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

Federal Register
Vol. 89, No. 24
Monday, February 5, 2024

Presidential Documents

Title 3—

The President

Proclamation 10698 of January 31, 2024

American Heart Month, 2024

By the President of the United States of America

A Proclamation

This American Heart Month, we recommit to promoting heart-healthy lifestyles, expanding access to quality health care, and breaking new bounds in heart disease research and treatment.

Each year, heart disease takes the lives of nearly 700,000 Americans. It is the leading cause of death in our country. Too many of us are familiar with the pain of losing a loved one to a heart attack, stroke, or coronary heart disease. There is still hope, however: With the adoption of a healthy lifestyle and access to good health care, these conditions can often be prevented and lives can be saved.

That is why my Administration is committed to giving families the tools they need to stay healthy. In 2022, we hosted the first White House Conference on Hunger, Nutrition, and Health in over 50 years and released a national strategy to end hunger and reduce diet-related diseases by 2030. Our strategy includes improving food access and affordability by providing free, healthy meals to millions of students, expanding incentives for fruits and vegetables in the Supplemental Nutrition Assistance Program, and expanding Medicaid and Medicare coverage to provide nutrition and obesity counseling.

I have often said that health care should be a right, not a privilege. Every American deserves access to the health care and treatment they need. In 2022, I was proud to sign the Inflation Reduction Act, which, once in effect will cap the total out-of-pocket drug costs for seniors and others with Medicare at $2,000 per year, saving nearly 19 million families an average of $400 per year. I have also improved access to dental services for people with Medicare who need certain cardiac procedures—these dental services have been shown to reduce unnecessary and preventable acute and chronic complications for the patient. These measures ensure that people on Medicare who have heart disease will be better able to access the preventative services and treatments they need.

Additionally, we are working to advance new breakthroughs on a range of diseases. Our Advanced Research Projects Agency for Health is working to accelerate major biomedical innovations in preventing, detecting, and treating life-threatening conditions like Alzheimer's, diabetes, and cancer. This is the kind of progress that can lead to new advancements for cardiovascular diseases.

It is also important for every American to be aware of individual actions we can take to keep our hearts healthy: Exercising regularly, eating well, managing weight, and avoiding smoking or vaping are proven to reduce the risk of cardiovascular disease. Experts also recommend that everyone should learn the warning signs of a heart attack and stroke and that they should consult a doctor if they experience risk factors or symptoms.

This Friday, February 2nd, I encourage every American to raise awareness about heart health by wearing red on National Wear Red Day. During American Heart Month, may we remember the lives of all those who have been lost to heart conditions and all the people who live with these conditions

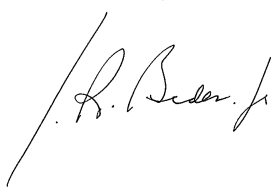
each day. My Administration will continue working to put a heart-healthy lifestyle within the reach of every American.

To learn more about heart health, please talk to your health care provider or visit CDC.gov/heartdisease.

In acknowledgement of the importance of the ongoing fight against cardiovascular disease, the Congress, by Joint Resolution approved December 30, 1963, as amended (36 U.S.C. 101), has requested that the President issue an annual proclamation designating February as ''American Heart Month.''

NOW, THEREFORE, I, JOSEPH R. BIDEN JR., President of the United States of America, do hereby proclaim February 2024 as American Heart Month, and I invite all Americans to participate in National Wear Red Day on February 2, 2024. I also invite the Governors of the States, the Commonwealth of Puerto Rico, officials of other areas subject to the jurisdiction of the United States, and the American people to join me in recognizing and reaffirming our commitment to fighting cardiovascular disease and extending the promise of a long and healthy life across this country.

IN WITNESS WHEREOF, I have hereunto set my hand this thirty-first day of January, in the year of our Lord two thousand twenty-four, and of the Independence of the United States of America the two hundred and forty-eighth.



[FR Doc. 2024–02343
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Billing code 3395–F4–P

Presidential Documents

Proclamation 10699 of January 31, 2024

National Black History Month, 2024

By the President of the United States of America

A Proclamation

This National Black History Month, we celebrate the vast contributions of Black Americans to our country and recognize that Black history is American history and that Black culture, stories, and triumphs are at the core of who we are as a Nation.

The soul of America is what makes us unique among all nations. We are the only country in the world founded on an idea. It is the idea that we are all created equal and deserve to be treated with equal dignity throughout our lives. While we still grapple today with the moral stain and vestiges of slavery—our country's original sin—we have never walked away from the fight to fully realize the promise of America for all Americans. Throughout our history, Black Americans have never given up on the promise of America. Unbowed by the forces of hate and undaunted as they fought for centuries against slavery, segregation, and injustice, Black Americans have held a mirror up to our Nation, allowing our country to confront hard truths about who we are and pushing us to live up to our founding ideals. They have helped redeem the soul of our Nation, ensuring the promises in our founding documents were not just words on a page but a lived reality for all people. In the process, the vibrancy of Black history and culture has enriched every aspect of American life.

Since taking office, the Vice President and I have worked to continue this legacy of progress and lay down a foundation for a stronger, more equitable Nation. On my first day as President, I signed a historic Executive Order on Advancing Racial Equity and Support for Underserved Communities Through the Federal Government. In February 2023, I signed an additional Executive Order to acknowledge the unbearable human costs of systemic racism and to direct the entire Federal Government to advance equity for those who have been historically underserved, marginalized, and adversely affected by persistent discrimination, poverty, and inequality, including the Black community. That includes building an economy that grows from the middle out and bottom up, not the top down. So far, we have created over 14 million jobs and in 2023, the Black unemployment rate was lower than in any other year on record.

We are addressing historic health inequities for Black Americans by making systemic changes to our health care systems that increase healthcare access while lowering costs. Today, more Black Americans have health insurance than at any previous time in American history. We are working to address the Black maternal health crisis—ensuring dignity, safety, and support for Black moms. The Vice President has helped elevate this critical issue to a national priority by calling on States to extend Medicaid postpartum coverage from two months to one year.

My Administration is also working to close racial gaps in education and economic opportunity. To that end, we have delivered over $7 billion in funding for Historically Black Colleges and Universities and are working to expand access to home-ownership—a major source of generational wealth for families—while aggressively combating racial discrimination in housing. Our update to the Thrifty Food Plan is keeping 400,000 Black kids out

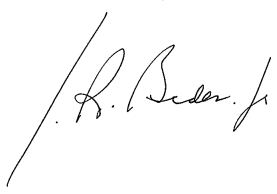
of poverty every month and making sure millions more have enough food to eat. By 2025, we are working to ensure that 15 percent of Federal contracting dollars goes to small disadvantaged businesses, including Black-owned small businesses. We are also replacing poisonous lead pipes so every American can turn on a faucet at home or school and drink clean water.

To deliver equal justice under the law, we are appointing judges to the Federal bench who reflect all of America, including Supreme Court Justice Ketanji Brown Jackson and more Black women to the Federal circuit courts than all previous administrations combined. I also signed a historic Executive Order that implemented key elements of the George Floyd Justice in Policing Act: banning chokeholds and restricting no knock warrants by Federal law enforcement, creating a national database of officer misconduct, and promoting effective and accountable community policing that advances public trust and safety. I also signed the first major gun safety legislation in nearly 30 years as well as a long-overdue law to make lynching a Federal hate crime in Emmett Till's name. My Administration continues to call on the Congress to pass the John Lewis Voting Rights Advancement Act and the Freedom to Vote Act to secure the right to vote for every American.

Today, I am reminded of something Amelia Boynton said when reflecting on her march across the Edmund Pettus Bridge on what would be known as Bloody Sunday: ''You can never know where you're going unless you know where you've been.'' America is a great Nation because we choose to learn the good, the bad, and the full truth of the history of our country—histories and truths that we must preserve and protect for the next generation. This National Black History Month, as we remember where we have been, may we also recognize that our only way forward is by marching together.

NOW, THEREFORE, I, JOSEPH R. BIDEN JR., President of the United States of America, by virtue of the authority vested in me by the Constitution and the laws of the United States, do hereby proclaim February 2024 as National Black History Month. I call upon public officials, educators, librarians, and all the people of the United States to observe this month with relevant programs, ceremonies, and activities.

IN WITNESS WHEREOF, I have hereunto set my hand this thirty-first day of January, in the year of our Lord two thousand twenty-four, and of the Independence of the United States of America the two hundred and forty-eighth.



[FR Doc. 2024–02344
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Presidential Documents

Proclamation 10700 of January 31, 2024

National Teen Dating Violence Awareness and Prevention Month, 2024

By the President of the United States of America

A Proclamation

During National Teen Dating Violence Awareness and Prevention Month, we recommit to building a future where our Nation's young people can live free from violence, fear, and abuse.

About 1 in 12 high school students in the United States have experienced physical or sexual dating violence. Violence, intimidation, and fear—whether perpetrated in person or online—can upend the lives of young people during some of their most formative years and have lifelong consequences. Survivors of teen dating violence are more likely to suffer from symptoms of depression, anxiety, and trauma. Experiencing an unhealthy or abusive relationship as a teen can increase a young person's risk of facing violence in intimate relationships throughout their lives.

Throughout my career, I have fought against abuses of power. As a United States Senator, I wrote and championed the groundbreaking Violence Against Women Act that became law in 1994. Preventing and responding to gender-based violence wherever it occurs and in all of its forms is a cause I care about deeply, and it has remained a cornerstone of my career in public service.

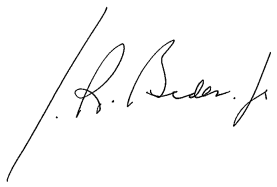
That is why, last year, my Administration released the first-ever National Plan to End Gender-Based Violence, which includes resources to prevent teen dating violence, promote healthier relationships, and equip survivors with the resources and care they deserve. In addition, the White House Task Force to Address Online Harassment and Abuse is working to help teens stay safe online and prevent the misuse of technology as tools of abuse, harassment, and exploitation. In 2022, I was proud to sign the reauthorization of the Violence Against Women Act, which increased investment in programs working to reduce teen dating violence.

The Centers for Disease Control and Prevention is providing tools and training for educators, families, and community members to teach young people how to form healthy relationships and safely leave abusive ones. Learn more at VetoViolence.CDC.gov. If you or someone you know is involved in an abusive relationship of any kind, immediate and confidential support is available through the National Domestic Violence Hotline's project focused on supporting young people by visiting loveisrespect.org, calling 1–866–331–9474 (TTY: 1–800–787–3224), or texting ''LOVEIS'' to 22522.

This month, may we come together to end teen dating violence and ensure our teens feel safe, protected, and empowered to live lives free from violence and full of dignity and respect.

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 February 2024 as National Teen Dating Violence Awareness and Prevention Month. I call upon everyone to educate themselves and others about teen dating violence so that together we can stop it.

IN WITNESS WHEREOF, I have hereunto set my hand this thirty-first day of January, in the year of our Lord two thousand twenty-four, and of the Independence of the United States of America the two hundred and forty-eighth.



[FR Doc. 2024–02349
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Presidential Documents

Executive Order 14115 of February 1, 2024

Imposing Certain Sanctions on Persons Undermining Peace, Security, and Stability in the West Bank

By the authority vested in me as President by the Constitution and the laws of the United States of America, including the International Emergency Economic Powers Act (50 U.S.C. 1701 *et seq.*) (IEEPA), the National Emergencies Act (50 U.S.C. 1601 *et seq.*) (NEA), section 212(f) and section 215(a) of the Immigration and Nationality Act of 1952 (8 U.S.C. 1182(f) and 8 U.S.C. 1185(a)), and section 301 of title 3, United States Code,

I, JOSEPH R. BIDEN JR., President of the United States of America, find that the situation in the West Bank—in particular high levels of extremist settler violence, forced displacement of people and villages, and property destruction—has reached intolerable levels and constitutes a serious threat to the peace, security, and stability of the West Bank and Gaza, Israel, and the broader Middle East region. These actions undermine the foreign policy objectives of the United States, including the viability of a two-state solution and ensuring Israelis and Palestinians can attain equal measures of security, prosperity, and freedom. They also undermine the security of Israel and have the potential to lead to broader regional destabilization across the Middle East, threatening United States personnel and interests. For these reasons, these actions constitute an unusual and extraordinary threat to the national security and foreign policy of the United States. I hereby declare a national emergency to deal with that threat.

Accordingly, I hereby order:

Section 1. All property and interests in property that are in the United States, that hereafter come within the United States, or that are or hereafter come within the possession or control of any United States person, including any foreign branch, of the following persons are blocked and may not be transferred, paid, exported, withdrawn, or otherwise dealt in:

(a) any foreign person determined by the Secretary of State, in consultation with the Secretary of the Treasury, or the Secretary of the Treasury, in consultation with the Secretary of State:

(i) to be responsible for or complicit in, or to have directly or indirectly engaged or attempted to engage in, any of the following:

(A) actions—including directing, enacting, implementing, enforcing, or failing to enforce policies—that threaten the peace, security, or stability of the West Bank; or

(B) planning, ordering, otherwise directing, or participating in any of the following actions affecting the West Bank:

(1) an act of violence or threat of violence targeting civilians;
(2) efforts to place civilians in reasonable fear of violence with the purpose or effect of necessitating a change of residence to avoid such violence;
(3) property destruction; or
(4) seizure or dispossession of property by private actors;

(ii) to be or have been a leader or official of:

(A) an entity, including any government entity, that has engaged in, or whose members have engaged in, any of the activities described in subsections (a) or (b) of this section related to the leader's or official's tenure; or

(B) an entity whose property and interests in property are blocked pursuant to this order as a result of activities relating to the leader's or official's tenure;

(iii) to have materially assisted, sponsored, or provided financial, material, or technological support for, or goods or services to or in support of, any person blocked pursuant to this order; or

(iv) to be owned or controlled by, or to have acted or purported to act for or on behalf of, directly or indirectly, any person blocked pursuant to this order; or

(b) any foreign person determined by the Secretary of State, in consultation with the Secretary of the Treasury:

(i) to have committed or have attempted to commit, to pose a significant risk of committing, or to have participated in training to commit acts of terrorism affecting the West Bank; or

(ii) to be a leader or official of an entity sanctioned pursuant to subsection (b)(i) of this section.

Sec. 2. The prohibitions in section 1 of this order apply except to the extent provided by statutes, or in regulations, orders, directives, or licenses that may be issued pursuant to this order, and notwithstanding any contract entered into or any license or permit granted before the date of this order.

Sec. 3. The prohibitions in section 1 of this order include:

(a) the making of any contribution or provision of funds, goods, or services by, to, or for the benefit of any person whose property and interests in property are blocked pursuant to this order; and

(b) the receipt of any contribution or provision of funds, goods, or services from any such person.

Sec. 4. (a) The unrestricted immigrant and nonimmigrant entry into the United States of noncitizens determined to meet one or more of the criteria in section 1 of this order would be detrimental to the interests of the United States, and the entry of such persons into the United States, as immigrants or nonimmigrants, is hereby suspended, except when the Secretary of State or the Secretary of Homeland Security, as appropriate, determines that the person's entry would not be contrary to the interests of the United States, including when the Secretary of State or the Secretary of Homeland Security, as appropriate, so determines, based on a recommendation of the Attorney General, that the person's entry would further important United States law enforcement objectives.

(b) The Secretary of State shall implement this order as it applies to visas pursuant to such procedures as the Secretary of State, in consultation with the Secretary of Homeland Security, may establish.

(c) The Secretary of Homeland Security shall implement this order as it applies to the entry of noncitizens pursuant to such procedures as the Secretary of Homeland Security, in consultation with the Secretary of State, may establish.

(d) Such persons shall be treated by this section in the same manner as persons covered by section 1 of Proclamation 8693 of July 24, 2011 (Suspension of Entry of Aliens Subject to United Nations Security Council Travel Bans and International Emergency Economic Powers Act Sanctions).

Sec. 5. (a) Any transaction that evades or avoids, has the purpose of evading or avoiding, causes a violation of, or attempts to violate any of the prohibitions set forth in this order is prohibited.

(b) Any conspiracy formed to violate any of the prohibitions set forth in this order is prohibited.

Sec. 6. I hereby determine that the making of donations of the types of articles specified in section 203(b)(2) of IEEPA (50 U.S.C. 1702(b)) by, to, or for the benefit of any person whose property and interests in property are blocked pursuant to this order would seriously impair my ability to

deal with the national emergency declared in this order, and I hereby prohibit such donations as provided by section 1 of this order.

Sec. 7. For the purposes of this order:

(a) the term ''entity'' means a partnership, association, trust, joint venture, corporation, group, subgroup, or other organization;

(b) the term ''noncitizen'' means any person who is not a citizen or noncitizen national of the United States;

(c) the term ''person'' means an individual or entity;

(d) the term ''United States person'' means any United States citizen, lawful permanent resident, entity organized under the laws of the United States or any jurisdiction within the United States (including foreign branches), or any person in the United States; and

(e) the term ''terrorism'' means an activity that:

(i) involves a violent act or an act dangerous to human life, property, or infrastructure; and

(ii) appears to be intended:

(A) to intimidate or coerce a civilian population;

(B) to influence the policy of a government by intimidation or coercion; or

(C) to affect the conduct of a government by mass destruction, assassination, kidnapping, or hostage-taking.

Sec. 8. For those persons whose property and interests in property are blocked or affected by this order who might have a constitutional presence in the United States, I find that because of the ability to transfer funds and other assets instantaneously, prior notice to such persons of measures to be taken pursuant to this order would render those measures ineffectual. I therefore determine that for these measures to be effective in addressing the national emergency declared in this order, there need be no prior notice of a listing or determination made pursuant to this order.

Sec. 9. The Secretary of the Treasury, in consultation with the Secretary of State, is authorized to take such actions, including the promulgation of rules and regulations, and to employ all powers granted to the President by IEEPA as may be necessary to carry out the purposes of this order. The Secretary of the Treasury may, consistent with applicable law, redelegate any of these functions within the Department of the Treasury. All executive departments and agencies of the United States shall take all appropriate measures within their authority to implement this order.

Sec. 10. Nothing in this order shall prohibit transactions for the conduct of the official business of the Federal Government or the United Nations (including its specialized agencies, programs, funds, and related organizations) by employees, grantees, and contractors thereof.

Sec. 11. The Secretary of the Treasury, in consultation with the Secretary of State, is authorized to submit recurring and final reports to the Congress on the national emergency declared in this order, consistent with section 401(c) of the NEA (50 U.S.C. 1641(c)) and section 204(c) of IEEPA (50 U.S.C. 1703(c)).

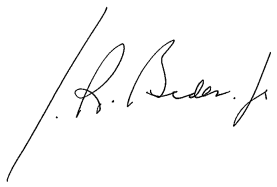
Sec. 12. (a) Nothing in this order shall be construed to impair or otherwise affect:

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

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

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

(c) This order is not intended to, and does not, create any right or benefit, substantive or procedural, enforceable at law or in equity by any party against the United States, its departments, agencies, or entities, its officers, employees, or agents, or any other person.



THE WHITE HOUSE,
February 1, 2024.

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Rules and Regulations

Federal Register
Vol. 89, No. 24
Monday, February 5, 2024

FEDERAL TRADE COMMISSION

16 CFR Parts 801 and 803

RIN 3084–AB46

Premerger Notification; Reporting and Waiting Period Requirements

AGENCY: Federal Trade Commission.

ACTION: Final rule.

SUMMARY: The Federal Trade Commission (''Commission'' or ''FTC'') is amending the Hart-Scott-Rodino (''HSR'') Premerger Notification Rules (''Rules'') that require the parties to certain mergers and acquisitions to file reports with the FTC and the Assistant Attorney General in charge of the Antitrust Division of the Department of Justice (''the Assistant Attorney General'') (together the ''Antitrust Agencies'' or ''Agencies'') and to wait a specified period of time before consummating such transactions. In a separate document published elsewhere in this issue of the **Federal Register**, the Commission is announcing the annual adjustment of the filing fee thresholds and amounts required by the Merger Filing Fee Modernization Act of 2022 (''2022 Amendments''), contained within the Consolidated Appropriations Act, 2023. In this document, the Commission amends Parts 801 and 803 of the Rules to make the ministerial changes required to reflect the annual adjustment of the filing fee thresholds and amounts required by the 2022 Amendments.

DATES: Effective March 6, 2024.

FOR FURTHER INFORMATION CONTACT: Robert Jones, Assistant Director, Premerger Notification Office, Bureau of Competition, Federal Trade Commission, 400 7th Street SW, Room CC–5301, Washington, DC 20024, or by telephone at (202) 326–3100, Email: *rjones@ftc.gov*.

SUPPLEMENTARY INFORMATION:

Introduction

Section 7A of the Clayton Act (the ''Act'') requires the parties to certain mergers or acquisitions to file with the Commission and the Assistant Attorney General and wait a specified period before consummating the proposed transaction to allow the Antitrust Agencies to conduct their initial review of a proposed transaction's competitive impact. The reporting requirement and the waiting period that it triggers are intended to enable the Agencies to determine whether a proposed merger or acquisition may violate the antitrust laws if consummated and, when appropriate, to seek a preliminary injunction in federal court to prevent consummation.

Section 7A(d)(1) of the Act, 15 U.S.C. 18a(d)(1), directs the Commission, with the concurrence of the Assistant Attorney General, in accordance with the Administrative Procedure Act, 5 U.S.C. 553, to require that premerger notification be in such form and contain such information and documentary material as may be necessary and appropriate to determine whether the proposed transaction may, if consummated, violate the antitrust laws. Section 7A(d)(2) of the Act, 15 U.S.C. 18a(d)(2), grants the Commission, with the concurrence of the Assistant Attorney General, in accordance with 5 U.S.C. 553, the authority to define the terms used in the Act and prescribe such other rules as may be necessary and appropriate to carry out the purposes of section 7A of the Act. Pursuant to that authority, the Commission, with the concurrence of the Assistant Attorney General, developed the Rules, codified in 16 CFR parts 801, 802 and 803, and the appendices to Part 803, the Notification and Report Form for Certain Mergers and Acquisitions (''HSR Form'') and Instructions to the Notification and Report Form for Certain Mergers and Acquisitions (''Instructions''), to govern the form of premerger notification to be provided by merging parties.

In this rulemaking, the Commission is amending Parts 801 and 803 of the Rules to make the ministerial changes required to reflect the annual adjustment of the filing fee thresholds and amounts required by the 2022 Amendments.

Affected in Part 801, Coverage Rules:

§ 801.1 Definitions.

Affected in Part 803, Transmittal Rules

- § 803.9 Filing fee.
- Appendix A to Part 803—Notification and Report Form for Certain Mergers and Acquisitions

Background

In 1989, section 605 of Public Law 101–162, 103 Stat. 1031 (15 U.S.C. 18a note), first required the Federal Trade Commission to assess and collect filing fees from persons acquiring voting securities or assets under the Act. The fee was originally $20,000 and was raised twice so that by 1994 it was $45,000. In 2000, fee tiers, rather than a single fee, were established by section 630(b) of Public Law 106–553, 114 Stat. 2762, 2762A–109 so that filers were required to pay $45,000, $125,000, or $280,000 per transaction, depending on the total value of the transaction. While these fees did not change after their adoption in 2000, the relevant jurisdictional thresholds began to adjust annually in 2005 to reflect changes in the gross national product (''GNP'').[1] This meant that the value of reportable transactions started to increase but the associated filing fees did not.

On December 29, 2022, the President signed into law the Consolidated Appropriations Act, 2023, which included the 2022 Amendments. The 2022 Amendments, among other things, aimed to address the disparity between the value of a transaction and its associated filing fee by amending the fees and fee tiers in the Act. *See* Public Law 117–328, Div. GG, 136 Stat. 4459. The fee structure enacted by the 2022 Amendments codifies six, rather than three, filing fee tiers. In addition, the 2022 Amendments require that the filing fee tiers be adjusted annually to reflect changes in the GNP for the previous year[2] and that the filing fee amounts be increased annually, if the percentage increase in the consumer price index (''CPI'') for the prior year as compared to the CPI for the fiscal year ended on September 30, 2022, is greater than one percent.[3] The 2022 Amendments specify that such adjustments to the fees will be rounded to the nearest $5,000.

[1] *See* Public Law 106–553, 114 Stat. at 2762A–109 to –110, amending Section 605 of title VI of Public Law 101–162 (15 U.S.C. 18a note).

[2] Public Law 117–328, 136 Stat. 4459, Div. GG, Title I.

[3] *Id.*

In a separate document published elsewhere in this issue of the **Federal Register**, the Commission is announcing (1) the revised jurisdictional thresholds for the Hart Scott Rodino Antitrust Improvements Act of 1976 required by the 2000 amendment of Section 7A of the Clayton Act; and (2) the revised filing fee schedule for the same Act required by Division GG of the 2023 Consolidated Appropriations Act. In the instant document, the Commission, with the concurrence of the Assistant Attorney General, amends Parts 801 and 803 of the Rules to make the ministerial changes required to reflect the annual adjustment of the filing fee thresholds and amounts required by the 2022 Amendments.

I. Section 801.1 Definitions

Section 801.1(n), Definition of (as Adjusted)

The Commission is making a ministerial change to the definition of ''(as adjusted)'' to clarify that the fee thresholds and amounts are subject to annual adjustment under the 2022 Amendments. The Commission is not making any material changes to this section.

II. Section 803.9 Filing Fee

Section 803.9 describes how fees are determined and paid. The Commission is amending the eight examples in § 803.9 to conform with the changes to the fees and fee tiers required by the 2022 Amendments, to update dates and dollar values to reflect more recent adjusted jurisdictional thresholds, and to add clarity to the examples. Specifically, the Commission will amend the examples in § 803.9 as follows:

- Revising Example 1 to add ''(as adjusted)'' to reflect the annual adjustment of the fee amounts as codified in the 2022 Amendments.
- Revising Example 2 to clarify that the tiers and amounts referenced are those in effect as of April 2024 and adjust example dollar values to align with values in effect as of April 2024 to avoid confusion and improve the utility of the example.
- Revising Example 3 to clarify that the tiers and amounts referenced are those in effect as of April 2024 and adjust example dollar values to align with values in effect as of April 2024 to avoid confusion and improve the utility of the example.
- Revising Example 4 to clarify that the tiers and amounts referenced are those in effect as of April 2024 and adjust example dollar values to align with values in effect as of April 2024 to avoid confusion and improve the utility of the example.
- Revising Example 5 to provide real (and not adjusted) asset values to avoid confusion and improve the utility of the example, and to add ''(as adjusted)'' to reflect the annual adjustment of the fee amounts as codified in the 2024 Amendments.
- Revising Example 6 to clarify that the tiers and amounts referenced are those in effect as of April 2024 and adjust example dollar values to align with values in effect as of April 2024 to avoid confusion, improve the utility of the example, and eliminate a typographical error.
- Revising Example 7 to clarify that the tiers and amounts referenced are those in effect as of April 2024 and adjust example dollar values to align with values in effect as of April 2024 to avoid confusion, improve the utility of the example, and eliminate a typographical error.
- Revising Example 8 to clarify that the tiers and amounts referenced are those in effect as of April 2024 and add ''(as adjusted)'' to reflect the annual adjustment of the fee amounts as codified in the 2022 Amendments.

III. Administrative Procedure Act

The Commission finds good cause to adopt these changes without prior public comment. Under the Administrative Procedure Act (''APA''), notice and comment are not required ''when the agency for good cause finds (and incorporates the finding and a brief statement of reasons therefore in the rules issued) that notice and public procedure thereon are impracticable, unnecessary, or contrary to the public interest.'' 5 U.S.C. 553(b)(3)(B).

In this case, the Commission finds that public comment on these changes is unnecessary. The Commission is amending the HSR Rules to conform with the new fee tiers and fees enacted by Congress. These updates do not involve any substantive changes in the HSR Rules' requirements for entities subject to the Rules. Rather, they are conforming updates to the definition of the HSR Act and examples of how to calculate the appropriate fee. In addition, these amendments fall within the category of rules covering agency procedure and practice that are exempt from the notice-and-comment requirements of the APA. See 5 U.S.C. 553(b)(3)(A).

For these reasons, the Commission finds there is good cause for adopting this final rule as effective on March 6, 2024 without prior public comment.

IV. Regulatory Flexibility Act

The Regulatory Flexibility Act, 5 U.S.C. 601–612, requires that the agency conduct an initial and final regulatory analysis of the anticipated economic impact of the proposed amendments on small businesses, except where the agency head certifies that the regulatory action will not have a significant economic impact on a substantial number of small entities. 5 U.S.C. 605. Because of the size of the transactions necessary to invoke an HSR filing, the premerger notification rules rarely, if ever, affect small businesses. Indeed, amendments to the Act in 2001 were intended to reduce the burden of the premerger notification program further by exempting all transactions valued at less than $50 million (as adjusted annually).[4] Likewise, none of the rule amendments expand the coverage of the premerger notification rules in a way that would affect small business. In addition, the Regulatory Flexibility Act requirements apply only to rules or amendments that are subject to the notice-and-comment requirements of the APA. See 5 U.S.C. 603, 604. Because these amendments are exempt from those APA requirements, as noted earlier, they are also exempt from the Regulatory Flexibility Act requirements. In any event, to the extent, if any, that the Regulatory Flexibility Act applies, the Commission certifies that these rules will not have a significant economic impact on a substantial number of small entities. This document serves as notice of this certification to the Small Business Administration.

V. Paperwork Reduction Act

The Commission has existing Paperwork Reduction Act clearance for the HSR Rules (OMB Control Number 3084–0005). The Commission has concluded that these technical amendments do not change the substance or frequency of the pre-existing information collection requirements and, therefore, do not require further OMB clearance.

VI. Other Matters

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).

List of Subjects in 16 CFR Parts 801 and 803

Antitrust.

[4] By comparison, the dollar thresholds established for total annual receipts of a small business under the applicable small business size standards fall well under $50 million. *See* 13 CFR 121.201.

For the reasons stated in the preamble, the Federal Trade Commission is amending 16 CFR parts 801 and 803 as set forth below:

PART 801—COVERAGE RULES

■ 1. The authority citation for part 801 continues to read as follows:

Authority: 15 U.S.C. 18a(d).

■ 2. Amend § 801.1 by revising paragraph (n) to read as follows:

§ 801.1 Definitions

* * * * *

(n) *(as adjusted).* The parenthetical ''(as adjusted)'' refers to the adjusted values published in the **Federal Register** document titled ''Revised Jurisdictional Thresholds and Fee Amounts under Section 7A of the Clayton Act.'' This **Federal Register** document will be published in January of each year and the values contained therein will be effective as of the effective date published in the **Federal Register** document and will remain effective until superseded in the next calendar year. The document will also be available at *https://www.ftc.gov.* Such adjusted values will be calculated in accordance with Section 7A(a)(2)(A) and the statutory note to Section 7A.

* * * * *

PART 803—TRANSMITTAL RULES

■ 3. The authority citation for part 803 continues to read as follows:

Authority: 15 U.S.C. 18a(d).

■ 4. Revise § 803.9 (a)(1) through (8) as follows:

§ 803.9 Filing fee.

(a) * * * * *

(1) ''A'' wishes to acquire voting securities issued by B, where the greater of the acquisition price and the market price is in excess of $50 million (as adjusted) but less than $100 million (as adjusted) pursuant to § 801.10 of this chapter. When ''A'' files notification for the transaction, it must indicate the $50 million (as adjusted) threshold. If the value of the voting securities is less than $161.5 million (as adjusted), ''A'' must pay a filing fee of $30,000 (as adjusted) because the aggregate total amount of the acquisition is greater than $50 million (as adjusted) but less than $161.5 million (as adjusted). If the aggregate total value of the voting securities is at least $161.5 million (as adjusted), but less than $500 million (as adjusted), ''A'' must pay a filing fee of $100,000 (as adjusted).

(2) In April 2024, ''A'' acquires $75 million of assets from ''B.'' The parties meet the size of person criteria of section 7A(a)(2)(B) of the act, but the transaction is not reportable because it does not exceed the $50 million (as adjusted) size of transaction threshold of that provision. Two months later ''A'' acquires additional assets from ''B'' valued at $175 million. Pursuant to the aggregation requirements of § 801.13(b)(2)(ii) of this chapter, the aggregate total amount of ''B's'' assets that ''A'' will hold as a result of the second acquisition is $250 million. Accordingly, when ''A'' files notification for the second transaction, ''A'' must pay a filing fee of $100,000 (as adjusted) because the aggregate total amount of the acquisition is less than $500 million (as adjusted), but not less than $161.5 million (as adjusted).

(3) In April 2024, ''A'' acquires $120 million of voting securities issued by B after submitting its notification and $30,000 (as adjusted) filing fee and indicates the $50 million (as adjusted) threshold. Later in 2024, ''A'' files to acquire additional voting securities issued by B valued at $120 million because it will exceed the next higher reporting threshold (*see* § 801.1(h) of this chapter). Assuming the second transaction is reportable, and the value of its initial holdings is unchanged (*see* §§ 801.13(a)(2) and 801.10(c) of this chapter), the provisions of § 801.13(a)(1) of this chapter require that ''A'' report that the total value of the second transaction is $240 million, which is in excess of $100 million (as adjusted) notification threshold. This is because ''A'' must aggregate previously acquired securities in calculating the value of B's voting securities that it will hold as a result of the second acquisition. ''A'' should pay a filing fee of $100,000 (as adjusted) because the total value is greater than $161.5 million (as adjusted) but less than $500 million (as adjusted).

(4) In April 2024, ''A'' signs a contract with a stated purchase price of $174 million, subject to adjustments, to acquire all of the assets of ''B.'' If the amount of adjustments can be reasonably estimated, the acquisition price—as adjusted to reflect that estimate—is determined. If the amount of adjustments cannot be reasonably estimated, the acquisition price is undetermined. In either case the board or its delegee must also determine in good faith the fair market value. (§ 801.10(b) of this chapter states that the value of an asset acquisition is to be the fair market value or the acquisition price, if determined and greater than fair market value.) ''A'' files notification and submits a $30,000 (as adjusted) filing fee. ''A's'' decision to pay that fee may be justified on either of two bases. First, ''A'' may have concluded that the acquisition price can be reasonably estimated to be less than $173.3 million, because of anticipated adjustments—*e.g.,* based on due diligence by ''A's'' accounting firm indicating that one third of the inventory is not saleable. If fair market value is also determined in good faith to be less than $173.3 million, the $30,000 (as adjusted) fee is appropriate. Alternatively, ''A'' may conclude that because the adjustments cannot reasonably be estimated, the acquisition price is undetermined. If so, ''A'' would base the valuation on the good faith determination of fair market value. The acquiring party's execution of the Certification also attests to the good faith valuation of the value of the transaction.

(5) In April 2024, ''A'' contracts to acquire all of the assets of ''B'' for $550 million. The assets include hotels, office buildings, and rental retail property, all of which are exempted by § 802.2 of this chapter. Section 802.2 directs that these assets—which are valued at $300 million—are exempt from the requirements of the act and that reporting requirements for the transaction should be determined by analyzing the remainder of the acquisition as if it were a separate transaction. Furthermore, § 801.15(a)(2) of this chapter states that those exempt assets are never held as a result of the acquisition. Accordingly, the aggregate amount of the transaction is in excess of $161.5 million (as adjusted), but less than $500 million (as adjusted). ''A'' will be liable for a filing fee of $100,000 (as adjusted), rather than $250,000 (as adjusted), because the value of the transaction is not less than $161.5 million (adjusted) but is less than $500 million (as adjusted).

(6) In April 2024, ''A'' acquires coal reserves from ''B'' valued at $150 million. No notification or filing fee is required because the acquisition is exempted by § 802.3(b) of this chapter. Three months later, A proposes to acquire additional coal reserves from ''B'' valued at $500 million. This transaction is subject to the notification requirements of the act because the value of the acquisition exceeds the $200 million limitation on the exemption in § 802.3(b). As a result of § 801.13(b)(2)(ii) of this chapter, the prior $150 million acquisition must be added because the additional $500 million of coal reserves were acquired from the same person within 180 days of the initial acquisition. Because aggregating the two acquisitions exceeds the $200 million exemption limitation, § 801.15(b) of this chapter directs that ''A'' will also hold the previously

exempt $150 million acquisition; thus, the aggregate amount held as a result of the $500 million acquisition is $650 million. Accordingly, ''A'' must file notification to acquire the coal reserves valued in excess of $500 million (as adjusted) but less than $1 billion (as adjusted) and pay a filing fee of $250,000 (as adjusted).

(7) In April 2024, ''A'' intends to acquire 20 percent of the voting securities of B, a non-publicly traded issuer. The agreed upon acquisition price is $172.3 million subject to post-closing adjustments of up to plus or minus $2 million. ''A'' estimates that the adjustments will be minus $1 million. In this example, since ''A'' is able in good faith to reasonably estimate the adjustments to the agreed-on price, the acquisition price is deemed to be determined and the appropriate filing fee threshold is $50 million (as adjusted). Even if the post-closing adjustments cause the final price actually paid to exceed $172.3 million, ''A'' would be deemed to hold $171.3 million in B voting securities as a result of this acquisition. Note, that any additional acquisition by ''A'' of B voting may trigger another filing and require the appropriate fee.

(8) In April 2024, ''A'' intends to make a cash tender offer for a minimum of 50 percent plus one share of the voting securities of B, a non-publicly traded issuer, but will accept up to 100 percent of the shares if they are tendered. There are 12 million shares of B voting stock outstanding and the tender offer price is $100 per share. In this instance, since there is no cap on the number of shares that can be tendered, the value of the transaction will be the value of 100 percent of B's voting securities, and ''A'' must pay the $400,000 (as adjusted) fee for the $1 billion (as adjusted) filing fee threshold. Note that if the tender offer had been for a maximum of 50 percent plus one share the value of the transaction would be $600 million, and the appropriate fee would be $250,000 (as adjusted), based on the $500 million (as adjusted) filing fee threshold. This would be true even if the tender offer were to be followed by a merger which would be exempt under section 7A(c)(3) of the act.

* * * * *

By direction of the Commission.

Joel Christie,

Acting Secretary.

[FR Doc. 2024–02228 Filed 2–2–24; 8:45 am]

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DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

24 CFR Part 5 and Chapter IX

[Docket No. FR–6438–N–01]

Regulatory Waivers and Administrative Flexibilities During a Presidentially Declared Disaster, for Public Housing Agencies During CY 2024 and CY 2025

AGENCY: Office of Assistant Secretary for Public and Indian Housing, U.S. Department of Housing and Urban Development (HUD).

ACTION: Notification of waivers.

SUMMARY: This document advises Public Housing Agencies (PHAs) and the public that HUD is establishing an expedited waiver process for requests to waive HUD regulatory and/or administrative requirements (''HUD requirements'') for PHAs during Presidentially Declared Disasters (PDDs). PHAs located in areas that are included in PDD areas (PDD PHAs) may request waivers of certain HUD Public Housing and section 8 requirements and receive expedited review of such requests to utilize the administrative flexibilities and expedited waiver process set forth in this document.

DATES: Waivers and administrative flexibilities set forth in this document are effective from January 1, 2024, until December 31, 2025.

FOR FURTHER INFORMATION CONTACT: Tesia Anyanaso, Office of Field Operations, Office of Public and Indian Housing, Department of Housing and Urban Development, 451 7th Street SW, Room 3180, Washington, DC 20410–5000, or email *PIH_Disaster_Relief@hud.gov* or call (202) 402–7026 during business hours. HUD welcomes and is prepared to receive calls from individuals who are deaf or hard of hearing, as well as individuals with speech and communication disabilities. To learn more about how to make an accessible telephone call, please visit *https://www.fcc.gov/consumers/guides/telecommunications-relay-service-trs.*

SUPPLEMENTARY INFORMATION: HUD is exercising its discretionary authority from 24 CFR 5.110 (Waivers) and is providing regulatory flexibility to PDD PHAs described in this document. Upon receipt of a PDD PHA waiver or flexibility request, HUD will review and may approve the submission. The request must include documentation of good cause for each waiver or flexibility request. HUD may consider extensions subject to statutory limitations and pursuant to 24 CFR 5.110, to facilitate a PDD PHA's ability to participate in disaster relief and recovery efforts.

Waivers of essential program requirements, such as property inspection or income verification, will not be granted in their entirety, although modifications may be considered. HUD's ability to grant waivers or approve alternative requirements is limited, as HUD does not have the authority to waive statutory requirements.

I. Instructions for PDD PHAs—How To Request an Expedited Waiver or Administrative Flexibility

A PDD PHA seeking a waiver or flexibility of a HUD requirement listed within this document, or any other HUD requirement needed to assist in disaster relief and recovery efforts, must submit a written request. HUD will not approve a PDD PHA's request to waive or be granted a flexibility for fair housing, civil rights, labor standards, or HUD's environmental review requirements.

Waiver requests approved by HUD pursuant to this document will be published in the **Federal Register** and will identify the PDD PHAs receiving such approvals, pursuant to section 106 of the Department of Housing and Urban Development Reform Act of 1989. The process that HUD will use in assessing applications for waivers and administrative flexibilities is explained below.

HUD developed a checklist (Attachment A at the end of this document) that a PDD PHA must complete and submit to request expedited review of waivers identified in this document. Each request must include a good-cause justification explaining the need for the waiver related to the PHA's disaster relief and recovery efforts. The PDD PHA must await HUD's response affirming waiver approval before implementing any requested waiver. Waivers will be granted for a period of up to 12 months following approval, unless otherwise specified.

