flaring, venting, and leaks in the 10 States responsible for 99 percent of Federal oil and gas production: New Mexico, Wyoming, Colorado, North Dakota, Utah, California, Montana, Texas, Alaska, and Oklahoma. Summaries of these regulations were collected in a table that is available in the docket for this rulemaking at *www.regulations.gov.* While there have been notable advancements in some States since the promulgation of the 2016 Waste Prevention Rule—for example, new comprehensive flaring regulations have since been adopted in New Mexico and Colorado, and new requirements for storage tanks, pneumatic equipment, and LDAR have been adopted in Colorado and Utah—State regulations vary widely in their scope and stringency.[83] And,

with market demand, and thus protect the public's royalty interest by preventing depression of the market.'').

[76] *Cf. California* v. *Bernhardt,* 472 F. Supp. 3d 573, 596 (N.D. Cal. 2020) (''The statutory language demonstrates on its face that any consideration of waste management limited to the *economics* of individual well-operators would ignore express statutory mandates concerning BLM's public welfare obligations.'').

[77] U.S. Department of Energy, Office of Fossil Energy, Office of Oil and Natural Gas, ''Natural Gas Flaring and Venting: State and Federal Regulatory Overview, Trends, and Impacts'' (June 2019).

[78] 83 FR 49187.

[79] *California* v. *Bernhardt,* 472 F. Supp. 3d 573, 606 (N.D. Cal. 2020).

[80] *Wyoming* v. *DOI,* 493 F. Supp. 3d 1046, 1075–78 (D. Wyo. 2020).

[81] 83 FR 49202.

[82] *California* v. *Bernhardt,* 472 F. Supp. 3d 573, 601–04 (N.D. Cal. 2020).

[83] Examples of variations among State regulations include the following. Unlike other States, (1) the States of New Mexico, North Dakota, Montana, Texas, Alaska, and Oklahoma do not have regulations to control losses of gas from pneumatic equipment; (2) Texas' requirements to inspect for

importantly, many of the State flaring regulations reserve substantial discretion to the States to authorize additional flaring.[84] That discretion creates significant uncertainty about the extent to which the BLM could rely on those regulations to protect the interests of the United States and Indian mineral owners in minimizing waste and maximizing royalty revenues.

For example, the BLM's review of State regulations revealed that North Dakota's flaring rules were modified in recent years in a manner allowing for more flaring within the State's gas-capture-percentage requirements. Operators in the Bakken, Bakken/Three Forks, and Three Forks pools are currently subject to a 91 percent gas capture requirement under North Dakota Industrial Commission (NDIC) Order 24655. However, the NDIC's current Policy/Guidance [85] for Order 24655 identifies a number of circumstances under which flared volumes will not be counted against the operator's capture percentage. These circumstances (referred to as ''variances'' by the NDIC) include flaring due to ''force majeure'' events, flaring due to new wells being connected to the same gas infrastructure system, and right-of-way delays. Thus, it appears that many flaring events that are rooted in inadequate gas-capture infrastructure will not count against an operator's gas-capture percentage under NDIC Order 24655. The BLM notes that in 2019—when NDIC Order 24655 ostensibly imposed an 88 percent capture requirement on operators—19 percent of total natural gas production in North Dakota was flared.[86] North Dakota is a major source of Federal oil and gas production, producing approximately 89 Bcf of Federal gas and 45 million barrels of Federal oil in 2019.

In addition to State regulation, the BLM recognizes that the EPA maintains regulations governing VOCs and/or methane emissions from certain aspects of oil and gas production operations at 40 CFR part 60, subparts OOOO and OOOOa, and that these regulations can have the co-benefit of reducing the waste of gas during production activities. Specifically, EPA's regulations require: (1) operators to capture or flare gas that reaches the surface during well completion operations with hydraulic fracturing; (2) operators of storage tanks (at facilities constructed, modified, or reconstructed after August 23, 2011) with potential VOC emissions of 6 tons or more per year to control those emissions (including through combustion); (3) pneumatic controllers (at facilities constructed, modified or reconstructed after October 15, 2013) to be low-bleed (*i.e.,* bleed rate less than 6 standard cubic feet/hour) or no-bleed at onshore natural gas processing plants; (4) emissions from pneumatic pumps (at facilities that were constructed, modified, or reconstructed after September 18, 2015) to be routed to a control device or process; and (5) operators of well sites constructed, modified, or reconstructed after September 18, 2015, to develop and implement a leak-monitoring plan involving instrument-based leak detection and semi-annual inspections.

Although operator compliance with these EPA requirements can reduce the waste of natural gas from Federal and Indian leases, they do not supplant the need for BLM standards for the following reasons. First, the EPA's requirements for storage tanks, pneumatic equipment, and LDAR apply only to emissions sources that were constructed, modified, or reconstructed after August 23, 2011, or later, depending on the requirement. Thus, relying on EPA's requirements would ignore wasteful practices at many [87] well sites producing Federal and Indian gas.[88] Second, EPA's requirements are not a substitute for BLM standards because EPA's requirements are focused on controlling methane and VOC emissions, rather than conserving natural gas, and compliance with the EPA's standards will not always reduce the waste of natural gas. For example, an operator can comply with EPA's current requirements for storage tanks and pneumatic pumps by routing the emissions to combustion (*i.e.,* flaring) and therefore eliminating venting from the tanks and pumps altogether—a process that results in the same loss of gas as venting the gas from the tank or pump.

Based on its review and analysis of State and EPA regulations, the BLM finds that it is necessary to establish a uniform standard governing the wasteful losses of Federal and Indian gas through venting, flaring, and leaks.[89] The BLM cannot rely on a patchwork of State and EPA regulations to ensure that operators of Federal oil and gas leases consistently meet the waste prevention mandates of the MLA, that the American public receives a fair return for the development of the Federal mineral estate, and that the Department's trust responsibility to Indian mineral owners is satisfied. The BLM acknowledges that this is a change in position from what the BLM stated in the Revision Rule regarding analogous State and EPA regulations.

The RIA [90] for this rule calculates that this rule would cost operators $122 million a year, using a 7 percent discount rate, for the next 10 years ($110 million a year using a 3 percent discount rate) while generating benefits to operators of approximately $54.2 million a year, using a 7 percent discount rate, in the form of 15.3 Bcf of additional captured gas ($54.8 million using a 3 percent discount rate). The RIA estimates that this proposed rule would generate $39 million a year in additional royalties. The BLM acknowledges that the costs of this rule

and repair leaks are focused on storage tanks; (3) Alaska does not maintain LDAR requirements; and (4) Wyoming's requirements for tanks, pneumatic equipment, and LDAR are limited to the Upper Green River Basin ozone nonattainment area.

[84] These States are: Wyoming, Utah, Montana, Texas, and Oklahoma.

[85] NDIC Order 24665 Policy/Guidance Version 09–22–2020.

[86] EIA, ''Natural gas venting and flaring in North Dakota and Texas increased in 2019'' (Dec. 8, 2020), *available at https://www.eia.gov/todayinenergy/detail.php?id=46176.*

[87] The BLM estimates that approximately 39% of BLM-managed well sites are not covered by the EPA requirements.

[88] The BLM recognizes that the EPA has proposed to revise new source performance standards for new, modified, and reconstructed oil and gas sources and has proposed emissions guidelines for existing oil and gas sources. See 86 FR 63110 (Nov 15, 2021). The BLM cannot presuppose the outcome of that rulemaking process. *Cf. California* v. *Bernhardt,* 472 F. Supp. 3d 573, 625 (N.D. Cal. 2020) (''BLM was not required to prejudge the outcome of that proposed rulemaking in its EA.''). However, the BLM will maintain an awareness of developments in EPA's regulations and will make adjustments to the final rule as appropriate. The BLM further notes that, under the Clean Air Act, once the EPA finalizes the new emission guidelines, States with one or more existing sources must develop and submit State plans to the EPA for approval. Under this statutory structure, State plans that would implement new emissions guidelines for existing sources would likely not go into effect until some period of time after such guidelines are finalized.

[89] The BLM acknowledges that the court in *Wyoming* questioned what it described as the BLM's authority to ''hijack'' cooperative federalism under the Clean Air Act ''under the guise of waste management.'' *Wyoming,* 493 F. Supp. 3d 1046, 1066 (D. Wyo. 2020). However, as noted elsewhere, this proposed rule is justified not by any ancillary effects on air quality or climate change, but solely on the basis of waste prevention—an arena where the BLM has independent statutory authority to regulate. *See Wyoming,* 493 F. Supp. 3d at 1063 (''The terms of the MLA and FOGRMA make clear that Congress intended the Secretary, through the BLM, to exercise rulemaking authority to prevent the waste of Federal and Indian mineral resources and to ensure the proper payment of royalties to Federal, State, and Tribal governments.''). On its own terms, therefore, the *Wyoming* court's reference to cooperative federalism under the Clean Air Act is therefore inapplicable to this proposal.

[90] The cost-benefit analysis contained in the RIA was generated to comply with Executive Order 12866 and is not required by the statutes authorizing the BLM to regulate for the prevention of waste from oil and gas leases.

to operators will outweigh the benefits in terms of the monetized market value of the gas conserved. The BLM notes that the statutory provisions authorizing the BLM to regulate oil and gas operations for the prevention of waste do not impose a net-benefit requirement.

The reduced methane emissions associated with the proposed rule would provide a monetized benefit to society (in the form of avoided climate damages) of $427 million a year over the same time frame, leading to an overall net monetized benefit from the rule of $359 million a year, as well as additional unquantified benefits (see section 7.2 of the RIA regarding unquantified benefits). The basis for the BLM's estimates of social benefits from reduced methane emissions—namely, the social cost of greenhouse gases (SC–GHG)—is explained in detail in Section 7 of the RIA. To be clear, although the BLM is reporting its estimates of the social benefits of reduced methane emissions here and in the RIA, the purpose of that reporting is solely to provide the most complete and transparent accounting of the costs and benefits of the proposed rule for the public's awareness and consideration. The requirements of this proposed rule reflect reasonable measures to avoid waste that could be expected of a prudent operator, irrespective of any impacts with respect to climate change.

IV. Section-by-Section Discussion of Proposed Rule

A. 43 CFR Part 3160—Onshore Oil and Gas Operations

Section 3162.3–1 Drilling Applications and Plans

Existing § 3162.3–1 contains the BLM's longstanding requirement that operators must submit an APD prior to conducting any drilling operations on a Federal or Indian oil and gas lease. No drilling operations may be commenced prior to the BLM's approval of the APD. This proposed rule would add two new paragraphs to § 3162.3–1 that are intended to help operators and the BLM avoid situations where substantial volumes of natural gas are flared due to inadequate gas capture infrastructure.

Proposed § 3162.3–1(j) would require an APD for an oil well to be accompanied by a plan to minimize the waste of natural gas from that well. This ''waste minimization plan'' would demonstrate how the operator plans to capture associated gas upon the start of oil production, or as soon thereafter as reasonably possible, and would also explain why any delay in capture of the associated gas would be necessary. The waste minimization plan would contain certain information that would provide the BLM with a more complete picture of the consequences of approving the APD in terms of wasted natural gas. Specifically, the waste minimization plan would be required to include the following information: the anticipated completion date of the well; a description of the anticipated production of both oil *and* associated gas; a certification that the operator has informed at least one midstream processing company of the operator's production plans; and information regarding the gas pipeline to which the operator plans to connect. If an operator cannot identify a gas pipeline with sufficient capacity to accommodate the anticipated associated gas production, the waste minimization plan would be required to also include: a gas-pipeline-system map showing the existing pipelines within 20 miles of the well and the location of the closest gas processing plant; information about the operator's flaring from other wells in the vicinity; and a detailed evaluation of opportunities for alternative on-site capture approaches, such as compression of the gas, removal of NGLs, or electricity generation. Finally, the operator would also be required to include any other information demonstrating the operator's plans to avoid the waste of gas production from any source, including pneumatic equipment, storage tanks, and leaks.

The contents of the operator's waste minimization plan would provide the BLM with the information necessary to understand how much associated gas would be lost to flaring if the oil-well APD were approved, and whether such loss of gas would be reasonable under the circumstances. If the available information demonstrates that approving the APD could result in the unreasonable and undue waste of Federal or Indian gas, proposed § 3162.3–1(k) would expressly authorize the BLM to take one of the following actions on the APD. First, the BLM could approve the APD subject to conditions for gas capture and/or royalty payments on vented and flared gas. Second, the BLM could defer action on the APD in the interest of preventing waste. If the BLM were to defer action on the APD under proposed § 3162.3–1(k)(2), the BLM would notify the applicant and specify steps that the applicant could take for the APD to be issued. If the potential for unreasonable and undue waste is not addressed within 2 years of the applicant's receipt of the notice, the BLM could deny the APD. The BLM notes that this proposed process is based on the requirements for APD processing in the MLA (30 U.S.C. 226(p)) and is consistent with the APD processing provisions of Onshore Order Number 1. The BLM seeks comment on its definition of ''unreasonable and undue waste'' (see discussion of § 3179.3 later) and whether or to what extent the final rule (or implementing guidance) should spell out in additional detail how the BLM expects to make decisions to defer or deny an APD due to concerns regarding excessive waste of associated gas.

The BLM believes that the proposed amendments to § 3162.3–1 would help to reduce the waste of associated gas from oil wells for the following reasons. First, the requirement to submit a waste minimization plan would force operators to think critically about opportunities for gas capture before the well is drilled. Second, the information provided in the proposed waste minimization plan would help the BLM make better decisions about which APDs should be approved and under what conditions. Finally, the express authorization for the BLM to defer—and potentially deny—an APD would incentivize operators to tailor their development plans to the available gas-capture infrastructure and avoid the waste of public, Tribal, and allottee-owned gas.

The BLM notes that some States have already incorporated concepts similar to the proposed waste minimization plan requirement into their regulations governing flaring. In New Mexico, operators must submit a ''natural gas management plan'' with any APD that describes the actions the operator will take to ensure that it will meet New Mexico's gas-capture requirements. In Wyoming, an operator's application for authorization to flare must include, among other information, a gas-capture plan identifying gas gathering and transportation facilities in the area, the name of gas gatherers providing ''gas take-away capacity,'' and information on the gas gathering line to which the operator proposes to connect. In Colorado, an operator must either commit to connecting to a gathering system by the commencement of production or submit a gas-capture plan containing information about the closest or contracted natural-gas gathering system and describing the operator's plan for connecting to the gas-gathering system or otherwise putting the gas to beneficial use. In North Dakota, an operator that has failed to meet its gas-capture requirements in any of the previous 3 months must submit a gas-capture plan with any application for a permit to drill. These existing, State-

level gas-capture planning requirements demonstrate that operators have the capacity to comply with the BLM's proposed waste minimization plan requirement and that the proposed requirement is consistent with the regulatory practices of other traditional oil and gas resource conservation agencies. To be clear, these State requirements do not obviate the need for a waste minimization plan requirement in the BLM's regulations. In the first instance, many States (including Utah, Montana, Texas, and Oklahoma) in which the BLM manages oil and gas drilling and production do not have analogous planning requirements. Second, the gas capture plan requirements in Wyoming and North Dakota are only triggered *after* flaring is demonstrated to be a problem at the well, and therefore do not address flaring at the well permitting stage. Finally, none of the State gas capture plan requirements require the operator to submit the plans to the BLM and, therefore, do not provide the BLM, in its capacity as regulator of the Federal mineral estate, with an opportunity to render its own determinations regarding potential waste when processing an APD.

The BLM acknowledges that the BLM's proposal to require waste minimization plans with oil-well APDs constitutes a change from the position the BLM articulated in the 2018 Revision Rule. See 83 FR 49184, 49191–92 (Sept. 28, 2018). For the reasons discussed earlier, the BLM has concluded that many assertions made in the Revision Rule are not supported by contemporary data, and the proposed waste minimization plan requirement; would facilitate less wasteful development; would not be unnecessarily duplicative of existing State requirements; and would not impose an undue administrative burden on operators.