Waivers are divided into two tiers: tier 1, waivers that are estimated to be approved within 30 days; and tier 2, waivers that are estimated to be approved within 60 days. The Office of Public and Indian Housing (PIH) will prioritize waiver request(s) based upon the designated tier.

II. List of Waivers and Administrative Flexibilities

Tier 1: Immediate Need. This tier includes waivers and administrative flexibilities needed for crisis management operations during the immediate aftermath of a PDD. These requests will be prioritized by HUD and

be approved with the quickest turnaround time estimated at 30 days.

Waivers applicable to both Public Housing (PH) and Housing Choice Voucher (HCV) programs:

A. 24 CFR 982.201(e) and 960.259(a) and (c)(1): Verification of Date of Birth and Disability Status

HUD may waive 24 CFR 982.201(e) and 960.259(a) and (c)(1) as it relates to verifying a family member's disability status and/or date of birth at the time of admission; and the impact that determination has on the family's eligible expenses and deductions.

If this waiver is approved, as an alternative requirement, a PHA may accept self-certification for families impacted by a PDD. If the family is unable to provide third-party verification of disability and/or date of birth for one of its members, because of loss of documents, or lack of access to documents, then the applicable family member must certify to date of birth and disability status. The PHA must verify the disability status and/or date of birth within 90 days after admission (30 days longer than the standard 60 days).

Self-certification of date of birth and disability status cannot be utilized when it is related to the eligibility for a particular special purpose voucher (*e.g.,* Mainstream).

B. 24 CFR 984.303(d): Family Self Sufficiency (FSS) Contract of Participation, Contract Extension

Section 984.303(d) authorizes a PHA to extend a family's contract of participation for a period not to exceed two years in the FSS Program, for any family that requests it. HUD may consider a request from a PDD PHA that wishes to extend contracts for up to 3 years (one additional year) if such extensions are justified during PDDs.

C. 24 CFR 982.201(e) and 960.259(a)(1) and (2) and (c): Eligibility Determination, Income Verification

PHAs are required to verify a family's income eligibility within 60 days prior to voucher issuance for the tenant-based voucher program and prior to admission for the project-based voucher and public housing programs. PIH Notice 2023–27 provides the verification hierarchy under which PHAs are responsible for obtaining third party verification of reported family annual income, and PHAs must demonstrate efforts to obtain third party verification prior to accepting self-certification except in instances when self-certification is explicitly allowed. This waiver would apply only to families lacking necessary income documentation due to being impacted by the PDD. If the waiver is approved, the following alternative requirements will apply:

1. For any applicant family impacted by the PDD, the PHA must first request third-party documentation from the family.

2. If the family is unable to provide third-party documentation at the time of the request, the PHA may immediately allow self-certification. The PHA is not required to first attempt to obtain the documentation from the third-party source of income before proceeding immediately to the family self-certification if the family does not have third party documents available to verify the family's income, notwithstanding the requirement under PIH Notice 2023–27 that PHAs must demonstrate efforts to obtain third party verification prior to accepting self-certification.

3. Applicants must submit a self-certification declaration of income, assets, expenses, and other factors that would otherwise affect an income eligibility determination.

4. If the family is unable to provide third-party verification, for the tenant-based HCV program the PHA must receive information verifying that the family is eligible within the period of 60 days after the PHA enters a Housing Assistance Payment (HAP) contract on behalf of the family, assuming the PHA has received self-certification of income from the applicant no later than 60 days prior to voucher issuance. For the Public Housing and Project Based Voucher (PBV) programs, the PHA must receive information verifying that the family is eligible within the period of 60 days following admission or commencement of PBV assistance, respectively.

5. The adoption of this waiver does not authorize any ineligible family to receive assistance under these programs or relieve the PHA of its responsibilities to correct any overpayments or underpayments of subsidy. The PHA must take steps to identify and resolve any income discrepancies, including updating the family's income retroactive to the New Admission (action code 1) HUD–50058 and correcting any overpayments or underpayments. If the PHA later determines that an ineligible family received assistance, it must take steps to terminate that family from the program.

D. 24 CFR 982.206(a)(2) and 960.206: Waiting List Opening and Closing, Public Notice

HUD may approve an alternative requirement that the PDD PHA may provide public notice in a voicemail message on its main or general information telephone number and through its website (if such a PHA website is available).

PHAs must comply with applicable fair housing and other civil rights requirements when they provide public notice. For example, a PDD PHA that chooses to provide public notice at its offices must consider the impact on persons with disabilities, who may have difficulty visiting the office in-person. Similarly, a PDD PHA that chooses to provide public notice via voice-mail message must consider how it will reach persons with hearing impairments and persons with limited English proficiency. HUD maintains the requirement that a PDD PHA must also provide the public notice in minority media. Any notice must comply with HUD fair housing requirements.

E. PIH Notice 2011–65: Timely Reporting Requirements of the Family Report (Form HUD–50058)

PHAs must submit family reports no later than 60 calendar days from the effective date of any action recorded on line 2b of the form HUD–50058 (or form HUD–50058 MTW). During a PDD, HUD may approve an alternative requirement allowing PHAs to extend this term and submit within 90 days.

F. 24 CFR 982.516(a)(2) and (3): Family Income and Composition, Annual, and Interim Examinations for HCV and PBV; 24 CFR 960.259(c): Family Information and Verification for PH and PIH Notice 2023–27

The PHA is required to obtain and document in the tenant file third-party verification or must document in the tenant file because third party verification was not available. HUD may waive the requirements to use the income verification hierarchy for families impacted by a PDD. If approved, a PHA can forgo third-party income verification requirements for Annual Reexaminations and Interim Reexaminations and the PHA may consider self-certification as the highest form of income verification to process Annual and Interim reexaminations during the allowable period of eligibility.

Waivers for the Housing Choice Voucher program only:

G. 24 CFR 5.703(d)(5): National Standards for the Physical Inspection of Real Estate, Units

HUD may consider a request from a PDD PHA to waive the requirement to have at least one bedroom or living/sleeping room for each two persons, to help house families displaced due to

PDDs. Should the waiver be granted, it will be in effect only for Housing Assistance Payment (HAP) contracts, or PBV leases entered during the rolling 12-month period following the date of HUD approval, and then only with the written consent of the family. HUD will not waive reasonable accommodation requirements. For any family occupying a unit pursuant to this waiver, the waiver will be in effect for the initial lease term.

H. 24 CFR 982.503(c): HUD Approval of Exception Payment Standard Amount

Typically, a PHA must provide data about the local market, as well as other program related information, to substantiate the need for an exception payment standard. In a PDD, however, the typical data sources fail to capture conditions ''on the ground.'' In addition, the PHA is focused on meeting the immediate needs of displaced families, and HUD wants to limit the PHA's burden to provide additional documentation that may not be readily available.

In these cases, a PHA must provide available data on pre-disaster HCV time to lease and success rates, its pre-disaster payment standards, the exception payment standard amounts being requested, and the need for the requested exception payment standard amounts. HUD will then consider the information provided by the PHA, along with the most recently available data on the rental market prior to the disaster—which may include rents and vacancy rates—and compare it to data available immediately after a disaster which may include the number and share of rental units destroyed or seriously damaged, number of households displaced, and the amounts the Federal Emergency Management Agency (FEMA) or local government is providing for rent assistance to displaced disaster survivors. HUD will use this information to arrive at an emergency exception payment standard amount, which may be up to 200 percent of the Fair Market Rent (FMR) or Small Area FMR, as applicable. For example, if a housing market with low vacancies and long search times for HCV tenants prior to a disaster, loses a substantial share of rental units due to the disaster, and FEMA or the local government is paying well above FMR for rent assistance, this could justify an exception payment standard set to match FEMA's rent assistance level.

The exception payment standards will be effective on or after the date the exception payment standards are adopted by the PHA following HUD approval. The exception payment standards will remain in effect for up to 12 months. HUD may revisit and adjust the approved exception payment standard amounts based on reliable post-disaster rental data once it is available. PDD PHAs are reminded that increased per-family costs resulting from the use of exception payment standards may result in a reduction in the number of families assisted or may require other cost-saving measures for an PDD PHA to stay within its funding limitations.

I. 24 CFR 982.54(d)(2): Term of Voucher, Extension of Term

The Department recognizes the urgency and the time required to update the Administrative Plan. Therefore, HUD may waive 24 CFR 982.54(d)(2), allowing the PHA to establish the alternative voucher extension policy immediately before updating its Administrative Plan. As an alternative requirement, the PHA must notify families searching with a voucher of the new policy as soon as possible and update its Administrative Plan within six months of approval of this waiver.

J. 24 CFR 982.305(c): PHA Approval of Assisted Tenancy, When HAP Contract Is Executed

When a PDD impacts an owner's ability to collect the documents, HUD may waive 24 CFR 982.305(c) and provide as an alternative requirement that the HAP contract must be executed no later than 120 calendar days (60 days longer than the standard regulation) from the beginning of the lease term. This waiver would remain in effect for up to six months following approval.

K. 24 CFR 982.633(a): Occupancy of Home

HUD may consider a request from a PDD PHA wishing to waive the requirement that PHAs make HAP for homeownership assistance only while a family resides in their home and must stop HAP no later than the month after a family moves out, to allow families displaced from their homes located in areas affected by PDDs to comply with mortgage terms or make necessary repairs.

A PHA requesting a waiver of this type must show good cause by demonstrating that the family is not already receiving assistance from another source. Note: In addition, a PDD PHA that wishes to request a waiver of the requirement at 24 CFR 982.312 that a family be terminated from the program if they have been absent from their home for 180 consecutive calendar days must do so separately.

L. 24 CFR 982.54(a): Administrative Plan

Recognizing difficulties in complying with the requirement that the PHA Board of Commissioners formally adopted revisions to the administrative plan during a PDD, HUD may waive the requirement to allow the PHA administrative plan to be revised on a temporary basis without Board approval for 120 days. Any informally adopted revisions under this waiver authority must be formally adopted within 120 days.

Waiver requests will be limited to revisions that do not constitute a significant amendment or modification to the PHA or Moving to Work (MTW) plan; pursuant to section 5A(g) of the 1937 Act, HUD cannot waive the approval by the board or other authorized PHA officials if the proposed revision would constitute a significant amendment or modification to the PHA or MTW plan. Finally, HUD cannot waive any terms within a PHA's own plan or state law requiring the approval of the board or authorized PHA officials.

M. 24 CFR 982.405(b): Supervisory Quality Control Inspections

This regulation requires the PHA to conduct supervisory quality control housing quality standards (HQS) inspections. This waiver would remove the requirement for PHAs to conduct such inspections for the 6-month period following waiver approval.[1]

N. 24 CFR 982.312: Absence From Unit

This regulation requires that a family may not be absent from a unit for a period of more than 180 consecutive calendars days for any reason. Under this document, PDD PHAs may seek waiver approval to extend the period of absence from 180 days to 240 days and maintain documentation in the tenant file indicating unit is under a PDD which resulted in the extended absence.

O. 24 CFR 982.455, 983.258, and 983.211(a): Automatic Termination of HAP Contract or Required Removal of Unit From the PBV HAP

During a PDD, families may experience economic and employment instability, resulting in loss of income in the immediate aftermath of a PDD. PHAs may request a waiver to extend the timeframe for automatic termination of the HAP contract or required removal of the unit from the PBV HAP contract,

[1] Although HCV regulations still cite HQS as a term, the citations point to the National Standards for the Physical Inspection of Real Estate (NSPIRE) final rule which was published on May 11, 2023 (88 FR 30442), consolidating HUD's inspection standards and procedures.

from 180 days to 360 days following the last HAP payment to the owner, to preserve families' assistance for a longer period in case a family experiences a loss of income, and to allow the PHA time to process interim reexaminations for families who report a loss of income.

P. 24 CFR 982.517(c): Revisions of Utility Allowance Schedule

PHAs must review their schedule of utility allowances each year and revise its allowance for a utility category if there has been a change of 10 percent or more in the utility rate since the last time the utility allowance schedule was revised.

During a PDD, HUD may allow a PHA to delay reviewing and updating HCV utility allowances, for an additional 6 months beyond the normal 12-month period.

Q. PIH Notice 2018–1, Section 9: Guidance on Small Area Fair Market Rent (SAFMR) and Payment Standard

PHAs may request a suspension or temporary exemption from using SAFMRs. A PDD PHA can request a suspension or temporary exemption from the requirement to use SAFMRs, and HUD can provide such an extension, through this waiver process rather than following the requirements and process outlined in PIH Notice 2018–1, which would normally be required.

R. 24 CFR Part 985: Section 8 Management Assessment Program (SEMAP)

For a PDD PHA that has a SEMAP score due during calendar year (CY) 2024 or CY2025 HUD may consider a request to carry forward the last SEMAP score received by the PHA and forego HUD performing an assessment for CY2024 or CY2025, as applicable. If HUD grants this waiver, the PHA's next SEMAP assessment will occur at the time an assessment would normally have been required had the PHA received the same SEMAP score for CY2024 or CY2025, as applicable.

Waivers for the Public Housing program only:

S. 24 CFR 965.302: Requirements for Energy Audits

PHAs must complete an energy audit for each PHA-owned project at least once every five years. If the deadline for completing energy audit coincides with a PDD, this waiver would allow the PHA to delay the completion of their energy audit if a project has units with a HUD approved status of Disaster, in accordance with 24 CFR 990.145(b)(2).

T. 24 CFR 965.507: Review and Revision of Allowances

PHAs must review, and update as necessary, utility allowances on an annual basis. During a PDD, HUD may allow a PHA to delay reviewing and updating public housing utility allowances, for an additional 6 months beyond the normal 12-month period.

U. 24 CFR 966.5: Posting of Policies, Rules, and Regulations

PHAs are required by this regulation to provide 30-day notice to impacted families for changes to policies, rules, and special charges to families. As an alternative requirement, for the 6-month period following approval of this waiver, PHAs will not be required to provide such advance notice to families, except advance notice must be provided for any changes related to tenant charges.

Tier 2 Waivers: Less Time Sensitive. Justification of these waivers depends on a PHA's reporting cycle or the timing of the PDD—it is not necessarily a flexibility needed for crisis management operations in the immediate aftermath of a disaster. Flexibility will be required as part of the recovery phase (reconstruction) of the disaster/emergency event, so PHAs can expect these requests to be expedited in approximately 60 days.

Waiver applicable to both PH and HCV programs:

A. 24 CFR 5.801(c) and (d)(1): Uniform Financial Reporting Standards, Filing of Financial Reports, Reporting Compliance Dates

For PDD PHAs with a deadline to submit only audited financial information in accordance with 24 CFR 5.801(b) and (d) within six months after the date of the disaster related to the PDD, HUD may consider a request to waive the due date. For PDD PHAs with a deadline to submit unaudited financial information in accordance with 24 CFR 5.801(b) and (d) within 120 days before and up to six months after the date of the disaster related to the PDD, HUD may consider a request to waiver the due date.

HUD may consider requests from PDD PHAs with financial submission due dates that fall outside these requirements. The deadline for submission of financial information in accordance with 24 CFR 5.801(b) and the deadline for submission of unaudited financial statement may be extended to 180 calendar days, and the deadline for submission of audited financial statements may be extended to 13 months.

Waivers for the Public Housing program only:

B. 24 CFR Part 902: Public Housing Assessment System

For PDD PHAs with fiscal year end (FYE) dates within four months before and up to 10 months after the effective date of the PDD, HUD may consider a request to waive the physical inspection and scoring of public housing projects, as required under 24 CFR part 902. For situations beyond the PHA's control, HUD may consider requests from PDD PHAs with a FYE date that falls outside these dates.

C. 24 CFR 905.306: Extension of Deadline for Programmatic Obligation and Expenditure of Capital Funds

The regulation does not permit extensions of the expenditure dates other than for the period of a HUD-approved extension of the obligation deadline. HUD may extend both the obligation end date and the expenditure end date for all Capital Fund grants during a PDD. However, no programmatic expenditure end date shall be extended beyond one month prior to the closure of the relevant appropriation account, pursuant to 31 U.S.C. 1552.

D. 24 CFR 905.322(b): Fiscal Closeout

An Actual Development Cost Certificate (ADCC) must be submitted 12 months from the date of completion/termination of a modernization activity, and the Actual Modernization Cost Certificate (AMCC) must be submitted not later than 12 months from the activity's expenditure deadline. In accordance with 2 CFR 200.344(b), HUD may authorize an extension; however, if the PHA does not submit all reports within one year, HUD must report the failure under the Office of Management and Budget (OMB) designate integrity and performance system.

E. 24 CFR 905.314(b) and (c): Cost and Other Limitations, Maximum Project Cost, Total Development Cost (TDC) Limit

To facilitate the use of Capital Funds for repairs and construction for needed housing in the disaster areas, HUD may consider waiving the TDC and housing cost cap limits for all work funded by the Capital Grant (with unexpended Capital Grant funds) or for work on housing in the disaster area which is included as part of a Choice Neighborhoods Implementation Grant. PDD PHAs that request to waive this provision and receive approval to do so must strive to keep housing costs reasonable given local market

conditions, based upon the provisions outlined in 2 CFR part 200.

F. 24 CFR 905.314(j): Cost and Other Limitations, Types of Labor

This section establishes that for high performer PHAs, they may use force account labor for modernization and development activities without including it in a Board-approved Capital Fund Program 5-Year Action Plan. HUD may waive this requirement to allow for the use of force account labor for modernization only activities for non-high performers even if this activity has not been included in the non-high performer PDD PHA's 5-Year Action Plan. Should HUD waive this requirement, the waiver will be in effect for a period not to exceed 12 months from the date of HUD approval.

G. 24 CFR 905.400(i)(5): Capital Fund Formula, Replacement Housing Factor To Reflect Formula Need for Projects With Demolition or Disposition Occurring on or After October 1, 1998, and Prior to September 30, 2013

HUD may consider waiving § 905.400(i)(5) to help address housing needs because of the displacement caused by the PDD, and to allow unexpended Capital Fund Replacement Housing Factor Grants to be used for public housing modernization. Should HUD waive this requirement, the waiver will be in effect for funds obligated within a period not to exceed 12 months from the date of HUD approval.

H. 24 CFR 970.15(b)(1)(ii): Demolition/ Disposition Applications and Environmental Reviews Performed Under 24 CFR Parts 50 and 58

For section 18 demolition applications and disposition applications justified by location obsolescence for PDD PHAs, HUD may consider a waiver request for the environmental review to be performed under 24 CFR part 50 or 58, if HUD determines the environmental review indicates the environmental conditions jeopardize the suitability of the site (or a portion of the site) and the housing structures for residential use.

I. 24 CFR 970.15(b)(2): Cost Estimate for Demo Application

For section 18 demolition applications justified by obsolescence, HUD requires that PHAs support the cost estimate by a list of specific and detailed work items that require rehabilitation or repair, as identified on form HUD–52860–B and other criteria outlined in PIH Notice 2018–04, section A. HUD may consider requests to waive these requirements if a PDD PHA submits other evidence (*e.g.,* insurance adjuster reports, condemnation orders from local municipalities, and photographs) that support the PDD PHA's certification that a program of modifications is not cost-effective.

J. 24 CFR 990.145(b)(2): Dwelling Units With Approved Vacancies

If a PDD PHA has one or more units that have been vacated due to a PDD, then the PDD PHA, with HUD approval, may treat the unit as an ''approved vacancy.'' Upon the request of a PDD PHA and HUD approval, on a case-by-case basis, such units may be considered approved vacancies for the time approved by HUD. Effective date of vacant unit must align with the date of the emergency/or significant disaster event that resulted in the PDD.

III. Exceptions or Waivers Not Listed in This Document

A PDD PHA may request an exception of a HUD requirement not listed in section II of this document. HUD will only consider such exception requests subject to statutory limitations and pursuant to 24 CFR 5.110. Such exceptions or waivers shall not include any requests to waive fair housing, civil rights, labor standards, or environmental review requirement. The request must include justification and supporting documentation, if necessary, to support the request.

IV. Finding of No Significant Impact

A Finding of No Significant Impact (FONSI) with respect to the environment has been made in accordance with HUD regulations at 24 CFR part 50, which implement section 102(2)(C) of the National Environmental Policy Act of 1969 (42 U.S.C. 4332(2)(C)).

The FONSI is available through the Federal eRulemaking Portal at *https://www.regulations.gov.* The FONSI is also available for public inspection between 8 a.m. and 5 p.m. Eastern Time weekdays in the Regulations Division, Office of General Counsel, Department of Housing and Urban Development, 451 7th Street SW, Room 10276, Washington, DC 20410–0500. Due to security measures at the HUD Headquarters building, an advance appointment to review the docket file must be scheduled by calling the Regulations Division at 202–708–3055 (this is not a toll-free number). HUD welcomes and is prepared to receive calls from individuals who are deaf or hard of hearing, as well as individuals with speech and communication disabilities. To learn more about how to make an accessible telephone call, please visit *https://www.fcc.gov/consumers/guides/telecommunications-relay-service-trs.*

V. Paperwork Reduction Act

The information collections referenced in this document have been approved by OMB pursuant to the Paperwork Reduction Act under, OMB Control Number 2577–0292.

Dominique Blom,

General Deputy Assistant Secretary for Public and Indian Housing.

Attachment A

Use this checklist and follow these instructions to submit a complete PDD waiver or flexibility request. Checklists and any supporting documentation or information must be submitted no later than 120 days following the PDD designation. Requests submitted after that time will not be considered on an expedited basis.

1. Copy and paste the checklist below into a new document, saving the document with the following filename format: **Federal Register** docket number (FR–XXXX–N–XX), a hyphen, then your Agency's HA Code. For example: FR–XXXX–N–XX–AL123.

2. The section titled ''Information about Requesting Agency'' must be completed in its entirety. An official of the PDD PHA must sign where indicated. If the information about the requesting agency is incomplete or the checklist has not been signed, then the checklist will be returned.

3. Address an email to both *PIH_Disaster_Relief@hud.gov* and your regional HUD Field Office Public Housing Director, which can be found at *https://www.hud.gov/program_offices/public_indian_housing/about/field_office.* In the subject line, type ''PHA Name—PHA Code—PDD Disaster Relief—Month and Year.'' For example, Allenway Housing Authority—AL123—PDD Disaster Relief—October 2024.

4. Attach to your email the completed checklist, letter of justification, and all supporting documentation as applicable. HUD will consider other methods of submission as needed.

Section 1. Information About Requesting Agency

NAME OF PHA:
PHA CODE:
Presidentially Declared Disaster (PDD) your agency is under, or FEMA disaster number:
Address:
City or Locality: (must be covered under PDD)
Zip Code:
Parish/County:

Date of Submission:
Signature of PHA Official:
Name/Title of PHA Official:
Phone number of PHA Official:
Email address of PHA Official:

Section 2. Insert an ''X'' to the Left of the Administrative Flexibilities You Are Requesting

Each request must include a good-cause justification for the waiver or flexibility, documenting why the waiver is needed for each purpose.

Tier	Waiver	Citation and waiver name—FY 2024 presidentially declared disaster (PDD)	PH	HCV	Both PH and HCV
Tier 1 Waivers ...	A	24 CFR 982.201(e) and 960.259: Verification of Date of Birth and Disability Status.			x
	B	24 CFR 984.303(d): Family Self Sufficiency (FSS) Contract of Participation, Contract Extension.			x
	C	24 CFR 982.516(a)(2) and (3) and 960.259(c): Eligibility Determination, Income Verification.			x
	D	24 CFR 982.206(a)(2) and 960.206: Waiting List, Opening and Closing, Public notice.			x
	E	PIH Notice 2011–65: Timely Reporting Requirements of the Family Report (form HUD–50058).			x
	F	24 CFR 982.516(a)(2) and (3): Family Income and Composition, Annual and Interim Examinations for HCV and PBV; 24 CFR 960.259(c): Family Information and Verification for PH and PIH Notice 2023–27.			x
	G	24 CFR 5.703(d)(5): National Standards for the Physical Inspection of Real Estate, Units.		x	
	H	24 CFR 982.503(c): HUD Approval of Exception Payment Standard Amount.		x	
	I	24 CFR 982.54(d)(2): Term of Voucher, Extension of Term		x	
	J	24 CFR 982.305(c): PHA Approval of Assisted Tenancy, When HAP Contract is Executed.		x	
	K	24 CFR 982.633(a): Occupancy of Home		x	
	L	24 CFR 982.54(a): Administrative Plan		x	
	M	24 CFR 982.405(b): Supervisory Quality Control Inspection		x	
	N	24 CFR 982.312: Absence from Unit		x	
	O	24 CFR 982.455, 983.258 and 983.211(a): Automatic Termination of HAP Contract or Required Removal of Unit from the PBV HAP.		x	
	P	24 CFR 982.517(c): Revisions of Utility Allowance Schedule		x	
	Q	PIH Notice 2018–1, Section 9: Guidance on SAFMR and Payment Standard.		x	
	R	24 CFR Part 985: Section 8 Management Assessment Program (SEMAP).		x	
	S	24 CFR 965.302: Requirements for Energy Audits	x		
	T	24 CFR 965.507: Review & Revision of Allowances	x		
	U	24 CFR 966.5: Posting of Policies, Rules, and Regulations	x		
Tier 2 Waivers	A	24 CFR 5.801(c) and (d)(1): Uniform Financial Reporting standards, Filing of Financial Reports, Reporting Compliance Dates.			x
	B	24 CFR Part 902: Public Housing Assessment System	x		
	C	24 CFR 905.306: Extension of Deadline for Programmatic Obligation and Expenditure of Capital Funds.	x		
	D	24 CFR 905.322(b): Fiscal Closeout	x		
	E	24 CFR 905.314(b) and (c): Cost and Other Limitations, Maximum Project Cost, TDC limit.	x		
	F	24 CFR 905.314(j): Cost and Other Limitations, Types of Labor	x		
	G	24 CFR 905.400(i)(5): Capital Fund Formula, Replacement Housing Factor to Reflect Formula Need for Projects with Demolition or Disposition Occurring on or after October 1, 1998, and Prior to September 30, 2013.	x		
	H	24 CFR 970.15(b)(1)(ii): Demolition/Disposition Applications and Environmental Reviews Performed under 24 CFR Parts 50 and 58.	x		
	I	24 CFR 970.15(b)(2): Cost Estimate for Demo Application	x		
	J	24 CFR 990.145(b)(2): Dwelling Units with Approved Vacancies	x		
Section III of this document.		Waivers that are not identified in this PIH document	x	x	x

[FR Doc. 2024–02094 Filed 2–2–24; 8:45 am]

BILLING CODE 4210–67–P

DEPARTMENT OF THE TREASURY

Alcohol and Tobacco Tax and Trade Bureau

27 CFR Part 9

[Docket No. TTB–2022–0012; T.D. TTB–190; Ref: Notice No. 217]

RIN 1513–AC82

Expansion of the Red Hills Lake County Viticultural Area

AGENCY: Alcohol and Tobacco Tax and Trade Bureau, Treasury.

ACTION: Final rule; Treasury decision.

SUMMARY: The Alcohol and Tobacco Tax and Trade Bureau (TTB) is expanding the ''Red Hills Lake County'' American viticultural area in Lake County, California by approximately 679 acres. The established viticultural area and the expansion area are both located entirely within the larger Clear Lake and North Coast viticultural areas. TTB designates viticultural areas to allow vintners to better describe the origin of their wines and to allow consumers to better identify wines they may purchase.

DATES: This final rule is effective March 6, 2024.

FOR FURTHER INFORMATION CONTACT: Kate Bresnahan, Regulations and Rulings Division, Alcohol and Tobacco Tax and Trade Bureau, 1310 G Street NW, Box 12, Washington, DC 20005; phone 202–453–1039, ext. 151.

SUPPLEMENTARY INFORMATION:

Background on Viticultural Areas

TTB Authority

Section 105(e) of the Federal Alcohol Administration Act (FAA Act), 27 U.S.C. 205(e), authorizes the Secretary of the Treasury to prescribe regulations for the labeling of wine, distilled spirits, and malt beverages. The FAA Act provides that these regulations should, among other things, prohibit consumer deception and the use of misleading statements on labels and ensure that labels provide the consumer with adequate information as to the identity and quality of the product. The Alcohol and Tobacco Tax and Trade Bureau (TTB) administers the FAA Act pursuant to section 1111(d) of the Homeland Security Act of 2002, codified at 6 U.S.C. 531(d). In addition, the Secretary of the Treasury has delegated certain administration and enforcement authorities to TTB through Treasury Order 120–01.

Part 4 of the TTB regulations (27 CFR part 4) authorizes TTB to establish definitive viticultural areas and regulate the use of their names as appellations of origin on wine labels and in wine advertisements. Part 9 of the TTB regulations (27 CFR part 9) sets forth standards for the preparation and submission to TTB of petitions for the establishment or modification of American viticultural areas (AVAs) and lists the approved AVAs.

Definition

Section 4.25(e)(1)(i) of the TTB regulations (27 CFR 4.25(e)(1)(i)) defines a viticultural area for American wine as a delimited grape-growing region having distinguishing features as described in part 9 of the regulations and, once approved, a name and a delineated boundary codified in part 9 of the regulations. These designations allow vintners and consumers to attribute a given quality, reputation, or other characteristic of a wine made from grapes grown in an area to the wine's geographic origin. The establishment of AVAs allows vintners to describe more accurately the origin of their wines to consumers and helps consumers to identify wines they may purchase. Establishment of an AVA is neither an approval nor an endorsement by TTB of the wine produced in that area.

Requirements

Section 4.25(e)(2) of the TTB regulations (27 CFR 4.25(e)(2)) outlines the procedure for proposing an AVA and allows any interested party to petition TTB to establish a grape-growing region as an AVA. Petitioners may use the same process to request changes to established AVAs. Section 9.12 of the TTB regulations (27 CFR 9.12) prescribes standards for petitions to modify established AVAs. Petitions to expand an established AVA must include the following:

Evidence that the area within the proposed expansion area boundary is nationally or locally known by the name of the established AVA;

An explanation of the basis for defining the boundary of the proposed expansion area;

A narrative description of the features of the proposed expansion area that affect viticulture, such as climate, geology, soils, physical features, and elevation, that make the proposed expansion area similar to the established AVA and distinguish it from adjacent areas outside the established AVA boundary;

The appropriate United States Geological Survey (USGS) map(s) showing the location of the proposed expansion area, with the boundary of the proposed expansion area clearly drawn thereon; and

A detailed narrative description of the proposed expansion area boundary based on USGS map markings.

Petition To Expand the Red Hills Lake County AVA

TTB received a petition submitted on behalf of local vineyard owners, proposing to expand the established ''Red Hills Lake County'' AVA by adding three separately owned parcels of land covering a total of approximately 679 acres. The Red Hills Lake County AVA (27 CFR 9.169) was established by T.D. TTB–15, which was published in the **Federal Register** on July 12, 2004 (69 FR 41750). The proposed expansion area and the established AVA are both located within the Clear Lake (27 CFR 9.99) and North Coast AVAs (27 CFR 9.30).

According to the expansion petition, the topography, soils, and climate of the proposed expansion area are similar to those of the established Red Hills Lake County AVA. The original petition noted that within the Red Hills Lake County AVA, slopes range from zero to greater than 30 percent, but that ''[n]o one group clearly predominates.'' When describing the region west of Bottle Rock Road, which is the location of the proposed expansion area, the original petition stated, ''almost all of the terrain shown has slopes of 15% and above.'' The expansion petition notes that, while the original AVA petition was correct that a large part of the region to the west of Bottle Rock Road does contain steep slopes, it also contains areas with gentler slopes. Figure 2 in the expansion petition indicates that the proposed expansion area contains regions with slopes from 0 to 20 percent, as well as slopes from 20 to over 30 percent. Additionally, the expansion petition includes a wider view of the slope and terrain map (Figure 6).[1] Both figures show that the slope angles of the proposed expansion area are similar to those within the Red Hills Lake County AVA, as described in T.D. TTB–15. According to the original Red Hills Lake County petition, the major soil groups within the AVA are of volcanic origin and include Glenview-Bottlerock-Arrowhead, Konocti-Benridge, and Collayomi-Aiken-Whispering. The expansion petition claims that 90 percent of the acreage within the proposed expansion area contains soils of the same soil units described in the original petition and are of volcanic origin. By contrast, the expansion petition notes that the region west of the

[1] Figures 2 and 6 to the expansion petition are both included in Docket TTB–2022–00012 at *www.regulations.gov.*

proposed expansion area and the Red Hills Lake County AVA contains large levels of serpentine soils, which are not found in the Red Hills Lake County AVA.

According to the brief description of the Red Hills Lake County AVA's climate provided in T.D. TTB–15, the AVA has a climate that is more influenced by Clear Lake than by the Pacific Ocean. The temperature contrasts between the lake and the land create winds that are credited for reducing the risk of frost within the AVA. The proposed expansion petition explains that, today, some growers within the Red Hills Lake County AVA and the expansion area have frost protection measures in place, although those may not be needed every year. By contrast, the expansion petition states that vineyards in the established Big Valley District-Lake County AVA (27 CFR 9.232), located to the northwest of the proposed expansion area and Red Hills Lake County AVA, require the use of frost protection every year. The expansion petition also notes that growers within the Red Hills Lake County AVA and the expansion area rarely harvest grapes before October 1, further suggesting the two regions share a similar climate. Although the proposed expansion area is more similar to the Red Hills Lake County AVA than the surrounding regions, the expansion area still shares some of the features of the surrounding Clear Lake and North Coast AVAs. For example, according to the petition, the Red Hills Lake County AVA, its expansion area, and the Clear Lake AVA are entirely within the Lake County Subwatershed. The Lake County Subwatershed gives both AVAs less fog and warmer temperatures than other parts of the North Coast AVA. The Pacific Ocean largely affects the climate in most parts of the North Coast AVA, while Clear Lake and the Lake County Subwatershed have larger effects on the Clear Lake and Red Hills Lake County AVAs' climate.

According to the petition, while similar to the Clear Lake AVA in some ways, the Red Hills Lake County AVA differs from the larger area as well. For example, the petition states that the Red Hills Lake County AVA and its expansion area have some of the highest elevations in the Clear Lake AVA. The petition also notes that the Red Hills Lake County AVA, including its expansion area, contains mostly red volcanic soils. While the Clear Lake AVA contains these soils as well, the Clear Lake AVA petition cited ''the uniform sandy loam and clay loam soils'' as a distinguishing feature. The petition also describes the Red Hills Lake County AVA as having higher minimum and median heat summations than the Clear Lake AVA.

Notice of Proposed Rulemaking and Comments Received

TTB published Notice No. 217 in the **Federal Register** on November 28, 2022 (87 FR 72937), proposing to expand the Red Hills Lake County AVA. In the notice, TTB summarized the evidence from the petition regarding the name, boundary, and distinguishing features for the proposed expansion area. For a detailed description of the evidence relating to the name, boundary, and distinguishing features of the proposed expansion area, and for a comparison of the distinguishing features of the proposed expansion area to the surrounding areas and to the established Red Hills Lake County AVA, see Notice No. 217.

The comment period for Notice No. 217 closed on January 27, 2023. In response to Notice No. 217, TTB received no comments.

TTB Determination

After careful review of the petition, TTB finds that the evidence provided by the petitioner supports the expansion of the Red Hills Lake County. Accordingly, under the authority of the FAA Act, section 1111(d) of the Homeland Security Act of 2002, and parts 4 and 9 of the TTB regulations, TTB modifies the boundary of the AVA, effective 30 days from the publication date of this document.

Boundary Description

See the narrative description of the boundary modification of the Red Hills Lake County AVA in the regulatory text published at the end of this final rule.

Maps

The petitioner provided the required maps, and they are listed below in the regulatory text. The modified Red Hills Lake County AVA boundaries may also be viewed on the AVA Map Explorer on the TTB website, at *https://www.ttb.gov/wine/ava-map-explorer.*

Impact on Current Wine Labels

Part 4 of the TTB regulations prohibits any label reference on a wine that indicates or implies an origin other than the wine's true place of origin. For a wine to be labeled with an AVA name or with a brand name that includes an AVA name, at least 85 percent of the wine must be derived from grapes grown within the area represented by that name, and the wine must meet the other conditions listed in § 4.25(e)(3) of the TTB regulations (27 CFR 4.25(e)(3)). If the wine is not eligible for labeling with an AVA name and that name appears in the brand name, then the label is not in compliance and the bottler must change the brand name and obtain approval of a new label. Similarly, if the AVA name appears in another reference on the label in a misleading manner, the bottler would have to obtain approval of a new label. Different rules apply if a wine has a brand name containing an AVA name that was used as a brand name on a label approved before July 7, 1986. See § 4.39(i)(2) of the TTB regulations (27 CFR 4.39(i)(2)) for details.

The expansion of the Red Hills Lake County AVA will not affect any other existing AVA, and bottlers using ''Red Hills Lake County,'' ''Clear Lake,'' or ''North Coast'' as an appellation of origin or in a brand name for wines made from grapes within the ''Red Hills Lake County,'' ''Clear Lake,'' or ''North Coast'' AVAs will not be affected by this expansion of the Red Hills Lake County AVA. The expansion of the Red Hills Lake County AVA will allow vintners to use ''Red Hills Lake County,'' ''Clear Lake,'' ''North Coast,'' or any combination of the three AVA names as appellations of origin for wines made primarily from grapes grown within the expansion area if the wines meet the eligibility requirements for the appellations.

Regulatory Flexibility Act

TTB certifies that this regulation will not have a significant economic impact on a substantial number of small entities. The regulation imposes no new reporting, recordkeeping, or other administrative requirement. Any benefit derived from the use of an AVA name would be the result of a proprietor's efforts and consumer acceptance of wines from that area. Therefore, no regulatory flexibility analysis is required.

Executive Order 12866

It has been determined that this final rule is not a significant regulatory action as defined by Executive Order 12866 of September 30, 1993, as amended. Therefore, no regulatory assessment is required.

Drafting Information

Kate Bresnahan of the Regulations and Rulings Division drafted this final rule.

List of Subjects in 27 CFR Part 9

Wine.

The Regulatory Amendment

For the reasons discussed in the preamble, TTB amends title 27, chapter I, part 9, Code of Federal Regulations, as follows:

PART 9—AMERICAN VITICULTURAL AREAS

■ 1. The authority citation for part 9 continues to read as follows:

Authority: 27 U.S.C. 205.

Subpart C—Approved American Viticultural Areas

■ 2. Section 9.169 is amended by:
■ a. Redesignating paragraphs (c)(15) through (22) as paragraphs (c)(31) through (38);
■ b. Revising paragraph (c)(14); and
■ c. Adding new paragraphs (c)(15) through (30).

The additions and revision read as follows:

§ 9.169 Red Hills Lake County.

* * * * *

(c) * * *

(14) Proceed about 0.4 mile northwesterly along Harrington Flat Road to its intersection with Bottle Rock Road in section 18, T21N, R8W; then

(15) Proceed southerly along Bottle Rock Road approximately 2,500 feet to its intersection with an unnamed, unimproved dirt road near the marked 2,928-foot elevation; then

(16) Proceed west along the unimproved dirt road to its intersection with the 2,800-foot elevation contour; then

(17) Proceed northwesterly, then northerly along the meandering 2,800-foot elevation contour to its intersection with the northern boundary of section 18, T12N, R8W; then

(18) Proceed easterly along the northern boundary of section 18 to its intersection with Bottle Rock Road; then

(19) Proceed north along Bottle Rock Road to its intersection with an unnamed trail in section 7, T12N, R8W; then

(20) Proceed west in a straight line to the western boundary of section 7, T12N, R8W; then

(21) Proceed north along the western boundary of section 7 to the southeastern corner of section 1, T12N, R9W; then

(22) Proceed west along the southern boundary of section 1 to its intersection with the 2,600-foot elevation contour; then

(23) Proceed north in a straight line to the intersection with an unnamed, unimproved dirt road known locally as Helen Road; then

(24) Proceed west in a straight line to the fourth intersection with the 2,560-foot elevation contour in section 1, T12N, R9W; then

(25) Proceed south in a straight line to the southern boundary of section 1; then

(26) Proceed west along the southern boundary of section 1 to its intersection with the western boundary of section 1; then

(27) Proceed north along the western boundary of section 1 to its intersection with the northern boundary of section 1; then

(28) Proceed east along the northern boundary of section 1 to its intersection with the 2,000-foot elevation contour; then

(29) Proceed southeasterly along the 2,000-foot elevation contour to its intersection with Bottle Rock Road; then

(30) Proceed northwesterly along Bottle Rock Road to its intersection with Cole Creek Road to the west and an unnamed, unimproved road to the east in section 25, T13N, R9W; then

* * * * *

Signed: January 22, 2024.

Mary G. Ryan,

Administrator.

Approved: January 23, 2024.

Thomas C. West, Jr.,

Deputy Assistant Secretary (Tax Policy).

[FR Doc. 2024–01877 Filed 2–2–24; 8:45 am]

BILLING CODE 4810–31–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 117

[Docket No. USCG–2023–0658]

RIN 1625–AA09

Drawbridge Operation Regulation; Okeechobee Waterway, Stuart, FL

AGENCY: Coast Guard, DHS.

ACTION: Final rule.

SUMMARY: The Coast Guard is modifying the operating schedule that governs the Roosevelt (US1) Bridge, across the Okeechobee Waterway, mile 7.5, at Stuart, FL. This action is necessary to allow the drawbridge to operate on demand, as outlined in the Record of Decision for the high-level fixed US1 Roosevelt Bridge which was constructed in 1997. Additionally, with the increase in railway activity on the adjacent railroad bridge, this modification will allow the drawbridges to operate in concert. The drawbridge name in the existing regulation is incorrect and will be changed in this Final Rule.

DATES: This rule is effective March 6, 2024.

ADDRESSES: To view documents mentioned in this preamble as being available in the docket, go to *https://www.regulations.gov*. Type the docket number (USCG–2023–0658) in the ''SEARCH'' box and click ''SEARCH''. In the Document Type column, select ''Supporting & Related Material.''

FOR FURTHER INFORMATION CONTACT: If you have questions on this rule, call or email Ms. Jennifer Zercher, Bridge Management Specialist, Seventh Coast Guard District; telephone 305–415–6740, email *Jennifer.N.Zercher@uscg.mil*.

SUPPLEMENTARY INFORMATION:

I. Table of Abbreviations

CFR Code of Federal Regulations
DHS Department of Homeland Security
FR Federal Register
OMB Office of Management and Budget
NPRM Notice of Proposed Rulemaking (Advance, Supplemental)
§ Section
U.S.C. United States Code
FL Florida
FDOT Florida Department of Transportation

II. Background Information and Regulatory History

The drawbridge name in the regulation, Roosevelt (US1) Bridge, is incorrect and will be permanently changed in the CFR and referred to for the remainder of the Final Rule as SR 707 (Dixie Highway) Bridge.

The SR 707 (Dixie Highway) Bridge was included in previously published notices and a general deviation with a request for comments in the **Federal Register**, under docket number USCG–2022–0222. These actions were taken to gather comments on waterway usage and the operation of the Florida East Coast Railroad Bridge and the SR 707 (Dixie Highway) Bridge at Stuart, FL.

On May 3, 2022, under docket USCG–2022–0222, the Coast Guard published a Notification of Inquiry entitled, ''Drawbridge Operation Regulation; Okeechobee Waterway, Stuart, FL'' in the **Federal Register** (87 FR 26145). On June 10, 2022, a Supplemental Notification of Inquiry entitled, ''Drawbridge Operation Regulation; Okeechobee Waterway, Stuart, FL'' was published in the **Federal Register** (87 FR 35472). We received a total 2,358 comments on those publications and those comments pertaining to SR 707 (Dixie Highway) Bridge were addressed in the NPRM. On June 8, 2023, under docket USCG–2022–0222, the Coast Guard published a Temporary Deviation entitled, ''Drawbridge Operation

Regulation; Okeechobee Waterway, Stuart, FL'' in the **Federal Register** (88 FR 37470). During the test period, 342 comments were received and those comments pertaining to SR 707 (Dixie Highway) Bridge were addressed in the NPRM.

On October 27, 2023, under docket USCG–2023–0658, the Coast Guard published a Notice of Proposed Rulemaking entitled Drawbridge Operation Regulation; Okeechobee Waterway, Stuart, FL'' in the **Federal Register** (88 FR 73808). There, the Coast Guard stated why it issued the NPRM and invited comments on the proposed regulatory action related to this regulatory change. During the comment period that ended November 27, 2023, we received zero comments.

III. Legal Authority and Need for Rule

The Coast Guard is issuing this rule under authority 33 U.S.C. 499. The SR 707 (Dixie Highway) Bridge, across the OWW, mile 7.5, at Stuart, Florida, is a double-leaf bascule bridge with a 14-foot vertical clearance at mean high water in the closed position. The normal operating schedule for the bridge is set forth in 33 CFR 117.317(d). Navigation on the waterway is commercial and recreational.

The drawbridge was required to operate on demand as outlined in the Record of Decision for the high-level fixed US1 Roosevelt Bridge which was constructed in 1997. The drawbridge was operating on demand until June 2020 when emergency repairs to the US1 Roosevelt Bridge necessitated the drawbridge operate on scheduled openings. It was then discovered the drawbridge operating regulation was not removed from the CFR in 1997 as required. After emergency repairs were completed on the US1 Roosevelt Bridge, the bridge owner, FDOT, continued to operate the drawbridge per 33 CFR 117.317(d). Given the previous requirement to operate on demand, the increase in railway activity on the adjacent railroad bridge, and the unique operation of the railroad bridge, the Coast Guard is modifying the operating regulation to allow the drawbridges to operate in concert.

IV. Discussion of Comments, Changes and the Final Rule

The Coast Guard provided a comment period of 30 days, and no comments were received. The current regulation provides for the drawbridge to remain closed to navigation during specified times and to operate on scheduled openings at other times. This final rule allows for the drawbridge to operate on demand and in concert with adjacent railroad drawbridge. Vessels that can pass beneath the drawbridge without an opening may do so at any time.

V. Regulatory Analyses

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

A. Regulatory Planning and Review

Executive Orders 12866 and 13563 direct agencies to assess the costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits. This proposed rule has not been designated a ''significant regulatory action,'' under section 3(f) of Executive Order 12866, as amended by Executive Order 14094 (Modernizing Regulatory Review). This rule has not been designated a ''significant regulatory action,'' under Executive Order 12866. Accordingly, it has not been reviewed by the Office of Management and Budget (OMB).

This regulatory action determination is based on the ability that vessels can transit the drawbridge on demand and vessels able to pass without an opening may do so at any time.

B. Impact on Small Entities

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

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

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

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

C. Collection of Information

This rule calls for no new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520).

D. Federalism and Indian Tribal Government

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

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

E. Unfunded Mandates Reform Act

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

we do discuss the effects of this rule elsewhere in this preamble.

F. Environment

We have analyzed this rule under Department of Homeland Security Management Directive 023–01, Rev.1, associated implementing instructions, and Environmental Planning Policy COMDTINST 5090.1 (series) which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA)(42 U.S.C. 4321–4370f). The Coast Guard has determined that this action is one of a category of actions that do not individually or cumulatively have a significant effect on the human environment. This rule promulgates the operating regulations or procedures for drawbridges and is categorically excluded from further review, under paragraph L49, of Chapter 3, Table3–1 of the U.S. Coast Guard Environmental Planning Implementation Procedures.

Neither a Record of Environmental Consideration nor a Memorandum for the Record are required for this rule.

List of Subjects in 33 CFR Part 117

Bridges.

For the reasons discussed in the preamble, the Coast Guard amends 33 CFR part 117 as follows:

PART 117—DRAWBRIDGE OPERATION REGULATIONS

■ 1. The authority citation for part 117 continues to read as follows:

Authority: 33 U.S.C. 499; 33 CFR 1.05–1; and Department of Homeland Security Delegation No. 00170.1. Revision No. 01.3.

■ 2. Amend § 117.317 by revising paragraph (d) to read as follows:

§ 117.317 Okeechobee Waterway

* * * * *

(d) The SR 707 (Dixie Highway) Bridge, mile 7.5 at Stuart, shall open on signal; except when the adjacent railroad bridge is in the closed position, the draw need not open. The draw must open immediately upon opening of the railroad bridge to pass all accumulated vessels requesting an opening.

* * * * *

Dated: January 31, 2024.

Douglas M. Schofield,

Rear Admiral, U.S. Coast Guard, Commander, Coast Guard Seventh District.

[FR Doc. 2024–02187 Filed 2–2–24; 8:45 am]

BILLING CODE 9110–04–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R09–OAR–2023–0422; FRL–11353–02–R9]

Air Plan Revisions; California; Butte County Air Quality Management District; Nonattainment New Source Review Requirements for the 2015 8-Hour Ozone Standard

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: The Environmental Protection Agency (EPA) is taking final action to approve revisions to the Butte County Air Quality Management District (''District'') portion of the California State Implementation Plan (SIP). These revisions address the nonattainment new source review (NNSR) requirements for the 2015 ozone national ambient air quality standards (NAAQS or ''standard''). We are approving the SIP revisions pursuant to the Clean Air Act (CAA or ''Act'') and its implementing regulations.

DATES: This rule is effective March 6, 2024.

ADDRESSES: The EPA has established a docket for this action under Docket ID No. EPA–R09–OAR–2023–0422. All documents in the docket are listed on the *https://www.regulations.gov* website. Although listed in the index, some information is not publicly available, *e.g.,* Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the internet and will be publicly available only in hard copy form. Publicly available docket materials are available through *https://www.regulations.gov,* or please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section for additional availability information. If you need assistance in a language other than English or if you are a person with a disability who needs a reasonable accommodation at no cost to you, please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section.

FOR FURTHER INFORMATION CONTACT: Shaheerah Kelly, EPA Region IX, 75 Hawthorne Street, San Francisco, CA 94105. By phone: (415) 947–4156 or by email at *kelly.shaheerah@epa.gov.*

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

Table of Contents

I. Proposed Action

On October 17, 2023 (88 FR 71518), the EPA proposed to approve the rule listed in Table 1 into the California SIP. The amended rule was submitted by the California Air Resources Board (CARB), the agency that serves as the governor's designee for California SIP submittals.

TABLE 1—SUBMITTED RULE

Rule	Title	Amendment date	Submittal date	Cover letter date
Rule 432	Federal New Source Review (FNSR)	4/22/2021	8/3/2021	8/3/2021

The District's SIP-approved nonattainment New Source Review (NNSR) program, established in Rule 432, ''Federal New Source Review (FNSR)'' (amended March 23, 2017) (''Rule 432''), applies to the construction and modification of stationary sources, including major stationary sources in nonattainment areas under its jurisdiction.[1] The District submitted the August 3, 2021 SIP revision primarily to demonstrate that Rule 432 complies with the 2015 ozone NAAQS NNSR SIP requirements in 40 CFR 51.165. The only revision to Rule 432 from the SIP-approved NNSR program was the removal of provisions related to interpollutant trading due to a recent court decision that vacated the interpollutant trading program.[2]

We proposed to approve this rule because we determined that it complies with the relevant CAA requirements applicable to the Butte County

[1] 83 FR 26222 (June 6, 2018).

[2] *Sierra Club* v. *EPA,* 21 F.4th 815 (D.C. Cir. 2021) and 86 FR 37918 (July 19, 2021).

nonattainment area as a Marginal ozone nonattainment area. Our proposed action contains more information on the rule and our evaluation.

II. Public Comments and EPA Responses

The EPA's proposed action provided a 30-day public comment period. During this period, we received no comments that resulted in a change in our proposed action.

III. EPA Action

No comments were submitted that changed our assessment of Rule 432 as described in our proposed action. Therefore, as authorized in CAA section 110(k)(3), and part D of title I of the Act and its regulations in 40 CFR 51.165, the EPA is approving Rule 432 into the California SIP. The April 22, 2021 version of Rule 432 will replace the previous version of this rule amended on March 23, 2017, and approved into the SIP on June 6, 2018.

IV. Incorporation by Reference

In this rule, the EPA is finalizing regulatory text that includes incorporation by reference. In accordance with requirements of 1 CFR 51.5, the EPA is finalizing the incorporation by reference of District Rule 432, ''Federal New Source Review (FNSR),'' amended on April 22, 2021, which establishes preconstruction review requirements for major stationary sources and major modifications in the Butte County nonattainment area. The EPA has made, and will continue to make, these documents available through *www.regulations.gov* and at the EPA Region IX Office (please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section of this preamble for more information).

V. Statutory and Executive Order Reviews

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

- Is not a significant regulatory action subject to review by the Office of Management and Budget under Executive Orders 12866 (58 FR 51735, October 4, 1993) and 14094 (88 FR 21879, April 11, 2023);
- 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 subject to Executive Order 13045 (62 FR 19885, April 23, 1997) because it approves a state program;
- Is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001); and
- Is not subject to requirements of Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the Clean Air Act.

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

Executive Order 12898 (Federal Actions To Address Environmental Justice in Minority Populations and Low-Income Populations, 59 FR 7629, Feb. 16, 1994) directs Federal agencies to identify and address ''disproportionately high and adverse human health or environmental effects'' of their actions on minority populations and low-income populations to the greatest extent practicable and permitted by law. The EPA defines environmental justice (EJ) as ''the fair treatment and meaningful involvement of all people regardless of race, color, national origin, or income with respect to the development, implementation, and enforcement of environmental laws, regulations, and policies.'' The EPA further defines the term fair treatment to mean that ''no group of people should bear a disproportionate burden of environmental harms and risks, including those resulting from the negative environmental consequences of industrial, governmental, and commercial operations or programs and policies.''

The State did not evaluate environmental justice considerations as part of its SIP submittal; the CAA and applicable implementing regulations neither prohibit nor require such an evaluation. The EPA did not perform an EJ analysis and did not consider EJ in this action. Consideration of EJ is not required as part of this action, and there is no information in the record inconsistent with the stated goal of Executive Order 12898 of achieving environmental justice for people of color, low-income populations, and Indigenous peoples.

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

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by April 5, 2024. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this action for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects in 40 CFR Part 52

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

Dated: January 29, 2024.

Martha Guzman Aceves,

Regional Administrator, Region IX.

For the reasons stated in the preamble, the Environmental Protection Agency amends part 52, chapter I, title 40 of the Code of Federal Regulations as follows:

PART 52—APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS

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

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

Subpart F—California

■ 2. Section 52.220 is amended by adding paragraphs (c)(504)(i)(A)(*2*) and (c)(591)(i)(B) to read as follows:

§ 52.220 Identification of plan—in part.

* * * * *

(c) * * *

(504) * * *

(i) * * *

(A) * * *

(*2*) Previously approved on June 6, 2018, in paragraph (c)(504)(i)(A)(*1*) of this section and now deleted with replacement in paragraph (c)(591)(i)(B)(*1*) of this section: Rule 432, ''Federal New Source Review,'' amended on March 23, 2017.

* * * * *

(591) * * *

(i) * * *

(B) Butte County Air Quality Management District.

(*1*) Rule 432, ''Federal New Source Review (FNSR),'' amended on April 22, 2021.

(*2*) [Reserved]

* * * * *

[FR Doc. 2024–02085 Filed 2–2–24; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 141

[EPA–HQ–OW–2023–0541; FRL–11620–01–OW]

Expedited Approval of Alternative Test Procedures for the Analysis of Contaminants Under the Safe Drinking Water Act; Analysis and Sampling Procedures

Correction

In rule document 2024–1530 beginning on page 5773 in the issue of Tuesday, January 30, 2024, make the following corrections:

1. On page 5790, table ''Alternative Testing Methods for Disinfectant Residuals Listed at 40 CFR 141.131(c)(1)'' should have the column headings:

Residual	Methodology	SM 21st edition [1]	SM 22nd edition,[28] SM 23rd edition,[49] SM 24th edition [66]	ASTM [4]	Other

2. On the same page, table ''Alternative Testing Methods for Parameters Listed at 40 CFR 141.131(d)'' should have column headings that appear as follows:

Parameter	Methodology	SM 21st edition [1]	SM 22nd edition [28]	SM 23rd edition,[49] SM 24th edition [66]	SM online [3]	EPA	Other

3. On the same page, table ''Alternative Testing Methods for Contaminants Listed at 40 CFR 141.402(c)(2)'' should have column headings that appear as follows:

Organism	Methodology	SM 20th edition [6]	SM 21st edition [1]	SM 22nd edition [28]	SM 23rd edition,[49] SM 24th edition [66]	SM online [3]	Other

4. On the same page, table ''Alternative Testing Methods for Contaminants Listed at 40 CFR 141.852(a)(5)'' should have column headings that appear as follows:

Organism	Methodology category	Method	SM 20th, 21st editions [1 6]	SM 22nd edition [28]	SM 23rd edition,[49] SM 24th edition [66]	SM online [3]

5. On page 5792, table ''Alternative Testing Methods for Contaminants Listed at 40 CFR 143.4(b)'' should have column headings that appear as follows:

Contaminant	Methodology	EPA method	ASTM [4]	SM 21st edition [1]	SM 22nd edition,[28] SM 23rd edition,[49] SM 24th edition [66]	SM online [3]

6. On the same page, table ''Alternative Testing Methods for Contaminants Listed at 40 CFR 143.4(b), the entry for Chloride should read as follows:

Chloride	Silver Nitrate Titration ..	.....	D 512–04 B, 12 B	4500–Cl^-B	4500–Cl^-B.	
	Ion Chromatography	.....	D 4327–11, –17	4110 B	4110 B.	
	Potentiometric Titration	.....	.....	4500–Cl^-D	4500–Cl^-D.	

7. On the same page, in the same table, the entry for Sulfate should read as follows:

Sulfate	Ion chromatography		D 4327–11, –17	4110 B	4110 B.	
	Gravimetric with ignition of residue.			4500–SO_4^{2-} C	4500–SO_4^{2-} C	4500–SO_4^{2-} C–97.
	Gravimetric with drying of residue.			4500–SO_4^{2-} D	4500–SO_4^{2-} D	4500–SO_4^{2-} D–97.
	Turbidimetric method		D 516–07, 11, 16	4500–SO_4^{2-} E	4500–SO_4^{2-} E	4500–SO_4^{2-} E–97.
	Automated methylthymol blue method.			4500–SO_4^{2-} F	4500–SO_4^{2-} F	4500–SO_4^{2-} F–97.

[FR Doc. C1–2024–01530 Filed 2–2–24; 8:45 am]

BILLING CODE 1505–01–D

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[EPA–HQ–OPP–2021–0523; FRL–5993–06–OCSPP]

Chlorpyrifos; Reinstatement of Tolerances

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: The Environmental Protection Agency (EPA) is amending its regulations to reflect the current legal status of the chlorpyrifos tolerances following a court order vacating the Agency's revocation of those tolerances. EPA is issuing this as a final action that is effective upon publication since this action simply conforms the regulations to reflect the tolerances that have already been legally reinstated by the court's order.

DATES: Effective on February 5, 2024.

ADDRESSES: The docket for this action, identified by docket identification (ID) number EPA–HQ–OPP–2021–0523, is available online at *https://www.regulations.gov.* Additional instructions for visiting the docket, along with more information about dockets generally, is available at *https://www.epa.gov/dockets.*

FOR FURTHER INFORMATION CONTACT: Patricia Biggio, Pesticide Re-Evaluation Division (7508M), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave. NW, Washington, DC 20460–0001; telephone number: 202–566–0700; email address: *OPPChlorpyrifosInquiries@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. Does this action apply to me?

This action is directed to the public in general. It may be of specific interest to persons who are an agricultural producer, food manufacturer, or pesticide manufacturer identified under North American Industrial Classification System (NAICS) codes 111, 112, 311, and 32532. The NAICS codes are provided to assist in determining interest. However, the Agency has not attempted to describe all the specific entities that may be affected by this action.

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

EPA is taking this action pursuant to the authority in section 408(e)(1) of the Federal Food, Drug, and Cosmetic Act (FFDCA), 21 U.S.C. 346a(e)(1).

III. What action is the Agency taking?

EPA is revising the tolerance regulations (40 CFR part 180) to reflect the reinstatement of tolerances for chlorpyrifos, in compliance with a decision and order dated November 2, 2023, from the U.S. Court of Appeals for the Eighth Circuit in the matter of *Red River Valley Sugarbeet Growers Ass'n* v. *Regan,* 85 F.4th 881 (8th Cir. 2023). Specifically, EPA is amending 40 CFR 180.342 to reflect the current legal status of the tolerances for chlorpyrifos.

IV. Why is EPA taking this action?

In April 2021, the U.S. Court of Appeals for the Ninth Circuit ordered EPA to issue a final rule either revoking all chlorpyrifos tolerances or modifying the chlorpyrifos tolerances, provided EPA could make a determination that those modified tolerances met the safety standard mandated by the FFDCA. *See League of United Latin American Citizens, et al.* v. *Regan,* 996 F.3d 673 (9th Cir. 2021). The Ninth Circuit ordered EPA to issue that final rule within 60 days of the issuance of the mandate.

As a result of the very short timeframe, EPA found that, based on the available data and anticipated exposure from registered uses of chlorpyrifos, it could not determine that there was a reasonable certainty of no harm from aggregate exposure, including food, drinking water, and residential exposure. Consequently, in the **Federal Register** of August 30, 2021 (86 FR 48315; FRL–5993–04–OCSPP), EPA issued a final rule amending 40 CFR 180.342 to revoke all tolerances for residues of chlorpyrifos. That rule included revocation of tolerances for residues of chlorpyrifos on specific food and feed commodities (180.342(a)(1)); on all food commodities treated in food handling and food service establishments in accordance with prescribed conditions (180.342(a)(2) and (a)(3)); and on specific commodities when used under regional registrations (180.342(c)). The final rule allowed the tolerances to remain in effect for six months, until February 28, 2022, at which time the tolerances expired. Gharda Chemicals International, Inc. (Gharda), one of the chlorpyrifos registrants, and several grower groups, among others, filed objections to the Agency's final rule revoking chlorpyrifos tolerances. The Agency denied those objections in an order issued in the **Federal Register** on February 28, 2022 (87 FR 11222 (FRL–5993–05–OCSPP)).

Gharda and several grower groups challenged EPA's order denying objections and the tolerance revocation rule in the U.S. Court of Appeals for the Eighth Circuit. On November 2, 2023, the Eighth Circuit issued its decision, vacating EPA's final rule and remanding the matter to EPA for further proceedings. No request for rehearing was filed. On December 28, 2023, the mandate issued, finalizing the court's judgment, and effectuating the vacatur of the Agency's rule revoking tolerances. Because the Eighth Circuit vacated EPA's rule revoking chlorpyrifos tolerances, those tolerances are legally currently in effect. EPA is issuing this final rule to amend the tolerance regulations to reflect the current legal status of the tolerances for chlorpyrifos by removing the introductory sentence currently in 40 CFR 180.342 that contains the revocation statement and expiration date.

V. Why is this a final rule?

Under FFDCA section 408(e)(2), 21 U.S.C. 346a(e)(2), EPA must provide a period of not less than 60 days for public comment on a proposed rule modifying a pesticide tolerance. However, the Agency may provide a shorter period for public comment so long as the Agency for good cause determines that it would be in the public interest to do so. Additionally, section 553 of the Administrative Procedure Act (APA) provides that when an agency for good cause finds that notice and public comment procedures are impracticable, unnecessary, or contrary to the public interest, the agency may issue a rule without providing notice and an opportunity for public comment.

EPA has determined that there is good cause for issuing this final rule without opportunity for notice and comment. The Agency finds that notice and comment are unnecessary for these rule amendments under 5 U.S.C. 553(b) because this ministerial rule does not alter the legal status or otherwise effect any substantive change to these tolerances; it merely amends the CFR to reflect the legal status of these tolerances in light of the decision by the U.S. Court of Appeals for the Eighth Circuit. Because the Eighth Circuit vacated EPA's 2021 revocation rule, these tolerances are currently in effect. The Agency lacks discretion to depart from this mandate.

VI. 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 a final rule issued under FFDCA section 408(e)(1), and may also request a hearing on those objections; however, due to the ministerial nature of this rule, which is merely amending the regulations to reflect the Eighth Circuit's order, EPA notes that it is making no substantive determinations about these tolerances and therefore any such issues are beyond the scope of this rulemaking. Because no relevant issues of material fact exist with respect to the issuance of this ministerial final rule, EPA believes that it is unlikely that there would be ''reasonable grounds'' for objection or basis for an evidentiary hearing under section 408(g) of the FFDCA.

Any person who wants to file an objection or request a hearing on this regulation must do so 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–2021–0523 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 April 5, 2024. 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–2021–0523, 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/dockets/where-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.*

VII. Statutory and Executive Order Reviews

This action amends the tolerance regulation for chlorpyrifos to reflect the current legal status of those tolerances as reinstated by the U.S. Court of Appeals for the Eighth Circuit. As a ministerial action, this action is not subject to review by the Office of Management and Budget (OMB) under Executive Order 12866, entitled *Regulatory Planning and Review* (58 FR 51735, October 4, 1993), as amended by Executive Order 14094, entitled *Modernizing Regulatory Review* (88 FR 21879, April 11, 2023). As a result, this action is not subject to Executive Order 13045, entitled *Protection of Children from Environmental Health Risks and Safety Risks* (62 FR 19885, April 23, 1997), and Executive Order 13211, entitled *Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use* (66 FR 28355, May 22, 2001).

In addition, this action is not subject to the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*). The RFA applies only to rules subject to notice and comment rulemaking requirements under the APA, 5 U.S.C. 553, or any other statute. This rule is not subject to notice and comment requirements because the Agency has invoked the ''good cause'' exemption under APA section 553(b) and FFDCA section 408(e)(2).

This action does not contain any information collections or impose additional burdens that require approval by OMB 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) or Executive Order 14096, entitled *Revitalizing Our Nation's Commitment to Environmental Justice for All* (88 FR 25251, April 26, 2023).

This rule 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 State 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 rule. This rule does not impose any enforceable duty or contain any unfunded mandate as described in the Unfunded Mandates Reform Act (UMRA) (2 U.S.C. 1531–1538).

In addition, since this action does not involve any technical standards, the National Technology Transfer and Advancement Act (NTTAA) section 12(d), 15 U.S.C. 272 note, does not apply to this action.

Additional information about these statutes and Executive Orders can be found at *https://www.epa.gov/laws-regulations-and-executive-orders.*

VIII. Congressional Review Act (CRA)

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: January 30, 2024.

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 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.

§ 180.342 [Amended]

■ 2. Amend § 180.342, by removing the introductory text.

[FR Doc. 2024–02153 Filed 2–2–24; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 54

[WC Docket No. 21–450; DA 24–23; FRS 200279]

Affordable Connectivity Program

AGENCY: Federal Communications Commission.

ACTION: Final action.

SUMMARY: In this document, due to a lack of additional funding from Congress, the Wireline Competition Bureau (Bureau) of the Federal Communications Commission (Commission) issued an Order laying out wind-down procedures for the Affordable Connectivity Program (ACP), important dates, and the impacts on consumers and providers. These procedures include the process for notifying enrolled ACP households about the impact of program termination on their broadband service and bills and the freezing of new enrollments. The Bureau also offers guidance to providers regarding advertising, awareness, and outreach requirements, timing of claims submissions, and participation during a possible partially funded month of ACP.

DATES: The wind-down procedures and guidance for the Affordable Connectivity Program were effective beginning January 11, 2024. The requirements of 47 CFR 54.1804(b) are waived beginning February 8, 2024, and will remain in effect for the duration of the enrollment freeze.

FOR FURTHER INFORMATION CONTACT: Benjamin Nashed, Wireline Competition Bureau, at *Benjamin.Nashed@fcc.gov* or 202–418–7400 or TTY: 202–418–0484. To request materials in accessible formats for people with disabilities (braille, large print, electronic files, audio format), send an email to *fcc504@fcc.gov* or call the Consumer & Governmental Affairs Bureau at (202) 418–0530 (voice), (202) 418–0432 (TTY).

SUPPLEMENTARY INFORMATION: This is a synopsis of the Bureau's Affordable Connectivity Program Wind-Down Order (Order) in WC Docket No. 21–450; DA 24–23, adopted January 11, 2024, and released January 11, 2024. The full text of this document is available for public inspection during regular business hours at Commission's headquarters at 45 L Street NE, Washington, DC 20554 or at the following internet address: *https://docs.fcc.gov/public/attachments/DA-24-23A1.pdf.*

I. Introduction

1. In the Order, and consistent with the authority delegated by the Commission, the Bureau announces requirements and guidance for the wind-down of the Affordable Connectivity Program (ACP). The Bureau currently projects that the last month for which the ACP can fully reimburse providers for the ACP benefits provided to enrolled households is April 2024. Should Congress not appropriate additional money, the existing funds will be exhausted, the Commission will have to end the ACP, and providers will stop providing discounts to enrolled households. The Commission nonetheless remains dedicated to providing ACP households an orderly transition out of the program and, more importantly, to keeping as many ACP households as possible connected to broadband service after the end of the program. To prepare low-income households and broadband providers, as well as the organizations that help support eligible households' enrollment, and as required by the Commission's delegation to the Bureau in the *ACP Order* (FCC 22–2), 87 FR 8346, February 14, 2022, the Bureau announces ACP wind-down procedures. These procedures include the process for notifying enrolled ACP households about the impact of program termination on their broadband service and bills and the freezing of new enrollments in the program. The Order also offers guidance to providers regarding advertising, awareness, and outreach requirements; the timing of claims submissions; and participation during a possible partially funded month of ACP. The Bureau also encourages providers to help ACP households transition to providers' own low-income internet offerings.

2. Congress provided $14.2 billion in funding for the ACP and that funding has been drawn down each month as providers have claimed reimbursement for benefits passed through to households. The ACP, which was launched two years ago, currently delivers discounted internet service to more than 22 million low-income households, benefiting both rural and urban households alike. Despite news of the program's projected end, the ACP remains as popular as ever as more households continue to enroll in the program each month. Moreover, the ACP is embraced by subscribers of all ages, with nearly half of subscribers over the age of 50.

3. The ACP provides eligible households with a monthly discount on broadband service of up to $30 per month and up to $75 per month for households on qualifying Tribal lands. Eligible households can also receive a one-time discount of up to $100 to purchase a laptop, desktop computer, or tablet from participating providers, if the household contributes more than $10 and less than $50 toward the purchase price. Should the ACP not receive additional funding, the Commission will have to end the program and enrolled households will no longer receive the ACP discount after the end of the program.

II. Discussion

4. *Preparing Consumers for the End of the ACP—Timing of Bureau Announcement of Last Fully Funded Month of Program.* The Bureau will announce the upcoming end of the ACP approximately 60 days prior to the end of the last fully funded month of the program. Thus, based on current projections that the last fully funded month of the ACP is April 2024, the Bureau anticipates that the announcement will occur in late

February 2024, but this timing may adjust based on activity in the program, particularly as a result of the freeze in enrollments. This announcement will trigger certain required communication to households receiving ACP-supported service clearly explaining the impact of the end of the benefit on their broadband bills so that households can make an informed choice about the broadband service they receive to stay connected. However, the Bureau requires providers to begin informing households about the upcoming end of the ACP benefit prior to the announcement.

5. *Provider Notices to ACP Households Regarding End of Program and Continuation of Service.* In the *ACP Order,* the Commission found that, as with the Emergency Broadband Benefit Program (*EBB Program*), ''requiring providers to obtain an affirmative opt-in from households before they [could] be charged an amount higher than they would pay under the full reimbursement amount was necessary to 'guard against unexpected charges' '' if the ACP were to end. The Commission also found that ''an affirmative opt-in following appropriate consumer notice is generally a good measure for avoiding consumer bill shock and ensuring the household is informed.''

6. Currently, Commission rules protect ACP households from bill shock in two ways. First, prior to enrolling a consumer in the ACP, participating providers are required to obtain affirmative consumer consent, either orally or in writing, that acknowledges that, after having reviewed the required disclosures about the ACP, the household consents to enroll with the provider. One of these required disclosures is that the household will be subject to the provider's undiscounted rates and general terms and conditions if the ACP ends. Second, the Commission requires providers to obtain a household's opt-in, either orally or in writing, to continue providing the broadband service to the household after the end of the ACP and to charge a higher rate than the household would pay if it were receiving the full discount permitted under ACP rules.

7. Consistent with the direction from the Commission to the Bureau to establish specific timeframes for consumer opt-ins and the appropriate consumer notice, the notice requirements are intended to ensure that enrolled households learn from their provider about the impact that the end of the ACP will have on the household's broadband bill. The Bureau does not prescribe a specific format or wording for these consumer notices but, to ensure that the notices meaningfully inform consumers about the impact of the end of the ACP on their broadband bills, certain key pieces of information must be included in the notices.

8. *Timing and Content of Provider Notices.* To ensure that ACP households have multiple opportunities to receive information regarding the end of the ACP and alternative broadband service plans, including providers' low-income internet programs, and consistent with the goal of ensuring ACP households remain connected, providers shall send at least three notices related to the end of the ACP to their ACP households. The first required notice shall be sent as soon as practicable, but no later than 14 days after January 11, 2024, the release of the Order, and shall generally advise ACP households about the possibility of program termination and the potential impact on their broadband service and bills. After the Bureau issues an announcement of the end of the last fully funded month of the ACP, providers shall send the second and third required notices to their ACP households notifying those households about the end of the program. The second required notice shall be sent as soon as practicable, but no later than 15 days after the last fully funded month of the ACP is announced by the Bureau. The third required notice shall coincide with the last bill or billing cycle in which the full ACP benefit is applied. The second and third required notices shall indicate that the ACP is ending and shall include (1) the date of the last bill on which the full ACP benefit will be applied and (2) the amount that the household will be billed for the service once the full ACP benefit is no longer available and/or that the household will be subject to the provider's undiscounted rates and general terms and conditions after the end of the ACP. The second and third notices shall also remind ACP households of their ability to change their service and/or to opt out of continuing their service at the end of the ACP. Providers are strongly encouraged to include in these notices information on their lower cost offerings and low-income programs or a phone number or link to a website where ACP households may obtain such information. Providers are not limited to sending only three notices to their ACP households and are encouraged to correspond more frequently with their ACP households should the provider believe that such additional outreach is necessary or beneficial.

9. *Delivery of Provider Notices.* The required provider notices shall be sent to ACP households in writing, in a manner that is accessible to persons with disabilities. The Bureau does not prescribe a specific format or wording for these consumer notices. However, the Bureau encourages providers to send these notices in a format (*e.g.,* email, text message, or paper mail) that is consistent with any consumer expressed preferences for receiving notices and other communications and using the same email, phone number, or mailing address to which bills or other monthly communications are sent. Providers are also encouraged to offer these notices in households' preferred language.

10. *Announcements and Notices from the Commission and USAC.* Like providers, the Commission and Universal Service Administrative Company (USAC) have a responsibility to help enrolled households become aware of the impact of the end of the ACP. To that end, the Bureau has been coordinating with the Consumer and Governmental Affairs Bureau (CGB) to identify necessary changes to consumer-facing Commission websites and materials to effectively communicate end-of-program information upon announcement of wind-down procedures and the end of the ACP. USAC, at the Bureau's direction, has also been preparing updates to USAC websites and materials, including *Getinternet.gov*, as needed. USAC also played a critical role in communicating program information directly to enrolled households in the past, such as during the transition from the EBB Program to ACP in early 2022. Accordingly, the Bureau and USAC have prepared and are ready to implement a communications plan for notifying enrolled households directly of the end of ACP, including multiple notices from USAC to ACP households.

11. *Subscriber Opt-In.* As with the transition from the EBB Program to the ACP, the Commission's approach to subscriber opt-in balances the goals of ensuring households can continue accessing the broadband service they need for work, school, healthcare, and more and of minimizing potential bill shock. Consistent with the requirement of affirmative opt-in in the *ACP Order,* the elements for establishing a household's affirmative opt-in to continuing to receive broadband service after the end of the ACP.

12. For purposes of the unique circumstances of the wind-down of the ACP and pursuant to the *ACP Order,* the Bureau finds that there are two elements to establishing that a household has affirmatively opted-in to continue receiving broadband service after the end of the ACP. The first element is established by the household's

acknowledgment of having reviewed the required disclosures, which include a statement that the household will be subject to the provider's undiscounted rates and general terms and conditions if the program ends, when enrolling in the EBB Program or the ACP. The second element is establishing the household's willingness and ability to pay for broadband service. Households are considered to have demonstrated a willingness and ability to pay for broadband after the end of the ACP if they (1) have informed their provider, either orally or in writing, that the provider may continue providing broadband service to the household after the end of the ACP and to charge a higher rate than the household would pay if it were receiving the full discount permitted under ACP rules; (2) were existing paying internet service customers with their current broadband provider at the time the household enrolled in the EBB Program or the ACP; or (3) currently pay a fee for their ACP-supported broadband service.

13. This approach for households that have demonstrated a willingness and ability to pay (*i.e.,* that (1) already informed the provider they would continue at a higher rate; (2) were existing paying customers with the current provider before the EBB Program or the ACP; or (3) currently pay a fee for their ACP-supported service) is consistent with the approach to affirmative opt-in that the Commission took in the *ACP Order* when transitioning households from the EBB Program's $50 non-Tribal monthly benefit to the ACP's smaller $30 non-Tribal monthly benefit. The *EBB Program Order* (FCC 21–29), 86 FR 19532, April 13, 2021, had required providers to ''obtain an affirmative opt-in from households . . . before they can be charged an amount higher than they would pay under the full EBB Program reimbursement amount.'' However, the *ACP Order* deemed affirmative opt-in to include ''EBB households that (1) were existing paying internet service customers with the broadband provider when the household enrolled in the EBB Program with that provider; (2) previously consented to the provider's general terms and conditions if they continued to receive service at the end of the EBB Program; or (3) currently pay a fee for their supported internet service.'' As the *ACP Order* explained, ''[t]his category of households has demonstrated to their current provider a willingness and ability to pay for internet service; therefore, the Bureau finds that there is little risk of unexpected financial harm even if their bill may potentially increase up to $20.'' Interpreting the entirety of the *ACP Order,* the Commission's statements express a preference for a flexible approach to affirmative opt-in and provides the Bureau with flexibility in implementing it.

14. In addition, this approach reduces the risk of subjecting a large percentage of ACP households to service disruption and avoids increasing administrative burdens on service providers and households. The Bureau believes this approach will help guard against unintended disconnections from broadband service for households that have demonstrated a willingness to pay for broadband without the ACP benefit, reduce consumer confusion and frustration, and mitigate bill shock. In light of their demonstrated willingness and ability to pay for broadband service and the required provider notifications to ACP households regarding the end of the program—which must inform households of their ability to change their service and/or to opt out of continuing service at the end of the ACP, the risk of unexpected financial harm for these households is low as compared to the risk of harm to these households due to disconnection for failure to opt-in to receive undiscounted service. For example, requiring a household that was paying for non-discounted broadband service prior to enrollment in the ACP to submit additional consent to retain that broadband service with the provider after the end of the ACP could result in a disconnection of broadband service should the household fail to timely consent. The unwanted loss of broadband service could not only lead to consumer confusion for such households, but could deprive those households of the broadband connections they were relying on for needs related to work, school, healthcare, and connections with governmental services. Losing such access could, in turn, result in loss of access to those services and employment, as the household spends the time to restore service.

15. Consistent with the *ACP Order's* requirement of affirmative opt-in, providers must collect an opt-in from households that have not established affirmative opt-in as prior to charging them a higher rate for that broadband service than the household was paying when the ACP benefit was applied. For these households, there may be a stronger risk of potential bill shock were they to receive a bill for undiscounted broadband service. This opt-in for this category of ACP households is warranted to ensure ACP households are adequately informed about their options and to protect households from bill shock. The opt-in must be collected either orally or in writing and providers may seek such opt-in from households at any time before increasing the household's bill due to the end of the ACP, including before the Bureau announces the end of the last fully funded month of the program.

16. *Ensuring ACP Households Remain Connected.* The ACP has made tremendous progress in bridging the digital divide by helping millions of low-income households for whom the cost of internet service has been a barrier to get or stay online. That progress would not be possible without the many participating providers serving ACP households. Unfortunately, losing the ACP benefit puts these ACP households at risk of losing their internet service altogether. Nevertheless, the Bureau is confident that participating providers will also play a crucial role in fulfilling an important goal of the wind-down procedures laid out in the Order: ensuring that ACP households remain connected at the end of the program. Some participating providers currently make low-income internet programs available to their households that can play a critical role in keeping ACP households connected. Consistent with this goal of ensuring that ACP households remain connected even after the end of the ACP, providers who already offer low-income internet programs are encouraged to help interested ACP households not already participating in these programs to transition to these programs, and providers that do not currently offer low-income internet programs are encouraged to develop such programs.

17. *Enrollment Freeze and Its Impact on ACP Outreach—Enrollment Freeze.* The Bureau will freeze new enrollments into the ACP beginning on February 8, 2024. Accordingly, enrollments into the ACP will be permitted until February 7, 2024, at 11:59 p.m. EST. The Bureau finds that this freeze will help to more accurately project funding exhaustion by increasing certainty in program commitments. For example, an enrollment freeze mitigates the risk that a spike in enrollments or device claims could hasten depletion of remaining ACP funds, preventing the Commission from fully funding benefits through April 2024 as currently projected. If funding were to run out earlier than projected, then low-income households enrolled in the ACP might lose their benefits earlier than anticipated, and before being given adequate time to learn of the program's end and make alternative arrangements for broadband

service without the ACP discount. The Bureau finds that freezing enrollments will help reduce the risk of the last fully funded month shifting earlier, thus permitting providers and USAC adequate time to notify consumers about the impact on their broadband bills and services should the ACP not receive more funding. Moreover, to more smoothly administer the end of the program, providers and households must have confidence that the ACP can support ACP benefits through the forecasted end date.