The proposed additions to § 3162.3–1 would reduce the waste of Federal and Indian gas by allowing the BLM to make better-informed decisions when processing oil-well APDs. In effect, the BLM would be able to more swiftly approve wells that pose the least risk of waste, while deferring approval of APDs for wells that lack access to the necessary gas-capture infrastructure and that would therefore result in waste. The BLM is not alone in recognizing the potential benefits of the proposed waste minimization plan requirement. In a recent report, the GAO analyzed State-level gas capture plan requirements and recommended that the BLM ''consider whether to require gas capture plans that are similar to what States require, including gas capture percentage targets, from operators on federal lands.'' [91] (As discussed later in the section-by-section discussion of proposed § 3179.8, the BLM has decided not to use gas-capture percentage targets in this proposed rule.)

Although the proposal discussed here pertains specifically to the permitting stage of oil and gas development, information regarding the capacity of available gas-capture infrastructure helps the BLM make better decisions at the leasing stage as well. The BLM currently has the discretion to offer, or not offer, parcels for lease based on waste/conservation considerations,[92] and the proposed waste minimization plans could provide an efficient (though not exclusive) means of collecting additional information regarding the location of adequate gas capture infrastructure that would be relevant for lease sale decisions. The BLM requests comment on how it can improve its processes pertaining to the leasing stage of development so as to minimize the waste of natural gas during later stages of development.

B. 43 CFR Part 3170—Onshore Oil and Gas Production

Subpart 3179—Waste Prevention and Resource Conservation

Section 3179.1 Purpose

Proposed § 3179.1 would state that the purpose of subpart 3179 is to implement and carry out the purposes of statutes relating to prevention of waste from Federal and Indian oil and gas leases, conservation of surface resources, and management of the public lands for multiple use and sustained yield, including Section 50263 of the Inflation Reduction Act. These statutes are discussed in detail in Section III.B of this preamble.

Section 3179.1 would also clarify that subpart 3179 would supersede those portions of NTL–4A pertaining to, among other things, flaring and venting of produced gas, unavoidably and avoidably lost gas, and waste prevention. Subpart 3178 has already superseded the portions of NTL–4A pertaining to oil or gas used for beneficial purposes (see 43 CFR 3178.1). Thus, if proposed subpart 3179 is ultimately adopted, NTL–4A will have been superseded in its entirety.

Section 3179.2 Scope

Section 3179.2 identifies the operations to which the various provisions of proposed subpart 3179 would apply. Paragraph (a) states that, in general, the provisions of proposed subpart 3179 would apply to: (1) all onshore Federal and Indian (other than Osage Tribe) oil and gas leases, units, and communitized areas; (2) Indian Mineral Development Act oil and gas agreements; (3) leases and other business agreements and contracts for the development of Tribal energy resources under a Tribal Energy Resource Agreement entered into with the Secretary; and (4) wells, equipment, and operations on State or private tracts that are committed to a federally approved unit or CA.

Paragraph (b) states that certain provisions in proposed subpart 3179 would apply only to operations and production equipment located on a Federal or Indian oil and gas lease, and would not apply to operations on State or private tracts, even where such tracts have been committed to a federally approved unit or CA (sometimes referred to as ''mixed-ownership'' units or CAs). The provisions of subpart 3179 subject to this more limited scope are those provisions pertaining to safety (proposed § 3179.6), pneumatic equipment (proposed § 3179.201), storage tanks (proposed § 3179.203), and LDAR (proposed §§ 3179.301 through 303).

As mentioned in Section III.D, proposed § 3179.2(b) responds to a question regarding the BLM's authority raised by the court that vacated the 2016 Waste Prevention Rule. Specifically, that court stated that the MLA ''does not provide broad authorization for the BLM to impose comprehensive Federal regulations similar to those applicable to operations on Federal lands on State or privately owned tracts or interests.'' [93] Rather, in that court's view, the BLM's authority to regulate unit or CA operations on State and private tracts under the MLA and FOGRMA is limited to rates of development and matters directly relevant to the BLM's proprietary interest in the Federal minerals.[94] The BLM maintains that the requirements proposed herein related to pneumatic equipment, storage tanks, and LDAR serve a legitimate waste-prevention purpose by requiring interventions that would lead to the conservation of natural gas and, therefore, to additional royalties allocable to the United States

[91] GAO, OIL AND GAS: Federal Actions Needed to Address Methane Emissions from Oil and Gas Development (April 2022) (GAO–22–104759).

[92] *See, e.g., Western Energy Alliance* v. *Salazar,* 709 F.3d 1040, 1044 (10th Cir. 2013) (MLA ''vest[s] the Secretary with considerable discretion to determine which lands will be leased'').

[93] *Wyoming* v. *DOI,* 493 F. Supp. 3d 1046, 1082 (D. Wyo. 2020).

[94] *Id.* at 1082–83.

or Indian mineral owners in a mixed-ownership unit or CA. In this rulemaking, however, the BLM has chosen to limit the scope of these provisions to operations on Federal or Indian leases. Other provisions that have a more direct impact on royalty revenues—such as the limits on royalty-free flaring in proposed §§ 3179.4, 3179.8, 3179.102, 3179.103, 3179.104, and 3179.105, and the measurement and reporting requirements of proposed § 3179.9—would apply to all operations producing Federal or Indian gas, whether on lease or as part of a mixed-ownership unit or CA. The BLM requests comment on its proposed approach to balancing its resource conservation objectives.

Section 3179.3 Definitions and Acronyms

This proposed section contains definitions for 13 terms that are used in subpart 3179: ''automatic ignition system;'' ''capture;'' ''compressor station;'' ''gas-to-oil ratio;'' ''gas well;'' ''high-pressure flare;'' ''leak;'' ''liquids unloading;'' ''lost oil or lost gas;'' ''low-pressure flare;'' ''pneumatic controller;'' ''storage vessel;'' and ''unreasonable and undue waste of gas.'' Some defined terms would have a particular meaning in this proposed rule. Other defined terms may be familiar to many readers, but we include their definitions in the proposed regulatory text to enhance the clarity of the rule.

The proposed rule would define ''unreasonable and undue waste of gas'' to mean a frequent or ongoing loss of gas that could be avoided without causing an ultimately greater loss of equivalent total energy than would occur if the loss of gas were to continue unabated. The intent of this definition is to clarify that the goal of waste prevention is maximizing the overall recovery of energy resources. To illustrate, the long-term flaring of associated gas from an oil well would constitute ''unreasonable and undue waste of gas'' if the operator could avoid or reduce the flaring by curtailing production in the near-term and producing an equal or greater amount of total energy resources (considering both oil and gas production) from the well in the long term. Thus, this proposed definition incorporates the fundamental concept of waste contained in NTL–4A. The phrase ''frequent or ongoing loss'' is intended to exclude one-off events such as an unanticipated equipment failure or a specific operation, like liquids unloading, that involves some venting or flaring of a limited duration. The phrase ''total equivalent energy'' compares the total expected energy production from the well with capture required to the total expected energy production from the well without capture, considering *both* production streams (oil and gas). Expected gas production is converted to barrels of oil equivalent to allow for an ''apples to apples'' comparison. In brief, if the gas that would otherwise be lost could be conserved without stranding more energy resources in the ground (*i.e.,* without creating more waste overall), the operator should be expected to take the necessary measures to conserve that gas. The BLM seeks comment on this definition of ''unreasonable and undue waste of gas.''

The phrase ''unreasonable and undue waste of gas'' appears in proposed §§ 3162.3–1(k), 3179.8, and 3179.301, which pertain to APD processing, oil-well gas flaring, and LDAR, respectively. As explained elsewhere in this section-by-section analysis, proposed §§ 3162.3–1(k), 3179.8, and 3179.301 each authorize the BLM to take some discretionary action based on its view of the ''unreasonable and undue waste of gas.'' This definition would establish parameters on the exercise of that discretion.

The BLM seeks comment on the following alternative definition: ''Unreasonable and undue waste of gas'' means a frequent or ongoing loss of substantial quantities of gas that could reasonably be avoided if the operator were to take prudent steps to plan for and manage anticipated production of both oil and associated gas from its operation, including, where appropriate, coordination with other nearby operations.

The BLM also seeks comment on the inter-relation and interaction of the ''unreasonable and undue waste'' concept with the ''avoidable/unavoidable loss'' concept detailed later. The BLM views ''avoidable/unavoidable loss'' primarily as a means of determining when royalties must be paid on lost gas, while the concept of ''unreasonable and undue waste'' would inform BLM decision-making with respect to other, more complicated waste prevention measures, such as delaying or denying a permit to drill or ordering a well to be shut-in due to excessive flaring. The BLM requests comment on whether the BLM should be considering other ways to view the inter-relation and interaction of these two concepts.

Section 3179.4 Determining When the Loss of Oil or Gas Is Avoidable or Unavoidable

This proposed section would specify when lost oil or gas would be classified as ''unavoidably lost'' (*i.e.,* when it is royalty free) and when it would be classified as ''avoidably lost'' (*i.e.,* when it is royalty bearing). NTL–4A contains similar provisions addressing when oil or gas is ''avoidably lost'' or ''unavoidably lost.'' However, these NTL–4A provisions have been subject to interpretation and have not always been applied consistently. In order to address this deficiency in NTL–4A, this proposed rule would deem losses from specified operations and sources to be ''unavoidably lost'' when the operator has not been negligent, has not violated laws, regulations, lease terms or orders, and has taken prudent and reasonable steps to avoid waste. Any oil or gas that is not categorized as unavoidably lost would be considered ''avoidably lost,'' and therefore royalty-bearing. The listed operations and sources that may constitute an unavoidable loss under this proposed rule include: well drilling; well completions and related operations; initial production tests; subsequent well tests; emergencies; downhole well maintenance and liquids unloading; facility and pipeline maintenance; and flaring due to pipeline capacity constraints, midstream processing failures, or other similar events. Notably, the proposed rule would apply reasonable time and/or volume limitations on royalty-free flaring attributable to many of these operations and sources. See the discussion of proposed §§ 3179.8, 3179.102, 3179.103., 3179.104, and 3179.105 later in this preamble. The BLM requests comment on whether the definition of ''unavoidably lost'' can be more narrowly defined than as proposed.

Section 3179.5 When Lost Production Is Subject to Royalty

This section would state that royalty is due on all ''avoidably lost'' gas, and that no royalty is due on ''unavoidably lost'' gas.

Section 3179.6 Safety

Proposed § 3179.6 contains provisions intended to ensure safety at the well site. First, proposed § 3179.6(a) would require that gas that cannot be captured must be flared (rather than vented), except under certain specified circumstances. It is generally safer to combust gas rather than to allow it to vent into the surrounding air due to the gas' explosiveness and the risks to workers from hypoxia and exposure to various associated pollutants.[95] The

[95] NIOSH–OSHA Hazard Alert, ''Health and Safety Risks for Workers Involved in Manual Tank Gauging and Sampling at Oil and Gas Extraction

preference for flaring over venting is well-established in oilfield operations. Indeed, the USGS implementing guidance for NTL–4A stated that, ''[b]ecause of safety requirements, gas which cannot be beneficially used or sold must normally be flared, not vented.'' CDM, 644.5.3G (June 1980). Operators would be allowed to vent gas when flaring is technically infeasible, under emergency conditions, and when gas is vented through the normal operation of pneumatic equipment, among other circumstances.

Proposed § 3179.6(b) would require flares or combustion devices be equipped with automatic ignition systems. There is no similar requirement in NTL–4A. Under proposed § 3179.6(b), the BLM would be authorized to issue an immediate assessment of $1,000 upon discovering a flare that is not lit.

Finally, proposed § 3179.6(c) would require that flares be placed a sufficient distance from the tank battery containment or other significant structures or objects so as not to create a safety hazard. NTL–4A does not contain similar flare location requirements.

Section 3179.7 Gas-Well Gas

This section states that gas-well gas cannot be flared or vented unless it is unavoidably lost under proposed § 3179.4(b). Currently, gas-well gas is prohibited from being vented or flared under NTL–4A unless it qualifies as ''unavoidably lost'' or is specially authorized by the BLM. Unlike oil wells, the primary purpose of a gas well is the production and sale of gas. Therefore, consistent with longstanding BLM policy, gas-well gas should not be vented or flared except in narrow circumstances.

Section 3179.8 Oil-Well Gas

Proposed § 3179.8 would establish a new policy governing the flaring of associated gas from oil wells. Most of the flaring from BLM-managed oil and gas leases occurs at oil wells that are connected to a gas pipeline with insufficient takeaway capacity for the well(s) connected to the pipeline. When the gas pipeline associated with an oil well becomes overwhelmed, the well is ''kicked off'' the pipeline and the operator is faced with a choice: flare the associated gas in order to continue oil production unabated, or curtail oil production in order to conserve the associated gas. At this point, the interests of the operator and the lessor (either the United States or the Indian mineral owner) may diverge. Specifically, the operator may wish to continue oil production unabated, sacrificing the associated gas production for near-term revenues from the oil production. When an operator chooses this course of action, proposed § 3179.8(a) would ensure that the financial interests of the public and Indian mineral owners are not unduly compromised. Under proposed § 3179.8(a), when oil-well gas must be flared due to pipeline capacity constraints, midstream processing failures, or other similar events that prevent produced gas from being transported through the connected pipeline, a maximum of 1,050 Mcf per month (per lease, unit, or CA) of such flared gas would be considered a royalty-free ''unavoidable loss.'' The operator would owe royalties on flaring beyond that limit.

The proposed monthly volume limit on royalty-free flaring due to pipeline capacity constraints replaces the case-by-case flaring approval process of NTL–4A. Under NTL–4A, an operator could seek BLM approval to flare where conservation of the gas was not ''economically justified.'' [96] As the rapid development of unconventional tight oil and gas resources resulted in more flaring due to midstream problems such as pipeline capacity constraints, many operators began to submit applications arguing that the flaring was justified under the economic circumstances and should therefore be royalty free.[97] The BLM has never taken the position that long-term flaring due to pipeline capacity constraints is economically justified. Furthermore, the BLM does not believe that the economic test in NTL–4A was intended to accommodate situations where large volumes of associated gas are flared in order to maximize an individual operator's near-term profits. Rather, as explained in detail previously, the economic standard in NTL–4A looked to ''the total leasehold production, including oil and gas, as well as the economics of a field-wide plan,'' when evaluating the feasibility of conserving the associated gas, and this standard did not envision that operators could use a pipeline constraint as an economic justification for long-term flaring. Finally, the drastic increase in flaring applications under NTL–4A demonstrates that the case-by-case application process is not a sustainable approach for evaluating the appropriateness of flaring. Therefore, the BLM is proposing to set a volume limit that will accommodate any truly unavoidable losses due to midstream failures while ensuring that royalties are paid when an operator makes the business decision to flare gas in order to continue producing oil.

In order to determine the appropriate monthly volume limit on royalty-free flaring due to midstream constraints, the BLM examined flaring data reported to ONRR for the years 2015–2019. Based on that data, the BLM determined that a limit of 1,050 Mcf per month would impact the 20 percent of flaring operations responsible for 95 percent of the reported flaring volumes. Thus, the proposed limit targets only those operators that generate the vast majority of the flaring. The BLM estimates that the proposed 1,050 Mcf per month limit would make approximately 85 percent of flared volumes royalty-bearing and generate an average of nearly $33 million in royalty revenues each year. The BLM examined limits lower than 1,050 Mcf per month, but found diminishing returns in terms of additional royalties relative to the number of operations impacted.