18. At the Bureau's direction, USAC has developed and is ready to implement procedures for this freeze on new enrollments, including changes necessary to the National Lifeline Accountability Database (NLAD) and provider processes, and to publish information on its websites announcing the upcoming freeze in new enrollments. Any existing ACP eligibility determinations and enrollments must be completed by the time enrollments are to be frozen, and no future eligibility determinations or enrollments will be made by USAC or providers unless directed by the Bureau. The Bureau further directs USAC to remove paper applications and links to the National Verifier ACP application on its websites at the time of the enrollment freeze. The Bureau recognizes that the freeze in enrollments will require service providers to adjust their own processes, including those relating to customer support and onboarding new ACP households. To ease provider administration of the wind-down of ACP, the Bureau does not require providers to perform transfer-in transactions for enrolled ACP households seeking to transfer their benefit, and instead allows providers to choose whether to accept transfers after the ACP enrollment freeze. For those that wish to continue to accept new ACP households via benefit transfers when enrollments into the program are frozen, the Bureau reminds those providers that they must continue to comply with the transfer notice and consent requirements in the Commission rules, as well as any transfer processes implemented by USAC.

19. With the anticipated freeze in enrollments, the Bureau also plans to pause certain activities related to advertising, awareness, and outreach. These activities were included when the ACP was first established because the Commission recognized that, for the program to achieve its full potential and reach as many eligible households as possible, households likely to be eligible must be clearly informed of the program's existence and key program information and that the Commission, USAC, participating providers, and other stakeholders and partners play an important role in disseminating information about the ACP to enrolled households and households likely to be eligible. Accordingly, the Commission adopted certain advertising and awareness requirements consistent with the Infrastructure Act and implemented certain statutorily authorized outreach tools. These activities that promote awareness of and facilitate enrollment in the ACP must also stop concurrently with the anticipated enrollment freeze, so as to avoid consumer confusion.

20. *Advertising, Notification Upon Subscription or Renewal, and Public Awareness Requirements.* The ACP rules include several requirements to ensure that consumers receive meaningful notice of the existence of the ACP. Commission rules require providers to publicize the availability of the ACP in a manner reasonably designed to reach those consumers likely to qualify for the program and in a manner that is accessible to individuals with disabilities. In addition, consistent with the statutory requirements laid out in the Infrastructure Act, the ACP rules include a requirement that participating providers must notify in writing or orally, in a manner that is accessible to individuals with disabilities, all consumers who either subscribe to or renew a subscription to an internet service offering about the ACP and how to enroll, along with requirements governing the timing and frequency of the required notices. Also consistent with the statutory requirements laid out in the Infrastructure Act, the ACP rules include a requirement that participating service providers carry out public awareness campaigns in their ACP areas of service that highlight the value and benefits of broadband internet access service and the existence of the ACP in collaboration with state agencies, public interest groups, and non-profit organizations.

21. As a general matter, ''an agency must adhere to its own rules and regulations.'' Although strict application of a rule may be justified ''to preserve incentives for compliance and to realize the benefits of easy administration that the rule was designed to achieve,'' the Commission's rules may be waived for ''good cause shown.'' The Commission may exercise its discretion to waive a rule where special circumstances warrant a deviation from the general rule, and such deviation will serve the public interest. The Commission may take into account considerations of hardship, equity, or more effective implementation of overall policy on an individual basis. The Bureau, under delegated authority, may act on requests for waiver of rules.

22. While the advertising and promotion requirements have played a valuable part in educating the public about the ACP, continuing to require providers to disseminate information about the ACP after the program ceases to accept new enrollments in excess of statutory requirements would cause consumer confusion and thus be contrary to the public interest. Accordingly, the Bureau waives the requirements of § 54.1804(b) of the Commission's rules effective February 8, 2024, concurrent with the start of the enrollment freeze, and this waiver will remain in effect for the duration of the enrollment freeze. While the Bureau is unable to waive the underlying statutory requirements set forth in § 54.1804(c) and (d) of the Commission's rules because they are contained in the statute, the Bureau advises that conducting campaigns informing consumers about the end of the ACP will be considered to be in compliance with those statutory requirements during the enrollment freeze.

23. *ACP Outreach Grant and Pilot Programs.* The Commission established the Affordable Connectivity Outreach Grant and ACP Pilot Programs to increase the awareness of and encourage participation in the ACP among eligible households. Under the Affordable Connectivity Outreach Grant Program, over 200 governmental and non-governmental entities are receiving grant funding to promote awareness of the ACP. The 23 participants in the Your Home, Your internet Pilot Program, and the 11 participants in the ACP Navigator Pilot Program are connecting with eligible households in their communities to promote the ACP and help provide application assistance. Congress authorized the Commission to ''conduct outreach efforts to encourage households to enroll in the Affordable Connectivity Program'' including providing grants to outreach partners in order to carry this out. The Commission, in adopting rules for the Affordable Connectivity Outreach Grant Program, stated ''[e]ntities that receive grant awards may continue to use their grant funds for outreach until enrollments cease.'' The Commission recognized that, should enrollments stop during the wind-down of the ACP, continuing outreach efforts could undermine the objectives of the grant programs and create consumer confusion. Additionally, it would not be fiscally responsible to continue grant-funded

enrollment efforts after an enrollment freeze. Therefore, consistent with the direction in the Commission's order establishing the Affordable Connectivity Outreach Grant Program, which includes grant funding for the ACP Pilots Programs, the Bureau and CGB will coordinate on communications and instructions to grant recipients and pilot participants on the need to cease grant-funded outreach work and other pilot-related activities that focus on enrollment activities as a result of the enrollment freeze.

24. *Claims Process—Expedited Claims Submission Timeline.* In the *ACP Order,* the Commission delegated to the Bureau the authority to develop procedures regarding how the remaining funds will be distributed in the final month of the ACP, any timing considerations related to the reimbursement process, and other procedures necessary to smoothly wind down the program. Pursuant to this authority, the Bureau adopts the following modifications to the existing reimbursement process to require providers to submit new claims by the 1st of the second month after the snapshot date. The Bureau finds these modifications are necessary to help ensure that USAC has a timely accounting of finalized provider claims to inform the forecast of remaining program funds and for the smooth administration of end-of-program procedures. Moreover, requiring providers to submit their claims on a shorter timeline will help track limited funding as it gives the Commission and USAC certainty of the amount the providers seek to claim for each service month.

25. Beginning with the February 1, 2024, snapshot, the Bureau requires participating providers to submit to USAC their reimbursement claims for service for households captured on the snapshot report by no later than the 1st of the second month after the snapshot date, or the following business day in the event that the 1st falls on a weekend or holiday. For example, all claims and upward revisions for the February 1 uniform snapshot date and for claims and upward revisions for preceding months must be submitted no later than April 1, 2024. Thereafter, all claims must be submitted no later than the 1st of the second month after the snapshot date, or the following business day in the event that the 1st falls on a weekend or holiday. Reimbursement claims submitted after the deadline will not be processed. While downward revisions will continue to be accepted, providers should make every effort to ensure that their reimbursement claims are complete and accurate, particularly as the ACP enters the wind-down phase. To facilitate the efficient wind-down of the ACP, the Bureau strongly encourages providers to submit any remaining outstanding claims for reimbursement or revisions prior to February 1, 2024. Should the ACP receive additional funding, the Bureau will re-evaluate the need to continue to require providers to submit claims on this new timeline.

26. *Partial Reimbursement.* In the event that reimbursement claims in the final month of the ACP exceed the amount of remaining funds, reimbursements for benefits passed through to households will be paid out to providers on a reduced, pro-rata basis. For example, if based on the forecast of the depletion of funding, the remaining balance in the Affordable Connectivity Fund (Fund) is sufficient to pay out 80% of each reimbursement claim submitted in the final month, the Fund will pay out 80% of each claim on a pro-rata basis, thus depleting the Fund. Similarly, if the Fund is only sufficient to pay 40% of each reimbursement claim in the final month, the Fund will pay out 40% of each claim on a pro-rata basis. The Bureau recognizes that the *ACP Order* contained language that suggested that providers would ''in no circumstances'' receive less than 50%'' of the providers' claim for the final month. However, the *ACP Order* also recognizes that the Fund might not support a 50% pro-rata payout in the final month on claims submitted and directs staff in this event to determine how best to use the remaining funds consistent with the law. Interpreting the entirety of the relevant paragraph, along with the fact that the Fund is limited, the Commission's statement *expresses* a preference for a pro-rata reimbursement scheme and also provides the Bureau with flexibility in implementing it if the Fund will not support a 50% pro-rata reimbursement rate in the final month. The Bureau intends, absent unforeseen circumstances, to direct USAC to provide notice to participating providers of whether providers will receive partial payment and the projected pro-rata share of such partial payments for that month as soon as practicable.

27. The Bureau understands that providers desire certainty as to whether there will be funding to allow for a partial month payment for benefits passed through to ACP households and as to the amount that the fund can reimburse providers for that benefit applied to ACP households' bills. Without this certainty, providers may end up passing through a benefit to households for which they may not receive full reimbursement if the ACP cannot fund that reimbursement at the very end of the program. The Bureau also recognizes the financial hardship that receiving a partial reimbursement may place not only on providers, but also on existing households, who may receive an unanticipated bill to cover the difference between the full ACP discount the household was expecting and the partial benefit that was applied. Therefore, to assist providers in winding down their own participation in the program, the Bureau allows ACP participating providers to choose whether to forego providing ACP service and receiving partial payment for discounts passed through to ACP households after the last fully funded month. At the time of the announcement of the end of the last fully funded month of the ACP, the Bureau will provide guidance to providers that wish to receive reimbursement for discounts provided to ACP households beyond that last fully funded month concerning how to notify USAC of their intention to do so. Providers that choose to forgo receiving partial reimbursement for the final month will not be required to pass through any benefits to ACP households after the announced last fully funded month. Providers that forgo reimbursement after the last announced fully funded month will not be expected to comply with voluntary withdrawal requirements set forth in § 54.1801(e) of the Commission's rules.

28. *Provider Applications and ACP High-Cost Area Benefit Eligibility—Provider Application and Approval.* The Bureau finds that it would be administratively inefficient and confusing to consumers to approve new provider applications for the ACP when enrollments have been frozen. Processing new provider applications, approvals, and election notices risks confusing ACP households by creating a false expectation that, by subscribing with a newly approved provider, the household would be able to enroll or transfer to that provider to receive the ACP benefit during the enrollment freeze. Accordingly, the Bureau and USAC will stop reviewing new provider applications and election notices, as well as new applications for alternative verification processes, on February 7, 2024, at 6 p.m. EST, concurrent with the final day that enrollments will be permitted in the program. While application and election notice reviews are frozen, providers, however, must continue to update contact, device, or other participation information to USAC

in accordance with the Commission's rules.

29. *High-Cost Area Benefit Provider Applications.* As required by the Infrastructure Act, the Bureau established a mechanism for providers to offer a benefit to eligible households in certain areas designated as ''high-cost'' by the National Telecommunications and Information Administration (NTIA). In keeping with those requirements, around the same time NTIA designated such high-cost areas, on November 1, 2023, the Bureau announced that USAC will begin accepting applications from providers seeking to qualify to offer the high-cost area ACP benefit on January 17, 2024. Due to the depletion of funding and upcoming enrollment freeze, USAC will not accept provider applications to offer the high-cost area benefit. The Bureau finds that processing high-cost area benefit applications and releasing educational and training materials related to the high-cost area benefit during the enrollment freeze would cause confusion among current and potential ACP households. Approving ACP high-cost area benefit applications, publishing information, and moving ahead with implementing the enhanced benefit while new households and providers cannot enter the program could cause confusion among subscribers about the future status of the program and the availability of the enhanced benefit for new subscribers or providers. Furthermore, changing the amount of the discount received by ACP households enrolled with a provider approved to offer the ACP high-cost area benefit, from $30 to $75, may cause increased consumer confusion with regard to the availability of program funding. The Bureau will re-evaluate the status of the ACP high-cost area benefit provider applications if the ACP receives additional funding.

30. *Ongoing Program Integrity Obligations.* The Commission is committed to ensuring the integrity of the ACP and addressing potential non-compliance using the full range of the Commission's authority and available tools, including audit and investigatory procedures and in cooperation with the FCC Office of Inspector General and law enforcement agencies. This commitment will continue during the ACP wind-down phase. The Bureau reminds participating service providers of their obligation to use robust policies and procedures for ensuring compliance with the Commission's rules—including the requirements set forth in the Order concerning consumer notices, opt-ins, and other aspects of wind-down—and de-enrolling households as appropriate. Even during a wind-down period, the Commission will use the full range of its authority and available tools to address non-compliance with the ACP rules, and providers are reminded of their obligation to comply with USAC and Commission requests. Providers are also reminded of their document retention requirements under the ACP programmatic rules, which will extend after the end of the ACP. Similarly, the Commission and USAC will retain records from the ACP under applicable National Archives and Records Administration schedules and directives—after which, the Commission will appropriately dispose of such records and rescind the applicable System of Records Notice under the Privacy Act of 1974.

III. Procedural Matters

31. *Paperwork Reduction Act Analysis.* This document does not contain new or modified information collection requirements subject to the Paperwork Reduction Act of 1995 (PRA), Public Law 104–13. In addition, therefore, it does not contain any new or modified information collection burden for small business concerns with fewer than 25 employees, pursuant to the Small Business Paperwork Relief Act of 2002, Public Law 107–198, *see* 44 U.S.C. 3506(c)(4).

32. The Bureau finds that notice and comment procedures are not required here under the Administrative Procedure Act, 5 U.S.C. 551 *et seq.* The Bureau notes that section 904(h) of the Consolidated Appropriations Act of 2021, which established the Emergency Broadband Benefit Program, the predecessor to the ACP, included an exemption from APA rulemaking requirements. *See* Consolidated Appropriations Act, div. N, tit. IX, section 904(h)(1), *codified at* 47 U.S.C. 1752(h)(1). In addition, certain of the rules being adopted here are procedural rules that are exempt from the notice and comment requirements. Administrative Procedure Act, 5 U.S.C. 553(b)(A). To the extent the rules adopted here are substantive rules not otherwise exempt from the APA rulemaking requirements, the Bureau finds good cause to forego notice and comment because it would be impracticable and contrary to the public interest. *See id.* at Administrative Procedure Act, 5 U.S.C. 553(b)(B). Given the short period of time between now and the projected depletion of ACP funding, undertaking notice and comment would not permit the Bureau to adopt rules with enough time for providers and USAC to prepare for wind-down and give adequate notice to ACP households about the end of the program. This could lead to substantial consumer confusion and result in unwanted disruptions to service for ACP households that could deprive households of the broadband connections they need for work, school, healthcare, and more and potentially resulting in significant adverse impacts on employment, education, and access to healthcare for millions of low-income consumers. The Bureau also notes that the Order was effective January 11, 2024, pursuant to the exemption in 47 U.S.C. 1752(h)(1), and also finds good cause for doing so for all the reasons stated.

33. Accordingly, *it is ordered,* pursuant to the authority contained in §§ 0.91, 0.291, and 1.3 of the Commission's rules, 47 CFR 0.91, 0.291, and 1.3, that 47 CFR 54.1804(b) of the Commission's rules is *waived* effective February 8, 2024, to the extent described herein.

34. Accordingly, *it is ordered,* pursuant to pursuant to the authority contained in in section 904 of division N, title IX of the Consolidated Appropriations Act, 2021, Public Law 116–260, 134 Stat. 1182 as amended by Infrastructure Investment and Jobs Act, Public Law 117–58, 135 Stat. 429 (2021), 5 U.S.C. 551 *et seq.,* and §§ 0.91, 0.291, and 1.3 of the Commission's rules, 47 CFR 0.91, 0.291, and 1.3, section 303(r) of the Communications Act, as amended, 47 U.S.C. 303(r), and §§ 0.91 and 0.291 of the Commission's rules, 47 CFR 0.91 and 0.291, that the Order is *adopted.*

35. *It is further ordered,* that pursuant to § 1.102(b)(1) of the Commission's rules, 47 CFR 1.102(b)(1), the Order *shall be effective* January 11, 2024.

Federal Communications Commission

Trent Harkrader,

Chief.

[FR Doc. 2024–02093 Filed 2–2–24; 8:45 am]

BILLING CODE 6712–01–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 648

[Docket No. 240130–0029]

RIN 0648–BM51

Fisheries of the Northeastern United States; Framework Adjustments to Northeast Multispecies, Atlantic Sea Scallop, Monkfish, Northeast Skate Complex, and Atlantic Herring Fisheries; Southern New England Habitat Area of Particular Concern Designation

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

ACTION: Final rule.

SUMMARY: This action implements the New England Fishery Management Council's Framework Adjustment that identifies a Habitat Area of Particular Concern offshore of Southern New England. This rule adjusts the following fishery management plans: Northeast Multispecies; Atlantic Sea Scallop; Monkfish; Northeast Skate Complex; and Atlantic Herring. The Habitat Area of Particular Concern is within and around wind lease areas in Southern New England, including Cox Ledge, to focus conservation recommendations on cod spawning habitats and complex benthic habitats that are known to serve important habitat functions to Council-managed fishery species.

DATES: Effective March 6, 2024.

ADDRESSES: Copies of the Southern New England Habitat Area of Particular Concern Framework and other supporting documents for this action are available upon request from Dr. Cate O'Keefe, Executive Director, New England Fishery Management Council, 50 Water Street, Mill 2, Newburyport, MA 01950. The supporting documents are also accessible via the internet at: *https://d23h0vhsm26o6d.cloudfront.net/230926-SNE-HAPC-Framework-FINAL.pdf.*

FOR FURTHER INFORMATION CONTACT: Sabrina Pereira, Marine Habitat Resource Specialist, email: *Sabrina.Pereira@noaa.gov;* phone: (978) 675–2178.

SUPPLEMENTARY INFORMATION:

Background

This action identifies a Habitat Area of Particular Concern (HAPC) in and around offshore wind lease areas in Southern New England, including Cox Ledge. The New England Fishery Management Council recommended the HAPC designation due to concerns about the potential adverse impact on essential fish habitat (EFH) from the development of offshore wind energy projects. The designation focuses on important cod spawning grounds and areas of complex habitat that are known to serve important habitat functions to federally managed species within and adjacent to offshore wind development areas. Complex benthic habitat provides shelter for certain species during their early life history, refuge from predators, and feeding opportunities. The HAPC designation will be applied during EFH consultation when data indicate that cod spawning and/or complex habitats occur within or near the footprint of a project located within the border of the HAPC area identified in Figure 6 of the Framework document.

HAPCs highlight specific types or areas of habitat within EFH that may be particularly vulnerable to human impacts. HAPC designations should be based on one or more of the following criteria: (1) The importance of the ecological function provided by the habitat, including both the historical and current ecological function; (2) the extent to which the habitat is sensitive to human-induced environmental degradation; (3) whether, and to what extent, development activities are, or will be, stressing the habitat type; and (4) the rarity of the habitat type (50 CFR 600.815(a)(8)). As detailed below, the HAPC designated by this action has all four of these attributes.

An area's status as an HAPC is intended to lead to special attention regarding potential adverse effects on habitats within areas of particular concern from various activities (*e.g.,* fishing, offshore wind energy). An HAPC designation does not provide any specific habitat management measures, such as restrictions on gear types, harvest levels, fishing locations, offshore wind survey and construction activities, or other activities with adverse effects on habitat in the area.

The proposed rule for this action was published in the **Federal Register** on September 26, 2023 (88 FR 65944), and comments were accepted through October 26, 2023. NMFS received 14 comments from the public, and no changes were made to the final rule because of those comments (see Comments and Responses for additional detail).

Habitat Area of Particular Concern Designation

This action implements Alternative 5, the Council's preferred alternative for the Southern New England HAPC designation, which identifies as an HAPC certain habitats in the area overlapping offshore wind lease sites in southern New England. The spatial extent of the HAPC is based on the footprint of the lease areas, buffered by approximately 10 km on all sides, combined with the footprint of the Cox Ledge spawning ground, which is based on recent evidence of cod spawning activity. Figure 6 on page 29 of the Framework document (online at *https://d23h0vhsm26o6d.cloudfront.net/230926-SNE-HAPC-Framework-FINAL.pdf*) contains a map of the HAPC designation area. As noted in the Framework document (at 27), when projects are proposed within this area, ''The HAPC designation will be applied during EFH consultation when data indicate that cod spawning and/or complex habitats occur within or near the project footprint.''

The HAPC area is located within designated EFH for the following species that occupy complex habitats within the footprint: Atlantic cod egg, larvae, juveniles, and adults; Atlantic herring eggs; Atlantic sea scallop eggs, juveniles, and adults; little skate juveniles and adults; monkfish juveniles and adults; ocean pout eggs, juveniles, and adults; red hake juveniles and adults; winter flounder eggs, juveniles, and adults; and winter skate juveniles and adults.

Complex habitats are defined as hard bottom substrates, defined by the Coastal and Marine Ecological Classification Standard (CMECS) as Substrate Class Rock Substrate, and by the four Substrate Groups: Gravels; gravel mixes; gravelly; and shell. This CMECS modifier was developed by NMFS for habitat mapping recommendations, including both large-grained and small-grained hard habitats. Hard bottom substrates with epifauna or macroalgae cover are also defined as complex habitat.

Evidence of cod spawning activity at a site could be based on: Capture of ripe, running, or spent cod during fishery independent surveys; detections of acoustically tagged fish between November and April; detections of cod grunts in acoustic surveys; capture of cod larvae in ichthyoplankton surveys; and/or evidence of eggs in ichthyoplankton surveys (not species specific but indicative of spawning success).

Designation of this HAPC places a focus on areas that are experiencing current development stresses. The designated area overlaps areas leased for renewable energy development. Some projects are already permitted, others

are currently undergoing environmental review, and others are still within the site assessment phase. The HAPC's spatial footprint closely aligns with the wind lease areas because these areas face differential levels of foreseeable on-going development-related threats compared to surrounding areas. The HAPC boundary includes a buffer of approximately 10 km beyond the leased areas, recognizing that some types of development activities can generate impacts at scales of tens of kilometers beyond the site of construction and operations. For example, acoustic impacts may extend kilometers from a pile driving site. Greater scrutiny would be given to activities within the HAPC designated area when data indicate that cod spawning and/or complex habitats occur within or near a project or activity footprint. An HAPC focused on these conservation objectives is consistent with the Council's Offshore Wind Energy Policy, as well as prior offshore wind project specific comments provided by the Council in recent years.

The cod spawning habitats within the HAPC meet all four of the HAPC criteria identified above, and the complex bottom habitats meet all criteria except for ''rarity.'' The HAPC area is important for current ecological function because it includes spawning sites, juvenile settlement areas, and feeding areas for species with EFH in the area, including various cod stocks. Georges Bank Atlantic cod, which is in poor stock condition (*i.e.,* overfished and experiencing overfishing), spawns in the area, and Southern New England cod represents a genetically distinct subpopulation. The subpopulation also contributes to the Georges Bank cod stock; thus, any impacts to Southern New England cod could also detrimentally impact the Georges Bank stock. With regard to sensitivity to anthropogenic stresses, cod spawning activities are particularly sensitive to adverse impacts from fishing and non-fishing activities, namely from offshore wind development (construction, operations, and maintenance), and complex habitats are susceptible to conversion and sedimentation. The HAPC meets the ''extent of current or future development stresses'' criterion because this area is facing an existing on-going development-related threat from offshore wind. Finally, regarding ''rarity,'' cod spawning habitats (based on acoustic environment, seafloor and water column setting) are rare with only one known grouping of active sites in Southern New England. On the other hand, complex habitat features alone are not considered rare (*i.e.,* spatially or temporally very limited).

The HAPC identified herein is a non-regulatory designation. HAPC designations are intended to provide for increased attention when habitat protection measures are considered. HAPCs that are vulnerable to the potential impacts from anthropogenic activities warrant special attention when determining appropriate management measures to minimize, compensate, or mitigate those impacts.

Comments and Responses

The public comment period for the proposed rule ended on October 26, 2023, and NMFS received 14 comments from the public. No changes were made to the final rule as a result of these comments. Eight comments expressed concern over offshore wind development and its impacts on marine life, but they did not address this specific action; therefore, no response is warranted at this time.

Comment 1: Two comments expressed general support for the HAPC designation.

Response: NMFS agrees and is implementing this rule in a timely manner.

Comment 2: Three comments were in support of the HAPC designation and also urged additional habitat protections and considerations for Cox Ledge, sensitive habitats, and protected species.

Response: This action does not add any restrictions on offshore development or fisheries management restrictions related to the HAPC. The Council's problem statement and objectives described in section 3.3 of the framework document (see **ADDRESSES**) focused on the potential for enhancing the EFH consultation process and conservation recommendations; developing new restrictions on fishing were outside the scope for the framework. Neither NMFS nor the Council has the ability to directly restrict offshore development, including offshore wind.

Comment 3: A comment from the American Clean Power Association expressed opposition to the HAPC and support for Alternative 2 identified in the Council's framework document because it includes only those areas for which scientific research has demonstrated the presence of cod spawning. The comment also urged the Council to rely on ''the best available sources'' when identifying EFH ''. . . and not the presence of an offshore wind lease,'' noted that the ''lack of data on cod spawning in southern New England waters does not equate to actual scientific evidence of rarity,'' and contended that ''wind development has not been directly linked to impacts on cod spawning habitat.''

Response: The Council's preferred alternative, Alternative 5, was chosen in part because it identifies a broader area of Southern New England within which the HAPC designation would be applied if additional cod spawning activity is documented by future data/studies and/or complex habitat is identified. Alternative 5 provides NMFS with the opportunity at the time of a project review to use available data that are related to the suitability for cod spawning, or the presence or absence of cod spawning activity, and/or complex habitat in order to determine whether to consult on a project area as an HAPC, without the need for a new designation from the Council. Alternative 2, supported by the commenter, focuses on Atlantic cod habitat, but this designation addresses multiple species and threats to those species. In addition, the preferred alternative designates areas of complex habitat within a broad Southern New England footprint as HAPC for certain life stages of Atlantic cod, Atlantic herring, Atlantic sea scallop, little skate, monkfish, ocean pout, red hake, winter flounder, and winter skate that use these habitats. Habitat for these additional species should also benefit from conservation recommendations based on this HAPC.

The Council and NMFS have utilized the best available data sources to map EFH for multiple federally managed fish species. The presence of offshore wind lease areas is not determinative of what areas are mapped EFH. Federal agencies are required to consult with the Secretary with respect to any action or proposed action authorized, funded, or undertaken that may adversely affect any identified EFH. In establishing HAPC designations, which are a subset of EFH, the Council and NMFS can consider whether, and to what extent, development activities are, or will be, stressing the habitat type. Offshore wind development is a specific stressor within the Southern New England lease areas, and therefore the spatial extent of the HAPC is based on the combined footprint of spawning grounds, complex habitats, and lease areas.

With respect to rarity, as noted above, NMFS concluded that active cod spawning habitats are rare based on information regarding critical ecosystem features such as the acoustic environment, seafloor and water column setting, which is the best scientific information available. Only one known group of active spawning sites exists in Southern New England. They are not

considered rare due to lack of data. EFH for cod spawning that may lead to an active cod spawning habitat is identified in the HAPC, and any updated data may be considered at the time of any action or proposed action to determine whether consultation is necessary. This is consistent with National Standard 2, one of the statutory principles that must be followed in any FMP as per the Magnuson-Stevens Fishery Conservation and Management Act, which recognizes the dynamic nature of the scientific process, the need to evaluate new data and uncertainties in available information, and to identify gaps in available information. Overall, cod is a very well-studied species with a long fishing history, decades of fishery independent surveys, extensive tagging work, and, most recently, acoustic surveys that have been used to document spawning grounds in space and time.

Finally, broad categories of activities that may adversely affect EFH include, but are not limited to: Dredging; filling; excavation; mining; impoundment; discharge; water diversions; thermal additions; actions that contribute to non-point source pollution and sedimentation; introduction of potentially hazardous materials; introduction of exotic species; and the conversion of aquatic habitat that may eliminate, diminish, or disrupt the functions of EFH.

Changes From the Proposed Rule

There are no substantive changes from the proposed rule.

Classification

Pursuant to section 305(d) of the Magnuson-Stevens Fishery Conservation and Management Act, this action is necessary to implement adjustments to fishery management plans as identified below. In a previous action taken pursuant to section 304(b), the Council designed the fishery management plans (FMP) to specify the process for NMFS to take this action pursuant to Magnuson-Stevens Act section 305(d), and this action puts in place administrative designations that are not implementing any associated management measures. The NMFS Assistant Administrator has determined that this rule is consistent with the Northeast Multispecies FMP; Atlantic Sea Scallop FMP; Monkfish FMP; Northeast Skate Complex FMP; and Atlantic Herring FMP, other provisions of the Magnuson-Stevens Act, and other applicable laws.

This final rule has been determined to be not significant for purposes of Executive Order 12866, as amended by Executive Order 14094.

The Chief Counsel for Regulation of the Department of Commerce certified to the Chief Counsel for Advocacy of the Small Business Administration during the proposed rule stage that this action would not have a significant economic impact on a substantial number of small entities. The basis for the certification was published in the proposed rule and is not repeated here. No comments were received regarding this certification, and the initial certification remains unchanged.

This final rule does not duplicate, conflict, or overlap with any existing Federal rules.

This final rule contains no new information collection requirements under the Paperwork Reduction Act of 1995.

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

Dated: January 30, 2024.

Samuel D. Rauch III,

Deputy Assistant Administrator for Regulatory Programs, National Marine Fisheries Service.

[FR Doc. 2024–02239 Filed 2–2–24; 8:45 am]

BILLING CODE 3510–22–P

Proposed Rules

Federal Register
Vol. 89, No. 24
Monday, February 5, 2024

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

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2024–0041; Project Identifier AD–2024–00032–E]

RIN 2120–AA64

Airworthiness Directives; International Aero Engines, AG Engines

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 International Aero Engines, AG (IAE AG) Model V2500 engines. This proposed AD was prompted by an analysis of an event involving an International Aero Engines, LLC (IAE LLC) Model PW1127GA–JM engine, which experienced a high-pressure compressor (HPC) 7th-stage integrally bladed rotor (IBR–7) separation that resulted in an aborted takeoff. This proposed AD would require performing an angled ultrasonic inspection (AUSI) of certain high-pressure turbine (HPT) 1st-stage hubs and HPT 2nd-stage hubs for cracks and replacing if necessary. This proposed AD would also require accelerated replacement of certain HPT 1st-stage hubs and HPT 2nd-stage hubs. 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 March 6, 2024.

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–2024–0041; 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 Pratt & Whitney (PW) and IAE AG service information identified in this NPRM, contact International Aero Engines, AG, 400 Main Street, East Hartford, CT 06118; phone: (860) 565–0140; email: *help24@pw.utc.com;* website: *connect.prattwhitney.com.*
- You may view this service information at the FAA, Airworthiness Products Section, Operational Safety Branch, 1200 District Avenue, Burlington, MA 01803. For information on the availability of this material at the FAA, call (817) 222–5110.

FOR FURTHER INFORMATION CONTACT: Carol Nguyen, Aviation Safety Engineer, FAA, 2200 South 216th Street, Des Moines, WA 98198; phone: (781) 238–7655; email: *carol.nguyen@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–2024–0041; Project Identifier AD–2024–00032–E'' 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.

The FAA has been informed that PW has done some outreach with affected operators regarding the proposed corrective actions for this unsafe condition. As a result, affected operators are already aware of the proposed corrective actions and, in some cases, have already begun planning for replacement of the affected parts. Therefore, the FAA has determined that a 30-day comment period is appropriate given the particular circumstances related to the proposed correction of this unsafe condition.

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 Carol Nguyen, Aviation Safety Engineer, FAA, 2200 South 216th Street, Des Moines, WA 98198. Any commentary that the FAA receives which is not specifically designated as CBI will be placed in the public docket for this rulemaking.

Background

On December 24, 2022, an Airbus Model A320neo airplane, powered by IAE LLC Model PW1127GA–JM engines, experienced a failure of the HPC IBR–7 that resulted in an engine shutdown and aborted take-off. Following this event, the manufacturer conducted a records review of production and field-returned parts and re-evaluated their engineering analysis methodology. The new analysis found that the failure of the HPC IBR–7 was caused by a nickel powdered metal anomaly, similar in nature to an anomaly previously observed on March 18, 2020, when an

Airbus Model A321–231 airplane, powered by IAE AG Model V2533–A5 engines, experienced an uncontained HPT 1st-stage hub failure that resulted in high-energy debris penetrating the engine cowling. The analysis also concluded that there is an increased risk of failure for a subpopulation of HPT 1st-stage hubs and HPT 2nd-stage hubs that were manufactured from the same production campaign (a batch of nickel powdered metal) as the HPT 1st-stage hub that failed on March 18, 2020; these parts have a higher likelihood of containing the nickel powdered metal anomaly and are susceptible to failure much earlier than previously determined. As a result, the FAA is proposing an accelerated AUSI for certain HPT 1st-stage hubs and HPT 2nd-stage hubs and, depending on the results of the inspections, replacing the HPT 1st-stage hubs or HPT 2nd-stage hubs. This proposed AD would also require accelerated replacement of certain HPT 1st-stage hubs and HPT 2nd-stage hubs. Certain IAE AG Model V2522–A5, V2524–A5, V2525–D5, V2527–A5, V2527E–A5, V2527M–A5, V2528–D5, V2530–A5, V2531–E5, and V2533–A5 engines are among the products affected by this condition, which, if not addressed, could result in hub failure, release of high-energy debris, damage to the engine, damage to the airplane, and possible loss of the airplane.

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 IAE AG Non-Modification Service Bulletin (NMSB) V2500–ENG–72–0720, dated November 20, 2023; and PW Special Instruction NO. 189F–23, dated November 20, 2023 which only applies to the IAE AG V2531–E5 Model engine. This service information specifies procedures for performing an AUSI for cracks on affected HPT 1st-stage hubs and HPT 2nd-stage hubs. This service information also specifies the list of affected HPT 1st-stage hubs and HPT 2nd-stage hubs, identified by part number and serial number, installed on certain IAE AG engines.

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 performing an AUSI of certain HPT 1st-stage hubs and HPT 2nd-stage hubs and, depending on the results of the inspections, replacing the HPT 1st-stage hubs or HPT 2nd-stage hubs. This proposed AD would also require accelerated replacement of certain HPT 1st-stage hubs and HPT 2nd-stage hubs.

Interim Action

The FAA considers this proposed AD to be an interim action. The unsafe condition is still under investigation by the manufacturer and, depending on the results of that investigation, the FAA may consider further rulemaking action.

Costs of Compliance

The FAA estimates that this AD, if adopted as proposed, would affect 116 engines installed on airplanes of U.S. registry. The FAA estimates that 40 engines would need an AUSI of the HPT 1st-stage hub; 40 engines would need an AUSI of the HPT 2nd-stage hub; 67 engines would need replacement of the HPT 1st-stage hub; and 49 engines would need replacement of the HPT 2nd-stage hub.

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
AUSI of HPT 1st-stage hub	5 work-hours × $85 per hour = $425	$0	$425	$17,000
AUSI of HPT 2nd-stage hub	5 work-hours × $85 per hour = $425	0	425	17,000
Replace HPT 1st-stage hub	100 work-hours × $85 per hour = $8,500	460,000	468,500	31,389,500
Replace HPT 2nd-stage hub	100 work-hours × $85 per hour = $8,500	360,000	368,500	18,056,500

The FAA has included all known costs in its cost estimate. According to the manufacturer, however, some 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

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:

International Aero Engines, AG: Docket No. FAA–2024–0041; Project Identifier AD–2024–00032–E.

(a) Comments Due Date

The FAA must receive comments on this airworthiness directive (AD) by March 6, 2024.

(b) Affected ADs

This AD is related to AD 2022–02–09, Amendment 39–21906 (87 FR 7029, February 8, 2022) (AD 2022–02–09).

(c) Applicability

This AD applies to International Aero Engines, AG (IAE AG) Model V2522–A5, V2524–A5, V2525–D5, V2527–A5, V2527E–A5, V2527M–A5, V2528–D5, V2530–A5, V2531–E5, and V2533–A5 engines.

(d) Subject

Joint Aircraft System Component (JASC) Code 7230, Turbine Engine.

(e) Unsafe Condition

This AD was prompted by an analysis of an event involving an International Aero Engines, LLC Model PW1127GA–JM engine, which experienced failure of a high-pressure compressor 7th-stage integrally bladed rotor that resulted in an engine shutdown and aborted takeoff. The FAA is issuing this AD to prevent failure of the high-pressure turbine (HPT) 1st-stage hub and HPT 2nd-stage hub. The unsafe condition, if not addressed, could result in uncontained hub failure, release of high-energy debris, damage to the engine, damage to the airplane, and loss of the airplane

(f) Compliance

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

(g) Required Actions

(1) For engines with an installed part, part number (P/N), and serial number (S/N) listed in Table 1 to paragraph (g)(1) of this AD, with no angled ultrasonic inspection (AUSI) performed or the AUSI inspected part was installed on or after November 1, 2023, at the next engine shop visit after the effective date of this AD before exceeding the applicable cycle limit specified in Table 1 to paragraph (g)(1) of this AD, perform an AUSI of the affected parts for cracks in accordance with the applicable service information listed in Table 1 to paragraph (g)(1) of this AD.

TABLE 1 TO PARAGRAPH (g)(1)—AUSI COMPLIANCE TIMES

Part	Table S/N is listed in	Previously operated in high-thrust model engine	Cycle limit from the effective date of this AD	Applicable service information
HPT 1st-stage hub P/N 2A5001.	Table 1 of IAE AG Non-Modification Service Bulletin V2500–ENG–72–0720, dated November 20, 2023 (IAE AG NMSB V2500–ENG–72–0720).	Yes	100 flight cycles (FCs)	Accomplishment Instructions, paragraph 5., of IAE AG NMSB V2500–ENG–72–0720.
	Table 1 of Pratt & Whitney (PW) Special Instruction NO. 189F–23, dated November 20, 2023 (PW SI 189F–23).			Accomplishment Instructions, paragraph 5., of PW SI 189F–23.
	Table 1 of IAE AG NMSB V2500–ENG–72–0720.	No	700 FCs	Accomplishment Instructions, paragraph 5., of IAE AG NMSB V2500–ENG–72–0720.
HPT 2nd-stage hub P/N 2A4802.	Table 2 of IAE AG NMSB V2500–ENG–72–0720.	Yes	800 FCs	Accomplishment Instructions, paragraph 6., of IAE AG NMSB V2500–ENG–72–0720.
	Table 2 PW SI 189F–23			Accomplishment Instructions, paragraph 6., of PW SI 189F–23.
	Table 2 of IAE AG NMSB V2500–ENG–72–0720.	No	1100 FCs	Accomplishment Instructions, paragraph 6., of IAE AG NMSB V2500–ENG–72–0720.

(2) For parts inspected in accordance with paragraph (g)(1) of this AD, within 4,000 FCs from accomplishment of the AUSI required by paragraph (g)(1) of this AD or at the next HPT module removal after the AUSI required by paragraph (g)(1) of this AD, whichever occurs first, remove the part from service and replace with a part eligible for installation.

(3) If any crack is found during the inspections required by paragraphs (g)(1) of this AD, before further flight, remove the affected part from service and replace with a part eligible for installation.

(4) For engines with an AUSI inspected part installed prior to November 1, 2023, having a P/N and S/N listed in Table 2 to paragraph (g)(4) of this AD, at the next HPT module removal after the effective date of this AD, but before exceeding the applicable cycle limit specified in Table 2 to paragraph (g)(4) of this AD, remove the affected part from service and replace with a part eligible for installation.

TABLE 2 TO PARAGRAPH (g)(4)—PART REPLACEMENT COMPLIANCE TIMES

Part	Table S/N is listed in	Previously operated in high-thrust model engine	Cycle limit from the effective date of this AD
HPT 1st-stage hub P/N 2A5001.	Table 1 of IAE AG NMSB V2500–ENG–72–0720 Table 1 of PW SI 189F–23.	Yes	1,800 FCs.
	Table 1 of IAE AG NMSB V2500–ENG–72–0720	No	2,800 FCs.
HPT 2nd-stage hub P/N 2A4802.	Table 2 of IAE AG NMSB V2500–ENG–72–0720 Table 2 of PW SI 189F–23.	Yes	3,400 FCs.

TABLE 2 TO PARAGRAPH (g)(4)—PART REPLACEMENT COMPLIANCE TIMES—Continued

Part	Table S/N is listed in	Previously operated in high-thrust model engine	Cycle limit from the effective date of this AD
	Table 2 of IAE AG NMSB V2500–ENG–72–0720	No	3,800 FCs.

(5) For engines with an installed part that has a P/N and S/N listed in Table 3 to paragraph (g)(5) of this AD, at the next HPT module removal after the effective date of this AD, but before exceeding the applicable cycle limit specified in Table 3 to paragraph (g)(5) of this AD, remove the affected part from service and replace with a part eligible for installation.

TABLE 3 TO PARAGRAPH (g)(5)—PART REPLACEMENT COMPLIANCE TIMES

Part	Table S/N is listed in	Previously operated in high-thrust model engine	Cycle limit from the effective date of this AD
HPT 1st-stage hub P/N 2A5001.	Table 3 of IAE AG NMSB V2500–ENG–72–0720	Yes	1,800 FCs.
	Table 3 of IAE AG NMSB V2500–ENG–72–0720	No	2,800 FCs.
HPT 2nd-stage hub P/N 2A4802.	Table 4 of IAE AG NMSB V2500–ENG–72–0720	Yes	3,400 FCs.
	Table 4 of IAE AG NMSB V2500–ENG–72–0720	No	3,800 FCs.

(h) Definitions

(1) For the purposes of this AD, a ''part eligible for installation'' is an HPT 1st-stage disk or HPT 2nd-stage disk having an S/N that is not listed in IAE AG NMSB V2500–ENG–72–0720 or PW SI 189F–23.

(2) For the purposes of this AD, an ''HPT module removal'' is when the HPT rotor and stator assembly are removed from the engine.

(3) For the purposes of this AD, ''Previously operated in high-thrust model engine'' refers to HPT 1st-stage hubs or HPT 2nd-stage hubs that have previously operated in an IAE AG Model V2527E–A5, V2527M–A5, V2528–D5, V2530–A5, V2531–E5, or V2533–A5 engine for any duration.

(4) For the purposes of this AD, an ''engine shop visit'' is the induction of an engine into the shop for maintenance involving the separation of pairs of major mating engine flanges, H–P, except for the following situations, which do not constitute an engine shop visit:

(i) Separation of engine flanges solely for the purposes of transportation without subsequent engine maintenance.

(ii) Engine removal for the purpose of performing field maintenance activities at a maintenance facility in lieu of performing them on-wing.

(5) For the purposes of this AD, the date that an AUSI inspected part was installed is the date of the authorized release certification for the shop visit at which the part was first installed after the AUSI was performed.

(i) Terminating Action to AD 2022–02–09

Compliance with paragraph (g)(1) of this AD satisfies the requirements of AD 2022–02–09.

(j) Alternative Methods of Compliance (AMOCs)

(1) The Manager, AIR–520 Continued Operational Safety Branch, FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. In accordance with 14 CFR 39.19, send your request to your principal inspector or local Flight Standards District Office, as appropriate. If sending information directly to the manager of the AIR–520 Continued Operational Safety Branch, send it to the attention of the person identified in paragraph (k) of this AD.

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

(k) Additional Information

For more information about this AD, contact Carol Nguyen, Aviation Safety Engineer, FAA, 2200 South 216th Street, Des Moines, WA 98198; phone: (781) 238–7655; email: *carol.nguyen@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) International Aero Engines AG (IAE AG) Non-Modification Service Bulletin V2500–ENG–72–0720, dated November 20, 2023.

(ii) Pratt & Whitney (PW) Special Instruction NO. 189F–23, dated November 20, 2023.

(3) For PW and IAE AG service information identified in this AD, contact International Aero Engines, AG, 400 Main Street, East Hartford, CT 06118; phone: (860) 565–0140; email: *help24@pw.utc.com;* website: *connect.prattwhitney.com.*

(4) You may view this service information at the FAA, Airworthiness Products Section, Operational Safety Branch, 1200 District Avenue, Burlington, MA 01803. For information on the availability of this material at the FAA, call (817) 222–5110.

(5) You may view this material at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, visit *www.archives.gov/federal-register/cfr/ibr-locations* or email *fr.inspection@nara.gov.*

Issued on January 24, 2024.

Victor Wicklund,

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

[FR Doc. 2024–02205 Filed 1–31–24; 4:15 pm]

BILLING CODE 4910–13–P

DEPARTMENT OF JUSTICE

Office of Justice Programs

28 CFR Part 94

[Docket No.: OJP (OVC) 1808]

RIN 1121–AA89

Subject: Victims of Crime Act (VOCA) Victim Compensation Grant Program

AGENCY: Office for Victims of Crime, Office of Justice Programs, Justice.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Office of Justice Programs (''OJP''), a bureau of the Department of Justice, Office for Victims of Crime (''OVC'') proposes adding a subpart to its regulations to replace the existing Victims of Crime Act (''VOCA'') Victim Compensation Program Guidelines (''Guidelines''), and update and codify program requirements for the VOCA Victim Compensation Formula Grant Program (''Victim Compensation Program'').

DATES: Comments must be received by no later than 11:59 p.m., E.T., on April 5, 2024.

ADDRESSES:

Electronic comments: OVC encourages commenters to submit all comments electronically through the

Federal eRulemaking Portal, which provides the ability to type comments directly into the comment field on the web page or attach a file. Please go to *https://www.regulations.gov* and follow the on-line instructions at that site for submitting comments. Upon completion of your submission, you will receive a Comment Tracking Number. Submitted comments are not instantaneously available for public view on *regulations.gov.* If you have received a Comment Tracking Number, you have submitted your comment successfully and there is no need to resubmit the same comment. Commenters should be aware that the system will not accept comments after 11:59 p.m. Eastern Time on the last day of the comment period.

Paper comments: OVC prefers to receive comments via *www.regulations.gov* where possible. Paper comments that duplicate electronic submissions are not necessary and are discouraged. Should you wish to mail a paper comment in lieu of an electronic comment, it should be sent via regular or express mail to: VOCA Compensation Rule Comments, Office for Victims of Crime, Office of Justice Programs, U.S. Department of Justice, 810 7th Street NW, Washington, DC 20531.

To ensure proper handling of comments, please reference ''RIN 1121–AA89'' on all electronic and written correspondence, including any attachments.

FOR FURTHER INFORMATION CONTACT: Kathrina Peterson, Division Director, Office for Victims of Crime, Office of Justice Programs, U.S. Department of Justice, 810 Seventh Street NW, Washington, DC 20531; (202) 616–3579 (please note that this is not a toll-free number).

SUPPLEMENTARY INFORMATION:

I. Posting of Public Comments

Please note that all comments received are considered part of the public record and made available for public inspection online at *www.regulations.gov.* Such information includes personal identifying information (such as your name, address, etc.) voluntarily submitted by the commenter. The Freedom of Information Act applies to all comments received.

If you wish to submit personal identifying information (such as your name, address, etc.) as part of your comment, but do not wish for it to be posted online, you must include the phrase ''PERSONAL IDENTIFYING INFORMATION'' in the first paragraph of your comment. You must also place all of the personal identifying information that you do not want posted online in the first paragraph of your comment and identify with specificity what information you want the agency to redact.

If you wish to submit confidential business information as part of your comment, but do not wish it to be posted online, you must include the phrase ''CONFIDENTIAL BUSINESS INFORMATION'' in the first paragraph of your comment. You must also prominently identify all confidential business information to be redacted within the comment. If a comment has so much confidential business information that it cannot be effectively redacted, the agency may choose not to post all or part of that comment.

Personal identifying information identified and located as set forth above will be placed in the agency's public docket file, but not posted online. Confidential business information identified and located as set forth above will not be placed in the public docket file. If you wish to inspect the agency's public docket file in person by appointment, please see the **FOR FURTHER INFORMATION CONTACT** paragraph.

II. Executive Summary

OJP's Office for Victims of Crime (''OVC'') administers the VOCA Victim Compensation Grant Program (''Victim Compensation Program''). The Victims of Crime Act of 1984 (''VOCA''), Public Law 98–473, sec. 1403, 34 U.S.C. 20102, authorizes the Victim Compensation Program, through which OVC provides an annual grant to State [1] victim compensation programs in amounts determined by statutory formula based on prior year expenditures of those programs, provided that the programs meet the VOCA criteria. State compensation programs make payments to reimburse victims of crime (or, in some cases, third-party providers on behalf of victims) for certain expenses incurred as a result of crime.

The proposed rule proposes to replace the existing Victim Compensation Program Guidelines (''Guidelines''), published in the **Federal Register** on May 16, 2001, at 66 FR 95, and update and codify program requirements. The proposed rule retains most of the substance of the current Guidelines, with various modest technical and substantive updates, primarily to account for statutory or procedural changes since 2001, and to clarify or streamline existing provisions. Of note, the proposed rule would clarify and streamline the policies and definitions regarding who may be considered a survivor of a victim; medical and dental expenses; property damage expenses; sexual assault forensic exam expenses; the requirement that States promote victim cooperation with the reasonable requests of law enforcement; consideration of a victim's or survivor's immigration status, criminal history, or alleged contributory conduct in claim determinations; and crowdfunded resources. It would make it easier for States to seek reimbursement for costs associated with recovery efforts (recovering payment amounts via restitution and subrogation). It would address extensions of grant performance periods and better describe OVC's discretion in remedying erroneous State certification of payments.

The benefits of this proposed rule outweigh the potential costs. A full analysis of costs and benefits is provided below in the regulatory certifications section.

III. Background

A. Overview of the VOCA Compensation Program

OVC's Victim Compensation Program provides an annual grant to eligible State-operated crime victim compensation programs, which reimburse victims of crime (or, in some cases, third-party providers on behalf of victims) for certain expenses incurred as a result of crime.

The Victim Compensation Program is funded from the Crime Victims Fund. The Fund receives Federal criminal fines, penalties, and assessments, as well as certain gifts and bequests, but does not receive any general tax revenue. The Crime Victims Fund is administered by OVC, and amounts that may be obligated therefrom are allocated each year according to the VOCA formula at 34 U.S.C. 20101. The amount annually available for obligation through the VOCA formula allocations typically (since Federal fiscal year 2000) has been set by statute, through limits specified in the annual Commerce, Justice, and Science appropriations act, at less than the total amount available in the Fund. The VOCA formula specifies that (in most years) the first $20M available in the Fund for that year is to go toward child abuse prevention and treatment programs (via grants made by the Department of Health and Human Services), with a certain amount to be set-aside for OVC grants to address

[1] For purposes of this notice, the term ''State'' includes the District of Columbia, the Commonwealth of Puerto Rico, the United States Virgin Islands, and any other possession or territory of the United States. 34 U.S.C. 20102(d)(4) (defining ''State'' for VOCA Compensation).

child abuse in Indian Country. After that, such sums as may be necessary are available to the Federal Bureau of Investigation and the U.S. Attorney's Offices to improve services to victims of Federal crime, and to operate a victim notification system. The remaining balance is allocated as follows: 47.5% for OVC's Victim Compensation Program, 47.5% for OVC's Victim Assistance Program, and 5% for the OVC Director to distribute in competitive-discretionary awards in certain statutorily defined categories. Generally, under the distribution rules for the Victim Compensation Program, if a portion of the 47.5% available for Compensation is not needed for that purpose (*i.e.,* it is greater than the sum of the statutorily allocated grant amounts for the eligible State victim compensation programs for that year), it is (per the statutory formula) made available to augment the Victim Assistance Program. The Victim Assistance Program distributes funds to States as mandated by VOCA, at 34 U.S.C. 20103(a) and (b).

Under 34 U.S.C. 20102, the Director of OVC is required to make an annual grant to eligible crime victim compensation programs that is equal to 75 percent of the amount awarded by the State program to victims of crime from State funds during the fiscal year preceding the year of deposits in the Fund (two fiscal years prior to the grant year). If the amount in the Fund is insufficient to award each State its percentage of the prior year's compensation payout from State revenues, all States will be awarded the same reduced percentage of their prior year's payout from the available Federal funds. (The allocation percentage was changed, by statute, from 60 to 75 percent in 2021.)

To determine the amount of the grant, each State must annually submit to OVC a certification of the amount expended by the State compensation program in a prior Federal fiscal year. State crime victim compensation programs may use state or VOCA compensation grant funds to pay for eligible expenses allowed by State compensation statute, rule, or other established policy. The VOCA compensation formula matches state-certified payments at the statutorily defined rate after certain deductions, which include payments made with VOCA compensation funding and most property damage and loss payments, among other things. OVC does not require States to submit budgets with their formula award applications, as the allocation and use of funds under this formula program are prescribed by VOCA. OVC does require basic information about State use of the administrative and training allowance.

Each VOCA Compensation grant is available for the entire fiscal year in which the award is made (typically, OVC makes awards toward the end of the Federal fiscal year, in August and September), and the following three fiscal years. 34 U.S.C. 20101(e). Pursuant to the implementation of the VOCA Fix to Sustain the Crime Victims Fund Act (''VOCA Fix''), Public Law 117–27 (July 22, 2021), OJP has authority to grant extensions of VOCA awards, including those under the VOCA Compensation Program.

State compensation programs must comply with applicable reporting requirements, are monitored by OVC for compliance with VOCA and other applicable requirements and are subject to audit.

B. Legal Changes Affecting the VOCA Compensation Program

Since the Guidelines were promulgated in 2001, there have been changes to VOCA, section 1403, which governs the VOCA Victim Compensation Program, to other parts of VOCA, and to various government-wide and OJP-specific rules and processes relevant to the program. These changes are discussed below, along with the relevant corresponding proposed changes to the program rules; but some of the more significant changes are highlighted below for context:

On October 26, 2001, a few months after issuance of the May 2001 Guidelines, the Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism Act of 2001 (the USA PATRIOT Act), Public Law 107–56, title VI, sec. 622(a)–(e)(1), raised the percentage used for calculating a State's VOCA grant from 40 percent of prior year certified payouts to 60 percent starting in Federal fiscal year 2003. (This was further increased by Pub L. 117–27, sec. 2(b)(1)(A) (July 22, 2021), to the current level of 75 percent starting in Federal fiscal year 2021.) The same 2001 law also removed the eligibility requirement that State compensation programs compensate victim of terrorism occurring outside of the United States. (It should be noted that the law did not, and does not, prevent States from compensating victims of such crimes, should they choose to do so.) The October 2001 amendment also changed the means-testing- and collateral-source exceptions applicable to State victim compensation payments: It added an exception that allowed the 9/11 Victim Compensation Fund to count State victim compensation payments for purposes of means testing and collateral-source review. It expanded the concept of means testing to include not only *income* eligibility but also *resource* or *asset* eligibility. It also expanded the exclusion to prevent most programs from counting payments from State victim compensation programs as a collateral source until the victim is fully compensated from the losses suffered as a result of the crime. It removed the role of the Director of OVC in determining that assistance or payment provided became necessary in full or part because of the commission of a crime, and instead simply exempted payments of ''any amount of crime victim compensation the applicant receives through a crime victim compensation program under this section [presumably meaning a State compensation program that receives a VOCA grant]''. It added the U.S. Virgin Islands to the list of U.S. territories treated as ''States'' for purposes of program eligibility. It clarified, with regard to the payor-of-last resort provision, that the 9/11 Victim Compensation Fund (as other Federal or federally financed programs) was to pay before the State victim compensation programs.

In 2006, Public Law 109–162, sec (a)(3), amended the VOCA provision allowing an administrative cost allowance of up to five percent of the annual VOCA Compensation grant, to allow grant funds also to be used for ''training purposes.''

On December 19, 2014, the White House Office of Management and Budget issued a major revision and consolidation of government-wide grant rules, for codification as 2 CFR part 200. These rules promulgated as a result provide the primary legal structure for most Federal grant activity, including VOCA Victim Compensation Program grants. The Department of Justice adopted these rules (with very minor exceptions) on September 9, 2016, in its rule at 28 CFR part 2800.

On September 1, 2017, the Office of the Law Revision Counsel of the U.S. House of Representatives reclassified the U.S. Code provisions where VOCA had been codified to a different title of the Code—moving them from 42 U.S.C. 10601, *et seq.,* to 34 U.S.C. 20101, *et seq.* (42 U.S.C. 10602 in the Guidelines was reclassified to 34 U.S.C. 20102.)

In 2021, the VOCA Fix increased the statutory formula percentage used for calculating a State's annual VOCA grant from 60 percent to 75 percent. It added exceptions (centered around victim wellbeing) to the existing eligibility provision that requires State compensation programs to promote

victim cooperation with the reasonable requests of law enforcement. It expressly prohibited OVC from deducting (from a State's compensation payments reported in the Victim Compensation Certification form) recovery costs or collections from restitution or from subrogation for payment under a civil lawsuit. The VOCA Fix also (in 34 U.S.C. 20101(e)) gave authority to the U.S. Attorney General (who has delegated this authority to the Assistant Attorney General for the Office of Justice Programs) to allow extensions of the VOCA-award time limit, which ordinarily makes victim compensation grants available for expenditure only in the Federal fiscal year (FY) of the award plus the next three fiscal years.

In 2022, Public Law 117–103, div. W, title XIII, sec. 1311, 1316(b), March 15, 2022, added a provision (that is to be implemented no later than March 2025) requiring State victim compensation programs to waive the application deadline for certain victims whose delay in filing ''was a result of a delay in the testing of, or a delay in the DNA profile matching from, a sexual assault forensic examination kit or biological material collected as evidence related to a sexual offense[.]''

C. Discussion of Proposed Changes to Program Requirements

1. Summary of Primary Substantive Changes to the Current Guidelines

The primary substantive changes that OVC proposes to make to the current Guidelines are highlighted as follows (with full discussion below):

1. OVC proposes to allow States to adopt policies that victim expenses for dental services and devices under a State-defined threshold are presumed to be attributable to a physical injury resulting from a compensable crime. This would allow States to facilitate processing of claims for these expenses in a more efficient and victim-centered manner, at a lower administrative burden to the State.

2. OVC proposes to clarify the definition of ''medical expenses'' and ''mental health counseling and care'' to emphasize that a limited definition applies for purposes of costs that a State *must* cover (to be an eligible program), but that States *may* apply a broader understanding of such expenses, in the exercise of their discretion. This would clarify that States have flexibility to address victim expenses more comprehensively where reasonable and appropriate; for example, in connection with services accessed in another jurisdiction, areas with limited access to licensed providers, or Native American healing practices.

3. OVC proposes to lower the threshold for States to seek reimbursement for the costs of their personnel who work on recovery efforts (*e.g.,* recovering restitution, subrogation for civil lawsuit recovery). The Guidelines currently require personnel to dedicate at least 75 percent of their time to such efforts, to be included in the State certification of payments that forms the basis for a subsequent VOCA Compensation grant. OVC proposes to lower this threshold to 50 percent.

4. OVC proposes a new definition of ''survivor of a victim'' to make patent OVC's longstanding view that States have discretion to consider a broad variety of relationships to the victim in determining who is eligible for compensation.

5. OVC proposes to add language reflecting the statutory change in 2021 that now allows OJP (via delegation from the United States Attorney General) to extend the performance period for VOCA Compensation grants under certain circumstances.

6. OVC proposes various clarifications of previously ambiguous or incorrect descriptions of statutory requirements, and removal of text that unnecessarily paraphrases or repeats the VOCA statute.

7. OVC proposes to clarify State discretion to pay for, and certify, expenses of damaged property reasonably necessary for victim safety and how this interacts with the prohibition on certifying property damage expenses. This proposal would allow State compensation programs to address victim safety needs better, and in a timely manner.

8. OVC proposes to omit in the Compensation rule some language in the current Guidelines (and make a conforming change to the VOCA Victim Assistance Program rule) that creates some confusion regarding which program (Victim Compensation or other programs, such as Victim Assistance) may pay for sexual assault forensic exams. This proposal would allow States to structure their coverage of the costs for these exams more flexibly, to enable them better to meet the requirement in Federal law that such exams be covered without charge to a victim. OVC also proposes to allow States to certify payments by the State compensation program for sexual assault forensic exams regardless of whether those funds derive from general state funding or are specifically appropriated for sexual assault forensic exam expenses. This would allow treatment of sexual assault forensic exam payments to be like that of other victim compensation expenses (for which the state funding source is largely irrelevant) and would encourage States to designate funding for sexual assault forensic exams by including those payments from designated state funding sources in the calculation for the Federal VOCA compensation award.

9. OVC proposes to clarify the VOCA eligibility requirement that States promote victim cooperation with the reasonable requests of law enforcement, to emphasize that the requirement applies—by statute—to *States,* not victims. Although States have discretion in addressing the requirement, the proposal would clarify that they are *not* required to impose an evidentiary burden on victims to do so and expressly encourages States to avoid doing so.

10. OVC proposes to make patent that nothing in the rule shall be understood to require or authorize a State to consider a victim's or survivor's Federal immigration status in determining eligibility for crime victim compensation.

11. OVC proposes to add a provision prohibiting States from denying claims based on criminal history. Certain populations may be more likely to have criminal history due to unjustified disparate treatment in the criminal justice system or due to criminal conduct induced through force, fraud, or coercion, such as unlawful acts that traffickers compelled their victims to commit, and this can result in unjustifiably disproportionate denial of claims for those populations.

12. OVC proposes to add a provision generally prohibiting States from considering a victim's alleged contributory conduct in determining compensation claims, except in specific exceptional claims and where a State has a publicly available written policy regarding consideration of this factor. This change is intended to increase objectiveness and consistency in contributory conduct reviews and to address inconsistent attribution of ''contributory conduct'' to victims, which attribution may later preclude these victims from receiving compensation.

13. OVC proposes to prohibit (with exceptions) States from requiring notarized signatures on claim applications. This is intended to lower the administrative barriers for victims seeking compensation.

14. OVC proposes a provision to clarify that crowdfunded resources are not considered a collateral source and to clarify that the VOCA payor-of-last-resort provision does not apply to

private insurance or crowdfunded resources.

15. OVC proposes minor changes to the provisions regarding incorrect State certification of compensation payments, to make patent OVC's discretion in remedying over- and under-payments resulting from erroneous certifications.

2. Section-by-Section Discussion of Changes to Current Guidelines

What follows is a section-by-section discussion of proposed changes to the Guidelines. It is organized below in the section order of the current Guidelines, with new proposed rule sections with no corresponding Guideline provision marked ''NEW.''.

Guideline	Proposed rule
N/A	NEW: 94.201 to 94.205. Sets forth administrative provisions describing the purpose of the rule and program, the scope of the rule, and OVC's authority regarding issuing guidance on the application of the rule; providing a savings clause; and describing when and to which grants the rule applies.
Preamble	Preamble. Consolidates and updates the information from the Guideline's two preamble sections.
Sec. I Definitions	94.206 Definitions. Retains some definitions from the Guidelines and adds (as denoted by asterisk) some definitions. The proposed rule defines— • **Administrative costs* (defines the statutory term by providing examples consistent with those in the Guidelines); • * *Certified compensation payment* and *Certify payment* (defines these terms for clarity because they are used frequently in the Guidelines and proposed rule, and relate to determination of the annual award amount); • **Certifiable property damage expenses* (defines certain property damage expenses for victim safety and physical necessities); • * *Collateral source* (defines this term in a general way for clarity, because it is a key concept applied by States in determining compensation payments); • * *Crime victim* or *victim of crime* (defines this generally as context for other eligibility concepts, such as victim of a ''compensable crime''; without the core broad definition of victim, the other definitions may be more difficult to understand); • * *Crowdfunding* (defines this generally as context for the proposed rules regarding consideration of collateral sources); • * *Dental services or devices* (defines the statutory term to make patent OVC's longstanding understanding that the term encompasses a range of compensable expenses); • * *Director* (defined for context); • *Driving while intoxicated* (retains the Guideline's longstanding definition, which reconciles the statutory term with a similar statutory term ''drunk driving'' by treating the offense of drunk driving to be a subset of driving while intoxicated, and provides some clarifying examples of how such offenses may be described in a State's law); • *Federal crime* (retains but condenses the definition); • **Federal fiscal year* (defines the time period to reflect that used in the Guidelines and most Federal programs); • * *Funeral expenses* (defines the statutory term to make patent that the term encompasses a range of expenses attributable to a death from compensable crime, but that States may impose reasonable cost and scope limitations); • *Mandatorily compensable crime* (defines in one place the crimes for which a State must, by statute, offer compensation); • *Medical expenses* (refers to statutory definition, which is quoted for ease of reference); • *Mental health counseling and care* (retains but updates definition to clarify that the term includes a variety of treatment methods, and refers to the professional treatment standards in the jurisdiction in which care is administered to address situations where care occurs outside of the State); • *Method of healing recognized by the law of the State* (clarifies that the applicable professional standards are those of the jurisdiction where the medical healing practice is provided, and that a State may recognize other healing practices); • *Optionally compensable crime* (defines crimes for which a State may provide compensation; examples are consistent with those in the Guidelines); • *Optionally compensable expenses* (provides examples, consistent with Guidelines, of expenses for which a State may provide compensation); • * *Personnel directly involved in recovery efforts* (defines the statutory phrase added to VOCA by the VOCA Fix Act relating to reimbursement of personnel and other costs associated with recovering compensation payments via restitution, subrogation, or other means; see discussion of Recovery Costs in proposed section 94.234 for additional information); • * *Preceding fiscal year* (defines the ambiguous statutory phrase to refer to the year preceding the year of deposits into the Crime Victims Fund, which is presumed to occur in the fiscal year before the grants are awarded; this is in accordance with OVC's longstanding practice of using reporting from two years prior to the Federal fiscal year of the grant award to calculate the grant amounts and also has the prudential advantage of allowing States to complete their accounting for the relevant time period); • *Property damage* (retains Guideline definition of ''Property Damage and Loss'' but uses the statutory term; definition continues to include both tangible and intangible property, but adds clarification regarding exclusions for otherwise compensable medical expenses or items excluded by the statutory definition of property damage); • * *Recovery costs* (references statutory definition, which is quoted for ease of reference); • * *Services rendered in accordance with a method of healing* (defines the statutory phrase used in the definition of ''medical expenses'' to include examples of medical services); • *State* (refers to the statutory definition, which is quoted for ease of reference); • * *Supplant* (defines the statutory term in a way consistent with the Guidelines and the DOJ Grants Financial Guide);

Guideline	Proposed rule
	• * *Survivor of a victim* (defines the statutory phrase to encompass a variety of relationship to clarify that States may consider not just traditional family relationships in determining survivor eligibility for compensation). • *Training costs* (provides examples of training costs, which are limited by an amendment to VOCA that occurred after the Guidelines were promulgated). * New OVC omits the definitions of— • *Federal Program, or a federally financed State or local program* (the term is self-explanatory, and examples of such programs are likely to be outdated quickly); • *Mass violence* (it is unnecessary to define the term in the rule—other crimes are not specifically defined—though victims of mass violence would be victims of violent crime, and thus States must compensate victims of such crimes); • *Terrorism occurring within the United States* (it is unnecessary to define the term in the rule—other crimes are not specifically defined—though victims of terrorism occurring within the United States would be victims of violent crime, and thus States must compensate victims of such crimes); • *Terrorism occurring outside the United States* (it is unnecessary to define the term in the rule because the statutory requirement that States compensate victims of such crimes was removed by Public Law 107–56, tit. VI, subtit. B, § 624I, 115 Stat. 272, 373, thus, States may, but are not required to, compensate victims of such crimes; these victims may apply for compensation under OVC's International Terrorism Victim Expense Reimbursement Program).
Sec. II. Background	Preamble. General updates.
Sec. III.A. Funding Allocations	Preamble. General updates.
Sec. III.B. Grant Period	94.241 Grant Award Period of Performance. Updates to reflect the VOCA Fix (allows extensions).
Sec. III.C. VOCA Victim Compensation Grant Formula.	Omitted because it merely repeats statutory language.
Sec. IV. A. Grantee	94.211 Eligibility of the Compensation Program. Updated to condense, but no substantive changes.
Sec. IV.B. Program Requirements	Program Requirements heading. 94.211–94.215.
Sec. IV.B.1. Compensable Crimes	Definitions of *mandatorily compensable crime* and *optionally compensable crime.* Updates to omit statutory repetition.
Sec. IV.B.1.(a) VOCA Mandated Crime	Definition of *mandatorily compensable crime.* Updates to omit statutory repetition; removes reference to coverage of terrorism to conform to current law.
Sec. IV.B.1.(b) Coverage of Other Crimes.	Definition of *optionally compensable crime.* Updates to omit statutory repetition and to clarify.
Sec. IV.B.2. Compensable Expenses	Definitions of *mandatorily compensable expenses* and *optionally compensable expenses;* 94.212 Payments and Certification of Payments. Updates to omit statutory repetition and to clarify and streamline; moves definitions to definition section.
Sec. IV.B.2.(a) VOCA Mandated Expenses.	Definition of *mandatorily compensable expenses.* Updates to omit statutory repetition and to clarify and streamline; moves definitions to definition section.
Sec. IV.B.2.(b) Other Allowable Expenses.	Definition of *optionally compensable expenses;* 94.212 Payments and Certification of Payments. Clarifies ambiguity in Guideline between use of VOCA Compensation funds for compensation payments and certification to OVC of State-funded payments. Also moves list of optionally compensable expenses to the definition, and clarifies that the list items are examples, not restrictions. Regarding specific items: • Clarifies in a more conceptual way the exceptions for compensation of property necessary for victim safety in a new definition, *certifiable property damage expenses.* • Clarifies that compensation for building modifications and equipment may address any disability, not just physical. • Removes limitations on certifying forensic sexual assault examination expenses, so that these are treated like any other expense and to allow States flexibility to meet victim needs (and adds a conforming change to 94.119(g)). • Adds language, in section 94.212(c), addressing considerations for dental services and devices. This language allows States to use streamlined process—via a presumption of causation—for payment of these expenses. A presumption is justified because dental injuries often are not covered by collateral sources, such as health insurance, delays in service may exacerbate injury and increase costs, and treating dentists typically are not asked, and may not be trained, to opine on causation of specific dental injuries when providing services. • Adds definition of *method of healing recognized by the law of the State* to clarify that States may compensate for expenses meeting the professional standards of the jurisdiction in which care is provided, and that they also have discretion to compensate for other healing practices.
Sec. IV.B.3. Victim Cooperation With Law Enforcement.	94.213 Promotion of Victim Cooperation with Reasonable Requests of Law Enforcement. OVC corrects the Guideline's misdescription of a statutory requirement: VOCA requires that States *promote* reasonable cooperation with the reasonable requests of law enforcement, not that States ensure or document such cooperation. It also updates the requirements to reflect the statutory exceptions to such promotion added by the VOCA Fix, gives examples of promotion, and requires that States have a policy regarding exceptions if the State requires the victim to bear an evidentiary burden to show cooperation.
Sec. IV.B.4. Nonsupplantation	94.214 Nonsupplantation of State Funds. Updates to omit statutory repetition, clarify that broad (in addition to ''across the board'', the phrase in the Guidelines) budget restrictions at the State level typically are not supplanting and that a return to a prior baseline level of funding after a temporary increase is not supplanting, either; it also would eliminate requirement to notify OVC of funding decreases.
N/A	NEW: 94.113 Engagement with American Indian and Alaskan Native tribes. Requires certain States to have a tribal engagement policy.

Guideline	Proposed rule
N/A	NEW: Victim Eligibility Considerations heading. This groups all requirements for State criteria for victim eligibility.
Sec. IV.B.5. Compensation for Residents Victimized Outside Their Own State.	94.221 Residency and Place of Crime. Updates to omit statutory repetition, and remove provisions no longer supported by law.
Sec. IV.B.6. Compensation for Non-residents of a State.	94.221. Updates to omit statutory repetition.
N/A	NEW: 94.221(c). Makes patent that nothing in the rule shall be understood to require or authorize a State to consider the victim's or survivor's Federal immigration status in determining eligibility for crime victim compensation.
Sec. IV.B.7. Victims of Federal Crime	Definition of *Mandatorily compensable crime.* Moves the requirement to the definition and updates it to omit statutory repetition.
N/A	NEW: 94.222 Criminal History and Delinquent Payments. Prohibits claim denials based on criminal history, with certain exceptions. Makes patent in the rule (where the Guidelines did not address the matter) that there is a longstanding statutory stay of the effective date of the VOCA eligibility requirement regarding the prohibition of payments to persons delinquent in paying Federal criminal fines, penalties, or restitution.
N/A	NEW: 94.223 Contributory Conduct. Adds a requirement that States may not consider a victim's alleged contributory conduct, except in specific exceptional cases and only where the State has a written policy regarding consideration of this factor that is publicly available.
Sec. IV.B.8. Unjust Enrichment	94.224. Familial Relationship or Shared Residence with Offender (Unjust Enrichment). Updates to omit statutory repetition, eliminates vague examples, and limits denial of claims for de minimis benefit to the offender and expressly allows exceptions for victim well-being.
N/A	NEW: 94.225 Victim Application Provisions. Addresses the VOCA statutory requirement added by the VOCA Fix that requires (starting on March 15, 2025) that States waive the claim filing deadline for claims related to sexual assault where forensic evidence testing, or matching, is delayed. Also prohibits States from requiring a notarized signature for an initial application, because this is an unnecessary barrier to accessing the compensation program.
Sec. IV.B.9. Discrimination Prohibited	94.249 Discrimination Prohibited. Updates to omit statutory repetition, and to refer to applicable DOJ regulation and OJP Office for Civil Rights mandates, and to emphasize language access requirements.
Sec. IV.B.10. Additional Information Requested by the OVC Director.	Omitted because it simply repeats statutory language.
N/A	NEW: Relationship to Collateral Sources of Payment heading. Groups together provisions addressing collateral sources.
Sec. IV.C. VOCA Funds and Collateral Federal Programs.	94.231 Coordination. Updated, but retains language regarding State coordination with other programs to facilitate victim access to resources.
Sec. IV.C.1. Means Testing	94.232 Means Testing. Omits repetition of statutory language and deletes a provision regarding the OVC Director's authority that has been incorrect since an October 2001 statutory change. Clarifies that the restriction on using victim compensation payments for means testing or payment offset in other programs applies to both State and federally funded payments.
Sec. IV.C.2. Payor of Last Resort	94.233 Payor of Last Resort. Omits repetition of statutory language but retains Guideline exceptions. Addresses an ambiguity in the Guidelines by clarifying that OVC interprets the statutory provision to apply to victim compensation payments from State or VOCA Compensation grant funds, not merely the latter.
N/A	NEW: 94.234 Private Donations and Crowdfunding. Adds a provision generally prohibiting the consideration of private donations and crowdfunding as collateral sources. VOCA does not require means testing of victims as a condition of compensation.
N/A	NEW: Program Administration heading. Groups technical administrative requirements.
Sec. V. State Certification	94.243 Process for State Certification of Compensation Payments. Updates the provision: Refers to Victim Compensation Certification form, which has detailed reporting instructions, instead of setting forth those instructions in the rule. Adds a requirement that States have a written policy regarding submission of the VCC form, to address a frequent recommendation in Office of the Inspector General audits.
Sec. V.A. Program Revenue	Omits the requirement that States report revenue, as this information is not used.
Sec. V.B. Program Expenditures	Omits this provision in favor of relying on the VCC form instructions, which reflect the Guideline provision.
Sec. V.C. Amounts to be Excluded	Omits this provision in favor of relying on the VCC form instructions, which reflect the Guideline provision.
Sec. V.D. Deductions	Omits this provision in favor of relying on the VCC form instructions, which have been updated to reflect the VOCA Fix, which prohibits OVC from deducting recovery costs or collections from restitution or subrogation.
Sec. V.E. [Omitted erroneously in Guidelines].	N/A.
Sec. V.F. Recovery Costs	94.244 Recoupment of Compensation Payments and Recovery Costs, and definition of *Personnel directly involved in recovery efforts.* Updates the provision to reflect the VOCA Fix, which essentially codifies OVC's longstanding practice of subsidizing State costs (including personnel costs) of recovering—typically via seeking restitution from the offender or subrogation from civil lawsuit recoveries—victim compensation payments. Decreases time threshold at which personnel are considered ''personnel directly involved in recovery efforts'' from 75% to 50% of the staff member's work time.
Sec. V.G. Sources of Payments to Crime Victims.	94.246 Sources of Payments to Crime Victims. Retains the Guideline provision, which facilitates State program administration by not requiring accounting at the payment level. (States are allowed to, and some do, use more detailed accounting.) Clarifies that aggregate payment amounts must be allocated in the accounting to Federal or State funding for reporting purposes.

Guideline	Proposed rule
Sec. V.H. Incorrect Certifications	94.245 Incorrect Certifications. Retains the Guidelines provision regarding default remedies for incorrect certifications (*e.g.,* recovery of excess funds for over-certifications, no supplemental funding for under-certifications) but makes patent OVC's discretion to use alternative remedies (*e.g.,* offset of over-certifications against under-certifications) as appropriate.
Sec. VI. Application Process and Performance Reporting.	94.241 Application, 94.247 Reporting. Retains the substance of Guideline provision with some updates.
Sec. VI.A. Application for Federal Assistance.	94.241 Application. Retains the provision with minor updates.
Sec. VI.B. Annual Performance Report	94.247 Reporting. Omits this language about annual performance report in favor of a more general requirement that States comply with OVC reporting requirements and deadlines (set forth in the solicitation and award document).
Sec. VII. Administrative Costs	Administrative and Training Costs heading (94.251 and 94.252).
Sec. VII.A. Administrative Costs Allowance.	94.251 Administrative and Training Cost Allowance. Updates to omit repetition of statute; to reflect a 2006 amendment to VOCA that added an express allowance of training costs to the administrative-cost-allowance provision, which now caps both administrative and training costs (in the aggregate) at 5 percent of the annual grant; and to use terminology from government-wide grant guidance. Moves non-supplantation language to 94.214.
Sec. VII.B. Allowable Costs	94.252 Allowable Administrative and Training Costs. Updates to reflect VOCA amendment allowing training, in addition to administrative, costs; to use terminology from government-wide grant guidance; and to condense. In response to confusion in various audits, adds clarification that the State crime victim compensation program, for purposes of allocating VOCA Compensation administrative and training funds, encompasses both State and federally funded payments and activities of the compensation program.
Sec. VII.C. Requirements to Notify OVC of Use of Administrative Funds.	94.251(a). Retains the provision with minor updates.
Sec. VII.D. Confidentiality of Research Information.	Omits this provision because VOCA Compensation grants generally do not fund research or statistical collections, and because the provision repeats and mischaracterizes the statutory provision at 34 U.S.C. 20110(d). The provision's interpretation of 20110(d), as not superseding mandatory reporting laws, is outside the scope of the rule and thus also is omitted.
N/A	NEW: 94.250 Non-disclosure of Confidential or Private Information. Incorporates VOCA Assistance confidentiality requirements by reference, *mutatis mutandis* (*i.e.,* as adjusted for the VOCA Compensation context). Added in response to various States' requests for confidentiality protections.
Sec. VIII. Financial Requirements	94.202 Scope. Retained in substance, makes minor updates to refer to current document names (*e.g.,* Circulars are now 2 CFR part 200).
Sec. IX. Monitoring	94.248 Access to Records. Condenses and folds this provision into 94.248, which addresses access to records. OJP has monitoring policies that are updated from time-to-time, and details regarding monitoring typically are communicated with award documents or in other communications, thus the (now inaccurate) description of monitoring procedures is omitted.
Sec. X. Suspension and Termination of Funding.	Omitted because remedies are addressed in VOCA at 34 U.S.C. 20110, DOJ regulations in 28 C.F.R. part 18, and in 2 C.F.R. part 200, as well as in annual award documents.

VI. Regulatory Certifications

A. Regulatory Flexibility Act of 1995

The Regulatory Flexibility Act (''RFA'', 5 U.S.C. 601–612) applies to rules that are subject to notice and comment under section 553(b) of the Administrative Procedure Act (''APA''). As noted in the discussion, below, however, regarding the applicability of the APA, this proposed rule is exempt from the 553(b) notice and comment requirements. Consequently, the RFA does not apply.

Nevertheless, consistent with the analysis typically required by the RFA (5 U.S.C. 605(b)), OVC has reviewed this proposed regulation and, by approving it, certifies that it will not have a significant economic impact on a substantial number of small entities. The Victim Compensation Program provides grant funding to States to supplement their crime victim compensation programs, thus this proposed rule will have no direct effect on any particular local governments or entities, nor will it have any cost to State, local, or tribal governments, or to the private sector. The program is funded by fines, fees, penalty assessments, and bond forfeitures paid by Federal offenders, as well as gifts from private individuals, that are deposited into the Crime Victims Fund of the U.S. Treasury. Therefore, an analysis of the impact of this proposed rule on such entities is not required under the RFA.

B. Executive Orders 12866, 13563, and 14094—Regulatory Review

This regulation has been drafted and reviewed in accordance with Executive Order 12866, ''Regulatory Planning and Review''; Executive Order 13563 ''Improving Regulation and Regulatory Review''; and Executive Order 14094, ''Modernizing Regulatory Review''. The Department has determined that this rule is not a ''significant regulatory action'' under section 3(f) of Executive Order 12866, Regulatory Planning and Review. Accordingly, this rule has not been reviewed by the Office of Management and Budget.

Consistent with the principles of Executive Order 14094, OVC engaged in substantial outreach and knowledge gathering related to this effort. This NPRM was informed by input from a wide variety of interested and affected communities, including formal stakeholder discussion sessions that included State compensation and assistance administrators, tribal organizations, victims of crime, and organizations that represent and serve victims of crime.

This proposed rule would impose no cost on State, local, or tribal governments, or on the private sector. The Crime Victim Compensation Grant Program is funded by fines, fees, penalty assessments, and forfeitures paid by Federal offenders, as well as gifts from private individuals, that are deposited into the Crime Victims Fund of the U.S. Treasury. The cost to the Federal Government is largely administrative and is clearly outweighed by the government's interest in seeing that crime victims are compensated for the expenses associated with their

victimization. Annual grant amounts are determined by statutory formula. Consequently, none of the changes in this rule is expected to alter the overall budgetary impact of this program or annual grant amounts materially.