In most cases, payment of royalties on flared associated gas would be sufficient to protect the proprietary interests of the United States and Indian mineral owners. However, because the incentive to flare is strongest where the price of gas (and, therefore, the royalty value of the gas) is lowest with respect to the price of oil, the BLM must be prepared for the possibility of egregious cases where the volume of flaring is unacceptable even in the face of royalty payments. In order to protect the public interest in such cases, paragraphs (b) and (c) of proposed § 3179.8 would establish a process whereby the BLM could, under a narrow set of circumstances, order an operator to curtail or shut-in production as necessary to avoid the unreasonable waste of Federal or Indian gas. The BLM is proposing to limit shut-in or curtailment orders under this section to situations where the operator had reported flaring in excess of 4,000 Mcf per month for 3 consecutive months and the BLM confirms that flaring is ongoing. According to ONRR data, only

Sites,'' February 2016, available at *https://www.osha.gov/sites/default/files/publications/OSHA3843.pdf.*

[96] See Section III.C.2 of this preamble for additional detail on this process and the applicable standard.

[97] *See, e.g., Petro-Hunt, LLC,* 197 IBLA 100, 105–106 (''Petro-Hunt stated that '[t]he flaring at issue was primarily the result of, among other things, force majeure events, maintenance, and/or capacity issues in the third-party gas gathering and processing system, a common cause of flaring in the Williston Basin.' It argued that '[w]hile [it] could have prevented flaring by shutting-in its productive oil wells and refusing to continue developing the field, such actions would not have been reasonable' because 'there are vast discrepancies in value between produced oil and gas.' '').

3 percent of reporting units had 3 consecutive months of more than 4,000 Mcf of flaring. However, this 3 percent accounted for approximately 16 percent of the total flaring in 2019.

The proposed standard for shut-in or curtailment orders is based on flaring over a consecutive 3-month period to account for the fact that flaring is often at its highest levels during the first months of a well's life and can taper off to substantially lower levels soon thereafter. One reason for this phenomenon is that facilities are often designed to accommodate long-term production levels, as opposed to the high levels of gas production experienced in the initial months of production. The purpose of the 3-month time frame is to focus shut-in and curtailment orders on wells most likely to flare large volumes for longer periods. The BLM requests comment on the proposed standard for shut-in or curtailment orders, including the volume threshold and the 3-month time frame.

If a shut-in or curtailment order would adversely affect production of oil or gas from non-Federal and non-Indian mineral interests (*e.g.,* State or private leases in a mixed-ownership unit or CA), the BLM is proposing to issue such an order only where the BLM is authorized to regulate the rate of production under the governing unit or communitization agreement. In the absence of such authorization, the BLM would contact the State regulatory authority having jurisdiction over the oil and gas production from the non-Federal and non-Indian interests and request that that entity take appropriate action to limit the waste of gas.

The BLM requests comment on this proposed approach to regulating the flaring of associated gas from oil wells. Specifically, the BLM would like comment on whether the proposed volume thresholds are appropriate, whether the proposed limit on royalty-free flaring in proposed § 3179.8(a) should cover sources of flaring besides midstream constraints, and whether shut-in or curtailment orders under proposed § 3179.8(b) can or should be applied more broadly (*e.g.,* for lower volumes of flaring, over a shorter time frame, or using a different standard for impacting non-Federal production).

The BLM also invites comment on alternative approaches to regulating flaring, such as the capture percentage regimes employed by New Mexico and North Dakota. The BLM has not proposed capture percentage requirements similar to those in the 2016 Rule because such requirements would appear to be more difficult for the BLM to implement and enforce (due to the relative complexity of the calculations) and not necessarily more effective at controlling waste or ensuring appropriate royalty payments as opposed to the provisions proposed herein.

Section 3179.9 Measuring and Reporting Volumes of Gas Vented and Flared

Under proposed § 3179.9(a), operators would be required to estimate (using estimation protocols) or measure (using a metering device) all flared and vented gas, whether royalty-bearing or royalty-free. Operators would also be required to report all volumes vented or flared under applicable ONRR reporting requirements.

Proposed paragraph (b) would require operators to use an orifice meter for any flare that is flaring at a rate of 1,050 Mcf per month or higher. The meter would be required to conform to the requirements of 43 CFR subpart 3175 for a low-volume facility measurement point (FMP), but with lesser requirements for plate inspection, EGM verification, determination of heating value, and overall measurement uncertainty. The proposed section would establish the timeframe for installation of the required meter (6 months after the effective date of the final rule) and would establish special requirements relating to the location of the meter. The BLM requests comment on whether operators should be required to document compliance with proposed paragraph (b) and provide that documentation to the BLM on a regular or as-needed basis.

Proposed paragraph (c) would provide the requirements for flares not covered by paragraph (b). This section would allow those flared volumes to be measured per the requirements of paragraph (b), estimated utilizing sampling and compositional analysis that complies with the requirements of proposed § 3179.203(c), or estimated using another method that has been approved by the BLM.

Proposed paragraph (d) would address situations where a flare is combusting gas that is combined across multiple leases, unit PAs, or communitized areas. This proposed paragraph would allow the operator to measure or estimate the gas at a single point at the flare but would require the operator to use an allocation method approved by the BLM to allocate the quantities of flared gas to each lease, unit PA, or communitized area.

Paragraph (e) would clarify that flare meters are not FMPs for the purposes of the BLM's gas measurement regulations at 43 CFR subpart 3175.

Section 3179.10 Determinations Regarding Royalty-Free Flaring

This proposed section would provide for a transition period for operators that are operating under existing approvals for royalty-free flaring as of the effective date of the final rule. Proposed paragraph (a) states those operators could continue to flare royalty-free pursuant to such approvals for 6 months after the effective date of the rule.

Paragraph (b) would clarify that nothing in proposed subpart 3179 would alter the royalty-bearing status of flaring that occurred prior to the effective date of the final rule or the BLM's authority to determine that status and collect appropriate back-royalties.

Section 3179.11 Incorporation by Reference (IBR)

The proposed rule would incorporate two industry standards without republishing the standards in their entirety in the CFR, a practice known as incorporation by reference. These standards were developed through a consensus process, facilitated by the Gas Processors Association (GPA) Midstream, with input from the oil and gas industry. The BLM has reviewed these standards and determined that they would further the purposes of § 3179.203 of this proposed rule. These standards reflect the industry-accepted standards for compositional analysis for samples under pressure where the sample is expected to have C10+ components. Under § 3179.203, pressurized samples from the last pressurized vessel upstream of the storage tank would be used to determine whether the volumes of gas lost from the storage tank are of sufficient quantity and quality to justify the installation of a vapor recovery unit. The legal effect of incorporation by reference is that the incorporated standards become regulatory requirements. This proposed rule would incorporate the specific versions of the standards listed. The standards referenced in this section would be incorporated in their entirety.

The proposed incorporation of industry standards follows the requirements found in 1 CFR part 51. The industry standards can be incorporated by reference pursuant to 1 CFR 51.7 because, among other things, they would substantially reduce the volume of material published in the **Federal Register**; the standards are published, bound, numbered, and organized; and the standards proposed for incorporation are readily available to the general public through purchase

from the standards organization or through inspection at any BLM office with oil and gas administrative responsibilities. 1 CFR 51.7(a)(3) and (4). The language of incorporation in proposed 43 CFR 3179.11 meets the requirements of 1 CFR 51.9.

All of the GPA Midstream materials for which the BLM is seeking incorporation by reference are available for inspection at the Bureau of Land Management, Division of Fluid Minerals, 301 Dinosaur Trail, Santa Fe, NM 87505, telephone 505–954–2000; and at all BLM offices with jurisdiction over oil and gas activities.

The GPA materials are also available for inspection and purchase from GPA Midstream, 6060 American Plaza, Suite 700, Tulsa, OK 74135; telephone 918–493–3872.

The following describes the GPA standards that the BLM proposes to incorporate by reference into this rule:

GPA 2286–14, Method for the Extended Analysis for Natural Gas and Similar Gaseous Mixtures by Temperature Program Gas Chromatography, Revised 2014 (''GPA 2286''). This standard covers the methods for determination of natural gas chemical composition when specifics of heavier fractions up to C14 is needed or required.

GPA 2186–14, Method for the Extended Analysis of Hydrocarbon Liquid Mixtures Containing Nitrogen and Carbon Dioxide by Temperature Programmed Gas Chromatography, Revised 2014 (''GPA 2186''). This standard covers the methods for determination of natural gas chemical composition when specifics of heavier fractions up to C10 is needed or required.

§ 3179.12 Reasonable Precautions To Prevent Waste

Proposed § 3179.12 would further implement the BLM's authority to prevent waste. Paragraph (a) is a nearly verbatim recitation of the MLA's requirement that operators must use all reasonable precautions to prevent the waste of oil or gas developed from the lease. See 30 U.S.C. 225. Paragraph (b) would reiterate the BLM's existing authority to specify certain reasonable precautions to prevent waste as conditions of approval (COA) of an APD. See 43 CFR 3162.3–1(h)(1). Paragraph (c) would authorize the Authorized Officer to order an operator to implement, within a reasonable time, other measures to prevent waste at ongoing operations. Finally, paragraph (d) would recognize that the reasonable precautions to prevent waste may evolve over time and would clarify that such reasonable precautions are not therefore limited to the waste prevention standards and requirements reflected elsewhere in the BLM's regulations. For example, under proposed § 3179.12, the BLM could impose a COA on an APD requiring the operator to use a particular instrument to detect leaks as part of its LDAR program if, due to technological advancements, changes in common industry practice, or other appropriate considerations, the failure to employ the specified instrument would constitute a failure to use all reasonable precautions to prevent waste. The BLM seeks comments on this section, specifically whether and to what extent the standards described in proposed paragraphs (c) and (d) provide the BLM with the appropriate flexibility to prevent waste.

Flaring and Venting Gas During Drilling and Production Operations

Section 3179.101 Well Drilling

This proposed section would address gas that is lost as a result of loss of well control. Gas lost as a result of a loss of well control during drilling would be classified as unavoidably lost and royalty-free, unless the loss of well control was due to operator negligence, in which case it would be avoidably lost and subject to royalties (see proposed § 3179.4(b)(1)). If there is a loss of well control, the BLM would determine whether it was due to operator negligence, and if so, the BLM would notify the operator in writing.

Section 3179.102 Well Completion and Related Operations

This proposed section would address gas that reaches the surface during well completions, post-completion and fluid recovery operations, and re-fracturing. Proposed paragraph (a) provides that, for new completions, up to 10,000 Mcf of gas that reaches the surface may be flared royalty-free. This would cover the operations of well completion, post-completion, and fluid recovery operations.

Proposed paragraph (b) provides that, for refracturing of existing completions at a well connected to a pipeline, up to 5,000 Mcf of gas that reaches the surface may be flared royalty-free. This would cover the operations of well completion, post-completion, and fluid-recovery operations.

Under the 2016 Waste Prevention Rule, royalty-free flaring during well completions and related operations was limited to 20,000 Mcf or up to 30 days, whichever occurred first. Upon further investigation, including post-2016 consultation with certain operators, the BLM believes that prudent operators conducting new completion operations are likely able to capture gas production before flaring more than 10,000 Mcf of gas. Specifically, the BLM understands from its conversations with mid-size operators that the flowback process has changed considerably over the past few years, and that it is now standard practice to connect to a gas sales line as soon as possible. The BLM understands that many operators are not using temporary production equipment, but rather production is flowing directly to permanent production facilities after completion, thereby substantially reducing the need for flaring. In addition, the BLM believes that a lower volume limit is appropriate for refractured wells because, though those wells would have some need for flaring, they should already have an established and available means of capture (*e.g.,* a pipeline to sales).

Section 3179.103 Initial Production Testing

This proposed section would clarify the limits on royalty-free flaring during a well's initial production test. This section is essentially the same as the 2016 Waste Prevention Rule provision governing royalty-free flaring during initial production testing. The BLM is proposing to adopt these limits rather than retaining the more liberal limits reflected in NTL–4A and the 2018 Revision Rule (which set a 30-day or 50,000 Mcf limit, subject to extensions) because the BLM believes the proposed limits would accommodate any truly unavoidable flaring during production testing while better protecting the public's and Indian mineral owners' interests in obtaining royalties on the extracted gas. Based on consultations with BLM State and Field Offices regarding their experiences with production testing, the BLM believes that it would be rare for operators to exceed the royalty-free flaring limits proposed in this section.

Proposed paragraph (a) would provide that gas could be flared royalty-free during initial production testing for up to 30 days or 20,000 Mcf of flared gas, whichever occurs first. Volumes flared during well completion would count against the 20,000 Mcf limit. Additionally, royalty-free flaring would end when oil production begins, even if the 30-day or 20,000 Mcf limit had not been reached.

Paragraph (b) would allow the BLM to approve royalty-free flaring during a longer testing period of up to 60 additional days if there are testing delays due to well or equipment

problems or a need for additional testing to develop adequate reservoir information.

Paragraph (c) would allow the BLM to increase the royalty-free flaring volume specified in paragraph (a)(2) by up to 30,000 additional Mcf if the well is an exploratory well in a remote location that would require additional testing related to the development of pipeline infrastructure.

Paragraph (d) would allow a 90-day (rather than 30-day) period for royalty-free flaring during the variable and time-intensive dewatering and initial evaluation of an exploratory coalbed methane well. In addition, the BLM could approve up to two extensions of 90 days each to allow for more time to dewater and evaluate the coalbed methane well.

Paragraph (e) would clarify that the operator would have to transmit a request for a longer test period under paragraphs (b), (c), or (d) of this proposed section through a Sundry Notice.

Section 3179.104 Subsequent Well Tests

The proposed requirement in this section is essentially the same as NTL–4A's requirement regarding subsequent well tests. It would limit royalty-free flaring during production tests after the initial production test to 24 hours, unless the BLM approves or requires a longer test period. The operator would be required to transmit its request for a longer test period through a Sundry Notice.

Section 3179.105 Emergencies

Under proposed § 3179.4(b)(6), and consistent with IRA Section 50263, gas lost during an ''emergency situation'' would be royalty-free. Proposed § 3179.105 would serve to clearly define what constitutes ''an emergency situation,'' specify circumstances that do *not* constitute an emergency situation, and place a time limit on royalty-free venting or flaring.

Proposed § 3179.105(a) would allow an operator to flare or, if flaring is not feasible due to the emergency situation, vent gas royalty-free under § 3179.4(b)(6) of this subpart for no longer than 48 hours during an emergency situation. IRA Section 50263 does not define what is an ''emergency situation that poses a danger to human health, safety, and the environment.'' The BLM is proposing to implement the statute in a way that is reasonable in light of its longstanding authority under the MLA and FOGRMA and its experience implementing those authorities (and is also proposing to make the same provision governing emergency situations applicable on Indian lands). Specifically, § 3179.105(a) would define an ''emergency situation'' as a temporary, infrequent, and unavoidable situation in which the loss of gas is necessary to avoid a danger to human health, safety, or the environment. Although NTL–4A limited royalty-free losses to 24 hours per ''emergency'' incident (except where otherwise approved by the BLM), this rule would implement a 48-hour limit (not subject to discretionary extensions) to reflect the time constraint contained in Section 50263 of the IRA.

Proposed § 3179.105(b) would clarify that the following circumstances do not constitute ''emergencies'' for the purposes of royalty assessment: (1) recurring equipment failures; (2) the operator's failure to install appropriate equipment of a sufficient capacity to accommodate production conditions; (3) the failure to limit production when the production rate exceeds the capacity of the related equipment, pipeline, or gas plant, or exceeds sales contract volumes of oil or gas; (4) scheduled maintenance; and (5) operator negligence.

Proposed § 3179.105(c) would require an operator to file a report to the BLM for any emergency situation that requires the operator to vent or flare beyond the timeframe authorized under paragraph (a).

To be clear, proposed § 3179.105 would not prohibit an operator from engaging in venting or flaring when the operator deems it operationally necessary to do so. The BLM is not attempting to substitute its judgment for that of the operator with respect to the management of emergencies. Rather, the purpose of proposed § 3179.105 is to safeguard the public interest in royalty revenues by ensuring that a royalty-free flaring exception for ''emergencies'' is limited to events that are truly out of the operator's control and could not have been avoided through more careful management.