OVC estimates that the proposed changes highlighted in the Executive Summary may marginally increase the amount of victim compensation payments by reducing barriers for victims and allowing States some additional flexibility. OVC does not anticipate that such changes would materially alter the outlays for victim compensation at the State level because the changes primarily would afford States additional flexibility to address marginal situations arising in the context of compensation that they already generally provide (*e.g.,* flexibility to cover unique but justifiable costs incurred by a victim for mental health needs, prohibiting denials based on criminal history). The benefits of these changes for individual victims, however, would be likely to be significant, as would be the benefit of advancing equity in claim determinations and reducing unnecessary barriers to compensation. OVC anticipates that the proposal to lower the threshold at which States may seek reimbursement for personnel involved in recovery efforts would result in a marginal, but non-material, increase in the amount of recovery costs that States are eligible to recover via the annual grant. In FY 2022, States recovered approximately $5.9 million in recovery costs. If the proposed provision increases eligible State recovery costs by 25 percent, the overall effect on the program outlays would be approximately $1.5 million annually, or less than 1 percent of the annual grant amounts (which totaled $177,813,000 in FY 2022). This de minimis cost increase in the Federal outlays are outweighed by the benefit to victims and State programs of incentivizing States to fund recovery efforts that result in money (including money for expenses not compensated) returning to victims and to the State programs. OVC does not expect that the revision to the provision regarding sexual assault forensic exam payments necessarily would cause changes to State payment regimes immediately and expects that most States would continue to cover sexual assault forensic exam costs from the State victim compensation program. OVC is not able to estimate the costs of State changes that would take advantage of additional flexibility regarding covering such exams from either program, because such changes would in large part depend on future State legislative action. OVC does expect, however, that State-level changes taking advantage of additional flexibility would inure to the end benefit to victims. The proposed prohibition on notarized signature requirements for applications would not impose a cost (nearly all States have eliminated this already without additional costs) but would reduce this cost- and time barrier for victims seeking compensation in the few (approx. 2) States that retain notary requirements. The proposed rule regarding crowdfunded resources may marginally increase State payments where such resources may have previously been counted as a collateral source. The provision, however, is also expected to reduce State administrative burdens regarding inquiring into the nature of crowdsourced resources, which, in many cases, would not be information readily available to State administrators. The provision regarding OVC's discretion to remedy over- and under certifications would not impose any new costs, because it merely would codify OVC's current approach, which considers a range of remedies (typically aimed at maximizing recovery of overpayments while minimizing the burden on State compensation resources).

C. Administrative Procedure Act

This proposed rule concerns matters relating to ''grants, benefits, or contracts,'' 5 U.S.C. 553(a)(2), and is therefore exempt from the requirement of notice and comment and a 30-day delay in the effective date. Nevertheless, in its discretion, OVC has decided to solicit comments on this proposed rule.

D. Executive Order 13132—Federalism

The VOCA Compensation Program does not impose any mandates on States; nor does it interfere with States' sovereignty, authorities, or rights. States, rather, participate in the Program voluntarily and, as a condition of receipt of funding, agree to comply with the Program's requirements, which are predicated on the authorizing statute. Thus, this proposed rule would not have substantial direct effects on the States, on the relationship between the Federal Government and the States, or on distribution of power and responsibilities among the various levels of government. The proposed rule would not impose substantial direct compliance costs on State and local governments or preempt any State laws. Therefore, in accordance with Executive Order No. 13132, it is determined that this proposed rule would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

E. Executive Order 12988—Civil Justice Reform (Plain Language)

This proposed rule meets the applicable standards set forth in section 3(a) and (b)(2) of Executive Order No. 12988 to specify provisions in clear language. Pursuant to section 3(b)(1)(I) of the Executive order, nothing in this proposed or any previous rule (or in any administrative policy, directive, ruling, notice, guideline, guidance, or writing) directly relating to the Program that is the subject of this proposed rule is intended to create any legal or procedural rights enforceable against the United States.

F. Unfunded Mandates Reform Act of 1995

This proposed rule, when finalized, would not result in the expenditure by State, local and Tribal Governments, in the aggregate, or by the private sector, of $100,000,000 or more in any one year, and it would not significantly or uniquely affect small governments. The Victim Compensation Program provides funds to States to supplement their victim compensation programs. As a condition of funding, States agree to comply with the Program requirements. Therefore, no actions are necessary under the provisions of the Unfunded Mandates Reform Act of 1995.

G. Congressional Review Act

This proposed rule is not a major rule as defined by 5 U.S.C. 804. This proposed rule would not result in an annual effect on the economy of $100,000,000 or more; a major increase in costs or prices; or significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based companies to compete with foreign-based companies in domestic and export markets.

H. Paperwork Reduction Act

This proposed rule would not propose any new, or changes to existing, ''collection[s] of information'' as defined by the Paperwork Reduction Act of 1995 (44 U.S.C. 3501, *et seq.*) and its implementing regulations at 5 CFR part 1320.

List of Subjects in 28 CFR Part 94

Crime Victims, Formula Grants, Victim Compensation.

Accordingly, for the reasons set forth in the preamble, the Office of Justice Programs proposes to amend Title 28, Part 94, of the Code of Federal Regulations as follows:

PART 94—CRIME VICTIM SERVICES

■ 1. The authority citation for part 94 is revised to read as follows:

Authority: 34 U.S.C. 20102, 20103, 20106, 20110(a), 20111.

Subpart B—VOCA Victim Assistance Program

§ 94.119 [Amended]

■ 2. Amend § 94.119, in paragraph (g), by removing ''to the extent that other funding sources such as State appropriations are insufficient''.

■ 3. Add a new subpart C to read as follows:

Subpart C—Victim Compensation Grant Program

Sec.

Authority: 34 U.S.C. 20102.

General Provisions

§ 94.201 Purpose.

This subpart implements the provisions of the Victims of Crime Act of 1984 ''VOCA'', at 34 U.S.C. 20102, which, as of [INSERT DATE OF PUBLICATION OF FINAL RULE IN THE **FEDERAL REGISTER**], authorize the Director to make an annual grant award, of an amount determined by statutory formula, to each eligible crime victim compensation program, to be used by such program for awards of compensation and, in statutorily limited amounts, for training purposes and the administration of the crime victim compensation program.

§ 94.202 Scope.

This subpart applies to both VOCA Victim Compensation Program formula grant award applicants and recipients. VOCA sets out the statutory requirements governing these grant awards, and this subpart should be read in conjunction with it. Grant awards under this program also are subject to various government-wide grant rules, including those in 2 CFR part 200, as implemented by the Department of Justice at 2 CFR part 2800, and the DOJ Grants Financial Guide.

§ 94.203 Construction and severability.

(a) Any provision of this subpart held to be invalid or unenforceable by its terms, or as applied to any person or circumstance, shall be construed so as to give it the maximum effect permitted by law, unless such holding shall be one of utter invalidity or unenforceability, in which event such provision shall be deemed severable from this subpart and shall not affect the remainder thereof or the application of such provision to other persons not similarly situated or to other, dissimilar circumstances.

(b) Unless otherwise expressly indicated, references herein—

(1) to statutory provisions are to be understood as references to such provisions as in effect on [INSERT DATE OF PUBLICATION OF THE FINAL RULE IN THE **FEDERAL REGISTER**];

(2) to provisions of 2 CFR part 200 are to be understood as references to such provisions as implemented by the Department of Justice at 2 CFR part 2800, all as in effect at the time of the pertinent grant award; and

(3) to provisions of the DOJ Grants Financial Guide are to be understood as references to such provisions as in effect at the time of the pertinent grant award.

§ 94.204 Compliance date.

This subpart applies to all Federal grant awards under this program made after the effective date of this rule.

§ 94.205 Definitions.

As used in this subpart—

Administrative costs include, but are not limited to, personnel costs (salaries, fringe benefits, consultants, contractors), travel costs, equipment and supplies, facilities, audits (*see* 2 CFR 200.425), indirect costs, coordination efforts, informational resources, memberships in crime victim organizations (see 2 CFR 200.454), strategic planning, surveys, needs assessments, policy and procedure development.

Certified compensation payment means a compensation payment that the appropriate State official has certified.

Certifiable property-damage expenses means optionally compensable expenses arising from property damage that are incurred for—

(1) purchase or acquisition of property reasonably necessary for victim safety (such as cell phones; security items such as doorbell cameras, movement lights, and locks; and window and door repair or replacement); or

(2) replacement of clothing or bedding or other physical property held as evidence.

Certify payment means to certify (via the Victim Compensation Certification form) that a payment meets the criteria in VOCA (as implemented by this rule) to be counted for the statutory partial-matching formula (see 34 U.S.C. 20102(a)) that determines the amount of the State's VOCA Compensation grant award, unless context should indicate otherwise.

Collateral source means a source of funding outside of the crime victim compensation program to pay for an

expense covered by the compensation program.

Contributory conduct means conduct (*e.g.,* engaging in the commission of a crime) that a State has determined to have contributed to a person's own victimization.

Crime victim or *victim of crime* means a person who has suffered physical, sexual, financial, or emotional harm as a result of the commission of a crime, or as otherwise defined under pertinent State law.

Crowdfunding means a method of raising funds by soliciting contributions widely, often through internet platforms.

Dental services and devices include those reasonably necessary for dental care, including, but not limited to, assessment, diagnosis, and treatment of underlying conditions affecting the treatment of the victimization injury, medication, prosthetics, and orthodontic appliances.

Director means the Director of the Office for Victims of Crime.

Driving while intoxicated means drunk driving and driving under the influence of alcohol or other drugs, as defined by the law or policy of the pertinent jurisdiction (*e.g.,* driving-under-the-influence- (''DUI'') or driving-while-impaired (''DWI'') offenses, such as DUI/DWI hit and run, DUI/DWI motor-vehicle crash, DUI/DWI resulting in death).

Federal crime means any criminal violation of the United States Criminal Code or the Code of Military Justice.

Federal fiscal year means (as used in this rule) the period beginning on October 1st and ending on September 30th.

Funeral expenses mean expenses of a funeral, burial, cremation, or other chosen method of interment or disposal of remains, and associated ceremonies, and other related expenses, all subject to reasonable State cost and scope limitations.

Mandatorily compensable crime means the following crimes for which a State must offer compensation—

(1) any crime indicated at 34 U.S.C. 20102(d)(2) (''crimes, whose victims suffer death or personal injury, that are described in section 247 of title 18 [damage to religious property and obstruction of persons in the free exercise of religious beliefs], driving while intoxicated, and domestic violence'');

(2) any crime indicated at 34 U.S.C. 20102(b)(1) (criminal violence, drunk driving, domestic violence); and

(3) any Federal crime indicated at 34 U.S.C. 20102(b)(5) (same basis for compensation of Federal crimes occurring within the State as for State crimes occurring there).

Mandatorily compensable expenses means expenses indicated at 34 U.S.C. 20102(b)(1) (medical expenses, lost wages, or funeral expenses attributable to a physical injury or death resulting from a mandatorily compensable crime).

Medical expenses has the meaning set forth in 34 U.S.C. 20102(d)(2) (''includes, to the extent provided under the eligible crime victim compensation program, expenses for eyeglasses or other corrective lenses, for dental services and devices and prosthetic devices, and for services rendered in accordance with a method of healing recognized by the law of the State.'')

Mental health counseling and care means the assessment, diagnosis, and treatment of an individual's mental and emotional functioning, and includes in-patient- and out-patient treatment, psychiatric care, counseling, therapy, and medication management. Mental health counseling and care must be provided by a person who meets professional standards to provide them in the jurisdiction in which they are provided.

Method of healing recognized by the law of the State means any medical healing practice that meets professional standards to provide it in the jurisdiction in which it is provided; such methods also may, in the discretion of the State, include other healing practices.

Optionally compensable crime means a crime (other than a mandatorily compensable crime) the victims of which may, in the discretion of the State, be eligible to receive compensation for under its eligible crime victim compensation program (*e.g.,* non-violent crimes, fraud, neglect, threats, economic crime, privacy crime).

Optionally compensable expenses means any expenses (other than mandatorily compensable expenses) for which a State, in its discretion, may offer compensation when attributable to compensable crime; such expenses, in the discretion of the State, may include, but are not limited to, those arising from—

(1) property damage (certifiable or non-certifiable);

(2) travel and transportation;

(3) temporary lodging and relocation;

(4) building modification and equipment reasonably necessary to accommodate disabilities;

(5) crime scene cleanup;

(6) attorneys' fees;

(7) sexual assault forensic medical examinations;

(8) dependent care;

(9) financial counseling; and

(10) pain and suffering.

Personnel directly involved in the recovery efforts means personnel who allocate (under applicable allocation principles) at least half of their time and effort (during the Federal fiscal year for which recovery costs are certified) to recovery efforts or to other similar collection or reimbursement efforts.

Preceding fiscal year means, for purposes of 34 U.S.C. 20102(a), the federal fiscal year two years prior to the Federal fiscal year in which the grant award is made.

Property damage means property loss and damage to material goods, which includes destruction of material goods or loss of money, stocks, bonds, etc., but, pursuant to 34 U.S.C. 20102(d)(1) (which expressly provides that property damage ''does not include damage to prosthetic devices, eyeglasses, other corrective lenses, or dental devices''), does not include any loss or destruction of personal property whose acquisition or purchase would qualify as a ''medical expense'' under this subpart.

Recovery costs has the meaning set forth in 34 U.S.C. 20102(d)(5), which defines such costs as ''expenses for personnel directly involved in the recovery efforts to obtain collections from restitution or from subrogation for payment under a civil lawsuit.''

Services rendered in accordance with a method of healing include, but are not limited to, assessment, diagnosis, comprehensive treatment, long-term care, treatment of underlying conditions that affect the treatment of the victimization injury, medication (prescription, non-prescription, prophylactic), and forensic sexual assault examinations and related expenses.

State has the meaning set forth in 34 U.S.C. 20102(d), which ''includes the District of Columbia, the Commonwealth of Puerto Rico, the United States Virgin Islands, and any other possession or territory of the United States [*e.g.,* Guam].'' References to ''States'' generally should be understood to refer to States' crime victim compensation program administering agencies (commonly referred to as ''State administering agencies''), unless the context should indicate otherwise.

Supplant means to reduce State funds deliberately, because of the existence of Federal funds. See section 94.213 of this subpart for considerations specific to this program.

Survivor of a victim means a person with a sufficiently close relationship (as determined by the State compensation program) to a victim to be considered

for compensation in circumstances where the victim has died.

Training costs include, but are not limited to, training of program personnel on functions necessary for the crime victim compensation program; and training of persons and entities outside of the victim compensation program (*e.g.,* victim services providers, criminal justice personnel, and health, mental health, and social services providers) about the crime victim compensation program.

§ 94.206 [RESERVED]

§ 94.207 [RESERVED]

§ 94.208 [RESERVED]

§ 94.209 [RESERVED]

§ 94.210 [RESERVED]

Program Requirements

§ 94.211 Eligibility of the Compensation Program.

The Federal grant-award recipient must meet the eligibility criteria in 34 U.S.C. 20102(b), as implemented by this subpart. A compensation program is entitled to a grant award under this subpart only after it has awarded benefits that can be matched under VOCA. VOCA funding may not be used as start-up funds for a new State compensation program. If a State chooses to administer its compensation program in a decentralized fashion, the State remains accountable to the Federal awarding agency for expenditure of these funds.

§ 94.212 Payments and Certification of Payments.

(a) *Use of award funds for payments.* A State may use VOCA compensation grant funds to make compensation payments for mandatorily compensable expenses and optionally compensable expenses.

(b) *Certifiable payments.* A State may certify compensation payments for—

(1) mandatorily compensable expenses; and

(2) optionally compensable expenses, except that property damage expenses may be certified only if they are *certifiable property damage expenses.*

(c) *Certification of payment for dental services and devices.* A State may, pursuant to State policy, establish a presumption that the expenses of dental services and devices under a State-defined threshold are attributable to a physical injury resulting from a compensable crime, and make payments from VOCA funds (and certify payments) for such expenses, pursuant to such presumption.

§ 94.213 Promotion of Victim Cooperation with Reasonable Requests of Law Enforcement.

(a) *In general.* As of the effective date of this rule, 34 U.S.C. 20102(b)(2)) requires crime victim compensation programs to ''promote[ ] victim cooperation with the reasonable requests of law enforcement authorities, except if a program determines that such cooperation may be impacted due to a victim's age, physical condition, psychological State, cultural or linguistic barriers, or any other health or safety concern that jeopardizes the victim's wellbeing.''

(b) *Policy on exceptions required if victim bears evidentiary burden.* For purposes of meeting the statutory eligibility threshold for promoting victim cooperation with the reasonable requests of law enforcement—

(1) A State is not required to document, or require a victim to submit documentation of, a crime report, evidence of a medical evidentiary examination, or any other similar information.

(2) A State may not require a victim to demonstrate cooperation with law enforcement unless it has a written policy in effect that addresses its application of the exceptions to promotion of victim cooperation that are set out in 34 U.S.C. 20102(b) (*e.g.,* specifying when it will provide alternative methods for victims to demonstrate cooperation or will dispense with the requirement).

(c) *Demonstrating compliance.* A State may show that it promotes cooperation with the reasonable requests of law enforcement authorities by using any reasonable means the State may determine to be appropriate to promote such cooperation, including any of the following:

(1) Having a policy of encouraging victims to report the crime to law enforcement or other appropriate entity (*e.g.,* protective services, university security), subject to the victim-wellbeing exceptions set forth in paragraph (a) of this section;

(2) Providing victims with information or services (or referring such victims to the same) to assist them in reporting to law enforcement or other appropriate entity;

(3) Accepting a victim's description of efforts to notify or cooperate with law enforcement or other appropriate entity (where evidence of victim's cooperation with law enforcement is a State program requirement); or

(4) Accepting a crime report to law enforcement or other appropriate entity, or documentation of an evidentiary or non-evidentiary medical examination indicating the occurrence of a crime (where evidence of victim cooperation with law enforcement is a State program requirement).

§ 94.214 Nonsupplantation of State Funds.

(a) *In general.* States must make the certifications under 34 U.S.C. 20102(b)(3) (regarding not supplanting State funds for compensation) and 20110(h) (regarding not supplanting State administrative funds for compensation), as a condition of accepting a VOCA Compensation grant.

(b) *Supplanting considerations.* Expenditure of VOCA funds received based on State certified compensation payments from previous years does not constitute supplantation. A decrease in State commitment to the compensation program (*e.g.,* a decrease in the number of State-supported staff positions) is not supplanting, where the decrease is part of broad or across-the-board budget restrictions at the State level or is a return to a prior baseline level after temporary increase. States must maintain documentation on the overall administrative commitment of the State prior to their use of VOCA administrative grant funds.

§ 94.215 Engagement with American Indian and Alaskan Native Tribes.

A State with one federally recognized American Indian and Alaskan Native tribe (or more) within its geographical boundaries must have a written policy in effect regarding how the State will engage with the same for purposes of compensation under this subpart. Such policy must (at a minimum) set forth a plan for conducting outreach efforts to inform tribal communities about the compensation program and for providing compensation for culturally appropriate expenses and services.

§ 94.216 [RESERVED]

§ 94.217 [RESERVED]

§ 94.218 [RESERVED]

§ 94.219 [RESERVED]

§ 94.220 [RESERVED]

Victim Eligibility Considerations

§ 94.221 Residency and Place of Crime.

(a) *Nonresidents.* A State must provide compensation to nonresidents of the State, as provided in 34 U.S.C. 20102(b)(4).

(b) *Residents victimized outside of the State.* A State must provide compensation to its residents who are victims of crimes occurring outside of the State, as provided in 34 U.S.C. 20102(b)(6). A State may, but is not required to, compensate its residents

who are victims of international terrorism occurring outside of the United States (see 18 U.S.C. 2331(1)).

(c) *Federal immigration status.* Nothing in this subpart shall be understood to require or authorize a State to consider the Federal immigration status of a victim (or of a survivor of a victim) in determining eligibility for crime victim compensation.

§ 94.222 Criminal History and Delinquent Payments.

(a) *Criminal History.* A State may not deny compensation because of a victim's or survivor's incarceration, probation, or parole status, prior criminal history, or sentence.

(b) *Delinquent Fines, Penalties, or Restitution.* A State may deny compensation to the extent that a victim is delinquent in paying a criminal fine, penalty, or restitution.

(c) *Federal Delinquent Fines, Penalties, or Restitution.* As of the effective date of this rule, States are not required to check whether a compensation recipient is delinquent in paying a Federal criminal fine, -penalty, or -restitution before making a compensation payment. *See* Public Law 104–132, title II, sec. 234(a)(2), April 24, 1996, 110 Stat. 1245 (delaying implementation of the requirement in 34 U.S.C. 20102(b)(8)).

§ 94.223 Contributory Conduct.

(a) *In general.* A State may not deny or reduce claims on the basis of a victim's alleged contributory conduct, except pursuant to paragraph (b).

(b) *Exceptional cases.* In exceptional and specific cases, a State may deny or reduce claims on the basis of a victim's alleged contributory conduct, provided that—

(1) The victim's alleged contributory conduct was not the result of criminal force, fraud, or coercion (*e.g.,* human trafficking); and

(2) The State has a publicly available written policy in effect that (at a minimum) sets forth the standard of review, the review process, and an appeal process for any such denials or reductions.

§ 94.224 Familial Relationship or Shared Residence with Offender (Unjust Enrichment).

(a) *In general.* States must comply with the limitation on the denial of compensation based on family relationship or sharing of a residence with the offender, set forth in 34 U.S.C. 20102(b)(7) (limiting such denials except pursuant to State rules to prevent unjust enrichment of the offender).

(b) *Unjust enrichment.* A State may not deny compensation based on a victim's familial relationship or shared residence with an offender unless it has, in effect, a law, rule, or written policy that addresses unjust enrichment. Such law, rule, or written policy may not prohibit compensation where there is only de minimis benefit to the offender, and it may provide exceptions for the wellbeing of the victim (*e.g.,* by allowing compensation when collateral sources of payment from an offender are not reasonably available, or where the State has the option of seeking subrogation from the offender).

§ 94.225 Victim Application Provisions.

(a) *Waiver of filing deadline for delayed testing of, or DNA profile matching from, certain sexual offense evidence.* States must provide a waiver for application filing deadlines, pursuant to the requirements of 34 U.S.C. 20102(a)(9).

(b) *Notary requirements prohibited.* No State may require applicants to provide a notarized signature to complete the State's initial application for compensation. States are not prohibited from requiring notarized signatures for specific application documents, where appropriate.

§ 94.226 [RESERVED]

§ 94.227 [RESERVED]

§ 94.228 [RESERVED]

§ 94.229 [RESERVED]

§ 94.230 [RESERVED]

Relationship to Collateral Sources of Payment

§ 94.231 Coordination.

In order to promote mutual understanding of eligibility requirements, application processing, timelines, and other program specific requirements, States must coordinate with, and provide appropriate referrals to, other programs that provide financial assistance and services to crime victims, whether funded by Federal, State or local Governments, to facilitate victim access to resources. Examples of such programs include workers' compensation, vocational rehabilitation, and VOCA victim assistance subgrantee programs.

§ 94.232 Means Testing.

OVC understands the provision at 34 U.S.C. 20102(c) (generally prohibiting other programs from counting victim compensation payments for purposes of means testing, except for the 9/11 Victim Compensation Fund), in its reference to ''any amount of crime victim compensation that the applicant receives through a crime victim compensation program under this section'' to refer to both State and federally funded victim compensation payments.

§ 94.233 Payor of Last Resort.

(a) *Exceptions.* A State may make exceptions to the payor of last resort requirement in 34 U.S.C. 20102(e) (which requires the State compensation program (whether using VOCA funds or State funds for payments) to be the payor of last resort with regard to most Federal or federally financed programs) for victim needs that would not adequately be met by collateral sources that normally are required to pay first (*e.g.,* collateral source not reasonably available due to delay, coverage, or other reasons).

(b) *No requirement for victims to apply for or use collateral sources.* States are not required to have victims apply for, or use, other Federal or federally funded programs, or private insurance, private donations, or crowdfunding, prior to making a compensation payment.

§ 94.234 Private Donations and Crowdfunding.

States may not consider private donations (*e.g.,* crowdfunding) as collateral sources for mandatorily or optionally compensable expenses, except under extenuating circumstances (*e.g.,* large incidents, mass violence, high-profile incidents), as determined by the State.

§ 94.235 [RESERVED]

§ 94.236 [RESERVED]

§ 94.237 [RESERVED]

§ 94.238 [RESERVED]

§ 94.239 [RESERVED]

§ 94.240 [RESERVED]

Program Administration

§ 94.241 Grant Award Period of Performance.

Victim compensation grants are awarded annually and are available during the timeframe set forth in 34 U.S.C. 20101(e) (the Federal fiscal year of award plus three fiscal years). A States may use grant award funds to pay compensation claims paid during the grant award period of performance (including reimbursement for claims paid during that period but prior to award), unless otherwise restricted by the terms of the award. OVC will consider period of performance extension requests on a case-by-case

basis (approval of a request is subject to the discretion of the Assistant Attorney General for OJP), pursuant to request procedures set forth in the DOJ Grants Financial Guide, or procedures otherwise specified by OVC from time-to-time.

§ 94.242 Application for Annual Grant.

OVC issues an annual notice of funding opportunity (solicitation of application) to States that describes how to apply for the grant. The application must be submitted in the form and manner, and by the deadlines, prescribed by OVC. OVC may deny a non-compliant application.

§ 94.243 Process for State Certification of Compensation Payments.

(a) *Manner of certification.* A State shall provide to OVC the information required by OVC and shall do so in such form and manner as OVC may specify from time-to-time, to run the allocation formula in 34 U.S.C. 20102(a). OVC, as of the effective date of this rule, requires this information to be reported annually on a Federal fiscal year basis via its Victim Compensation Certification form.

(b) *State policy for certification.* A State must have a written policy regarding completion and submission of the Victim Compensation Certification form. Such policy must (at a minimum) set forth the steps to complete the form, the data sources the State uses to populate the form, and the review process for approval of the form.

§ 94.244 Recoupment of Compensation Payment Recovery Costs.

States may report certain recovery costs to OVC, as provided in the Victim Compensation Certification form, to be treated as (and added to) the amount of certified compensation payments for purposes of calculating the State's VOCA Victim Compensation grant.

§ 94.245 Incorrect Certifications.

(a) *Over-certification.* If a State over-certifies compensations payments to crime victims (resulting in a grant amount that is more than the statutory allocation), the necessary steps will be taken by OVC to recover funds that were awarded in error. OVC (in its discretion) may offset the excess amount against prior or subsequent year under-certifications, or against future awards, or implement other remedies as appropriate.

(b) *Under-certification.* If a State under-certifies compensation payments to crime victims (resulting in a grant amount that is less than the statutory allocation), OVC ordinarily will not award supplemental funds to the State to correct the State's error, as this typically would require recalculating allocations to every State VOCA compensation and assistance program and would be administratively burdensome. OVC (in its discretion) may offset the lower amount against prior or subsequent year over-certifications, add it to future awards, or implement other remedies as appropriate.

§ 94.246 Sources of Payments to Crime Victims.

A State is not required to identify the source of individual payments to crime victims as either Federal or State funds, or to track restitution recoveries or other refunds to Federal or State funds paid out to the victim. States are required (at a minimum) to allocate aggregate payment amounts to Federal or State funding for annual reporting.

§ 94.247 Reporting.

A State shall submit such reports for grants awarded under this program as OVC may require from time-to-time.

§ 94.248 Access to Records.

A State shall, upon request, and consistent with 2 CFR 200.337 (protecting true names of victims), provide OJP (and other Federal agencies responsible for grant monitoring, audit, or investigation) with access to all records related to the use of grant awards under this subpart.

§ 94.249 Discrimination Prohibited.

(a) *DOJ rules apply.* The VOCA non-discrimination provisions set out at 34 U.S.C. 20110(e) are implemented for grant awards under this subpart in accordance with 28 CFR part 42.

(b) *OCR guidance.* In complying with VOCA, at 34 U.S.C. 20110(e), as implemented by 28 CFR part 42, and other applicable civil rights requirements, SAAs shall comply with such guidance as may be issued from time-to-time by the OJP Office for Civil Rights.

(c) *Language access.* In connection with grants awarded under this subpart, States shall comply with pertinent Federal civil-rights requirements to provide language access for limited English proficient persons.

§ 94.250 Non-disclosure of Confidential or Private Information.

A State shall comply with the requirements of section 94.115 of subpart B of this Part, applied *mutatis mutandis* to grants awarded under this subpart.

Administrative and Training Costs

§ 94.251 Administrative and Training Cost Allowance.

(a) *Notification.* Within the limit provided in 34 U.S.C. 20102(a)(4), a State may use VOCA Compensation grant funds for training purposes or administration of the State crime victim compensation program but must notify OVC of its decision to do so, either at the time of application for the VOCA grant or within thirty days of such decision. If VOCA funding will be used for administration, the State shall follow the rules in sec. 94.213 of this subpart, and submit the certification required by 34 U.S.C. 20110(h), regarding supplantation.

(b) *Records.* States shall maintain sufficient records to substantiate expenditure of VOCA funds for training or administration and are required (in performance reporting) to describe the use and effect of these funds on the State victim compensation program.

§ 94.252 Allowable Administrative and Training Costs.

States may use the VOCA Compensation administrative and training cost allocation for a broad variety of costs reasonably necessary and allocable to administrative and training needs of the State crime victim compensation program. The State crime victim compensation program encompasses both State-funded and federally funded compensation payments and activities under that program. All charges to the VOCA grant for administrative and training costs must be reasonably allocable to the period of performance under the grant award to which they are charged and in proportion to their benefit to the State victim compensation program under the generally applicable government-wide allocation rules in 2 CFR part 200. VOCA funds used for training may be used only for training activities that occur within the award period of performance for the grant award to which they are charged, and all funds for training charged to that grant award must be obligated prior to the end of that period of performance.

Dated: January 31, 2024.

Amy Solomon,

Assistant Attorney General, Office of Justice Programs.

[FR Doc. 2024–02230 Filed 2–2–24; 8:45 am]

BILLING CODE 4410–18–P

SELECTIVE SERVICE SYSTEM

32 CFR Part 1665

RIN 3240–AA05

Privacy Act Procedures

AGENCY: United States Selective Service System.

ACTION: Proposed rule.

SUMMARY: The Selective Service System (SSS) proposes the following revisions to its Privacy Act Procedure regulations to ensure processes and procedures for requesting access and amendments to records by electronic means and appeals from denials of request for access to or amendments of records is clearly spelled out within the SSS regulations.

DATES: Comments must be received 60 days from publication date.

ADDRESSES: You may submit comments identified by docket number and/or Regulatory Information Number (RIN) number and title by email to *federalregisterliaison@sss.gov,* or by mail to: Selective Service System, Federal Register Liaison, 1501 Wilson Boulevard, Suite 700, Arlington, VA 22209.

Instructions: All submissions received must include the agency name and docket number or RIN 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 *https://www.regulations.gov* as they are received without change, including any personal identifiers or contact information.

FOR FURTHER INFORMATION CONTACT: Ms. Kelly Cramer, Office of the General Counsel, 703–605–4069, *kcramer@sss.gov.*

SUPPLEMENTARY INFORMATION:

A. Summary of New Regulatory Provisions and Their Impact

The revision to 32 CFR part 1665 adds clarity for how to make online inquiries, and how inquiries will be processed, allows for electronic requests, and makes several stylistic and grammatical changes.

B. Background and Legal Basis for This Rule

The Housekeeping Statute, 5 U.S.C. 301, authorizes agency heads to promulgate regulations governing ''the custody, use, and preservation of its records, papers, and property.'' The Privacy Act is a Federal statute that establishes a Code of Fair Information Practice that governs the collection, maintenance, use, and dissemination of personally identifiable information about individuals that is maintained in systems of records by Federal agencies. A system of records is a group of records under the control of an agency from which information is retrieved by the name of the individual or by some identifier assigned to the individual. The Privacy Act requires that agencies give the public notice of their systems of records by publication in the **Federal Register**.

The Privacy Act prohibits the disclosure of information from a system of records absent the written consent of the subject individual unless the disclosure is pursuant to one of 12 statutory exceptions. The Act also provides individuals with a means by which to seek access to and amendment of their records and sets forth various agency record-keeping requirements. Additionally, with people granted the right to review what was documented with their name, they are also able to find out if the ''records have been disclosed'' and are also given the right to make corrections. The Privacy Act also provides an avenue for appeal from denials of request for access to or amendment of records. This new rule amends part 1665 to ensure processes and procedures for appeals from denials of request for access to or amendments of records is clearly spelled out within the SSS regulations.

C. Expected Impact of the Final Rule

This proposed rule will not impose any new costs. These regulations will clarify and streamline appeals from denials of request for access to or amendment of records. This revision will produce efficiency and uniformity to the public's benefit.

D. Executive Order (E.O.) 12866, ''Regulatory Planning and Review,'' E.O. 13563, ''Improving Regulation and Regulatory Review,'' and Congressional Review Act (5 U.S.C. 801–08)

E.O.s 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, distribute impacts, and equity). E.O. 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. Following the requirements of these EOs, the Office of Management and Budget (OMB) has determined that this final rule is not a significant regulatory action under section 3(f) of E.O. 12866 nor a ''major rule'' as defined by 5 U.S.C. 804(2).

E. Public Law 96–354, ''Regulatory Flexibility Act'' (5 U.S.C. 601)

SSS certifies that this proposed rule is not subject to the Regulatory Flexibility Act, 5 U.S.C. 601, because it would not have a significant economic impact on a substantial number of small entities. Therefore, the Regulatory Flexibility Act, as amended, does not require SSS to prepare a regulatory flexibility analysis.

F. Section 202 of Public Law 104–4, ''Unfunded Mandates Reform Act'' (2 U.S.C. 1532)

Section 202 of the Unfunded Mandates Reform Act of 1995, 2 U.S.C. 1532, requires agencies to assess anticipated costs and benefits before issuing any rule whose mandates require the expenditure of $100 million or more (in 1995 dollars, adjusted annually for inflation) in any one year. This proposed rule will not mandate any requirements for state, local, or tribal governments, nor will it affect private sector costs.

G. Public Law 96–511, ''Paperwork Reduction Act'' (44 U.S.C. Chapter 35)

It has been determined that 32 CFR part 1665 does not impose reporting or recordkeeping requirements under the Paperwork Reduction Act.

H. Congressional Review Act

A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This rulemaking is not a major rule under 5 U.S.C. 801.

I. E.O. 13132, ''Federalism''

E.O. 13132 establishes certain requirements that an agency must meet when it promulgates a proposed rule (and subsequent final rule) that imposes substantial direct requirement costs on State and local governments, preempts State law, or otherwise has federalism implications. This proposed rule will not have a substantial effect on State and local governments.

J. Compliance With Pay-As-You-Go Act of 2023 (Fiscal Responsibility Act of 2023, Pub. L. 118–5, Div. B, Title III)

In accordance with Compliance with Pay-As-You-Go Act of 2023 (Fiscal Responsibility Act of 2023, Pub. L. 118–5, div. B, title III) and OMB Memorandum (M–23–21) dated September 1, 2023, SSS has determined that this proposed rule is not subject to the Act because it will not increase direct spending beyond specified thresholds.

K. E.O. 11623, Delegation of Authority & Coordination Requirements

In E.O. 11623, the President delegated to the Director of Selective Service the authority to prescribe the necessary rules and regulations to carry out the provisions of the Military Selective Service Act. In carrying out the provisions of E.O. 11623, as amended by E.O. 13286, the Director shall request the views of the Secretary of Defense, the Attorney General, the Secretary of Labor, the Secretary of Health, Education, and Welfare, the Secretary of Homeland Security (when the Coast Guard is serving under the Department of Homeland Security), the Director of the Office of Emergency Preparedness, and the Chairman of the National Selective Service Appeal Board with regard to such proposed rule or regulation, and shall allow not less than 10 days for the submission of such views before publication of the proposed rule or regulation. On January 24, 2024, the SSS completed its coordination requirements, and the Director certifies that he has requested the views of the officials required to be consulted pursuant to subsection (a) of E.O. 11623, considered those views, and, as appropriate, incorporated those views in these regulations, and that none of them has timely requested that the matter be referred to the President for decision.

List of Subjects in 32 CFR Part 1665

Privacy, Personally identifiable information, Procedural rules.

For the reasons stated in the preamble, SSS proposes to amend 32 CFR part 1665 as set forth below:

PART 1665—PRIVACY ACT PROCEDURES

■ 1. The authority citation for part 1665 is revised to read as follows:

Authority: 50 U.S.C. 3801 *et seq.;* and 5 U.S.C. 552a.

■ 2. Amend § 1665.1 by:

■ a. Revising paragraph (a);

■ b. Removing paragraph (b); and

■ c. Redesignating paragraphs (c) and (d) as paragraphs (b) and (c), respectively.

■ d. In newly redesignated paragraph (b):

■ i. Removing the words ''Ordinarily, the requester will'' and adding in their place the words ''For requesters who make a hand-written request for USPS delivery or electronic request for information to SSS, will ordinarily'' in the first sentence;

■ ii. Adding the word ''of'' after the word ''informed'' in the first sentence; and

■ e. In newly redesignated paragraph (c), removing the word ''the'' before the words ''10 days'' in the first sentence.

The revision reads as follows:

§ 1665.1 Rules for determining if an individual is the subject of a record.

(a) Individuals desiring to know if a specific system of records maintained by the Selective Service System (SSS) contains a record pertaining to them should address their inquiries in writing or by electronic means to the Selective Service System, ATTN: Records Manager, Public and Intergovernmental Affairs Directorate, Arlington, VA 22209–2425. Online inquiries in English and Spanish may be made at: Contact Us | Selective Service System: Selective Service System (*sss.gov*) or by email using *PrivacyAct@sss.gov.* The written or electronic inquiry should contain the following information: name and address of the requester, email address of subject (for electronic requests only), identity of the systems of records, and nature of the request. It should also include identifying information specified in the applicable SSS System of Record Notices to assist in identifying the request, such as location of the record, if known, full name, birth date, time periods in which the records are believed to have been complied, etc. SSS Systems of Record Notices subject to the Privacy Act is in the **Federal Register** and copies of the notices will be available upon request to the records manager. A compilation of such notices will also be made and published by the Office of Federal Register, in accord with 5 U.S.C. 552a(f). Requesters seeking copies of their registration records with the SSS may first seek to obtain their registration number and related information by visiting *https://www.sss.gov/verify/* and making the request. To make this request, the individual must provide their last name, social security number and date of birth when completing the required fields to access their registration information online. For other documentation requests such as for a registration Status of Information Letter (SIL), the individual must make the request electronically or in writing and send via the United States Postal Service (USPS).

* * * * *

§ 1665.2 [Amended]

■ 3. Amend § 1665.2 by:

■ a. In paragraph (a):

■ i. Adding the words ''or electronic'' after the words ''Requirement for written'' in the paragraph heading; and

■ ii. Adding the words ''or electronically (as specified in § 1665.1(a)) after the words ''request in writing'' in the first sentence.

§ 1665.4 [Amended]

■ 4. Amend § 1665.4 by:

■ a. In paragraph (a):

■ i. Adding the words ''or electronic'' after the words ''Requirement for written'' in the paragraph heading; and

■ ii. Adding the words ''or electronically (as specified in § 1665.1(a))'' after the words ''request in writing'' in the first sentence.

■ 5. Amend § 1665.5 by:

■ a. Revising the section heading;

■ b. Removing the words ''request for review'' and adding in their place the word ''appeal'' wherever it appears;

■ c. Revising paragraphs (a) and (d); and

■ d. Adding paragraphs (e) and (f).

The revisions and additions read as follows:

§ 1665.5 Appeals.

(a) If the requester is dissatisfied with the SSS response, the requester can appeal an adverse determination denying the request to the appellate authority listed in the notification of denial letter. The appeal must be made in writing or electronically (as specified in § 1665.1(a)), and it must be postmarked (or sent by email) within 60 calendar days of the date of the letter denying the initial request for records or amendment of information. The appeal should include a copy of the SSS determination (including the assigned request number, if known). For the quickest possible handling, the appeal whether in writing or by email should specify that it is a ''Privacy Act Appeal.'' If the requester is dissatisfied with the SSS response, the requester can appeal an adverse determination denying an initial request to access or amend a record in accordance with the provisions of §§ 1665.2 and 1665.4. The requester should submit the appeal in writing or electronically (as specified in § 1665.1(a)) and, to the extent possible, include the information specified in paragraph (b) of this section. Individuals desiring assistance in the preparation of their appeal should contact the records manager at the address provided herein.

* * * * *

(d) The appellant will be notified of the decision on his or her appeal in writing or by email within 20 days (excluding Saturdays, Sundays, and legal Federal holidays) from the date of receipt by SSS of the individual's request for review unless the *appeal authority* extends the 20 days period for good cause. The extension and the reasons therefore will be sent by SSS to

the requester within the initial 20-day period. Such extensions should not be routine and should not normally exceed an additional 30 days. If the decision affirms the adverse determination in whole or in part, the notification will include a brief statement of the reason(s) for the affirmation, including any exemptions applied, and will inform the appellant of the Privacy Act provisions for judicial review of the appellate authority's decision, a description of the steps the individual may take to obtain judicial review of such a decision, a statement that the individual may file a concise statement with SSS setting forth the individual's reasons for his disagreement with the decision, and the procedures for filing such a statement of disagreement. The Director of Selective Service has the authority to determine the *conciseness* of the statement, *considering* the scope of the disagreement and the complexity of the issues. Upon the filing of a proper, concise statement by the individual, any subsequent disclosure of the information in dispute will be clearly noted so that the fact that the record is disputed is apparent, which shall include a copy of the concise statement furnished and a concise statement by SSS setting forth its reasons for not making the requested changes, if SSS chooses to file such a statement. A notation of a dispute is required to be made only if an individual informs SSS of their disagreement with its determination in accordance with paragraphs (a) through (c) of this section. A copy of the individual's statement, and if it chooses, SSS's statement will be sent to any prior transferee of the disputed information who is listed on the accounting required by 5 U.S.C. 552a(c). If the reviewing official determines that the record should be amended in accord with the individual's request, SSS will promptly correct the record, advise the individual, and inform previous recipients if an accounting of the disclosure was made pursuant to 5 U.S.C. 552a(c). The notification of correction pertains to information actually disclosed. If the adverse determination is reversed or modified, in whole or in part, the appellant will be notified in writing of this decision and the request will be reprocessed in accordance with that appeal decision.

(e) In order to seek a judicial review of a denial of a request for access to records, a requester must first file an appeal under this section.

(f) An appeal ordinarily will not be acted on if the request becomes a matter of litigation.

■ 6. Amend § 1665.6 by revising paragraph (c)(3) to read as follows:

§ 1665.6 Schedule of fees.

* * * * *

(c) * * *

(3) Remittance shall be in the form of cash, a personal check or bank draft drawn on a bank in the United States, or postal money order. Remittances shall be made payable to the order of the Selective Service System and mailed or delivered to the records manager, Selective Service System, 1501 Wilson Blvd., Suite 700, Arlington, VA 22209.

* * * * *

■ 7. Amend § 1665.7 by revising the section heading and paragraphs (a) and (b) and removing paragraph (c) to read as follows:

§ 1665.7 Information available to the public or to those seeking confirmation of SSS registration status to convey benefits related to registration.

(a) SSS maintains a record which contains the name, Selective Service number, and registration status of those that have registered with SSS.

(b) Any compensated employee of SSS may disclose to an entity seeking to convey a benefit related to SSS registration status by law whether the individual has or has not registered with SSS.

■ 8. Revise § 1665.8 to read as follows:

§ 1665.8 Systems of records exempted from certain provisions of this act.

The SSS will not provide requesters information exempt from disclosure pursuant to 5 U.S.C. 552a(k), (*e.g.,* the SSS will not reveal to the suspected violator the informant's name or other identifying information relating to the informant).

These proposed regulations were reviewed and approved by Joel C. Spangenberg, Acting Director of Selective Service.

Daniel A. Lauretano, Sr.,

Selective Service System General Counsel & Federal Register Liaison Officer.

[FR Doc. 2024–02119 Filed 2–2–24; 8:45 am]

BILLING CODE 8015–01–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R03–OAR–2023–0565; FRL–11415–01–R3]

Air Plan Approval; Pennsylvania; Allegheny County Open Burning Revision and Addition of Mon Valley Air Pollution Episode Requirements

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The Environmental Protection Agency (EPA) is proposing to approve a state implementation plan (SIP) revision submitted by the Pennsylvania Department of Environmental Protection (PADEP) on behalf of the Allegheny County Health Department (ACHD). The SIP submission requests EPA to incorporate into the Pennsylvania SIP particulate matter emission mitigation requirements for industry operating in the portion of Allegheny County known as the ''Mon Valley'' during weather-related pollution episodes. It also amends a portion of Allegheny County's open burning regulation, which was previously incorporated into Pennsylvania's SIP. This action is being taken under the Clean Air Act (CAA).

DATES: Written comments must be received on or before March 6, 2024.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–R03–OAR–2023–0565 at *www.regulations.gov,* or via email to *gordon.mike@epa.gov.* For comments submitted at *Regulations.gov*, follow the online instructions for submitting comments. Once submitted, comments cannot be edited or removed from *Regulations.gov*. For either manner of submission, EPA may publish any comment received to its public docket. Do not submit electronically any information you consider to be confidential business information (CBI) or other information whose disclosure is restricted by statute. Multimedia submissions (audio, video, etc.) must be accompanied by a written comment. The written comment is considered the official comment and should include discussion of all points you wish to make. EPA will generally not consider comments or comment contents located outside of the primary submission (*i.e.* on the web, cloud, or other file sharing system). For additional submission methods, please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section. For the full EPA public comment policy, information about CBI or multimedia

submissions, and general guidance on making effective comments, please visit *www.epa.gov/dockets/commenting-epa-dockets.*

FOR FURTHER INFORMATION CONTACT: Ellen Schmitt, Planning & Implementation Branch (3AD30), Air & Radiation Division, U.S. Environmental Protection Agency, Region III, 1600 John F Kennedy Boulevard, Philadelphia, Pennsylvania 19103. The telephone number is (215) 814–5787. Ms. Schmitt can also be reached via electronic mail at *schmitt.ellen@epa.gov.*

SUPPLEMENTARY INFORMATION: EPA received a SIP submission from ACHD on August 23, 2023 requesting that EPA incorporate into Pennsylvania's SIP, revisions to ACHD Air Pollution Control Rules and Regulations in Article XXI. These revisions include amendments to section 2105.50 regarding open burning, and adding new section 2106.06, which focuses on mitigating particulate matter air pollution episodes in the Mon Valley.

I. Background

EPA's particulate matter national ambient air quality standards (NAAQS) address particles with diameters that are generally two and half micrometers or smaller (fine particulate matter or $PM_{2.5}$) and particles with diameters that are generally 10 micrometers or smaller (coarse particulate matter or PM_{10}). On July 1, 1987, EPA promulgated two primary standards for PM_{10}: A 24-hour (daily) standard of 150 micrograms per cubic meter (μg/m³) and an annual standard of 50 μg/m³. EPA also promulgated secondary PM_{10} standards that were identical to the primary standards.[1] On October 17, 2006 (71 FR 61144),[2] EPA revoked the annual PM_{10} standards but retained the 24-hour standards.

On July 18, 1997 (62 FR 38652), EPA revised the NAAQS for particulate matter to add new standards for $PM_{2.5}$, establishing primary and secondary annual and 24-hour standards.[3] The annual standard was set at 15.0 μg/m³ based on a 3-year average of annual mean $PM_{2.5}$ concentrations, and the 24-hour standard was set at 65 μg/m³ based on the 3-year average of the annual 98th percentile values of 24-hour $PM_{2.5}$ concentrations at each population-oriented monitor within an area.[4]

On October 17, 2006 (71 FR 61144), EPA retained the annual average $PM_{2.5}$ NAAQS at 15.0 μg/m³ but lowered the level of the 24-hour $PM_{2.5}$ NAAQS to 35 μg/m³ based on a 3-year average of the annual 98th percentile values of 24-hour concentrations.[5]

On December 14, 2012, EPA promulgated the 2012 $PM_{2.5}$ NAAQS, including lowering the annual standard to 12.0 μg/m³ based on a 3-year average of annual mean $PM_{2.5}$ concentrations. EPA maintained the 24-hour standard of 35 μg/m³ based on a 3-year average of the 98th percentile of 24-hour concentrations.[6] Allegheny County was designated as nonattainment for the 2012 $PM_{2.5}$ NAAQS.[7] Since the 2012 $PM_{2.5}$ NAAQS designation, monitors within Allegheny County have periodically recorded exceedances[8] of the 24-hour $PM_{2.5}$ NAAQS. According to ACHD, many of these exceedances have occurred during lengthy temperature inversions which trap pollutants closer to the earth's surface.[9]

II. Summary of SIP Revision and EPA Analysis

On August 23, 2023, EPA received from PADEP, a SIP submission that pertains to proposed revisions to the Allegheny County portion of the Pennsylvania SIP. The submission seeks to incorporate into Pennsylvania's SIP a new section (2106.06, Mon Valley Air Pollution Episode) to Allegheny County Article XXI, which focuses on mitigating particulate matter air pollution episodes in the Mon Valley. The August 2023 submission also seeks to incorporate into the Pennsylvania SIP related changes to Article XXI, section 2105.50, Open Burning.

Article XXI, section 2106.06, Mon Valley Air Episodes, is aimed at emission mitigation requirements for industry operating in the portion of the county known as the ''Mon Valley'' during weather-related pollution episodes.[10] Section 2106.06 applies to the following sources located within the prescribed Mon Valley Pollution Episode Area: (1) all major and synthetic minor sources of $PM_{2.5}$;[11] (2) all sources that have combined allowable emissions from all emissions units of 6.5 tons or more per year of $PM_{2.5}$; and (3) all sources that have combined allowable emissions from all emission units of 10 tons per year of PM_{10}.[12]

Section 2106.06 requires applicable sources to submit a mitigation plan to reduce particulate matter emissions for review and approval by ACHD.[13] Each applicable source's mitigation plan must include a Mon Valley Air Pollution Watch Phase and a Mon Valley Air Pollution Warning Phase, that the source must be prepared for and follow. A Mon Valley Air Pollution Watch shall be issued by ACHD if ''the air quality forecast for at least the next 24-hour period atmospheric conditions will exist

[1] 52 FR 24634 (July 1, 1987). Effective July 31, 1987.

[2] Effective December 18, 2006.

[3] In this same action, EPA revised the form of the 24-hour PM_{10} standard to be based on the 3-year average of the 99th percentile of 24-hour PM_{10} concentrations at each monitor within an area.

[4] The primary and secondary standards were set at the same level for both the 24-hour and the annual $PM_{2.5}$ standards.

[5] Under EPA regulations at 40 CFR part 50, the primary and secondary 2006 24-hour $PM_{2.5}$ NAAQS are attained when the annual arithmetic mean concentration, as determined in accordance with 40 CFR part 50, appendix N, is less than or equal to 35 μg/m³ at all relevant monitoring sites in the subject area, averaged over a 3-year period.

[6] December 14, 2012 is the signature date of the action. The action was published in the **Federal Register** on January 15, 2013 with an effective date of March 18, 2013. See 78 FR 3086.

[7] 80 FR 2206 (January 15, 2015) and 80 FR 18535 (April 7, 2015). For the 1987 p.m.$_{10}$ NAAQS, a portion of Allegheny County was designated as nonattainment. The area has since been redesignated to attainment. 68 FR 53515 (September 11, 2003). The PM_{10} area is comprised of the Boroughs of Liberty, Lincoln, Port Vue, and Glassport and the City of Clairton in Allegheny County, Pennsylvania.

[8] An exceedance is determined by an air quality measurement at a specific monitor at a specific time. Since the 2012 $PM_{2.5}$ NAAQS design value is a three-year average of the 98th percentile, an exceedance at a monitor does not equal a violation.

[9] See August 23, 2023 SIP submission which can be found in the docket for this proposed rulemaking. Page 7.

[10] Section 2106.06(d) defines the Mon Valley Air Pollution Episode Area as including the following municipalities: City of Clairton, City of Duquesne, City of McKeesport, Borough of Braddock, Borough of Braddock Hills, Borough of Chalfant, Borough of Dravosburg, Borough of East McKeesport, Borough of East Pittsburgh, Borough of Elizabeth, Borough of Forest Hills, Borough of Glassport, Borough of Jefferson Hills, Borough of Liberty, Borough of Lincoln, Borough of Munhall, Borough of North Braddock, Borough of Port Vue, Borough of Rankin, Borough of Swissvale, Borough of Turtle Creek, Borough of Versailles, Borough of Wall, Borough of West Elizabeth, Borough of West Mifflin, Borough of White Oak, Borough of Wilmerding, Borough of Whitaker, Elizabeth Township, Forward Township, North Versailles Township, and Wilkins Township. See the technical support document (TSD) portion of Pennsylvania's August 23, 2023 Mon Valley Air Pollution Episode SIP submission, section 2.2 Extent of Area, to learn more about how ACHD determined the area of focus within Allegheny County. The SIP submission and incorporated TSD are located in the docket for this proposed rulemaking.

[11] Definitions of major source and synthetic minor source can be found in ACHD Article XXI, section 2101.20, Definitions.

[12] ACHD completed an analysis of the composition of $PM_{2.5}$ in the Mon Valley to determine which sources should be applicable to section 2106.06. It was determined that the majority of excess $PM_{2.5}$ in the Mon Valley is primary in nature and caused by point source emissions from within the area. For additional information, see sections 2.3 and 2.4 of ACHD's TSD which is located in the docket for this proposed rulemaking.

[13] According to ACHD, as of October 31, 2023, all currently applicable sources have submitted approved mitigation plans.

which indicate that the 24-hour average ambient concentration of $PM_{2.5}$ in one or more of the Mon Valley municipalities is forecasted to exceed'' the value of the 24-hour $PM_{2.5}$ NAAQS of 35 μg/m³.[14] Pursuant to section 2106.06(e), each source's mitigation plan must include procedures for when a Mon Valley Air Pollution Watch is issued. These procedures are to ensure that equipment is maintained in good working condition, that equipment is operating in a manner consistent with good engineering practice, and that the source has sufficient staff and resources available to implement the Warning Phase within 24 hours of ACHD's notification to the source of a Watch. Sources must also show that they have procedures in place for record keeping and reporting to ACHD during the Watch period.

ACHD shall issue a Mon Valley Air Pollution Warning if during a rolling 24-hour averaging period, an official monitoring station in an applicable municipality exceeds the Mon Valley $PM_{2.5}$ threshold, 35 μg/m³, and ACHD has determined that atmospheric conditions will continue for the next 24-hour period. Each source's mitigation plan must also contain a Warning Phase section which includes measures to reduce $PM_{2.5}$ and PM_{10}, the timeframe for implementing each measure, and an estimate of the $PM_{2.5}$ and PM_{10} emissions reductions during the Mon Valley Air Pollution Warning period.

Additional subsections within 2106.06 outline the following: (f) a submission schedule for the Mitigation Plans; (g) procedures for review and the effective date of the Mitigation Plans; (h) details regarding ACHD's notification of Mon Valley Air Pollution Episodes; (i) termination procedures for Mon Valley Air Pollution Episodes; and (j) clarification that this section does not affect ACHD's authority to issue an Emergency Order under section 2109.05.

To support the reduction of particulate matter pollution during a Mon Valley Air Pollution Watch or Warning, ACHD is also requesting that EPA incorporate into the SIP, ACHD's amendment to Article XXI, section 2105.50, Open Burning, which was previously approved into the Commonwealth's SIP. The amendment clarifies that wood burning activities should not occur in the Mon Valley Episode Area when a Watch or Warning has been issued, with the exception of conducting such burning for the commercial preparation of food.

After review of the August 2023 SIP submission, EPA has determined that the changes to Article XXI are overall SIP strengthening. With the addition of section 2106.06 and the amendment to section 2105.50, Article XXI builds on the protections found under the Federal requirements for air pollution emergency episodes found in 40 Code of Federal Regulations (CFR) part 51, subpart H. While the regulations in 40 CFR part 51, subpart H do not address $PM_{2.5}$ specifically and do not identify a significant harm level or priority classification levels for $PM_{2.5}$, EPA has recommended that states only need to develop contingency plans for those areas that have monitored and recorded 24-hour $PM_{2.5}$ levels greater than 140.4 μg/m³.[15] EPA has evaluated $PM_{2.5}$ regulatory monitoring data in the Mon Valley since 2012 and have confirmed that no values greater than 140.4 μg/m³ have been recorded.

By incorporating Allegheny County Article XXI section 2106.06 into the Pennsylvania SIP, ACHD adds an additional measure by which the county can help control particulate matter emissions in the Mon Valley, with a relatively quick turn-around time. The amendment to section 2105.50 further supports this measure. This revision will support ACHD's efforts to reduce air pollution emissions in order to minimize the impact on public health.[16]

III. Proposed Action

EPA has determined that the SIP submission requesting EPA to incorporate Allegheny County Article XXI section 2106.06 and the amended Article XXI section 2105.50 into the Pennsylvania SIP is SIP strengthening. The proposed revision will assist ACHD in reducing particulate matter air emissions, thereby assisting in the protection of public health in Allegheny County. EPA is proposing to approve into the SIP the August 23, 2023 ACHD submission, as EPA has determined that the addition of Article XXI section 2106.06 and the amendment to Article XXI section 2105.50 is SIP strengthening. EPA is soliciting public comments on the issues discussed in this document. These comments will be considered before taking final action.

IV. Incorporation by Reference

In this document, EPA is proposing to include in a final EPA rule regulatory text that includes incorporation by reference. In accordance with requirements of 1 CFR 51.5, EPA is proposing to incorporate by reference Allegheny County Article XXI section 2106.06 and Article XXI section 2105.50, as described in section II of this preamble. EPA has made, and will continue to make, these materials generally available through *www.regulations.gov* and at the EPA Region III Office (please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section of this preamble for more information).

V. Statutory and Executive Order Reviews

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

- Is not a significant regulatory action subject to review by the Office of Management and Budget under Executive Orders 12866 (58 FR 51735, October 4, 1993) and 13563 (76 FR 3821, January 21, 2011);
- Does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);
- Is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);
- Does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4);
- Does not have federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- Is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
- Is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001); and

[14] Article XXI section 2106.06(c). Article XXI section 2106.06 provides that the ''Mon Valley $PM_{2.5}$ threshold level'' for purposes of defining a Watch and Warning is the value of the primary 24-hour $PM_{2.5}$ NAAQS.

[15] See ''Guidance on SIP Elements Required Under Sections 110(a)(1) and (2) for the 2006 24-hour Fine Particle ($PM_{2.5}$) National Ambient Air Quality Standards,'' William T. Harnett, Director, EPA's Air Quality Policy Division, September 25, 2009. This document can be found in the docket for this action.

[16] Nothing contained in Article XXI section 2106.06 shall impact ACHD's power to issue an Emergency Order pursuant to section 2019.05 of the same Article.

• 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

Executive Order 12898 (Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations, 59 FR 7629, February 16, 1994) directs Federal agencies to identify and address ''disproportionately high and adverse human health or environmental effects'' of their actions on minority populations and low-income populations to the greatest extent practicable and permitted by law. EPA defines environmental justice (E.J.) as ''the fair treatment and meaningful involvement of all people regardless of race, color, national origin, or income with respect to the development, implementation, and enforcement of environmental laws, regulations, and policies.'' EPA further defines the term fair treatment to mean that ''no group of people should bear a disproportionate burden of environmental harms and risks, including those resulting from the negative environmental consequences of industrial, governmental, and commercial operations or programs and policies.''

ACHD did not evaluate environmental justice considerations as part of its SIP submission; the CAA and applicable implementing regulations neither prohibit nor require such an evaluation. EPA did not perform an EJ analysis and did not consider EJ in this proposed rulemaking. Due to the nature of the proposed action being taken here, this proposed rulemaking is expected to have a neutral to positive impact on the air quality of the affected area. Consideration of EJ is not required as part of this action, and there is no information in the record inconsistent with the stated goal of E.O. 12898 of achieving environmental justice for people of color, low-income populations, and Indigenous peoples.

In addition, this proposed rulemaking, amending Article XXI section 2105.50 and adding Article XXI section 2106.06 to Pennsylvania's SIP, does not have tribal implications as specified by Executive Order 13175 (65 FR 67249, November 9, 2000), because the SIP is not approved to apply in Indian country located in the Commonwealth, and EPA notes that it will not impose substantial direct costs on tribal governments or preempt tribal law.

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Carbon monoxide, Incorporation by reference, Particulate matter, Reporting and recordkeeping requirements.

Adam Ortiz,

Regional Administrator, Region III.

[FR Doc. 2024–02215 Filed 2–2–24; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 665

[Docket No. 240130–0028]

RIN 0648–BM65

Pacific Island Fisheries; Annual Catch Limits and Accountability Measures for Main Hawaiian Islands Kona Crab for Fishing Years 2024–2026

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

ACTION: Proposed rule; request for comments.

SUMMARY: NMFS proposes to implement an annual catch limit (ACL) and an annual catch target (ACT) for main Hawaiian Islands (MHI) Kona crab for fishing years 2024, 2025, and 2026. This proposed action would not revise, add, or remove current accountability measures (AMs) in the regulations. NMFS will close Federal waters to Kona crab fishing for the remainder of the fishing year if NMFS projects the fishery will reach the ACT. NMFS will reduce the ACT and ACL the subsequent fishing year by the overage if landings exceed the ACL. This proposed rule supports the long-term sustainability of MHI Kona crab.

DATES: NMFS must receive comments by March 6, 2024.

ADDRESSES: You may submit comments on the proposed rule, identified by NOAA–NMFS–2024–0017, by either of the following methods:

• *Electronic Submission:* Submit all electronic public comments via the Federal e-Rulemaking Portal. Go to *https://www.regulations.gov* and enter NOAA–NMFS–2024–0017, in the Search box (note: copying and pasting the FDMS Docket Number directly from this document may not yield search results). Click on the ''Comment'' icon, complete the required fields, and enter or attach your comments.

• *Mail:* Send written comments to Sarah Malloy, Acting Regional Administrator, NMFS Pacific Islands Regional Office (PIRO), 1845 Wasp Blvd., Bldg. 176, Honolulu, HI 96818.

Instructions: Comments sent by any other method, to any other address or individual, or received after the end of the comment period will not be considered by NMFS. All comments received are a part of the public record and will generally be posted for public viewing on *https://www.regulations.gov* without change. All personal identifying information (*e.g.,* name, address, *etc.*), confidential business information, or otherwise sensitive information submitted voluntarily by the sender will be publicly accessible. NMFS will accept anonymous comments (enter ''N/A'' in the required fields if you wish to remain anonymous).

Pursuant to the National Environmental Policy Act, the Western Pacific Fishery Management Council (Council) and NMFS prepared a 2021 environmental assessment (EA) and draft 2023 supplemental information report (SIR) that support this proposed action. The EA and SIR are available at *https://www.regulations.gov.*

FOR FURTHER INFORMATION CONTACT: Savannah Lewis, NMFS Pacific Islands Regional Office (PIRO) Sustainable Fisheries, 808–725–5144.

SUPPLEMENTARY INFORMATION: NMFS and the Council manage the Kona crab fishery in the U.S. Exclusive Economic Zone (Federal waters) around Hawaii under the Fishery Ecosystem Plan for the Hawaiian Archipelago (FEP), as authorized by the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act) (50 CFR part 665). The FEP contains a process for the Council and NMFS to specify ACLs, ACTs, and AMs (see 50 CFR 665.4). NMFS must specify ACLs and AMs for each stock and stock complex of each management unit species (MUS) in an FEP, as recommended by the Council, and must consider the best available scientific, commercial, and other information about the fishery. If a fishery exceeds an ACL, the regulations require the Council to take action (*e.g.,* an AM reducing the ACL for the subsequent fishing year by the amount of the overage). ACTs can be used as an additional management measure to help ensure catch does not exceed the ACL.

This proposed rule would establish for the MHI Kona crab an ACL of 30,802 lb (13,972 kg) and an ACT of 25,491 lb (11,563 kg) (see table 1).

TABLE 1—PROPOSED ANNUAL CATCH LIMITS AND ANNUAL CATCH TARGETS FOR MAIN HAWAIIAN ISLANDS KONA CRAB

Fishing year	2024	2025	2026
ACL (lb)	30,802	30,802	30,802
ACT (lb)	25,491	25,491	25,491

The fishing year begins on January 1 and ends on December 31, and catch from both State and Federal waters are counted towards catch limits. The proposed rule would not change the current AMs, or enact any additional AMs, for the MHI Kona crab fishery (50 CFR 665.253(b)). As an in-season AM, NMFS will close Federal waters to commercial and non-commercial fishing for Kona crab for the remainder of the fishing year if NMFS projects that the fishery will reach the ACT. If a closure occurs, NMFS will publish a document to that effect in the **Federal Register** at least 7 days in advance of the closure. We will also request the State of Hawaii notify Commercial Marine License holders of any changes in the fishery, including an in-season closure or a post-season correction. The state of Hawaii does not have complementary management measures and will therefore not close if Federal waters close and catch will be continue to be attributed to the overall ACT and ACL. As a post-season AM, NMFS will reduce the ACT and ACL in the subsequent fishing year by the overage amount if the landings exceed the ACL in a fishing year. If catch exceeds the ACT, but is below the ACL, a post-season correction would not be applied.

This proposed rule is consistent with recommendations made by the Council at its 195th meeting in June 2023, and the proposed 2024–2026 catch limits are identical to those implemented in 2020 for fishing years 2020–2023. The ACL is associated with a 38 percent risk of overfishing and the ACT is associated with a 20 percent risk of overfishing. According to the 2019 stock assessment, the Kona crab fishery is neither overfished nor experiencing overfishing. Furthermore, the fishery did not exceed the ACL of 30,802 lb (13,972 kg) during fishing years 2020–2023. From 2020 through 2023, an average of 16 commercial marine license holders made 41 trips and landed an average catch of 3,581 lb (1,624 kg) of MHI Kona crab (12 percent of the ACL; 14 percent of the ACT).

NMFS will consider public comments on this proposed rule and will announce the final rule in the **Federal Register**. NMFS must receive any comments by the date provided in the **DATES** section above and will not consider late comments.

Classification

Pursuant to section 304(b)(1)(A) of the Magnuson-Stevens Act, the NMFS Assistant Administrator has determined that this proposed rule is consistent with the FEP, other provisions of the Magnuson-Stevens Act, and other applicable laws, subject to further consideration after public comment.

This proposed rule contains no information collection requirements under the Paperwork Reduction Act of 1995.

This proposed rule has been determined to be not significant for purposes of Executive Order 12866.

Regulatory Flexibility Act (RFA) Certification of Finding of No Significant Impact on Substantial Number of Small Entities

The Chief Counsel for Regulation of the Department of Commerce certified to the Chief Counsel for Advocacy of the Small Business Administration that this proposed rule, issued under the authority of the Magnuson-Stevens Act, would not have a significant economic impact on a substantial number of small entities.

The proposed rule would implement an ACL of 30,802 lb (13,972 kg) and an ACT of 25,491 lb (11,563 kg). The proposed ACL and ACT are the same as those implemented during fishing years 2020–2023. This proposed action would not revise, add, or remove current (AMs) in the regulations. The AMs include both an in-season closure in the Kona crab fishery if catch is projected to reach the ACT and a post-season adjustment if catch exceeds the ACL.

This rule would apply to participants in the commercial and non-commercial fisheries for MHI Kona crab. Kona crab catch averaged 3,887 lb (1,763 kg) from 2018–2022, with an estimated ex-vessel value of $38,013, if all catch were sold, based on the 2022 average price of $9.78 per lb ($21.52 per kg). Between 2018 and 2022, the percent sold ranged from 43 to 64 percent. The amount of Kona crab caught each year has generally declined since 2011, when 49 fishermen reported landing 10,979 lb (4,979 kg), although Kona crab catch from 2019 to 2021 generally exceeded catch levels from 2013 to 2018. The 2022 catch was in line with the 2013–2018 catch levels. During the 2021 fishing year, 18 fishermen reported landing 3,945 lb (1,789 kg). In 2022, 19 fishermen reported landing 2,533 lb (1,149 kg).

NMFS has established a small business size standard for businesses, including their affiliates, whose primary industry is commercial fishing (see 50 CFR 200.2). A business primarily engaged in commercial fishing is classified as a small business if it is independently owned and operated, is not dominant in its field of operation (including its affiliates), and its combined annual receipts are not in excess of $11 million for all of its affiliated operations worldwide. Based on available information, NMFS has determined that all vessels engaging in the commercial and non-commercial fisheries for Kona crab (North American Industry Classification System (NAICS) Code: 11411) are small entities. That is, they are engaged in the business of fish harvesting, are independently owned or operated, are not dominant in their field of operation, and have annual gross receipts not in excess of $11 million. Because all of the participants are small entities, there would be no disproportionate economic impacts between large and small entities.

Even though this proposed action would apply to a substantial number of vessels, this action should not result in significant adverse economic impact to individual vessels. The proposed ACL and ACT are the same as those implemented during fishing years 2020–2023. The proposed ACL is not expected to result in an expansion of the fishery by new fishermen looking to take advantage of the higher quota compared to previous years. Given the offshore fishing grounds for Kona crab, it would take a significant financial investment to become active in the fishery if fisherman did not already own a vessel and the required, specialized gear. The proposed action, if implemented, is not expected to constrain the fishery, given that the proposed ACL and ACT are both more than double the highest catch recorded over the past 12 years (10,979 lb (4,979 kg) in 2011). Furthermore, the fishery would still be subject to the State of Hawaii's regulations. This continued management, in combination with a low number of commercial marine license holders, is not expected to result in a surge of new fishery entrants.

The proposed action does not duplicate, overlap, or conflict with other Federal rules and is not expected to have significant impact on small entities, organizations, or governmental jurisdictions. The proposed action also will not place a substantial number of small entities, or any segment of small entities, at a significant competitive disadvantage to large entities. For the reasons above, NMFS does not expect the proposed action to have a significant economic impact on a substantial number of small entities. As such, an

initial regulatory flexibility analysis is not required and none has been prepared.

List of Subjects in 50 CFR Part 665

Accountability measures, Annual catch limits, Fisheries, Fishing, Hawaii, Kona crab, Pacific Islands.

Dated: January 30, 2024.

Samuel D. Rauch III,

Deputy Assistant Administrator for Regulatory Programs, National Marine Fisheries Service.

For the reasons set out in the preamble, NMFS proposes to amend 50 CFR part 665 as follows:

PART 665—FISHERIES IN THE WESTERN PACIFIC

■ 1. The authority citation for 50 CFR part 665 continues to read as follows:

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

■ 2. In § 665.253, revise paragraph (b)(1) to read as follows:

§ 665.253 Annual Catch Limits (ACL) and Annual Catch Targets (ACT).

* * * * *

(b) * * *

(1) In accordance with § 665.4, the ACLs for each fishing year are as follows:

TABLE 1 TO PARAGRAPH (b)(1)

Fishing year	2024	2025	2026
ACL (lb)	30,802	30,802	30,802
ACT (lb)	25,491	25,491	25,491

* * * * *

[FR Doc. 2024–02238 Filed 2–2–24; 8:45 am]

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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 679

[Docket No. 240126–0024]

RIN 0648–BM40

Fisheries of the Exclusive Economic Zone Off Alaska; Amendment 126 to the Fishery Management Plans for Groundfish of the Bering Sea and Aleutian Islands Management Area and Amendment 114 to the Fishery Management Plan for Groundfish of the Gulf of Alaska To Expand Electronic Monitoring To the Pollock Fisheries

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

ACTION: Proposed rule; request for comments.

SUMMARY: The North Pacific Fishery Management Council (Council) submitted Amendment 126 to the Fishery Management Plan (FMP) for Groundfish of the Bering Sea and Aleutian Islands Management Area (BSAI) and Amendment 114 to the FMP for Groundfish of the Gulf of Alaska (GOA). If approved, Amendments 126/114 would implement an electronic monitoring (EM) program for pelagic trawl pollock catcher vessels and tender vessels delivering to shoreside processors and stationary floating processors in the Bering Sea (BS), Aleutian Islands (AI), and GOA. This proposed rule is intended to promote the goals and objectives of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act), Amendments 126/114, the BSAI FMP, and the GOA FMP.

DATES: Comments must be received no later than April 5, 2024.

Public Meetings:

1. February 28, 2024, 6 p.m. Alaska local time, Kodiak, AK.

2. March 12, 2024, 6 p.m. Pacific time, Virtual (see **ADDRESSES** for link).

ADDRESSES: You may submit comments on this document, identified by NOAA–NMFS–2023–0125, by any of the following methods:

• *Electronic Submission:* Submit all electronic public comments via the Federal e-Rulemaking Portal. Go to *https://www.regulations.gov* and type NOAA–NMFS–2023–0125 in the Search box (*note:* copying and pasting the FDMS Docket Number directly from this document may not yield search results). Click on the ''Comment'' icon, complete the required fields, and enter or attach your comments.

• *Mail:* Submit written comments to Gretchen Harrington, Assistant Regional Administrator, Sustainable Fisheries Division, Alaska Region NMFS. Mail comments to P.O. Box 21668, Juneau, AK 99802–1668.

Instructions: Comments sent by any other method, to any other address or individual, or received after the end of the comment period, may not be considered by NMFS. All comments received are a part of the public record and will generally be posted for public viewing on *https://www.regulations.gov* without change. All personal identifying information (*e.g.,* name, address, *etc.*), confidential business information, or otherwise sensitive information submitted voluntarily by the sender will be publicly accessible. NMFS will accept anonymous comments (enter ''N/A'' in the required fields if you wish to remain anonymous).

Electronic copies of Amendment 126 to the BSAI FMP and Amendment 114 to the GOA FMP (collectively, the FMPs), the Environmental Assessment/Regulatory Impact Review prepared for this action (the analysis), and the Finding of No Significant Impact prepared for this action may be obtained from *https://www.regulations.gov* and the NMFS Alaska Region website at *https://www.fisheries.noaa.gov/region/alaska.*

Per section 313 of the Magnuson-Stevens Act, NMFS will also be conducting public hearings to accept oral and written comments on the proposed rule during the public comment period. The first public hearing will be held at the Kodiak Fisheries Research Center, 301 Research Court, Kodiak, Alaska 99615. The second public hearing will be held virtually, available at *https://meet.google.com/gcz-emgh-kkw.*

FOR FURTHER INFORMATION CONTACT: Joel Kraski, 907–586–7228, *joel.kraski@noaa.gov.*

SUPPLEMENTARY INFORMATION:

Authority for Action

NMFS manages the groundfish fisheries in the exclusive economic zone under the FMPs. The Council prepared the FMPs under the authority of the Magnuson-Stevens Act, 16 U.S.C. 1801 *et seq.* Regulations governing U.S. fisheries and implementing the FMPs appear at 50 CFR parts 600 and 679.

This proposed rule would implement Amendments 126/114 to the FMPs. The Council submitted Amendments 126/114 for review by the Secretary of Commerce, and a Notice of Availability of these amendments was published in the **Federal Register** on January 22, 2024, with comments invited through March 22, 2024 (88 FR 3902).

This proposed rule and Amendments 126/114 amend the Council's fisheries research plan prepared under the authority of section 313 of the Magnuson-Stevens Act. NMFS published regulations implementing the plan on November 21, 2012 (77 FR 70062) and integrated EM into the plan on August 8, 2017 (82 FR 36991). The Secretary implements the fisheries research plan through the North Pacific Observer Program (Observer Program). Its purpose is to establish a research plan for the collection of data necessary for the conservation, management, and scientific understanding of the

groundfish and halibut fisheries off Alaska.

Section 313 of the Magnuson-Stevens Act requires NMFS to provide a 60-day public comment period on the proposed rule and conduct a public hearing in each state represented on the Council for the purpose of receiving public comment on the proposed regulations. The states represented on the Council are Alaska, Oregon, and Washington. NMFS will conduct a public hearing at a physical location in Alaska and a virtual public hearing will be held for Oregon and Washington (see **DATES**).

People wanting to make an oral statement for the record at a public hearing are encouraged to submit a written copy of their statement to NMFS using one of the methods identified under **ADDRESSES**. If attendance at the public hearing is large, the time allotted for individual oral statements may be limited. Oral and written statements receive equal consideration. There are no limits on the length of written comments submitted to NMFS. Respondents do not need to submit the same comments on Amendments 126/114 and the proposed rule. All relevant written comments received by the end of the applicable comment period, whether specifically directed to the FMP amendments or this proposed rule, will be considered by NMFS in the approval/disapproval decision for Amendments 126/114 and addressed in the response to comments in the final decision. Comments received after the end of the comment period may not be considered in the approval/disapproval decision on Amendment 126/114. To be certain of consideration, comments would need to be received, not just postmarked or otherwise transmitted, by the last day of the comment period (see **DATES**).

North Pacific Observer Program

The Observer Program is an integral component in the management of North Pacific fisheries. The Observer Program was created with the implementation of the Magnuson-Stevens Act in the mid-1970s and has evolved from primarily observing foreign fleets to observing domestic fleets. The Observer Program provides the regulatory framework for NMFS-certified observers (observers) and EM systems to be deployed on board vessels to obtain information necessary for the conservation and management of the groundfish and halibut fisheries.

The information collected by observers and EM systems is entered into databases and then is used to manage the fisheries in furtherance of the purposes and national standards of the Magnuson-Stevens Act. Observers and EM systems collect fishery-dependent information used to estimate total catch and interactions with protected species. Managers use these data to manage groundfish and prohibited species catch (PSC) within established limits and to document and reduce fishery interactions with protected species. Scientists use fishery-dependent data to assess fish stocks, provide data for fisheries and ecosystem research and fishing fleet behavior, assess marine mammal and seabird interactions with fishing gear, and characterize fishing impacts on habitat.

In 2013, the Council and NMFS restructured the Observer Program to address long-standing concerns about statistical bias of observer-collected data and cost inequity among fishery participants with the funding and deployment structure under the previous Observer Program (77 FR 70062, November 21, 2012). The restructured Observer Program established two observer coverage categories: partial and full. All groundfish and halibut vessels and processors are included in one of these two categories. NMFS requires fishing sectors in the full coverage category to have all operations observed. The full coverage category is specified at 50 CFR 679.51(a)(2) and includes most catcher/processors, all motherships, and those catcher vessels participating in a catch share program with a transferrable PSC limit. Owners of vessels and processors in the full coverage category arrange and pay for required observer coverage from a permitted observer provider. The shoreside processors and stationary floating processors in the full coverage category are currently required to maintain observer coverage.

The partial coverage category is described at § 679.51(a)(1) and includes fishing sectors (vessels and processors) that are not required to have an observer at all times. The partial coverage category includes catcher vessels, shoreside processors, and stationary floating processors when they are not participating in a catch share program with a transferrable PSC limit. Small catcher/processors that meet criteria in § 679.51(a)(3) may request to be in the partial coverage category.

In the partial coverage category, NMFS contracts with an observer provider and EM providers and determines when and where observers and EM systems are deployed, based on a scientific sampling design. Each year, NMFS develops an Annual Deployment Plan (ADP) that describes how NMFS plans to deploy observers and EM systems to vessels and processors in the partial coverage category in the upcoming year. The ADP also specifies the scientific sampling design NMFS uses to generate estimates of total and retained catch and catch composition in the groundfish and halibut fisheries. The ADP process provides flexibility to improve deployment to meet scientifically based estimation needs while accommodating the realities of dynamic fiscal and harvesting environments. NMFS's goal is to achieve a representative sample of fishing events and to do this without exceeding funds collected through the observer fee. This is accomplished by the random selection of trips for deployment of observers, placement of EM systems, and shoreside sampling in the partial coverage category. NMFS adjusts the ADP after conducting a scientific evaluation of data collected under the Observer Program to assess the impact of changes in observer and EM deployment and improvements in data collection methods necessary to conserve and manage the groundfish and halibut fisheries.

To summarize the ADP process, each fall, NMFS develops a draft ADP for the next fishing year that describes how NMFS plans to deploy observers and EM systems to vessels in the partial coverage category. The draft ADP describes the deployment methods NMFS plans to use to collect EM data on discarded and retained catch, including the information used to estimate catch composition and marine mammal and seabird interactions in the groundfish and halibut fisheries. The draft ADP also describes how NMFS would deploy observers to shoreside processors in the partial coverage category. In October, the Council reviews the draft ADP and considers public comment when developing its recommendations about the draft ADP. The Council may recommend adjustments to observer and EM deployment to prioritize data collection based on conservation and management needs. After NMFS conducts a scientific evaluation and considers operational issues of the Council's recommendations, NMFS adjusts the draft ADP as appropriate and finalizes the ADP in December for release prior to the start of the fishing year. NMFS posts the ADP on the NMFS Alaska Region website.

NMFS conducts its scientific evaluation of data collected under the Observer Program in an Annual Report that evaluates how well various aspects of the program are achieving program goals, identifies areas where improvements are needed, and includes preliminary recommendations regarding

the upcoming ADP. The Council and its Scientific and Statistical Committee review the Annual Report in June. This timing allows NMFS and the Council to consider the results of past performance in developing the ADP for the following year. NMFS posts the Annual Report on the NMFS Alaska Region website.

The Observer Declare and Deploy System (ODDS) is a web application that provides information about observer and EM deployment on catcher vessels in the partial coverage category. ODDS facilitates communication among the operator of a catcher vessel in the partial coverage category, NMFS, NMFS's contracted observer provider, and NMFS-approved EM providers. Operators of catcher vessels in the partial coverage category enter information about upcoming fishing trips into ODDS and receive information about whether a trip has been selected for observer or EM coverage.

The restructured Observer Program established a system of fees that is used to pay for the cost of implementing observer and EM coverage in the partial coverage category. As specified at § 679.55, catcher vessels and processors included in the partial coverage category pay a fee of 1.65 percent of the ex-vessel value of fishery landings to NMFS to fund the deployment of observers in the partial coverage category. Under section 313 of the Magnuson-Stevens Act, the fees shall not exceed 2 percent of the fishery ex-vessel value.

Integrating Electronic Monitoring Into the Observer Program

Since the restructuring of the Observer Program, the Council and NMFS have been actively engaged in developing EM, a system using cameras, video storage devices, and associated sensors to record and monitor fishing activities, as a tool to collect fishery data. The restructured Observer Program expanded the types of vessels required to carry observers to include nontrawl vessels that had not previously been subject to observer requirements. Even before implementing the restructured Observer Program, many nontrawl vessel owners and operators new to the Observer Program opposed carrying an observer. Nontrawl vessel owners and operators explained that there was limited space on their vessels for an additional person and limited space in the vessel's life raft. Some vessel owners, operators, and industry representatives advocated for the use of EM instead of having an observer on board their smaller nontrawl vessels. To address their concerns, the Council and NMFS developed EM as a tool to collect fishery data in the nontrawl fisheries.