Conservation of Gas From Equipment, Storage Vessels, and During Well Maintenance Operations

Section 3179.201 Pneumatic Controllers and Pneumatic Diaphragm Pumps

Under proposed § 3179.201, an operator of a lease, unit participating area (PA), or CA producing at least 120 Mcf of gas or 20 barrels of oil per month would be prohibited from using natural-gas-activated pneumatic controllers or pneumatic diaphragm pumps with a bleed rate that exceeds 6 scf/hour. In effect, this would require operators to use ''low-bleed'' pneumatic equipment or pneumatic equipment that does not bleed natural gas, such as air-activated pneumatic equipment.

Prudent operators should be expected to employ less wasteful technologies where it is economically feasible to do so. Thus, the proposed prohibition on the use of higher-bleed natural-gas-activated pneumatic equipment is limited to operations producing amounts of oil or gas that would render the adoption of these less wasteful technologies economically feasible. Specifically, the BLM chose production thresholds of oil and gas that would pay for the installation of a low-bleed pneumatic controller (estimated to be about $2,200) in a period of less than 1 year (around 10 months). The BLM understands that it is unlikely that an operator of a lease, unit, or CA producing only 120 Mcf of gas or 20 barrels of oil per month could re-direct the entirety of its revenues for 10 months towards paying for upgrading its pneumatic equipment. However, the BLM expects that the life of such a lease, unit, or CA would extend well beyond 10 months and that the cost of the required equipment could be financed over a longer period. The more a lease, unit, or CA is producing above 120 Mcf of gas or 20 barrels of oil per month, the more revenue will be available to subsidize the new equipment. In a prior rulemaking, the BLM found that low-bleed continuous pneumatic controllers are already very common in the petroleum and natural gas production sector, and that low-bleed continuous pneumatic controllers have the potential to generate revenue for operators as gas that would otherwise be vented is captured and sold. See 83 FR 49184, 49195 (Sept. 28, 2018).

In order to temper the potentially disruptive effect of this new requirement on existing operations, proposed § 3179.201(b) would set a compliance deadline of 1 year after the effective date of the final rule. The RIA estimates that operators would need to replace up to 53,213 pneumatic devices to meet the conditions of this rule. It is estimated that such replacements would conserve about 5.93 Bcf of gas a year. The proposed requirement is expected to cost operators up to $15.6 million dollars a year while generating $21 million in benefits from increased gas sales each year. Although the private benefits to industry would exceed the costs to industry—thereby indicating that operators should adopt this technology even in the absence of a regulation requiring them to do so—the BLM finds this requirement necessary

because, in the BLM's experience, operators do not typically replace functional equipment, nor do they typically replace malfunctioning equipment unless the repair costs exceed the purchase price of new equipment. There would be an added benefit to society of $165 million a year in the value of reduced methane emissions. The BLM also notes that the reduced emissions of natural gas would reduce emissions of other pollutants (*e.g.,* VOCs and hazardous air pollutants), though the BLM has not quantified or monetized the benefits to society associated with reducing those pollutants. The BLM requests comment on appropriate methodologies for quantifying and monetizing these benefits.

The BLM considered requiring the use of no-bleed, air-activated devices instead of gas-activated equipment, but based on the information at our disposal, the BLM currently proposes that the higher price of the air-activated equipment may not be consistent with our statutory focus on waste reduction, considering the marginal increase in gas capture relative to the lower cost and effective low-bleed devices.[98] The BLM also considered different production thresholds at which the requirements would be imposed but found the proposed thresholds to provide the best balance of gas conservation and economic feasibility. The BLM requests comment on the proposed approach to pneumatic equipment on Federal and Indian leases, including the estimated costs and benefits, appropriate production thresholds for these requirements, and the economic and technical feasibility of alternative approaches (such as requiring no-bleed equipment).

Section 3179.203 Oil Storage Vessels

Storage vessels or tanks are used on-site to store produced hydrocarbons and other fluids. In most cases, an operator will direct recovered fluids from the well to a separator, with the hydrocarbons then directed to the storage tanks. During storage, light hydrocarbons dissolved in the crude oil or condensate vaporize and collect in the space between the tank liquids and the tank roof. These vapors are often vented to the atmosphere when the liquid level in the tank subsequently fluctuates.

Proposed § 3179.203 would establish new requirements that would limit the loss of natural gas from oil storage vessels. Paragraph (a) would require the thief hatch on a storage tank to remain closed, except as necessary to conduct production and measurement operations. Paragraph (a) would require the BLM to issue a $1,000 immediate assessment upon discovering a thief hatch that has been left open and unattended.

Under proposed § 3179.203(b), all oil storage vessels would be required to be equipped with a vapor-recovery system or other mechanism that avoids the intentional loss of natural gas from the vessel, unless the operator is able to establish that it would be technically or economically infeasible. In order to temper the disruptive effect of this new requirement on existing operations, proposed § 3179.203(b) would set a compliance deadline of 1 year after the effective date of the final rule. The proposed rule does not contain a definition or formula for determining economic feasibility for the purposes of § 3179.203(b). The BLM oversees a wide variety of production scenarios—from multi-well facilities operated by large companies to individual ''stripper wells'' operated by very small companies—and recognizes that the economic feasibility (from a waste-prevention perspective) of a vapor-recovery system will depend on a variety of factors, such as the oil gravity and the production rate. The BLM would, therefore, like to retain flexibility in making this determination. To be clear, flexibility does not indicate unrestrained discretion. Were the BLM to order an operator to install a vapor-recovery unit or other mechanism to capture gas from a storage vessel, traditional administrative law principles would require the BLM to explain why the ''technically or economically infeasible'' exemption does not apply. The BLM requests comment on this approach, and specifically requests comment on whether, and how, economic feasibility should be defined for this section.

Under proposed § 3179.203(c), where an operator has not equipped a storage vessel with a vapor-recovery system or other appropriate mechanism, the operator would be required to submit an annual compositional analysis of production flowing to the storage vessel. Proposed § 3179.203(c) would contain technical sampling and analysis requirements intended to ensure the accuracy of the compositional analysis submitted by the operator. The purpose of the compositional-analysis requirement would be to demonstrate that installing a vapor-recovery system (or other similar mechanism) is, in fact, technically or economically infeasible. The compositional analysis would allow the operator and the BLM to estimate the quantity and quality of natural gas emitted from the storage tank, which would in turn indicate the value and volume of the gas to be recovered, and therefore the economic feasibility of a vapor-recovery system. The BLM estimates that each annual compositional analysis report would cost approximately $500. The BLM requests comment on this approach to ensuring that operators take all reasonable measures to conserve natural gas from oil storage tanks, and the BLM invites comment on alternative approaches. Specifically, the BLM is interested in alternative standards for requiring vapor recovery, which might include using the tank's throughput (the volume of oil stored in the tank over a period of time) as an indicator of when vapor recovery should be required.

Proposed § 3179.203(d) would generally require gas released from an oil storage vessel to be flared rather than vented. This paragraph would also make clear that an operator may commingle vapors from multiple storage vessels to a single flare without the need for prior BLM approval.

The RIA estimates that operators would need to install up to 2,774 vapor recovery units on existing storage tanks to meet the conditions of this rule. It is estimated that this would conserve about 9 Bcf of gas a year. The proposed requirement is expected to cost operators up to $93 million dollars a year while generating $33 million in benefits from increased gas sales each year. There would be an added benefit to society of $253 million per year in the value of reduced methane emissions. The BLM also notes that the reduced emissions of natural gas would reduce emissions of other pollutants (*e.g.,* VOCs and hazardous air pollutants), though the BLM has not quantified or monetized the benefits to society associated with reducing those pollutants. The BLM requests comment on appropriate methodologies for quantifying and monetizing these benefits.

Section 3179.204 Downhole Well Maintenance and Liquids Unloading

In producing gas wells, fluids may accumulate in the wellbore and impede the flow of gas, sometimes halting production itself. Gas wells generally have sufficient pressure to produce both formation fluids and gas early on, but, as production continues and reservoir pressure declines, the gas velocity in the production tubing may not be sufficient to lift the formation fluids. When this occurs, liquids (hydrocarbons and salinized water) may accumulate in the

[98] See Section 7.11 of the RIA for detailed discussion of this analysis.

tubing, causing a further drop in pressure, slowed gas velocity, and raised pressure at the perforations. When the bottom-hole pressure becomes static, gas flow stops, and all liquids accumulate at the bottom of the tubing. In order to return the flow of gas, operators will engage in ''liquids unloading,'' which will often involve venting.

This proposed section would establish limits on royalty-free venting and flaring during downhole well maintenance and liquids unloading in order to prevent waste. This section would impose a 24-hour limit on royalty-free venting or flaring for each event, and the 24-hours of royalty-free venting or flaring would only be available if the operator employs best practices that prevent or minimize vented gas and the need for well venting. For wells equipped with a plunger lift system or an automated well control system, the operator would be required to optimize the operation of the system to prevent or minimize gas losses. During any liquids unloading by manual well purging, the person conducting the well purging would be required to be present on-site to minimize, to the maximum extent practicable, any venting to the atmosphere.

Section 3179.205 Size of Production Equipment

This proposed section would state that the equipment used for production and processing would be required to be appropriately sized to handle the expected volumes produced at the lease site. For example, production equipment would be required to be sized to provide for the proper retention time of fluid flows, which has a direct impact on the gas-oil ratio of the fluid as it enters the storage tank. Under-sizing of the separator equipment can result in a higher quantity of gas remaining entrained in the fluid. That, in turn, can be the source of unnecessary losses of natural gas, since the gas will be released when the fluid weathers in the tank.

Leak Detection and Repair (LDAR)

This proposed rule would require operators on Federal and Indian leases to maintain LDAR programs in order to minimize the waste of Federal and Indian gas. The 2016 Waste Prevention Rule also contained LDAR requirements, though those requirements were more stringent, less flexible, and more costly for operators than the requirements put forward in this proposed rule. Although the LDAR requirements of the 2016 Rule were expected to result in higher reductions in lost gas than the requirements proposed today, they were also heavily criticized by the court that vacated the 2016 Rule and contributed to that court's finding that the BLM had been arbitrary and capricious in promulgating the rule.[99] The 2016 Rule broadly imposed strict LDAR requirements and invited operators to seek reductions in their obligations based on site-specific economic circumstances. This proposed rule, in contrast, would establish some basic parameters (such as the time frame for repairs) while providing substantial flexibility for operators to tailor their LDAR programs to their operations. Simultaneously, operators would not be permitted to seek exemptions based on site-specific economic considerations. The BLM has concluded that even the operators of marginal wells could be expected to take reasonable measures to identify and repair leaks. The RIA estimates that this provision of the rule would only affect 2,178 well sites (or, around 2.2 percent of Federal well sites and 0.2 percent of the total well sites in the U.S.) due to existing State or EPA rules that meet or exceed the BLM's proposed standards. It is estimated that the proposed requirements would conserve about 0.3 Bcf of gas a year. It is expected to cost operators up to $2.8 million dollars a year while generating $.98 million per year in benefits from increased gas sales. There would also be an added benefit to society of $8.5 million a year in reduced methane emissions. The BLM also notes that the reduced emissions of natural gas would reduce emissions of other pollutants (*e.g.,* VOCs and hazardous air pollutants), though the BLM has not quantified or monetized the benefits to society associated with reducing those pollutants. The BLM requests comment on appropriate methodologies for quantifying and monetizing these benefits. The LDAR requirements of the proposed rule are explained in more detail as follows.

Section 3179.301 Leak Detection and Repair Program

This proposed section would require an operator to maintain an LDAR program designed to prevent the unreasonable and undue waste of Federal or Indian gas. The program would be required to include regular inspections of all oil and gas production, processing, treatment, storage, and measurement equipment on the lease site. Within 6 months of the effective date of the final rule, the operator of an existing lease would be required to submit a Sundry Notice to the BLM describing the operator's LDAR program. For leases issued after the effective date of the final rule, the operator would be required to submit the Sundry Notice within 6 months of the lease's issuance. The BLM would then review the operator's description of its LDAR program to determine whether the program is adequate to prevent the unreasonable and undue waste of gas, in light of all the circumstances at the lease site, including the variety of equipment at the lease site and the quantities of production that might support a more robust LDAR program. That is, a large, multi-well lease site with many pieces of equipment and substantial revenues from production might warrant a more vigorous LDAR program than a single marginal well for which additional regulatory burdens might risk a premature shut in. The LDAR program would need to provide for regular inspections (at least annually), and would not require any specific LDAR process or equipment to be used. The BLM would then notify the operator if the BLM deems the LDAR program to be inadequate. The notification would explain the basis for the BLM's determination, identify the plan's inadequacies, describe any additional measures necessary to address the inadequacies, and provide a reasonable time frame for the submission of a revised LDAR program.

This proposed section would require that LDAR inspections occur at least annually. For existing operations, the first inspection would be required within 1 year of the effective date of the final rule. For future leases and operations, the operator would be required to conduct the initial inspection within 1 year of the commencement of operations. In developing the proposed rule, the BLM considered requiring semi-annual—rather than annual—inspections, but this proposed rule finds, based on the information at our disposal as well as our judgment and assumptions about costs over time, that the additional compliance costs increased out of proportion with the additional gas to be saved by the more frequent inspections. This is based on evidence that leaks do not arise on a consistent basis such that twice as many inspections may not necessarily catch twice as many leaks or conserve twice as much leaked gas. So, while there is a risk of more leaks being undetected for longer, annual inspections appeared to be a more cost-effective (with respect to gas conservation) basic requirement than

[99] *See Wyoming* v. *DOI,* 493 F. Supp. 3d 1046, 1075–77 (D. Wyo. 2020).

semi-annual inspections in the long run. To be clear, the BLM is judging the cost-effectiveness of the proposed requirements in terms of gas conservation only. The BLM recognizes that the EPA has set, and is in the process of promulgating, different (though not incompatible) LDAR standards based on a different view of cost-effectiveness.[100] Any divergence between the BLM and EPA on LDAR standards (or those pertaining to pneumatic equipment or storage vessels) is due to the fact that the BLM and the EPA regulate these matters under different statutory authorities and for different purposes.

The BLM requests comment on alternative approaches, including whether required LDAR inspections should be more frequent, in line with the requirements of some States and EPA, as well as data on likely costs and benefits over time.

The BLM notes that the proposed rule envisions operators submitting LDAR program documents on a lease-by-lease basis. The BLM requests comment on alternative approaches, such as allowing operators to submit a document detailing a program that would apply to its operations across multiple leases or even to all of its operations on BLM-managed lands.

Section 3179.302 Repairing Leaks

This proposed section would require operators to repair any leak as soon as practicable, and no later than 30 calendar days after discovery of the leak, unless there is good cause for repair to take longer. This proposed section of the rule would require the operator to notify the BLM by Sundry Notice if there is good cause to delay the repairs beyond 30 days, and to complete the repair at the earliest opportunity, but in no event longer than 2 years after discovery. The operator would also be required to conduct a follow-up inspection within 30 days after the repair to verify the effectiveness of the repair, and to make additional repairs within 15 days if the previous repair was not effective. The operator would be required to follow this repair and follow-up process until the repair is effective.

Section 3179.303 Leak Detection Inspection Recordkeeping and Reporting

This proposed section would require operators to maintain records of LDAR inspections and repairs, including the date and location of required inspections, the methods used to identify leaks, the equipment where the leaks were found, the dates of repairs, and the dates of follow-up inspections. These records would be required to be made available to the BLM upon request. Audio, visual, or olfactory (AVO) inspections would only have to be documented if the operator finds a leak requiring repair. Paragraph (b) of the section would require operators to submit to the BLM, by March 31 of each calendar year, an annual summary report on the previous year's LDAR inspection activities. The BLM plans to make these reports available to the public, subject to any protections for confidential business information.

State or Tribal Variances

Section 3179.401 State or Tribal Requests for Variances From the Requirements of This Subpart

Proposed § 3179.401 would reinstate the State or Tribal variance provision from the 2016 Waste Prevention Rule.[101] Under this section, States and Tribes would be able to request a variance under which analogous State or Tribal rules would apply in place of some or all of the requirements of subpart 3179. The State or Tribe's variance request would be required to: identify the subpart 3179 provision(s) for which the variance is requested; identify the State, local, or Tribal rules that would be applied instead; explain why the variance is needed; and, demonstrate how the State, local, or Tribal rules would be as effective as the subpart 3179 provisions in terms of reducing waste, reducing environmental impacts, assuring appropriate royalty payments, and ensuring the safe and responsible production of oil and gas. The BLM State Director would be authorized to approve the variance request or approve it subject to conditions, after considering all relevant factors. This decision would be entirely at the BLM's discretion and would not be subject to administrative appeals under 43 CFR part 4. If the BLM were to approve a variance, the State or Tribe that requested the variance would be obligated to notify the BLM of any substantive amendments, revisions, or other changes to the State, local, or Tribal rules to be applied under the variance. Finally, if the BLM were to approve a variance under this section, the BLM would be authorized to enforce the State, local, or Tribal rules applied under the variance as if they were contained in the BLM's regulations.

Before including a variance provision in the final rule, the BLM is seeking to confirm that such variances would be both useful and practical. Operators on Federal and Indian lands are already required to adhere to other applicable State, Tribal, and local laws and regulations, so applying for a variance on the basis that a State, Tribal, or local rule would provide increased protection for the taxpayer or lower levels of waste through, for example, lower allowable monthly flaring volumes, would be unnecessary and a burden for States and Tribes that would apply for the variance provision, and a potential source of confusion for operators. To put it another way, operators in States or on Tribal lands that have more stringent standards than those contained in this proposed rule would be required to conform to the more stringent State or Tribal standards in any event, regardless of whether the State or Tribe receives a variance under the provision of the proposed rule. Such situations routinely arise in the context of other BLM oil and gas operational regulations, which raises questions about the usefulness or need of the variance provision contained in this proposed rule. The BLM believes that alignment of data collection processes or other potential areas of regulatory duplication, such as through a common reporting form that could be submitted to both the State or Tribal regulatory agency and the BLM, could bring greater efficiencies for both operators and regulators, but believes that a memorandum of understanding (MOU) between the BLM and a State or Tribe could more efficiently achieve many of those goals without the need for a State or Tribal variance. The BLM requests that commenters provide specific examples of situations where the variance provision in proposed § 3179.401 would improve on existing practices and administrative tools, such as MOUs, in terms of providing better environmental protection, better protecting taxpayer and lessor interests, achieving better administrative efficiencies, and reducing burdens on operators.

[100] See 86 FR 63154.

[101] The BLM chose not to include a similar State variance provision in the 2018 Revision Rule, concluding that the provision in the 2016 Waste Prevention Rule was no longer necessary in light of the predominance State regulations in the Revision Rule. 83 FR 49197. This proposed rule would not defer to State regulations to the same extent as the Revision Rule, and so a variance provision—*i.e.,* a provision providing for appropriate State and Tribal flexibility—is therefore a relevant consideration in this rulemaking. At the final rule stage, the BLM will assess whether the proposed variance provision is ''too restrictive'' in light of comments from States, Tribes, and other stakeholders.

V. Procedural Matters

A. Regulatory Planning and Review (E.O. 12866, E.O. 13563)

Executive Order 12866 provides that the Office of Information and Regulatory Affairs (OIRA) within the Office of Management and Budget (OMB) will review all significant rules. The OIRA has determined that this proposed rule is economically significant.

Executive Order 13563 reaffirms the principles of Executive Order 12866 while calling for improvements in the Nation's regulatory system to promote predictability, to reduce uncertainty, and to use the best, most innovative, and least burdensome tools for achieving regulatory ends. The Executive Order directs agencies to consider regulatory approaches that reduce burdens and maintain flexibility and freedom of choice for the public where these approaches are relevant, feasible, and consistent with regulatory objectives. Executive Order 13563 emphasizes further, that regulations must be based on the best available science and that the rulemaking process must allow for public participation and an open exchange of ideas. We have developed this rule in a manner consistent with these requirements.

This proposed rule would replace the BLM's current rules governing venting and flaring, which are contained in NTL–4A. We have developed this proposed rule in a manner consistent with the requirements in Executive Order 12866 and Executive Order 13563.

The monetized costs and benefits of this rule can be seen on the following table along with the transfer payments this rule would provide in the form of increased royalties from increased gas sales. The total monetized Net Benefit on an annualized basis is $359 million at a 7 percent discount rate and $372 million at a 3 percent discount rate. Additional unquantified benefits from reduced emissions of VOCs and hazardous air pollutants are discussed further in the RIA. The BLM reiterates that, while it has included benefits associated with the social cost of greenhouse gases in this particular presentation of costs and benefits and in the RIA, this was done to respond to Executive Orders 12866 and 13563 and in order to present as complete a picture as possible of the total costs and benefits of the proposed rule for the public. Climate benefits derived from foregone emissions were not a factor in the decision to propose any of the individual waste prevention requirements in this proposed rule.

COSTS AND BENEFITS SUMMARY

[2022–2031]

	7% Discount rate		3% Discount rate	
	NPV ($MM)	Annualized ($MM)	NPV ($MM)	Annualized ($MM)
Costs:				
Measurements	$9.99	$1.42	$11.13	$1.31
Tanks	657.75	93.65	716.74	84.02
Pneumatics	109.79	15.63	114.06	13.37
LDAR	20.16	2.87	24.48	2.87
Administrative Burdens	58.61	8.34	71.18	8.34
Total Cost	856.30	121.92	937.59	109.91
Benefits:				
Tanks	2,386.70	285.48	2,438.33	285.85
Pneumatics	1,558.34	186.40	1,592.05	186.64
LDAR	79.37	9.48	80.94	9.49
Total Benefits	4,024.41	481.36	4,111.32	481.97
Net Benefits	3,168.10	359.44	3,173.72	372.06
Transfer Payments	274.10	39.03	336.66	39.47

The BLM reviewed the requirements of the proposed rule and determined that it would not adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or Tribal governments or communities. For more detailed information, see the RIA prepared for this proposed rule. The RIA has been posted in the docket for the proposed rule on the Federal eRulemaking Portal: *https://www.regulations.gov.* In the Searchbox, enter ''RIN 1004–AE79'', click the ''Search'' button, open the Docket Folder, and look under Supporting Documents.

B. Regulatory Flexibility Act

The Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) (RFA) requires that Federal agencies prepare a regulatory flexibility analysis for rules subject to the notice-and-comment rulemaking requirements under the Administrative Procedure Act (5 U.S.C. 500 *et seq.*), if the rule would have a significant economic impact, whether detrimental or beneficial, on a substantial number of small entities. See 5 U.S.C. 601–612. Congress enacted the RFA to ensure that government regulations do not unnecessarily or disproportionately burden small entities. Small entities include small businesses, small governmental jurisdictions, and small not-for-profit enterprises.

The BLM reviewed the Small Business Administration (SBA) size standards for small businesses and the number of entities fitting those size standards as reported by the U.S. Census Bureau in the Economic Census. The BLM concludes that the vast majority of entities operating in the relevant sectors are small businesses as defined by the SBA. As such, the proposed rule would likely affect a substantial number of small entities.

The BLM reviewed the proposed rule and has determined that, although the proposed rule would likely affect a substantial number of small entities,

that effect would not be significant. The basis for this determination is explained in more detail in the RIA. In brief, the per-entity, annualized compliance costs associated with this proposed rule are estimated to represent only a small fraction of the annual net incomes of the companies likely to be impacted. Because the proposed rule would not have a ''significant economic impact on a substantial number of small entities,'' as that phrase is used in 5 U.S.C. 605, an initial regulatory flexibility analysis is not required. Nonetheless, in an effort to be thorough and in recognition of the substantial number of ''small entities'' operating Federal and Indian oil and gas leases, the BLM conducted an initial regulatory flexibility analysis, which is detailed in the RIA. The Secretary of the Interior certifies under 5 U.S.C. 605(b) that this rule would not have a significant economic impact on a substantial number of small entities.

C. Small Business Regulatory Enforcement Fairness Act

This proposed rule is a major rule under 5 U.S.C. 804(2), the Small Business Regulatory Enforcement Fairness Act, because it is estimated that the rule would have an annual economic impact of $100 million or more. As noted earlier, the RIA that the BLM produced for this rule calculates that this rule would cost operators $122 million per year (using a 7 percent discount rate) for the next 10 years, while generating benefits to operators of approximately $54 million a year (using a 7 percent discount rate) in the form of 15.3 Bcf of additional captured gas. The reduced methane emissions associated with the proposed rule would provide a benefit to society of $427 million a year over the same time frame, leading to a net benefit from the rule of $359 million a year.

D. Unfunded Mandates Reform Act (UMRA)

The proposed rule would not have a significant or unique effect on State, local, or Tribal governments or the private sector. The proposed rule contains no requirements that would apply to State, local, or Tribal governments. The proposed rule would revise requirements that would otherwise apply to the private sector participating in a voluntary Federal program. The costs that the proposed rule would impose on the private sector are below the monetary threshold established at 2 U.S.C. 1532(a). A statement containing the information required by the Unfunded Mandates Reform Act (UMRA) (2 U.S.C. 1531 *et seq.*) is therefore not required for the proposed rule. This proposed rule is also not subject to the requirements of section 203 of UMRA because it contains no regulatory requirements that might significantly or uniquely affect small governments, because it contains no requirements that apply to such governments, nor does it impose obligations upon them.

E. Governmental Actions and Interference With Constitutionally Protected Property Right—Takings (Executive Order 12630)

This proposed rule would not affect a taking of private property or otherwise have taking implications under Executive Order 12630. A takings implication assessment is not required. The proposed rule would replace the BLM's current rules governing venting and flaring, which are contained in NTL–4A. Therefore, the proposed rule would impact some operational and administrative requirements on Federal and Indian lands. All such operations are subject to lease terms which expressly require that subsequent lease activities be conducted in compliance with subsequently adopted Federal laws and regulations.

This proposed rule conforms to the terms of those leases and applicable statutes and, as such, the rule is not a government action capable of interfering with constitutionally protected property rights. Therefore, the BLM has determined that the rule would not cause a taking of private property or require further discussion of takings implications under Executive Order 12630.

F. Federalism (Executive Order 13132)

Under the criteria in section 1 of Executive Order 13132, this proposed rule does not have sufficient federalism implications to warrant the preparation of a federalism summary impact statement. A federalism impact statement is not required.

The proposed 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 levels of government. It would not apply to States or local governments or State or local governmental entities. The rule would affect the relationship between operators, lessees, and the BLM, but it would not directly impact the States. Therefore, in accordance with Executive Order 13132, the BLM has determined that this proposed rule would not have sufficient federalism implications to warrant preparation of a Federalism Assessment.

G. Civil Justice Reform (Executive Order 12988)

This proposed rule complies with the requirements of Executive Order 12988. 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.

H. Consultation and Coordination With Indian Tribal Governments (Executive Order 13175 and Departmental Policy)

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. Since the BLM approves proposed operations on all Indian (except Osage Tribe) onshore oil and gas leases, the proposed rule has the potential to affect Indian Tribes.

In August of 2021, the BLM sent a letter to each registered Tribe informing them of certain rulemaking efforts, including the development of this proposed rule. The letter offered Tribes the opportunity for individual government-to-government consultation regarding the proposed rule. The opportunity for Tribal consultation will remain open throughout the rulemaking process.

I. Paperwork Reduction Act

1. Overview

The Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3501 *et seq.*) generally provides that an agency may not conduct or sponsor a collection of information, and, notwithstanding any other provision of law, a person is not required to respond to collection of information unless it has been approved by the Office of Management and Budget (OMB) and displays a currently valid OMB Control Number. The existing information collections requirements contained in 43 CFR parts 3160, and 3170 have been approved by OMB under OMB Control Numbers 1004–0137 and 1004–0211.

This proposed rule contains new information collection (IC) requirements for BLM regulations, and a submission

to OMB for review under the PRA as outlined in the PRA implementing regulations at 5 CFR 1320.11. The IC requirements are necessary to assist the BLM in preventing venting, flaring, and leaks that waste the public's resources and assets. Respondents are holders of Federal and Indian oil and gas leases. The information collection requirements are outlined in the BLM's waste prevention standards as well as on BLM Form 3160–5 (*Sundry Notices and Reports on Wells*). Form 3160–5 is used broadly for onshore oil and gas operations and production purposes under 43 CFR parts 3160 and 3170 and is approved under OMB control number 1004–0137. This proposed rule would not introduce any changes to Form 3160–5 and the form will continue to be approved under OMB control number 1004–0137; however, this information collection request (ICR) seeks to include burdens specific to the use of Form 3160–5 in regard to the proposed waste prevention standard subject to this proposed rule. The proposed rule contains the following new and revised IC requirements.

2. Effects on Existing Information Collections Requirements

Existing § 3162.3–1 Drilling Applications and Plans (Application for Permit To Drill Oil Well and Waste Minimization Plan)

Currently, the BLM does not have a mechanism whereby to factor waste into the decision-making process on an APD. As with the 2016 Waste Prevention Rule, operators would be required to submit a ''waste minimization plan'' with an APD for an oil well. The waste minimization plan would disclose anticipated gas production and the capacity of the extant infrastructure to capture the gas. The BLM's onshore oil and gas operations and production regulations (43 CFR 3162.3–1(a) through (i)) currently provide that each well shall be drilled in conformity with an acceptable well-spacing program and that the operator shall submit to the authorized officer for approval an APD for each well. The APD is currently approved under OMB control number 1004–0137. This proposed would not introduce any changes to this requirement.

This proposed rule would, however, add § 3162.3–1(j), which would require that when submitting an APD for an oil well, the operator must also submit a plan to minimize waste of natural gas from that well. The waste minimization plan would need to demonstrate how the operator plans to capture associated gas upon the start of oil production, or as soon thereafter as reasonably possible, including an explanation of why any delay in the capture of the associated gas would be necessary.

Request for Approval for Royalty-Free Uses On-Lease or Off-Lease (43 CFR 3178.5, 3178.7, 3178.8, and 3178.9)

Sections 3178.5, 3178.7, 3178.8, and 3178.9 of the BLM's current regulations require submission of a Sundry Notice (Form 3160–5) to request prior written BLM approval for use of gas royalty-free for operations and production purposes on the lease, unit or communitized area. This proposed rule would not change this existing requirement.

3. New Information Collection Requirements

This proposed rule would add a new subpart to the BLM's waste prevention standards. The proposed new subpart 3179 would add new information collection requirements as discussed later. The purpose of this subpart would be to implement and carry out the purposes of statutes relating to prevention of waste from covered Federal and Indian oil and gas leases by enhancing conservation of surface resources, particularly in regard to flaring and venting of produced gas, unavoidably and avoidably lost gas, and waste prevention.

Proposed § 3179.4 Determining When the Loss of Oil or Gas Is Avoidable or Unavoidable (Notifying BLM Prior to Flaring)

Proposed § 3179.4(b)(13) would require that an operator notify the BLM through a Sundry Notice (Form 3160–5) prior to the flaring of gas from which at least 50 percent of NGLs have been removed and captured for market, if the operator wishes such flaring to qualify for royalty-free treatment.

Proposed § 3179.9 Measuring and Reporting Volumes of Gas Vented and Flared

Proposed § 3179.9(a) of this proposed rule would require operators to measure or estimate all volumes of gas vented or flared from wells, facilities, and equipment on a lease, unit, or CA and report those volumes to ONRR. The burden associated with the reporting of volumes of gas vented or flared is accounted for under ONRR's OMB control number 1012–0004, *30 CFR Parts 1210 and 1212, Royalty and Production Reporting,* using Form ONRR–4054, *Oil and Gas Operations Report.* This proposed rule would not change this existing reporting requirement. Section 3179.9(b) of the proposed rule would introduce inspection and measurement requirements for all high-pressure flares flaring 1,050 Mcf per month or more. Furthermore, as applicable, the orifice plate for the meter must be pulled and inspected at least once a year and the meter must be verified at least once a year.

Proposed § 3179.103 Initial Production Testing and § 3179.104 Subsequent Well Tests (Requests for Longer Test Period or Increase Limit)

This proposed rule would allow royalty-free flaring during initial production testing until one of the following occurs: (1) the operator determines that it has obtained adequate reservoir information; (2) 30 days have passed since beginning of the production test; (3) 20,000 Mcf of gas have been flared; or (4) oil production begins. Proposed § 3179.103 would allow an operator to flare gas for 30 days since the beginning of the production test under certain conditions and specified limits. Proposed § 3179.104 would permit an operator to flare gas for no more than 24 hours during well tests subsequent to the initial production test. An operator would be required to submit its request for a longer test periods or increased limits using a Sundry Notice.

Proposed § 3179.105 Emergencies (Reporting Volumes Flared or Vented Beyond Timeframes)

This proposed rule would allow for royalty-free flaring during an emergency situation that poses a danger to human health, safety, or the environment. This proposed rule defines ''emergency situation'' in a manner that emphasizes its temporary and unavoidable nature. This proposed rule would place a 48-hour limit on the royalty-free emergency flaring and specify circumstances that would not constitute an emergency. Proposed § 3179.105 would allow an operator to flare or, if flaring is not feasible given the emergency situation, vent gas royalty-free under proposed § 3179.4(b)(6) of this subpart during an emergency. Within 45 days of the start of the emergency situation, the operator would be required to estimate and report to the BLM on a Sundry Notice the volumes flared or vented beyond the timeframes specified in proposed § 3179.105(b).

Proposed § 3179.203 Oil Storage Vessels (Composition Analysis)

Proposed § 3179.203(b) would require tanks to be equipped with a vapor recovery system or other mechanism that avoids the intentional loss of gas from the tank unless it is technically or

economically infeasible. If an operator does not equip a tank with vapor recovery, the operator would be required to submit an annual compositional analysis based on samples of production flowing to the tank. The purpose of the compositional analysis would be to show whether installation of vapor recovery is feasible. These requirements would only apply to operations on Federal or Indian lands. Additionally, this section of this proposed rule would require that the compositional analysis be based on pressurized samples and that the compositional analysis must show the expected emissions from the storage vessel at 60 degrees Fahrenheit and 14.73 psia.

Proposed § 3179.301 Leak Detection and Repair (LDAR) Program

This proposed rule would require an operator to maintain an LDAR program designed to prevent the unreasonable and undue waste of Federal or Indian gas. The LDAR program would have to provide for regular (at least annual) inspections of all oil and gas production, processing, treatment, storage, and measurement equipment on the lease site. Operators would submit their LDAR programs for BLM review, and the BLM would notify the operator if its program was determined to be inadequate. Operators would be required to submit an annual report on inspections and repairs. Proposed § 3179.301(b) would require that the operator of a Federal or Indian lease must submit a Sundry Notice to the BLM describing the operator's leak detection and repair program for the lease site, including the frequency of inspections and any instruments to be used for leak detection.

Proposed § 3179.302 Repairing Leaks (Notifying the BLM for Delaying a Leak Repair)

Proposed § 3179.302(b) would require that if there is good cause for delaying the repair beyond 30 calendar days, the operator must notify the BLM of the cause by Sundry Notice.

Proposed § 3179.303 Leak Detection Inspection Recordkeeping and Reporting

Operators would be required to keep records of inspections and repairs and submit those records to the BLM upon request and to maintain such records for the period required under 43 CFR 3162.4–1(d).

Proposed § 3179.401 State or Tribal Requests for Variances From the Requirements of This Subpart

This proposed rule would include the State or Tribal variances provision from the 2016 Rule. In essence, this provision would allow States and Tribes to submit a request to the BLM to have analogous State or Tribal regulations apply in place of the BLM's. Section 3179.401(e) of the proposed rule would require that if the BLM approves a variance under this section, the State or Tribe that requested the variance must notify the BLM in writing in a timely manner of any substantive amendments, revisions, or other changes to the State, local or Tribal regulation(s) or rule(s) to be applied under the variance. The purpose of this section and the associated information collection requirements is to reduce regulatory burden and duplication where a State or Tribal government has implemented regulations that are demonstrated to be at least as effective as the BLM's regulatory waste prevention requirements. The information collection requirements of this section are intended to assist the BLM in making appropriate determinations regarding the variances contemplated in proposed § 3179.401.

In order to comply with the proposed information collection requirements, the BLM believes that some operators may need to purchase and install new equipment in order to collect, maintain, and report the required information. These one-time cost burdens for operators that may need to install new orifice meters and/or vapor recovery systems would be a result of the proposed rule.

D. Public Information Collection Burdens by Information Collection

Currently, there are 50 respondents, 50 responses, 400 annual burden hours, and $0 non-hour cost burdens approved under OMB Control Number 1004–0211. These burdens pertain to a Request for Approval for Royalty-Free Uses On-Lease or Off-Lease (43 CFR 3178.5, 3178.7, 3178.8, and 3178.9) which is not addressed in this proposed rule. The BLM projects that the information collections as contained in this proposed rule would result in the following additional new burdens: 552 new respondents; 48,337 new annual responses; 117,410 new burden hours and $1,050,000 new non-hour cost burden. The new total estimated burdens for the existing information collection and for the proposed new information collections under this OMB Control Number are listed as follows.

Title: Waste Prevention, Production Subject to Royalties, and Resource Conservation (43 CFR parts 3160, 3170, and 3179).

OMB Control Number: 1004–0211.

Form Number: 3160–5 (OMB Control Number 1004–0137).

Type of Review: Revision of a currently approved collection.

Description of Respondents: Federal and Indian leases, as well as State and private tracts committed to a federally approved lease, unit, or communitized area.

Estimated Number of Respondents: 602.

Estimated Number of Annual Responses: 48,337.

Estimated Completion Time per Response: Varies from 1 hour to 8 hours depending on activity.

Estimated Total Annual Burden Hours: 117,410.

Respondents' Obligation: Required to obtain or retain a benefit.

Frequency of Collection: On occasion, Annually, Monthly, or one-time depending on activity.

Estimated Total Non-Hour Cost: $1,050,000.

As part of our continuing effort to reduce paperwork and respondent burdens, we invite the public and other Federal agencies to comment on any aspect of this information collection, including:

(1) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) The accuracy of our estimate of the burden for this collection of information, including the validity of the methodology and assumptions used;

(3) Ways to enhance the quality, utility, and clarity of the information to be collected; and

(4) 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, *e.g.,* permitting electronic submission of response.

In accordance with the PRA and the PRA implementing regulations at 5 CFR 1320.11, the BLM has submitted an ICR to OMB for the new and revised ICs in this proposed rule. If you wish to comment on the IC requirements in this proposed rule, please see the **DATES** and **ADDRESSES** sections earlier.

J. National Environmental Policy Act

The BLM has prepared a draft EA to determine whether this proposed rule

would have a significant impact on the quality of the human environment under the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321 *et seq.*). The draft EA will be shared with the public during the public comment period on the proposed rule. The BLM will respond to substantive comments on the EA. If the final EA supports the issuance of a Finding of No Significant Impact for the rule, the preparation of an environmental impact statement pursuant to the NEPA would not be required.

The draft EA has been placed in the file for the BLM's Administrative Record for the rule at the address specified in the **ADDRESSES** section. The EA has also been posted in the docket for the rule on the Federal eRulemaking Portal: *https://www.regulations.gov.* In the Searchbox, enter ''RIN 1004–AE79'', click the ''Search'' button, open the Docket Folder, and look under Supporting Documents. The BLM invites the public to review the draft EA and suggests that anyone wishing to submit comments on the EA should do so in accordance with the instructions contained in the ''Public Comment Procedures'' section earlier.

K. Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use (Executive Order 13211)

Under Executive Order 13211, agencies are required to prepare and submit to OMB a Statement of Energy Effects for significant energy actions. This statement is to include a detailed statement of ''any adverse effects on energy supply, distribution, or use (including a shortfall in supply, price increases, and increase use of foreign supplies)'' for the action and reasonable alternatives and their effects.

Section 4(b) of Executive Order 13211 defines a ''significant energy action'' as ''any action by an agency (normally published in the **Federal Register**) that promulgates or is expected to lead to the promulgation of a final rule or regulation, including notices of inquiry, advance notices of proposed rulemaking, and notices of proposed rulemaking: (1)(i) that is a significant regulatory action under Executive Order 12866 or any successor order, and (ii) is likely to have a significant adverse effect on the supply, distribution, or use of energy; or (2) that is designated by the Administrator of (OIRA) as a significant energy action.''

Since the compliance costs for this rule would represent a small fraction of company net incomes, the BLM has concluded that the rule is unlikely to impact the investment decisions of firms. See Section 9 of the BLM's RIA. Also, any incremental production of gas estimated to result from the rule's enactment would constitute a small fraction of total U.S. gas production, and any potential and temporary deferred production of oil would likewise constitute a small fraction of total U.S. oil production. For these reasons, we do not expect that the proposed rule would significantly impact the supply, distribution, or use of energy. As such, the rulemaking is not a ''significant energy action'' as defined in Executive Order 13211.

L. Clarity of This Regulation (Executive Orders 12866, 12988, and 13563)

We are required by Executive Orders 12866 (section 1(b)(12)), 12988 (section 3(b)(1)(B)), and 13563 (section 1(a)), and by the Presidential Memorandum of June 1, 1988, to write all rules in plain language. This means that each rule must:

(a) Be logically organized;

(b) Use the active voice to address readers directly;

(c) Use common, everyday words and clear language rather than jargon;

(d) Be divided into short sections and sentences; and

(e) Use lists and tables wherever possible.

If you feel that we have not met these requirements, send us comments by one of the methods listed in the **ADDRESSES** section. To better help the BLM revise the proposed rule, your comments should be as specific as possible. For example, you should tell us the numbers of the sections or paragraphs that you find unclear, which sections or sentences are too long, the sections where you feel lists or tables would be useful, etc.

Authors

The principal authors of this final rule are: Amanda Eagle, Petroleum Engineer, Santa Fe, NM; Beth Poindexter, Petroleum Engineer, Santa Fe, NM (now retired); and Christopher Rhymes, Attorney Advisor, Office of the Solicitor, Department of the Interior. Technical support provided by: Tyson Sackett, Economist, Cheyenne, WY; Scott Rickard, Economist, Billings, MT; Janna Simonsen, Senior Natural Resources Specialist, Santa Fe, NM; and Barbara Sterling, Senior Natural Resources Specialist, BLM Colorado State Office (now retired). Assisted by: Stormy Phillips, Petroleum Engineer, Tulsa, OK (Contractor); Casey Hodges, Petroleum Engineer, Granby, CO (Contractor); and Senior Regulatory Analysts Faith Bremner and Darrin King of the BLM Washington Office.

List of Subjects

43 CFR Part 3160

Administrative practice and procedure, Government contracts, Indians-lands, Mineral royalties, Oil and gas exploration, Penalties, Public lands-mineral resources, Reporting and recordkeeping requirements.

43 CFR Part 3170

Administrative practice and procedure, Flaring, Immediate assessments, Incorporation by reference, Indians-lands, Mineral royalties, Oil and gas exploration, Oil and gas measurement, Public lands—mineral resources, Reporting and record keeping requirements, Royalty-free use, Venting.

For the reasons set out in the preamble, the Bureau of Land Management proposes to amend 43 CFR parts 3160 and 3170 as follows:

PART 3160—ONSHORE OIL AND GAS OPERATIONS

■ 1. The authority citation for part 3160 continues to read as follows:

Authority: 25 U.S.C. 396d and 2107; 30 U.S.C. 189, 306, 359, and 1751; 43 U.S.C. 1732(b), 1733, 1740; and Sec. 107, Pub. L. 114–74, 129 Stat. 599, unless otherwise noted.

■ 2. Amend § 3162.3–1 by adding paragraphs (j) and (k) to read as follows:

§ 3162.3–1 Drilling applications and plans.

* * * * *

(j) When submitting an Application for Permit to Drill an oil well, the operator must also submit a plan to minimize waste of natural gas from that well. The waste minimization plan must demonstrate how the operator plans to capture associated gas upon the start of oil production, or as soon thereafter as reasonably possible, including an explanation of why any delay in capture of the associated gas would be necessary. The BLM may deny an Application for Permit to Drill if the operator fails to submit a complete and adequate waste minimization plan. The waste minimization plan must include the following information:

(1) The anticipated completion date of the proposed well(s);

(2) A description of anticipated production, including:

(i) The anticipated date of first production;

(ii) The expected oil and gas production rates and duration from the proposed well. If the proposed well is on a multi-well pad, the plan must include the total expected production for all wells being completed;

(iii) The expected production decline curve of both oil and gas from the proposed well; and

(iv) The expected Btu value for gas production from the proposed well.

(3) Certification that the operator has provided one or more midstream processing companies with information about the operator's production plans, including the anticipated completion dates and gas-production rates of the proposed well or wells;

(4) Identification of a gas pipeline to which the operator plans to connect that has sufficient capacity to accommodate the anticipated production of the proposed well(s), and information on the pipeline, including, to the extent that the operator can obtain it, the following information:

(i) Maximum current daily capacity of the pipeline;

(ii) Current throughput of the pipeline;

(iii) Anticipated daily capacity of the pipeline at the anticipated date of first gas sales from the proposed well;

(iv) Anticipated throughput of the pipeline at the anticipated date of first gas sales from the proposed well; and

(v) Any plans known to the operator for expansion of pipeline capacity for the area that includes the proposed well;

(5) If an operator cannot identify a gas pipeline with sufficient capacity to accommodate the anticipated production of the proposed well(s), the waste minimization plan must also include:

(i) A gas-pipeline-system location map of sufficient detail, size, and scale to show the field in which the proposed well will be located, and all existing gas trunklines within 20 miles of the well. The map must also contain:

(A) The name and location of the gas processing plant(s) closest to the proposed well(s), and the name and location of the intended destination processing plant, if different;

(B) The name and location of the operator of each gas trunkline within 20 miles of the proposed well;

(C) The proposed route and tie-in point that connects or could connect the subject well to an existing gas trunkline;

(ii) The total volume of produced gas, and percentage of total produced gas, that the operator is currently flaring or venting from wells in the same field and any wells within a 20-mile radius of that field; and

(iii) A detailed evaluation, including estimates of costs and returns, of opportunities for on-site capture approaches, such as compression or liquefaction of natural gas, removal of natural gas liquids, or generation of electricity from gas.

(6) Any other information demonstrating the operator's plans to avoid the waste of gas production from any source, including, as appropriate, from pneumatic equipment, storage tanks, and leaks.

(k) Where the available information indicates that drilling an oil well could result in the unreasonable and undue waste of Federal or Indian gas (as defined in § 3179.4), the BLM may take one of the following actions:

(1) Approve the application subject to conditions for gas capture and/or royalty payments on vented or flared gas; or

(2) Defer action on the permit in the interest of preventing waste. The BLM will notify the applicant that its application, if approved, could result in unreasonable and undue waste of Federal or Indian gas and specify any steps the applicant could take for the permit to be issued. If the applicant does not address the potential for unreasonable and undue waste to the BLM's satisfaction within 2 years of the applicant's receipt of the BLM's initial notice under this paragraph, the BLM may deny the permit.

PART 3170—ONSHORE OIL AND GAS PRODUCTION

■ 3. The authority citation for part 3170 continues to read as follows:

Authority: 25 U.S.C. 396d and 2107; 30 U.S.C. 189, 306, 359, and 1751; and 43 U.S.C. 1732(b), 1733, and 1740.

■ 4. Revise subpart 3179 to read as follows:

Subpart 3179—Waste Prevention and Resource Conservation

Secs.

Subpart 3179—Waste Prevention and Resource Conservation

§ 3179.1 Purpose.

The purpose of this subpart is to implement and carry out the purposes of statutes relating to prevention of waste from Federal and Indian (other than Osage Tribe) oil and gas leases, conservation of surface resources, and management of the public lands for multiple use and sustained yield. This subpart supersedes those portions of Notice to Lessees and Operators of Onshore Federal and Indian Oil and Gas Leases, Royalty or Compensation for Oil and Gas Lost (NTL–4A) pertaining to, among other things, flaring and venting of produced gas, unavoidably and avoidably lost gas, and waste prevention.

§ 3179.2 Scope.

(a) Except as provided in provided in paragraph (b), this subpart applies to:

(1) All onshore Federal and Indian (other than Osage Tribe) oil and gas leases, units, and communitized areas;

(2) Indian Mineral Development Act (IMDA) agreements, unless specifically excluded in the agreement or unless the relevant provisions of this subpart are inconsistent with the agreement;

(3) Leases and other business agreements and contracts for the development of Tribal energy resources under a Tribal Energy Resource Agreement (TERA) entered into with the Secretary, unless specifically excluded in the lease, other business agreement, or TERA;

(4) Wells, equipment, and operations on State or private tracts that are committed to a federally approved unit or communitization agreement defined by or established under 43 CFR subpart 3105 or 43 CFR part 3180.

(b) Sections 3179.6, 3179.201, 3179.203, and 3179.301–.303 of this

subpart apply only to operations and production equipment located on a Federal or Indian oil and gas lease. They do not apply to operations and production equipment on State or private tracts, even where those tracts are committed to a federally approved unit or communitization agreement.

(c) For purposes of this subpart, the term ''lease'' also includes IMDA agreements.

§ 3179.3 Definitions and acronyms.

As used in this subpart, the term:

Automatic ignition system means an automatic ignitor and, where needed to ensure continuous combustion, a continuous pilot flame.

Capture means the physical containment of natural gas for transportation to market or productive use of natural gas and includes reinjection and royalty-free on-site uses pursuant to subpart 3178.

Compressor station means any permanent combination of one or more compressors that move natural gas at increased pressure through gathering or transmission pipelines, or into or out of storage. This includes, but is not limited to, gathering and boosting stations and transmission compressor stations. The combination of one or more compressors located at a well site, or located at an onshore natural gas processing plant, is not a compressor station.

Gas-to-oil ratio (GOR) means the ratio of gas to oil in the production stream expressed in standard cubic feet of gas per barrel of oil.

Gas well means a well for which the energy equivalent of the gas produced, including its entrained liquefiable hydrocarbons, exceeds the energy equivalent of the oil produced. Unless more specific British thermal unit (Btu) values are available, a well with a gas-to-oil ratio greater than 6,000 standard cubic feet (scf) of gas per barrel of oil is a gas well.

High-pressure flare means an open-air flare stack or flare pit designed for the combustion of natural gas leaving a pressurized production vessel (such as a separator or heater-treater) that is not a storage vessel.

Leak means a release of natural gas from a component that is not associated with normal operation of the component, when such release is:

(1) A hydrocarbon emission detected by use of an optical-gas-imaging instrument;

(2) At least 500 ppm of hydrocarbon detected using a portable analyzer or other instrument that can measure the quantity of the release; or

(3) A hydrocarbon emission detected via visible bubbles detected using soap solution.

Releases due to normal operation of equipment intended to vent as part of normal operations, such as gas-driven pneumatic controllers and safety-release devices, are not considered leaks unless the releases exceed the quantities and frequencies expected during normal operations. Releases due to operator errors or equipment malfunctions or from control equipment at levels that exceed applicable regulatory requirements, such as releases from a thief hatch left open, a leaking vapor recovery unit, or an improperly sized combustor, are considered leaks.

Liquids unloading means the removal of an accumulation of liquid hydrocarbons or water from the wellbore of a completed gas well.

Lost oil or lost gas means produced oil or gas that escapes containment, either intentionally or unintentionally, or is flared before being removed from the lease, unit, or communitized area, and cannot be recovered.

Low-pressure flare means any flare that does not meet the definition of high-pressure flare.

Pneumatic controller means an automated instrument used for maintaining a process condition, such as liquid level, pressure, delta-pressure, or temperature.

Storage vessel means a tank or other vessel that contains an accumulation of crude oil, condensate, intermediate hydrocarbon liquids, or produced water, and that is constructed primarily of non-earthen materials (such as wood, concrete, steel, fiberglass, or plastic) that provides structural support. A well-completion vessel that receives recovered liquids from a well after startup of production following flowback, for a period that exceeds 60 days, is considered a storage vessel under this subpart, unless the storage of the recovered liquids in the vessel is governed by § 3162.3–3 of this title. For purposes of this subpart, the following are not considered storage vessels:

(1) Vessels that are skid-mounted or permanently attached to something that is mobile (such as trucks, railcars, barges or ships), and are intended to be located at a site for less than 180 consecutive days. This exclusion does not apply to well-completion vessels or to storage vessels that are located at a site for at least 180 consecutive days.

(2) Process vessels, such as surge-control vessels, bottoms receivers, or knockout vessels.

(3) Pressure vessels designed to operate in excess of 15 psig and without emissions to the atmosphere.

(4) Tanks holding hydraulic-fracturing fluid prior to implementation of an approved permanent disposal plan under Onshore Oil and Gas Order No. 7.

Unreasonable and undue waste of gas means a frequent or ongoing loss of gas that could be avoided without causing an ultimately greater loss of equivalent total energy than would occur if the loss of gas were to continue unabated.

§ 3179.4 Determining when the loss of oil or gas is avoidable or unavoidable.

For purposes of this subpart:

(a) Lost oil is ''unavoidably lost'' if the operator has not been negligent; the operator has taken prudent and reasonable steps to avoid waste; and the operator has complied fully with applicable laws, lease terms, regulations, provisions of a previously approved operating plan, and other written orders of the BLM.

(b) Lost gas is ''unavoidably lost'' if the operator has not been negligent; the operator has taken prudent and reasonable steps to avoid waste; the operator has complied fully with applicable laws, lease terms, regulations, provisions of a previously approved operating plan, and other written orders of the BLM; and the gas is lost from the following operations or sources:

(1) Well drilling;

(2) Well completion and related operations, subject to the limitations in § 3179.102;

(3) Initial production tests, subject to the limitations in § 3179.103;

(4) Subsequent well tests, subject to the limitations in § 3179.104;

(5) Exploratory coalbed methane well dewatering;

(6) Emergency situations, subject to the limitations in § 3179.105;

(7) Normal operating losses from a natural-gas-activated pneumatic controller or pump;

(8) Normal operating losses from a storage vessel or other low-pressure production vessel that is in compliance with § 3179.203 and § 3174.5(b);

(9) Well venting in the course of downhole well maintenance and/or liquids unloading performed in compliance with § 3179.204;

(10) Leaks, when the operator has complied with the leak detection and repair requirements in §§ 3179.301 and 302;

(11) Facility and pipeline maintenance, such as when an operator must blow-down and depressurize equipment to perform maintenance or repairs;

(12) Pipeline capacity constraints, midstream processing failures, or other

similar events that prevent oil-well gas from being transported through the connected pipeline, subject to the limitations in § 3179.8;

(13) Flaring of gas from which at least 50 percent of natural gas liquids have been removed and captured for market, if the operator has notified the BLM through a Sundry Notices and Report on Wells, Form 3160–5 (Sundry Notice) that the operator is conducting such capture and the inlet of the equipment used to remove the natural gas liquids will be an FMP;

(14) Flaring of gas from a well that is not connected to a gas pipeline, to the extent that such flaring was authorized by the BLM in the approval of the Application for Permit to Drill.

(c) Lost oil or gas that is not ''unavoidably lost'' as defined in paragraphs (a) and (b) of this section is ''avoidably lost.''

§ 3179.5 When lost production is subject to royalty.

(a) Royalty is due on all avoidably lost oil or gas.

(b) Royalty is not due on any unavoidably lost oil or gas.

§ 3179.6 Safety.

(a) The operator must flare, rather than vent, any gas that is not captured, except:

(1) When flaring the gas is technically infeasible, such as when volumes are too small to flare;

(2) Under emergency conditions, when the loss of gas is uncontrollable or venting is necessary for safety;

(3) When the gas is vented through normal operation of a natural-gas-activated pneumatic controller or pump;

(4) When the gas is vented from a storage vessel, provided that § 3179.203 does not require the capture or flaring of the gas;

(5) When the gas is vented during downhole well maintenance or liquids unloading activities performed in compliance with § 3179.204;

(6) When the gas is vented through a leak;

(7) When venting is necessary to allow non-routine facility and pipeline maintenance, such as when an operator must, upon occasion, blow-down and depressurize equipment to perform maintenance or repairs; or

(8) When a release of gas is necessary and flaring is prohibited by Federal, State, local, or Tribal law or regulation, or enforceable permit term.

(b) All flares or combustion devices must be equipped with an automatic ignition system. Upon discovery of a flare that is not lit, the BLM may subject the operator to an immediate assessment of $1,000 per violation.

(c) The flare must be placed a sufficient distance from the tank battery containment area and any other significant structures or objects so that the flare does not create a safety hazard. The prevailing wind direction must be taken into consideration when locating the flare.

§ 3179.7 Gas-well gas.

Gas well gas may not be flared or vented, except where it is unavoidably lost pursuant to § 3179.4(b).

§ 3179.8 Oil-well gas.

(a) Where oil-well gas must be flared due to pipeline capacity constraints, midstream processing failures, or other similar events that prevent produced gas from being transported through the connected pipeline, up to 1,050 Mcf per month, per lease, unit, or CA, of such flared gas will be considered ''unavoidably lost'' for the purposes of §§ 3179.4(b)(12) and 3179.5.

(b) Where substantial volumes of oil-well gas are flared, resulting in the unreasonable and undue waste of Federal or Indian gas, the BLM may order the operator to curtail or shut-in production as necessary to avoid the unreasonable and undue waste of Federal or Indian gas. The BLM will not issue a shut-in or curtailment order under this paragraph unless the operator has reported flaring in excess of 4,000 Mcf per month for 3 consecutive months and the BLM confirms that flaring is ongoing.

(c) If a BLM order under paragraph (b) of this section would adversely affect production of oil or gas from non-Federal and non-Indian mineral interests (*e.g.,* production allocated to a mix of Federal, State, Indian, and private leases under a unit agreement), the BLM may issue such an order only to the extent that the BLM is authorized to regulate the rate of production under the governing unit or communitization agreement. In the absence of such authorization, the BLM will contact the State regulatory authority having jurisdiction over the oil and gas production from the non-Federal and non-Indian interests and request that that entity take appropriate action to limit the waste of gas.

§ 3179.9 Measuring and reporting volumes of gas vented and flared.

(a) The operator must measure or estimate all volumes of gas vented or flared from wells, facilities, and equipment on a lease, unit PA, or communitized area and report those volumes under applicable Office of Natural Resources Revenue (ONRR) reporting requirements (see the ONRR *Minerals Revenue Reporter Handbook* for details on reporting vented and flared volumes).

(b) The following requirements apply to all high-pressure flares flaring 1,050 Mcf per month or more:

(1) Flaring from all high-pressured flares must be measured by orifice meters. Starting on [DATE 6 MONTHS AFTER THE EFFECTIVE DATE OF THE FINAL RULE], an appropriate meter must be installed at all high-pressure flares.

(2) The orifice plate for the meter must be pulled and inspected at least once a year.

(3) The meter must be verified at least once a year.

(4) The quality of the flared gas must be determined at least once a year.

(A) A C_6+ analysis must be performed for any gas samples used in determining the quality of the flared gas.

(B) The gas sample must be taken from one of the following locations:

(i) At the flare meter;

(ii) At the gas FMP, if there is a gas FMP at the well site and the gas composition is the same as that of the flare-meter gas; or

(iii) At another location approved by the BLM.

(5) Measurement at the high-pressure flare must achieve an overall measurement uncertainty within ±5 percent.

(6) The operator must take radiant heat from the flare into consideration when determining the placement of the flare meter.

(7) Except as otherwise specified in this paragraph, measurement from high-pressure flares must meet the measurement requirements for a low-volume FMP under subpart 3175 of this part.

(c) For all other flares, the operator must:

(1) Measure flared volumes in accordance with paragraph (b) of this section;

(2) Estimate flared volumes utilizing sampling and compositional analysis conducted pursuant to, or consistent with, § 3179.203(c); or

(3) Estimate flared volumes using another method approved by the BLM.

(d) If a flare is combusting gas that is combined across multiple leases, unit PAs, or communitized areas, the operator may measure or estimate the gas at a single point at the flare but must use an allocation method approved by the BLM to allocate the quantities of flared gas to each lease, unit PA, or communitized area.

(e) Measurement points for flared volumes are not FMPs for the purposes of subpart 3175 of this part.

§ 3179.10 Determinations regarding royalty-free flaring.

(a) Approvals to flare royalty free, which are in effect as of the effective date of this rule, will continue in effect until [DATE 6 MONTHS AFTER THE EFFECTIVE DATE OF THE FINAL RULE]. From this date forward, the royalty-bearing status of all flaring will be determined according to the provisions of this subpart.

(b) The provisions of this subpart do not affect any determination made by the BLM before or after [EFFECTIVE DATE OF THE FINAL RULE], with respect to the royalty-bearing status of flaring that occurred prior to [EFFECTIVE DATE OF THE FINAL RULE].

§ 3179.11 Incorporation by Reference (IBR).

Certain material is incorporated by reference into this subpart with the approval of the Director of the Federal Register under 5 U.S.C. 552(a) and 1 CFR part 51. To enforce any edition other than that specified in this section, the BLM must publish a rule in the **Federal Register**, and the material must be reasonably available to the public. All approved incorporation by reference (IBR) material is available for inspection at the Bureau of Land Management (BLM) and at the National Archives and Records Administration (NARA). Contact Amanda Eagle with the BLM at: Division of Fluid Minerals, 301 Dinosaur Trail, Santa Fe, NM 87505, telephone 505–954–2016; email *aeagle@blm.gov*; *https://www.blm.gov/programs/energy-and-minerals/oil-and-gas*. The approved material is also available for inspection at all BLM offices with jurisdiction over oil and gas activities. For information on inspecting this material at NARA, visit *www.archives.gov/federal-register/cfr/ibr-locations.html* or email *fr.inspection@nara.gov*. The material may be obtained from the following source:

(a) GPA Midstream Association (GPA), 6060 American Plaza, Suite 700, Tulsa, OK 74135; telephone 918–493–3872.

(1) GPA Midstream Standard 2286–14, Method for the Extended Analysis for Natural Gas and Similar Gaseous Mixtures by Temperature Program Gas Chromatography, Revised 2014 (''GPA 2286''), IBR approved for § 3179.203(c).

(2) GPA Midstream Standard 2186–14, Method for the Extended Analysis of Hydrocarbon Liquid Mixtures Containing Nitrogen and Carbon Dioxide by Temperature Programmed Gas Chromatography, Revised 2014 (''GPA 2186''), IBR approved for § 3179.203(c).

(b) [Reserved]

§ 3179.12 Reasonable precautions to prevent waste.

(a) Operators must use all reasonable precautions to prevent the waste of oil or gas developed from the lease.

(b) The Authorized Officer may specify reasonable measures to prevent waste as conditions of approval of an Application for Permit to Drill.

(c) After an Application for Permit to Drill is approved, the Authorized Officer may order an operator to implement, within a reasonable time, additional reasonable measures to prevent waste at ongoing exploration and production operations.

(d) Reasonable measures to prevent waste may reflect factors including but not limited to relevant advances in technology and changes in industry practice.

Flaring and Venting Gas During Drilling and Production Operations

§ 3179.101 Well drilling.

If, during drilling, gas is lost as a result of loss of well control, the BLM will make a determination as to whether the loss of well control was due to operator negligence. Such gas is avoidably lost if the BLM determines that the loss of well control was due to operator negligence. The BLM will notify the operator in writing when it makes a determination that gas was lost due to operator negligence.

§ 3179.102 Well completion and related operations.

(a) When a new completion is in the process of being hydraulically fractured, up to 10,000 Mcf of gas that reaches the surface during well completion, post-completion, and fluid recovery operations may be flared royalty-free.

(b) When an existing completion is refractured and the well is connected to a gas pipeline, up to 5,000 Mcf of gas that reaches the surface during well completion, post-completion, and fluid recovery operations may be flared royalty-free.

§ 3179.103 Initial production testing.

(a) Gas flared during a well's initial production test is royalty-free under §§ 3179.4(b)(3) and 3179.5(b) of this subpart until one of the following occurs:

(1) The operator determines that it has obtained adequate reservoir information for the well;

(2) 30 days have passed since the beginning of the production test, except as provided in paragraphs (b) and (d) of this section;

(3) The operator has flared 20,000 Mcf of gas, including volumes flared under § 3179.102(a), except as provided in paragraph (c) of this section; or

(4) Oil production begins.

(b) The BLM may extend the period specified in paragraph (a)(2) of this section, not to exceed an additional 60 days, based on testing delays caused by well or equipment problems or if there is a need for further testing to develop adequate reservoir information.

(c) The BLM may increase the limit specified in paragraph (a)(3) of this section by up to an additional 30,000 Mcf of gas for exploratory oil wells in remote locations where additional testing is needed in advance of development of pipeline infrastructure.

(d) During the dewatering and initial evaluation of an exploratory coalbed methane well, the 30-day period specified in paragraph (a)(2) of this section is extended to 90 days. The BLM may approve up to two extensions of this evaluation period, of up to 90 days each.

(e) The operator must submit its request for a longer test period or increased limit under paragraphs (b), (c), or (d) of this section using a Sundry Notice.

§ 3179.104 Subsequent well tests.

During well tests subsequent to the initial production test, the operator may flare gas royalty free under § 3179.4(b)(4) for no more than 24 hours, unless the BLM approves or requires a longer period. The operator must submit any request for a longer period under this section using a Sundry Notice.

§ 3179.105 Emergencies.

(a) An operator may flare or, if flaring is not feasible due to the emergency situation, vent gas royalty-free under § 3179.4(b)(6) of this subpart for no longer than 48 hours during an emergency situation. For purposes of this subpart, an ''emergency situation'' is a temporary, infrequent, and unavoidable situation in which the loss of gas is necessary to avoid a danger to human health, safety, or the environment.

(b) The following examples do not constitute emergency situations for the purposes of royalty assessment:

(1) Recurring failures within a single piece of equipment;

(2) The operator's failure to install appropriate equipment of a sufficient capacity to accommodate the production conditions;

(3) Failure to limit production when the production rate exceeds the capacity of the related equipment, pipeline, or

gas plant, or exceeds sales contract volumes of oil or gas;

(4) Scheduled maintenance; or

(5) A situation caused by operator negligence.

(c) Within 45 days of the start of the emergency, the operator must estimate and report to the BLM on a Sundry Notice the volumes flared or vented beyond the timeframe specified in paragraph (a) of this section.

Gas Flared or Vented From Equipment and During Well Maintenance Operations

§ 3179.201 Pneumatic controllers and pneumatic diaphragm pumps.

(a) Where a lease, unit PA, or CA is producing at least 120 Mcf of gas or 20 barrels of oil per month, the operator may not use a natural-gas-activated pneumatic controller or pneumatic diaphragm pump with a bleed rate that exceeds 6 scf per hour.

(b) Operators must comply with paragraph (a) of this section beginning on [DATE 1 YEAR AFTER THE EFFECTIVE DATE OF THE FINAL RULE].

§ 3179.203 Oil storage vessels.

(a) The thief hatch on a storage vessel may be open only to the extent necessary to conduct production and measurement operations. Upon discovery of a thief hatch that has been left open and unattended, the BLM will impose an immediate assessment of $1,000 on the operator.

(b) Beginning on [DATE 1 YEAR AFTER THE EFFECTIVE DATE OF THE FINAL RULE], all oil storage vessels must be equipped with a vapor-recovery system or other mechanism that avoids the intentional loss of natural gas from the vessel, unless the operator determines that equipping the storage vessel with a vapor-recovery system or other appropriate mechanism is technically or economically infeasible.

(c) Where an operator has not equipped a storage vessel with a vapor recovery system or other appropriate mechanism under paragraph (b) of this section, the operator, using a Sundry Notice, must submit an annual compositional analysis of production flowing to the storage vessel.

(1) The compositional analysis must be based on pressurized samples taken downstream of the last pressurized vessel and upstream of the last pressure reduction (*e.g.,* a valve) prior to the oil flowing into the storage vessel.

(2) The compositional analysis must show the expected emissions from the storage vessel at 60 degrees Fahrenheit and 14.73 psia.

(3) The following sampling requirements apply:

(i) Samples must be collected from a sample probe located downstream of the last pressurized vessel at least 2 feet below the gas-liquid interface of the vessel on the oil discharge, and upstream of the last pressure reduction prior to oil flowing into the storage vessel.

(ii) Samples must be collected in constant pressure (CP) cylinders.

(iii) Samples must be collected at a rate between 100 ml/minute and 60 ml/minute.

(iv) Samples must be collected within 30 minutes of the well cycle completion for intermittent flow.

(v) Samples must indicate the pressure and temperature at the sample probe at the time of sampling. The equipment used to measure pressure and temperature must be certified to NIST within ±0.5 psi and ±1 degree Fahrenheit.

(4) The following analysis requirements apply:

(i) Flash-gas compositional analysis must be consistent with GPA 2286 (incorporated by reference, see § 3179.11).

(ii) Dead oil composition analysis must be consistent with GPA 2186 (incorporated by reference, see § 3179.11).

(d) Where practical and safe, gas released from an oil storage vessel must be flared rather than vented. An operator may commingle vapors from multiple storage vessels to a single flare without prior approval from the BLM.

§ 3179.204 Downhole well maintenance and liquids unloading.

(a) Gas vented or flared during downhole well maintenance and well purging is royalty free for a period not to exceed 24 hours per event, provided that the requirements of paragraphs (b) through (d) of this section are met. Gas vented or flared from a plunger lift system and/or an automated well control system is royalty free, provided the requirements of paragraphs (b) and (c) of this section are met.

(b) The operator must minimize the loss of gas associated with downhole well maintenance and liquids unloading, consistent with safe operations.

(c) For wells equipped with a plunger lift system and/or an automated well control system, minimizing gas loss under paragraph (b) of this section includes optimizing the operation of the system to minimize gas losses to the extent possible, consistent with removing liquids that would inhibit proper function of the well.

(d) For any liquids unloading by manual well purging, the operator must ensure that the person conducting the well purging remains present on-site throughout the event to end the event as soon as practical, thereby minimizing to the maximum extent practicable any venting to the atmosphere.

(e) For purposes of this section, ''well purging'' means blowing accumulated liquids out of a wellbore by reservoir gas pressure, whether manually or by an automatic control system that relies on real-time pressure or flow, timers, or other well data, where the gas is vented to the atmosphere, and it does not apply to wells equipped with a plunger lift system.

§ 3179.205 Size of production equipment.

Production and processing equipment must be of sufficient size to accommodate the volumes of production expected to occur at the lease site.

Leak Detection and Repair (LDAR)

§ 3179.301 Leak detection and repair program.

(a) Pursuant to paragraph (b) of this section, the operator must maintain a leak detection and repair (LDAR) program designed to prevent the unreasonable and undue waste of Federal or Indian gas. The LDAR program must provide for regular inspections of all oil and gas production, processing, treatment, storage, and measurement equipment on the lease site.

(b) The operator of a Federal or Indian lease must submit a Sundry Notice to the BLM describing the operator's LDAR program for the lease site, including the frequency of inspections and any instruments to be used for leak detection. The BLM will review the operator's LDAR program and notify the operator if the BLM deems the program to be inadequate. The notification will explain the basis for the BLM's determination, identify the plan's inadequacies, describe any additional measures that could address the inadequacies, and provide a reasonable time frame in which the operator must submit a revised LDAR program to the BLM for review. For leases in effect on [EFFECTIVE DATE OF THE FINAL RULE], the operator must submit the Sundry Notice describing the operator's LDAR program no later than [6 MONTHS AFTER THE EFFECTIVE DATE OF THE FINAL RULE]. For leases issued after [EFFECTIVE DATE OF THE FINAL RULE], the operator must submit the Sundry Notice describing the operator's LDAR program within six months of the lease's issuance.

(c) LDAR inspections must occur on an annual basis, if not more frequently. For leases in effect on [EFFECTIVE DATE OF THE FINAL RULE] and on which operations have commenced, the operator must conduct an initial inspection within 1 year of [EFFECTIVE DATE OF THE FINAL RULE]. For other leases, the operator must conduct an initial inspection within one year of the commencement of operations.

§ 3179.302 Repairing leaks.

(a) The operator must repair any leak as soon as practicable, and in no event later than 30 calendar days after discovery, unless good cause exists to delay the repair for a longer period. Good cause for delay of repair exists if the repair (including replacement) is technically infeasible (including unavailability of parts that have been ordered), would require a pipeline blowdown, a compressor station shutdown, or a well shut-in, or would be unsafe to conduct during operation of the unit.

(b) If there is good cause for delaying the repair beyond 30 calendar days, the operator must notify the BLM of the cause by Sundry Notice and must complete the repair at the earliest opportunity, such as during the next compressor station shutdown, well shut-in, or pipeline blowdown. In no case will the BLM approve a delay of more than 2 years.

(c) Not later than 30 calendar days after completion of a repair, the operator must verify the effectiveness of the repair by conducting a follow-up inspection using an appropriate instrument or a soap bubble test under Section 8.3.3 of EPA Method 21—Determination of Volatile Organic Compound Leaks (40 CFR Appendix A–7 to part 60).

(d) If the repair is not effective, the operator must complete additional repairs within 15 calendar days and conduct follow-up inspections and repairs until the leak is repaired.

§ 3179.303 Leak detection inspection recordkeeping and reporting.

(a) The operator must maintain the following records for the period required under § 3162.4–1(d) of this title and make them available to the BLM upon request:

(1) For each inspection required under § 3179.301 of this subpart, documentation of:

(i) The date of the inspection; and

(ii) The site where the inspection was conducted;

(2) The monitoring method(s) used to determine the presence of leaks;

(3) A list of leak components on which leaks were found;

(4) The date each leak was repaired; and

(5) The date and result of the follow-up inspection(s) required under § 3179.302(c) of this subpart.

(b) By March 31 of each calendar year, the operator must provide to the BLM an annual summary report on the previous year's inspection activities that includes:

(1) The number of sites inspected;

(2) The total number of leaks identified, categorized by the type of component;

(3) The total number of leaks repaired;

(4) The total number of leaks that were not repaired as of December 31 of the previous calendar year due to good cause and an estimated date of repair for each leak.

(c) Audio/visual/olfactory (AVO) checks are not required to be documented unless they find a leak requiring repair.

State or Tribal Variances

§ 3179.401 State or Tribal requests for variances from the requirements of this subpart.

(a)(1) At the request of a State (for Federal land) or a Tribe (for Indian lands), the BLM State Director may grant a variance, from any provision(s) of this subpart, that would apply to all Federal leases, units, or communitized areas within a State or to all Tribal leases, IMDAs, units, or communitized areas within the Tribe's lands, or to specific fields or basins within the State or Tribe's lands, if the BLM finds that the variance would meet the criteria in paragraph (b) of this section.

(2) A State or Tribal variance request must:

(i) Identify the provision(s) of this subpart from which the State or Tribe is requesting the variance;

(ii) Identify the State, local, or Tribal regulation(s) or rule(s) that would be applied in place of the provision(s) of this subpart;

(iii) Explain why the variance is needed; and

(iv) Demonstrate how the State, local, or Tribal regulation(s) or rule(s) would perform at least equally well to reduce waste of oil and gas, reduce environmental impacts from venting and/or flaring of gas, assure appropriate royalty payments to the United States or to the beneficial Indian owners, and ensure the safe and responsible production of oil and gas, compared to the particular regulatory provision(s) from which the State or Tribe is requesting the variance.

(b) The BLM State Director, after considering all relevant factors, may approve the request for a variance, or approve it with one or more conditions, only if the BLM determines that the State, local or Tribal regulation(s) or rule(s) would perform at least equally well in terms of reducing waste of oil and gas, reducing environmental impacts from venting and/or flaring of gas, assuring appropriate royalty payments to the United States or to the beneficial Indian owners, and ensuring the safe and responsible production of oil and gas, compared to the particular regulatory provision(s) from which the State or Tribe is requesting the variance, and would be consistent with the terms of the affected Federal or Indian leases and applicable statutes. The BLM's decision to grant or deny the variance will be in writing and is discretionary. The decision on a variance request is not subject to administrative appeals under 43 CFR part 4.

(c) A variance from any particular regulatory requirement of this subpart does not constitute a variance from provisions of any other regulations, laws, or orders.

(d) The BLM reserves the right to rescind a variance or modify any condition of approval, in which case the BLM will provide notice to the affected State or Tribe.

(e) If the BLM approves a variance under this section, the State or Tribe that requested the variance must notify the BLM in writing and in a timely manner of any substantive amendments, revisions, or other changes to the State, local or Tribal regulation(s) or rule(s) to be applied under the variance.

(f) If the BLM approves a variance under this section, the State, local or Tribal regulation(s) or rule(s) to be applied under the variance, including any changes to the regulation(s) or rule(s) described in paragraph (e) of this section, may be enforced by the BLM as if the regulation(s) or rule(s) were provided for in this subpart. The State, locality, or Tribes' own authority to enforce its regulation(s) or rule(s) to be applied under the variance is not to be affected by the BLM's approval of a variance.

Laura Daniel-Davis,

Principal Deputy Assistant Secretary, Land and Minerals Management.

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Vol. 87, No. 229

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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.

3 CFR

Proclamations:
10482 65649
10483 66515
10484 66517
10485 66519
10486 66521
10487 66525
10488 66527
10489 66529
10490 66531
10491 66533
10492 67763
10493 68019
10494 68591
10495 68593
10496 68885
10497 70701
10498 71503
10499 71505
10500 73431

Administrative Orders:
Memorandums:
Memorandum of October 28, 2022 67761
Memorandum of November 10, 2022 71201
Notices:
Notice of November 1, 2022 66225
Notice of November 8, 2022 68013
Notice of November 8, 2022 68015
Notice of November 8, 2022 68017
Notice of November 10, 2022 68589

5 CFR

315 67765
432 67765
752 67765
875 68595

Proposed Rules:
841 68642
842 68642

6 CFR

5 68599

7 CFR

205 68021
272 68335
273 68335
457 ..... 72359, 72859
1230 66535
1710 73433
1714 73433
1717 73433
1724 73433
1730 73433
1738 73443
1739 73443
3550 66075
3555 66075

Proposed Rules:
246 71090
906 69208
993 66958
1206 65683
1222 66960

9 CFR

Proposed Rules:
201 73507

10 CFR

Ch. I 66228, 68335
20 68028
26 71422
35 68028
50 ..... 66227, 68028
51 68028
52 ..... 66227, 68028
72 ..... 66539, 68028
73 68028
110 68028
150 68028
429 ..... 65651, 65856, 66935
430 ..... 66935, 72862
431 ..... 65651, 65856

Proposed Rules:
37 67397
50 ..... 67571, 71531
72 66613
430 ..... 65687, 68931, 69082, 73259
1021 68385

12 CFR

201 68887
204 68888
Ch. X 66935, 66940, 71507
1006 65668
1022 72364
1091 70703

13 CFR

121 ..... 69118, 73400
124 69118
125 73400
127 69118
128 73400
134 73400

Proposed Rules:
107 68109
120 66963
121 68109

14 CFR

11 70707
13 66544

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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