In 2014, the Council appointed the EM Workgroup to develop an EM program for nontrawl vessels—that is, those vessels using jig, pot, and longline gear—and integrate EM into the Observer Program. The EM Workgroup provided a forum for stakeholders, including the commercial fishery participants, NMFS, Alaska Department of Fish and Game, and EM service providers, to cooperatively and collaboratively design, test, and develop EM systems and to identify key decision points related to operationalizing and integrating EM systems into the Observer Program in a strategic manner.

Starting in 2015, NMFS developed with Council input the Electronic Technologies Implementation Plan for the Alaska Region to guide integration of monitoring technologies, including EM, into North Pacific fisheries management and provide goals and benchmarks to evaluate attainment of those goals (Plan and updates are available at *https://www.fisheries.noaa.gov/national/fisheries-observers/electronic-technologies-implementation-plans*). This plan was completed in 2021.

The EM Workgroup developed a collaborative research program to inform evaluation of multiple EM program design options and consider various EM integration approaches to achieve management needs identified in the Electronic Technologies Implementation Plan. Through the use of an exempted fishing permit (EFP), the research model resulted in the testing of, and subsequent implementation of EM for nontrawl vessels in the partial coverage category pursuant to Amendment 114 to the BSAI FMP and Amendment 104 to the GOA FMP (82 FR 36991, August 8, 2017).

In February 2018, after the implementation of EM on nontrawl catcher vessels, the Council directed its EM Workgroup to focus on developing EM as a tool for meeting monitoring objectives on trawl catcher vessels in the BS, AI, and GOA pelagic pollock fisheries, reconstituting the committee as the Trawl EM Committee. In April 2018, the Trawl EM Committee was modified to include industry representatives, fishery participants, and other stakeholders in the catcher vessel pelagic trawl pollock fisheries along with NMFS and EM service providers. The Council adopted three monitoring objectives proposed by the Trawl EM Committee after its May 2018 meeting: (1) improve salmon accounting; (2) reduce monitoring costs; and (3) improve the quality of monitoring data. A fourth objective was added by the Trawl EM Committee at their meeting in August 2018: (4) modify current retention and/or discard requirements as necessary to achieve objectives 1–3. While EM development for pelagic trawl catcher vessels was not identical to that for nontrawl, the Trawl EM Committee relied on the collaborative lessons learned, including creating a workgroup/committee, creating a research plan, pre-implementation testing of EM, and developing regulations.

The development of the trawl EM category has evolved through pilot projects in 2018 and 2019 and under EFP 2019–03 from 2020 through 2024. Each phase of program development benefitted from a collaborative process and open communication between project partners, which includes NMFS, EFP permit holders, EM service providers, video reviewers, and observer providers. Lessons learned through this process were incorporated into the development of the trawl EM category proposed in this action.

In the 2018 and 2019 pilot projects, prior to applying for an EFP, the pollock trawl fishery voluntarily operated video cameras on a subset of catcher vessels to test EM systems, while maintaining observer coverage. The trawl EM category developed further through EFP 2019–03, which involved multiple phases as part of a research plan developed by the Trawl EM Committee.

The Trawl EM Committee guided the research plan and EFP modifications and identified that there was adequate information on the use of EM to collect data for management purposes. The Council and its monitoring committees were kept informed of industry-led pilot projects through regular updates such as in December 2018 as part of the Trawl EM 2019 Cooperative Research Plan and in a March 2019 update to the Cooperative Research Plan. Results from pilot projects comparing discard estimates by EM reviewers and on-board observers were presented to the Trawl EM Committee in August 2019. Results identified that, while further refinement was needed, EM was able to capture discard activity onboard pelagic trawl pollock catcher vessels. NMFS approved EFP 2019–03 in 2020 and renewed modified versions of the EFP for fishing conducted in 2021 through 2024. EFPs in Alaska can be viewed on the NMFS Alaska Region website.

Observers played a key role in the collaborative process, providing real time feedback via inseason messaging and post deployment surveys. The information that observers provided helped the project partners make

decisions impacting communication and data quality through the project. Regularly scheduled check-in meetings between NMFS and project partners played an integral role during the EFP and began on January 15, 2020, and occurred every two weeks during the directed pollock seasons and as requested by the project partners. Check-in meetings provided an opportunity for each project partner to give updates on how operations under the EFP were progressing and identify any issues or concerns. NMFS has made a collaborative effort to make this situation work under unique circumstances, including staffing issues, quarantine challenges, and equipment shortages.

Several years of EFP data has shown that the objectives for trawl EM were met by: (1) improved salmon bycatch accounting, specifically in the western GOA pollock fishery that currently relies on estimates with large variances under status quo methods; (2) reduced monitoring costs; (3) improved quality of monitoring data; and (4) improved retention with limited changes in catcher vessel activities. In addition, it was also clear that EM is effective in capturing at-sea discard events to support catch accounting and may capture marine mammal incidents. Finally, EFP data showed some biological sampling can be accomplished at processing plants by observers with effective communication from vessels and processors.

The Council and NMFS developed this proposed action based on input received from the Trawl EM Committee, three years of data gathered through the EFP process, and public input through the Council process. This proposed action would provide an option for participants in the partial and full coverage categories using pelagic trawl gear to directed fish for pollock, as well as tender vessels delivering pollock to shoreside processors or stationary floating processors to choose to be in the trawl EM category.

Other trawl fisheries operate differently, have different monitoring and compliance requirements, and would require a lengthy development process prior to being able to have a functioning EM program. EM programs must be designed for the unique characteristics of each fishery or group of similar fisheries (such as the nontrawl fisheries and the pollock trawl fisheries). The Council and NMFS first prioritized nontrawl EM and then pollock trawl EM. The next priority that is under development is EM for vessels participating in the Rockfish Program, which will require a separate rulemaking if the Council recommends EM for that Program.

Objectives of and Rationale for Amendments 126/114 and This Proposed Rule

In October 2022, the Council recommended Amendment 126 to the BSAI FMP and Amendment 114 to the GOA FMP. The FMP amendments and this proposed rule would implement EM for catcher vessels targeting pollock with pelagic trawl gear in the BS, AI, or GOA fisheries (hereinafter ''catcher vessels'' or ''CVs'') and tender vessels delivering pollock to shoreside processors or stationary floating processors in the BS, AI, and GOA.

The Council and NMFS developed EM for the pelagic trawl gear pollock fisheries to explore an alternative way to collect fisheries data given the unique operating requirements in these fisheries. The pollock trawl fisheries have low rates of incidental catch of non-pollock species, leading to the ability to improve the retention of all catch, thus allowing for collection of biological data from unsorted catch at processors. Improved retention of catch means the vessel is operated in such a way that catch is retained to the greatest extent practicable. Under this proposed rule, EM systems would collect at-sea data for NMFS to determine if discards at sea occurred and subsequent video review would verify vessel discard estimates for accuracy. The use of EM on vessels in the trawl EM category would allow for monitoring of compliance with Federal regulations and catch handling requirements. The implementation of EM has the potential to reduce economic and operational costs associated with deploying observers on catcher vessels. Through the use of EM, it may continue to be feasible to obtain fishery-dependent data from catcher vessels, improve data quality, and increase NMFS's and the Council's flexibility to respond to the scientific and management needs of these fisheries. The Council's intent in recommending Amendments 126/114 is to improve salmon accounting for all species, reduce monitoring costs, and improve the quality of monitoring data.

The Council adopted the following purpose and need statement to originate this action in June 2021:

''To carry out their responsibilities for conserving and managing groundfish resources, the Council and NMFS must have high quality, timely, and cost-effective data to support management and scientific information needs. In part, this information is collected through a fishery monitoring program for the groundfish fisheries off Alaska. While a large component of this monitoring program relies on the use of human observers, the Council supports integrating electronic monitoring and reporting technologies into NMFS North Pacific fisheries-dependent data collection program, where applicable, to ensure that scientists, managers, policy makers, and industry are informed with fishery-dependent information that is relevant to policy priorities, of high quality, and available when needed, and obtained in a cost-effective manner. The Council and NMFS have been on the path of integrating technology into the fisheries monitoring systems for many years, with electronic reporting systems in place, and operational EM in some fisheries. An EM program for compliance purposes on pelagic pollock trawl catcher vessels and tenders both delivering to shoreside processors will obtain necessary information for quality accounting for catch including bycatch and salmon PSC in a cost-effective manner, and provide reliable data for compliance monitoring of a no discard requirement for salmon PSC. This trawl EM program has the potential to advance cost efficiency and compliance monitoring, through improved salmon accounting and reduced monitoring costs. Regulatory change is needed to modify the current retention and discard requirements to allow participating CVs to maximize retention of all species caught (*i.e.,* minimize discards to the greatest extent practicable) for the use of EM as a compliance tool on trawl catcher vessels in both the full and partial coverage categories of the Observer Program and meet monitoring objectives on trawl catcher vessels in the Bering Sea (BS) and Gulf of Alaska (GOA) pelagic pollock fisheries.''

In consultation with the Council, NMFS has considerable annual flexibility to provide observer coverage to respond to the scientific and management needs of the fisheries. By integrating EM on catcher vessels targeting pollock with pelagic trawl gear as a tool in the fisheries monitoring suite, the Council seeks to preserve and increase this flexibility. Regulatory change would be needed to specify vessel operator and processor responsibilities for using EM technologies, after which NMFS, in consultation with the Council would be able to deploy observer and EM monitoring tools tailored to the needs of different fishery sectors through the ADP.

Amendments 126/114 would add new language to section 3.9.2 of the BSAI and GOA FMPs to allow the use of EM systems to meet observer coverage

requirements for catcher vessels under the Observer Program.

This proposed rule to implement Amendments 126/114 would establish regulations for an EM option for catcher vessels and tender vessels delivering pollock to shoreside processors and stationary floating processors in the BS, AI, and the GOA. While the Council's purpose and need statement did not specify that EM could be used by catcher vessels fishing in the AI, the Council motion at final action clarified that should an AI pollock fishery be open, participating catcher vessels would have the opportunity to participate in trawl EM.

Trawl EM Category

This proposed rule would implement the requirements described below to allow owners or operators of catcher vessels and tender vessels to choose to use an EM system in place of an observer. Participation in trawl EM would be voluntary and a vessel owner or operator could choose on an annual basis to request a vessel's placement in the trawl EM category.

This proposed rule would establish the process and structure for use of an EM video system to monitor whether discards at sea occur. Further, it would establish video review to verify vessel discard estimates submitted by those catcher vessels using pelagic trawl gear and tender vessels that choose to be in the trawl EM category. NMFS's intent is largely to allow trawl EM category vessels to continue their normal operations and allow the cameras to capture data observations that an EM reviewer would then extract onshore. For fishing trips by vessels in the trawl EM category, the data collection previously conducted by at-sea observers would be completed by observers stationed at the processor receiving the catch. This is possible because EM systems would monitor all points of discard on the catcher vessel and tender vessel (if used) from the time the catch is brought onboard the catcher vessel or tender vessel to the point of delivery. This will ensure all catch is monitored by EM systems at sea and allow the collection of statistically robust fishery data at the point of delivery at the processor. Data collected at the processor could include the collection of species composition samples, PSC data, biological samples, and other sampling assigned by NMFS. One of the Council's objectives for this action is to achieve the most efficient use of observer resources. By shifting observer sampling duties from at-sea vessels to shoreside processors and stationary floating processors, each observer would be able to monitor more catch with greater accuracy.

In the event NMFS identifies additional data that cannot be collected at the processor, NMFS retains the authority to deploy at-sea observers on catcher vessels in the trawl EM category. Additionally, some level of at-sea data collection in the pollock fisheries will continue to be necessary to collect certain spatial and biological data. This data is currently being collected on vessels that remain in the observer coverage categories; however, if the number of vessels remaining in the observer coverage categories drops to low levels, additional at-sea observer coverage could be necessary in the full coverage or the partial coverage trawl EM category. NMFS would make these observer coverage decisions through the ADP process.

Currently, catcher vessels in the partial coverage category are required to have an observer at-sea on each selected trip and full coverage vessels carry an observer every trip. When vessels deliver trawl-caught pollock, the at-sea observer follows the fish into the processing plant and completes the enumeration and sampling of salmon during the vessel's delivery. Under this proposed rule, these at-sea observers would no longer be a resource available for sampling these vessels' catch. Instead, shoreside processors or stationary floating processors would be responsible for ensuring that all salmon are placed in a designated storage container until the observers have the opportunity to sample them consistent with proposed regulations at § 679.28(g)(9)(ii).

In addition to observers stationed at shoreside processors and stationary floating processors, Catch Monitoring Control Plans (CMCPs) and vessel monitoring plans (VMPs) would be used to determine and achieve the sampling objectives outlined by NMFS in the ADP. The EM systems onboard vessels would ensure that compliance monitoring objectives are met while providing a chain of custody for PSC. Observers at shoreside processors or stationary floating processors would then collect species composition, PSC, and biological samples as determined by the Alaska Fisheries Science Center, Fisheries Monitoring and Analysis Division. The flexibility offered by the ADP allows NMFS and the Council to achieve transparency, accountability, and efficiency from the Observer Program to meet its various objectives. The ADP process ensures that the best available information is used to evaluate deployment, including scientific review and Council input, to annually determine deployment methods.

Due to these changes, a ''one size fits all'' approach to deploying observer resources would be an inefficient use of observer resources. For example, a processor receiving deliveries 24 hours a day, 7 days a week from catcher vessels in the trawl EM category would require more observer resources than a processor receiving only one or two such deliveries each day. NMFS is proposing that the number of observers required at each processing plant receiving deliveries from vessels approved to operate in the trawl EM category be tailored to each processor based on metrics specified in the ADP and consistent with proposed regulations at § 679.51(b)(2)(i). Observers stationed at processors would collect data as requested by the Alaska Fisheries Science Center, Fisheries Monitoring and Analysis Division. NMFS would continue to work with data users, including stock assessors and other scientists, to evaluate the trawl EM category and monitor for data gaps.

All fishing trips for each vessel operating in the trawl EM category would be required to improve retention (*i.e.,* minimize discards to the greatest extent practicable) and record all catch handling. All EM data would be submitted as required to NMFS for review to ensure the program elements are followed. Failure to meet the program objectives, as outlined in the ADP and VMP, may result in disapproval of further participation in the trawl EM category and potential enforcement action.

This proposed rule would implement requirements applicable to: (1) catcher vessels in the trawl EM category; (2) tender vessels, shoreside processors, and stationary floating processors receiving deliveries from catcher vessels in the trawl EM category; (3) observer providers; and (4) EM service providers for vessels in the trawl EM category.

Under this proposed rule, a catcher vessel would remain subject to observer coverage, currently described at § 679.51(a)(1) or § 679.51(a)(2), unless NMFS approves a request for placement of the catcher vessel in the trawl EM category. Tender vessels are not currently subject to observer coverage requirements under subpart E to part 679 and this proposed rule would establish monitoring requirements for tender vessels that receive deliveries from a catcher vessel in the trawl EM category. Shoreside processors and stationary floating processors are subject to observer coverage requirements at § 679.51(b)(1) or § 679.51(b)(2). This

proposed rule would establish additional observer sampling station and monitoring requirements at § 679.28(g)(7) through (10) for shoreside processors and stationary floating processors. These observer sampling station and monitoring requirements previously existed for shoreside processors and stationary floating processors receiving American Fisheries Act (AFA) deliveries. Under this proposed rule, those requirements would be expanded to any plant receiving trawl EM deliveries to support shoreside observers and include additional requirements, such as updating spatial requirements to allow for new data collections. Additionally, under this proposed rule, entities intending to provide EM hardware to vessels in the full coverage EM category would be required to apply, and be approved, for an EM hardware service provider permit as specified at § 679.52(d) and (e).

Annual Request for Placement in the Trawl EM Category and Compliance Responsibilities

Under this proposed rule, eligible vessel owners or operators of catcher vessels would voluntarily request to participate in the trawl EM category annually through ODDS by November 1 and, if approved, would be subject to coverage requirements as specified by NMFS. Specifically, any owner or operator of a catcher vessel—that is, a catcher vessel with a pollock pelagic trawl endorsement on their Federal Fisheries Permit (FFP)—or a tender vessel receiving deliveries from these catcher vessels, may request to be in the trawl EM category. Shoreside processors or stationary floating processors would indicate annually during their CMCP process whether they intend to receive deliveries, or use tenders to receive deliveries, from vessels in a trawl EM category. This process consists of a shoreside processor or stationary floating processor submitting a CMCP to the NMFS CMCP specialist.

The November 1 deadline for catcher vessels would allow potential participants to review the draft ADP, which would be available in October, prior to deciding whether to request to join the trawl EM category. The draft ADP would contain NMFS's criteria for determining how catcher vessels would be assigned to the partial coverage trawl EM category. The ADP would be finalized in December.

This proposed rule establishes responsibilities for the operator of a catcher vessel or tender vessel in the trawl EM category to install and maintain the EM system. Vessels in the trawl EM category would be required to comply with all provisions of the trawl EM category, including those specified in regulations, the ADP, and in individual VMPs. This proposed rule would add regulations at § 679.51(g) to specify the EM system requirements for vessels using pelagic trawl gear. A catcher vessel would remain in the trawl EM category for all directed fishing for pollock with pelagic trawl gear for the entirety of the fishing year, in order to maintain the sampling design outlined in the ADP. A tender vessel would remain in the trawl EM category at all times when receiving catch from a catcher vessel in the trawl EM category during the fishing year. Vessels would not be able to leave the trawl EM category during a fishing year in order to maintain the sampling design used for that year.

Trawl EM Coverage

This proposed rule would establish two coverage categories within the trawl EM category: (1) full coverage; and (2) partial coverage. Unless otherwise specified in this proposed rule, the trawl EM category encompasses both the full coverage and partial coverage trawl EM categories.

Full Coverage Trawl EM Category

Proposed regulations at § 679.51(g)(1)(i)(A)(*2*) define the full coverage trawl EM category for catcher vessel operating in the BS or Community Development Quota (CDQ) fisheries. These vessels are currently in the Observer Program's full coverage category. For the fishing year, if a catcher vessel is approved to be in the full coverage trawl EM category, that vessel would be subject to this proposed rule for every fishing trip in which the vessel deploys pelagic trawl gear. This would mean, in addition to other requirements, these vessels must ensure their EM systems are operating and actively recording for the duration of every pelagic trawl gear fishing trip and associated offload. The CDQ pollock fishery is not currently prosecuted by catcher vessels delivering to shoreside processors or stationary floating processors, but if this activity does occur in the future, and the catcher vessels meet the eligibility requirements of the trawl EM category, they would be included in the full coverage category. The owner or operator of a vessel in the full coverage trawl EM category would be responsible for contracting with a permitted EM hardware service provider, as specified at 679.51(g)(1)(ix), to procure, install, and maintain EM equipment on their vessel. To pay for video review services for vessels in the full coverage trawl EM category, this proposed rule would establish a new full coverage EM review fee in proposed regulations at § 679.56.

Partial Coverage Trawl EM Category

Proposed regulations at § 679.51(g)(1)(i)(A)(*1*) define the partial coverage trawl EM category for catcher vessels operating in the GOA or AI. These vessels are currently in the Observer Program's partial coverage category.

Catcher vessels approved to be in the partial coverage trawl EM category must continue to log all trips in ODDS. Access to ODDS is available through the NMFS Alaska Region website. For the fishing year, every fishing trip in which a partial coverage catcher vessel deploys solely pelagic trawl gear is considered a part of the trawl EM category and is subject to this proposed rule (proposed rule at § 679.51(g)). This would mean, these vessels must, in addition to other requirements, ensure their EM system is operating and actively recording for the duration of every fishing trip and associated offload. Vessels in the partial coverage trawl EM category would be prohibited from deploying non-pelagic trawl gear while on a fishing trip subject to EM coverage. Catcher vessels in the partial coverage trawl EM category would be required to deliver catch only to tender vessels or processors in the trawl EM category having a NMFS-approved VMP or CMCP. Vessels in the partial coverage trawl EM category will use NMFS's contracted EM hardware service provider that has been procured through the partial coverage fee program. EM equipment for vessels in the partial coverage trawl EM category would be paid for by the observer fees as specified at § 679.55.

The AI pollock fishery is not currently prosecuted by catcher vessels delivering to shoreside processors or stationary floating processors, but if this activity were to occur, and the catcher vessels meet the eligibility requirements of the trawl EM category, they would be included in the partial coverage trawl EM category.

Tender Vessels

The proposed rule adds EM requirements for tender vessels that are used to transport unprocessed groundfish received from a catcher vessel in the trawl EM category to an associated processor. As part of the unprocessed groundfish chain of custody, it is necessary for tender vessels to comply with EM requirements to ensure no sorting of catch occurs between the catcher vessel and the processor. Proposed regulations at

§ 679.51(g)(1)(i)(B) allow the owner or operator of a tender vessel to request to be placed in the trawl EM category before receiving any delivery from a catcher vessel in the trawl EM category. A tender vessel that is approved to be in the trawl EM category must comply with applicable vessel responsibilities specified at § 679.51(g)(3) for every delivery received and offload subject to the trawl EM category, including ensuring their EM system is operating and actively recording for the duration of every trip and associated offload.

Tender vessels are primarily used by small catcher vessels in the Western GOA that fish in locations that make it inefficient for these catcher vessels to deliver their catch directly to a shoreside or stationary floating processor.

Shoreside Processors and Stationary Floating Processors

For shoreside processors or stationary floating processors to receive deliveries from vessels in the trawl EM category, the proposed rule includes additional catch handling requirements. Shoreside processors or stationary floating processors would indicate their intent to receive EM deliveries in the upcoming fishing year during the annual CMCP process. Under proposed regulations at § 679.28(g)(7), (9), and (10) shoreside processors or stationary floating processors receiving deliveries from vessels in the trawl EM category would be required to follow specified salmon sorting and handling procedures to ensure shoreside observers have full access to salmon bycatch. The proposed rule at § 679.28(g)(9) would allow observers at these processors to collect full salmon and Pacific halibut retention data and necessary biological samples, which are vital in monitoring the health and status of those stocks in Alaska.

Current regulations at § 679.21(f)(15)(ii)(C) require salmon retention and storage for processors in the BS pollock fishery. This proposed rule would move these existing regulations to § 679.28(g)(9)(ii) and (g)(10), and extend those regulations to shoreside processors and stationary floating processors receiving deliveries from vessels in the trawl EM category in the GOA. Each year NMFS publishes an Observer Sampling Manual, which contains the comprehensive sampling procedures and methods to be used by observers to collect fishery-dependent data, but does not establish the sampling rate. The criteria used to determine the sampling rate required at shoreside processors and stationary floating processors receiving deliveries from vessels in the trawl EM category will be determined annually and published in the ADP.

EM Service Providers

There are currently two types of EM service providers: (1) EM hardware service providers that equip and maintain EM systems aboard vessels, and (2) EM review service providers that receive and review EM data from EM systems. This proposed rule would add a regulation at § 679.2 to define an EM service provider as ''any person, including their employees or agents, that NMFS contracts with, or grants an EM hardware service provider permit to under § 679.52(d), to provide EM services, or to review, interpret, or analyze EM data as required under § 679.51.'' NMFS may contract with, or grant a permit to, a prospective EM hardware service provider if their data are readily accessible by the current EM service provider NMFS has selected for reviewing EM data.

EM Hardware Service Provider Permit

Alaskan fishing vessels operate in a challenging environment and endure harsh conditions, making it necessary to ensure that an EM hardware service provider is properly equipped to deploy and service EM hardware onboard vessels in the trawl EM category. This proposed rule would add regulations at § 679.52 specifying the procedures for applying to NMFS for and NMFS' issuance of, an EM hardware service provider permit, responsibilities of EM hardware service providers, and issuance of permits to existing EM hardware service providers upon implementation of this proposed rule. Prospective EM hardware service providers will need to apply to NMFS, and be approved, for an EM hardware service provider permit. Once approved and issued by NMFS, the EM hardware service provider permit is valid until the provider becomes inactive, providing no EM services for a period of 12 consecutive months. Performance of the EM hardware service provider will be assessed annually on the ability of the provider to meet program objectives.

EM Review Service Providers

An EM data review service provider is a provider that NMFS contracts with, or otherwise has an established business relationship with, to review, interpret, or analyze EM data as required under § 679.51. An EM data review service provider is selected by NMFS to avoid any conflicts of interest caused by vessels in the trawl EM category having a direct financial relationship with the independent EM data review service providers. This model reflects the same system that is currently in place for observers.

EM Equipment and VMPs

The operator of each catcher vessel or tender vessel approved by NMFS to be in the trawl EM category, must make their vessel available to an EM hardware service provider for installation and servicing of all required EM system components according to proposed regulations at § 679.51(g)(1)(ix). The EM hardware service provider would install the EM system and cameras in locations that meet the monitoring objectives annually specified in the ADP. Full coverage vessels would choose their permitted EM hardware service provider, while partial coverage catcher vessels or tender vessels would be assigned a NMFS-permitted EM hardware service provider by NMFS.

If a vessel already has an EM system installed from a non-permitted EM hardware service provider, the catcher vessel or tender vessel operator would work with a NMFS-permitted EM hardware service provider to modify the EM system as necessary to meet the specifications in the trawl EM category. For example, a catcher vessel or tender vessel may have an existing EM system on board because that catcher vessel or tender vessel participates in another federally managed fishery that has an EM program.

After EM equipment has been installed or serviced, the catcher vessel or tender vessel operator would develop a VMP with the EM hardware service provider and submit it to NMFS for approval according to proposed regulations at § 679.51(g)(2). A VMP is a document that includes operator responsibilities for the trawl EM category, including requirements for sending EM data to the EM data review service provider for review, restrictions should EM equipment malfunction, and how feedback from NMFS or the EM data review service provider would be communicated to vessel operators.

The catcher vessel or tender vessel operator agrees to comply with the components of the VMP and would submit a signed VMP to NMFS. NMFS would review the VMP for completeness and may request additional clarification. If the VMP meets the requirements established in the VMP template, NMFS would approve the VMP and place the vessel in a trawl EM category for the fishing year.

A catcher vessel or tender vessel in the trawl EM category would be required to maintain a copy of their current NMFS-approved VMP onboard at all times while that catcher vessel conducts fishing activities, or tender

vessel receives EM deliveries, as part of the trawl EM category. If NMFS does not approve the VMP, NMFS will issue an IAD to the vessel owner or operator that will explain the basis for the disapproval. The vessel owner or operator may file an administrative appeal under the administrative appeals procedures set out at 15 CFR part 906.

The catcher vessel or tender vessel operator would be required to make the NMFS-approved VMP available to NOAA Office of Law Enforcement (OLE) or other NMFS-authorized officer or personnel upon request (see § 679.51(g)(4)(iv)).

If NMFS determines that a catcher vessel or tender vessel is out of compliance with the VMP, the catcher vessel or tender vessel's application for placement in the trawl EM category may not be approved the following year. For example, repeated discarding of PSC, repeated failure to ensure the entirety of the trip is recorded due to negligence of the crew, or failure to make the changes necessary to achieve monitoring goals may be grounds for NMFS to disapprove a VMP.

Catcher Vessel and Tender Vessel Operator Responsibilities

Catcher vessel and tender vessel operators would be required to maintain the EM system in working order, including ensuring the EM system is powered and functioning throughout the fishing trip, keeping cameras clean and unobstructed, and ensuring the system is not tampered with, consistent with proposed regulations at § 679.51(g)(3). Catcher vessel or tender vessel operators would also be required to ensure that power is maintained to the EM system at all times when the vessel is underway or the engine is operating on such fishing trips. Additionally, catcher vessel or tender vessel operators would be required to ensure the EM system is fully functional prior to deploying gear during the fishing trip or prior to receiving a delivery, as applicable.

Before fishing gear is retrieved or an offload is received, the catcher vessel or tender vessel operator would need to verify that all components of the EM system are functioning. Instructions for completing this verification would be provided in the vessel's VMP consistent with proposed regulations at § 679.51(g)(2)(vi).

Catcher vessel and tender vessel operators would also be required to follow landing notice procedures specified in the VMP, consistent with proposed regulations at § 679.51(g)(3). The landing notice would be transmitted by the catcher vessel or tender vessel to the intended shoreside processor or stationary floating processor, consistent with the timeline specified in the VMP prior to returning to port. After receiving the landing notice from the vessel, the processor will relay that information to shoreside observers. The landing notice would also provide shoreside observers in the BSAI and GOA the information necessary to meet the objectives specified by NMFS in the ADP.

Catcher vessel or tender vessel operators would be prohibited from tampering with the EM system or harassing their EM service provider, EM reviewers, or any other monitoring personnel who may be working with operators to enact this program. Additional prohibitions would be added to existing EM prohibitions at § 679.7(j) to ensure the EM system functions and the data from these systems is usable for fisheries management. Other operator responsibilities would be identified in the VMP to meet data needs for EM monitoring.

Catcher vessel or tender vessel operators would submit the EM data to the EM data review provider using a method specified in the approved VMP. Operators of vessels in the trawl EM category would submit EM data after a specified number of trips, consistent with the vessel's approved VMP. This frequency would be defined in the VMP and could change based on data needs identified by NMFS, consistent with proposed regulations at § 679.51(g).

EM System Malfunctions

The EM system must be fully operational as described in the VMP. The VMP would list EM system malfunctions that would be considered contrary to the data collection objectives. The VMP would also describe the procedures to follow if malfunctions were detected, including contacting the EM service provider and OLE. The proposed regulations at § 679.51(g)(4) describe the responsibilities of the catcher vessel or tender vessel operator in case of an EM system malfunction.

Improved Retention of Catch

With trawl EM, catcher vessel operators would retain all catch except for where safety and stability of the vessel would be compromised (see proposed regulations at § 679.7(j)(2)). Improved retention of catch is necessary to provide observers stationed at shoreside processor and stationary floating processors receiving deliveries from vessels in the trawl EM category with unsorted catch for collection of biological samples and to minimize potential biases in data collection. Improved retention would greatly reduce at-sea discards and improve catch accounting, resulting in improved estimates of catch and bycatch in the pollock fisheries.

For all fishing trips, catcher vessels would be expected to avoid sorting and discarding catch to the greatest extent practicable. The term ''sort,'' ''sorting,'' or ''sorted'' means removing any ''fish'' from the unsorted catch. ''Discard'' means to release or return fish to the sea, whether or not such fish are brought fully on board a fishing vessel (see § 600.10). The term ''fish'', when used as a noun, means any finfish, mollusk, crustacean, or parts thereof, and all other forms of marine animal and plant life other than marine mammals and birds (see § 600.10). Unsorted catch would be delivered to a tender vessel, shoreside processor, or a stationary floating processor to ensure observers have access to all catch. The most common instances of discards at-sea are related to spillage events, discards needed for safety or stability, and large organisms that are challenging to accommodate on board a catcher vessel, such as sharks.

Operators of catcher vessels less than 60 feet (18.3 meters) length overall (LOA) in the trawl EM category would now be required to report any at-sea discards in their logbook, and operators would also report this information to NMFS and shoreside processors in eLanding reports (see proposed regulations at § 679.5(a)(1) and (4)). Catcher vessel logbook estimates of discards would be verified in the video review process by an EM review service provider. Additionally, EM reviewers make independent estimates of any discard events and that data would be used to verify catcher vessel compliance to ensure catcher vessels are following improved retention rules under this program.

Removing Requirements for Regulatory Discards

This proposed rule includes particular exceptions to regulations that require discarding catch at sea in specific circumstances to promote retention of catch for catcher vessels in the trawl EM category. Catcher vessels in the trawl EM category would not be subject to the prohibition against exceeding Maximum Retainable Amounts (MRAs) in the BS, AI, and GOA, the prohibition against vessels having on board, at any particular time, 20 or more crabs of any species, and the prohibition against exceeding the pollock trip limit in the GOA.

This proposed rule exempts vessels in the trawl EM category from the regulations at § 679.20(e) pertaining to MRAs that limit retention of incidentally caught species so that total harvest can be managed up to, but not over, the Total Allowable Catch (TAC) by the end of the year. The MRA regulations at § 679.20(e) result in at-sea discards of fish above the MRA amount for each species. While the prohibition on exceeding the MRAs would be removed for vessels participating in the trawl EM category, NMFS would continue to use MRA calculations to determine whether a vessel is ''directed fishing'' for a particular species and gauge whether vessel behavior has changed, in conjunction with the Trawl EM Incentive Plan Agreement (TEM IPA) discussed below.

This proposed rule would also add an exception for vessels participating in the trawl EM category from the regulation at § 679.7(a)(14)(i) that prohibits vessels in the BSAI and GOA from having on board, at any particular time, 20 or more crabs of any species with a carapace width of more than 1.5 inches (38 millimeters) at the widest dimension. Catcher vessels would retain all crabs for enumeration by shoreside observers at the processor, as described below in the PSC Retention section of this preamble. This change would improve NMFS's ability to estimate crab bycatch in the pollock fisheries.

Additionally, this proposed rule would also exempt vessels in the trawl EM category from the regulations at § 679.7(b)(2) that limit catcher vessels' harvest of pollock in the GOA (commonly referred to as the pollock trip limit). Currently, catcher vessels are subject to a 300,000 pound onboard retention limit on pollock, requiring vessels to discard any pollock in excess of 300,000 pounds.

Trawl EM Incentive Plan Agreements for Partial Coverage Catcher Vessels

To maintain the controls on the pollock fisheries that the MRAs, crab retention limit, and the GOA pollock trip limit provide, this proposed rule includes provisions for a Trawl EM Incentive Plan Agreement (TEM IPA) to limit changes in partial coverage category vessel behavior notwithstanding these proposed regulatory changes. Namely, the TEM IPAs would aim to prevent catcher vessels from targeting species other than pollock, failing to avoid bycatch, and exceeding trip limits or MRAs, when in the trawl EM category. With the TEM IPA, NMFS does not anticipate that the proposed action would change how catcher vessels in the partial coverage trawl EM category operate, their harvest limits, or their amount of bycatch.

Under this proposed rule, in order to be qualified to participate in the trawl EM category, partial coverage catcher vessels would be required to become a party to a trawl EM Incentive Plan Agreement (TEM IPA). The TEM IPA was modeled on the Salmon bycatch IPAs (see § 679.21(f)(12)), which have proven to be a successful method for the BS pollock fleet to modify its behavior to meet NMFS management goals.

An IPA is an industry-developed contractual arrangement that is approved by NMFS. For the trawl EM category, NMFS would approve an IPA if the IPA meets the criteria specified in proposed regulations at § 679.57. To ensure IPAs are effective, IPA parties would be required to demonstrate to the Council through annual reports that the IPA is accomplishing the Council's intent that each vessel limit changes in behavior. Under proposed rule regulations at § 679.57, TEM IPAs would be structured to limit changes in vessel behavior as a result of this proposed rule. For instance, the IPAs would aim to encourage catcher vessels to avoid targeting non-pollock species, avoid bycatch, and avoid exceeding trip limits or MRAs, when in the trawl EM category and to meet specific goals to avoid exceeding MRAs and the GOA pollock trip limit.

Currently, all full coverage vessels are AFA vessels that have these measures incorporated into existing cooperative agreements and there is little to no incentive to retain species other than pollock. Additionally, all potential EM trawl full coverage participants are party to a Salmon bycatch IPA, therefore a TEM IPA would not be required for full coverage trawl EM category catcher vessels.

NMFS inseason management staff would track trawl EM category bycatch and pollock harvest and provide updates in the Annual Inseason Report to the Council. In addition, the representative of each approved TEM IPA would submit a written annual report to the Council, which would be available to the public. Upon receipt of the Annual Reports on the TEM IPA, the Council may re-evaluate the goals of the TEM IPA and make adjustments as necessary. Each year NMFS will publish on the NMFS Alaska Region website the approved list of TEM IPAs and NMFS Approval Memos, the list of parties to each IPA, approved modifications to the TEM IPAs, and the list of catcher vessels that, on average, catch more than 300,000 pounds of pollock per fishing trip in the GOA and or harvest bycatch in quantities that would exceed MRAs. For the sake of clarity, each TEM IPA will define how these averages will be calculated over the fishing year.

PSC Retention

Currently, vessels are required to retain all salmon for enumeration at the processing plant, but not other PSC species or groundfish species placed on PSC status when the TAC is reached. Under this proposed rule, catcher vessels fishing in the trawl EM category would be required to retain all species, including crab, categorized as PSC so that they can be fully enumerated by shoreside observers at the processing plant as specified at § 679.21(a)(2). This requirement to retain PSC would result in more precise enumeration at the shoreside plant and is unlikely to change the rate at which these catcher vessels harvest these PSC species.

Logbooks

Logbooks are necessary for trawl EM data flow, and the trawl EM category would not work without this component. Logbooks would be required for all participants in the trawl EM category. While location and effort are collected by the EM systems, logbooks collect other data necessary for catch accounting and stock assessments. Catcher vessels in the trawl EM category would be able to use NMFS-approved paper or electronic logbooks and follow the logbook-related regulations at § 679.5(a).

Discard information is reported in the logbook and would be provided to the shoreside processor during offload and recorded in the eLandings report. Under this proposed rule, the video reviewer would verify compliance with reporting at-sea discard information in the logbook for all vessels in the trawl EM category.

Catcher vessels less than 60 feet (18.3 meters) LOA that participate in the Western GOA do not currently have a logbook requirement and, indeed, are exempt from logbook requirements under § 679.5(a)(4). Under this proposed rule, these catcher vessels in the trawl EM category would be required to maintain a logbook to participate in the trawl EM category. This proposed rule would also add catcher vessels in the trawl EM category to the list of exceptions to the exemption at § 679.5(a)(4).

CMCP

Under this proposed rule, catcher vessels and tender vessels in the trawl EM category would only deliver fish to a shoreside processor or stationary floating processor that has a NMFS-approved CMCP in place. Processors

would be prohibited from receiving deliveries from a catcher vessel, or tender vessel, in the trawl EM category without a NMFS-approved CMCP.

For pollock, CMCPs are currently required for AFA shoreside processors and stationary floating processors and any shoreside processors or stationary floating processors receiving AI directed pollock deliveries. Currently, not all potential trawl EM processors currently receive AFA pollock deliveries. CMCPs provide a framework for how a shoreside processor or stationary floating processor operates when receiving fish from catcher vessels and tender vessels and how landing information is communicated to necessary personnel. In this proposed rule, CMCPs would be required for all shoreside processors and stationary floating processors receiving deliveries from vessels in the trawl EM category. CMCPs include provisions that ensure observers stationed at processors have the necessary tools, such as enhanced sample station requirements, to collect fishery data and biological information related to catch and PSC. Additionally, CMCPs facilitate communication between the processors and the observers collecting data related to the pollock fishery. NMFS reviews these plans annually and may adjust them inseason to enhance their effectiveness as necessary.

Currently, each shoreside processor and stationary floating processor receiving AFA, CDQ, or AI directed pollock are required to develop and operate under a NMFS-approved CMCP. The procedures were established under the regulation at § 679.28(g). CMCPs were designed to monitor the weighing of pollock, sorting and weighing of bycatch to species, and proper sorting and storage of salmon at the shoreside processors. Under the proposed rule, all shoreside processors and stationary floating processors receiving pollock from vessels in the trawl EM category would be required to have approved CMCPs in place. This proposed rule would also change wording to clarify that NMFS ''may,'' not ''will,'' inspect these processors, as external factors may prevent an in-person inspection of each processor in a given year.

The current CMCP regulations require that processors meet minimum observer sampling station area requirements. Observer sampling stations are crucial for ensuring data quality in fisheries monitoring due to their standardized environments. These standards allow trained observers to accurately record catch details, species identification, and other critical data points by minimizing the challenges posed by the dynamic setting of shoreside processors and stationary floating processors. This proposed rule modifies existing regulations at § 679.28(g) to reorganize CMCP requirements to improve clarity and consistency and to add provisions necessary to facilitate observer data collection for trawl EM category deliveries.

For example, this proposed rule clarifies and improves current requirements for observer sampling stations for processors at § 679.28(g)(7)(ix). This proposed rule includes requirements for the location of the observer station, platform scale, minimum workspace, table size, *etc.,* to more closely align with observer sample station requirements applicable to at-sea catcher/processor vessels. Modifications to the pre-existing requirements create a more consistent working environment for observers stationed at processors while also enhancing data collection.

NMFS would define the criteria in the ADP for determining the necessary number of observers. The criteria for determining the necessary amount of observers for a given processor may include tonnage processed, number of deliveries, or processing hours. These criteria would apply to all processors receiving deliveries from vessels in the trawl EM category. The specific number of observers necessary to meet sampling objectives would be listed in the CMCP, which could be updated throughout the year to ensure that the necessary number of observers are present, as processing effort may change seasonally. For example, a processor may need four observers during ''A season'' to meet sampling objectives, but during ''B season'', the same processor may need additional observers to fully account for chum salmon.

Observer Providers

Shoreside processors and stationary floating processors receiving deliveries from vessels in the full coverage trawl EM category would procure observer services by arranging and paying for observer services directly from a permitted observer provider consistent with existing regulations at § 679.51(d). This proposed rule would modify regulations governing observer provider permitting and responsibilities at § 679.52 to remove fax as an electronic communication method, update how often specific information must be submitted to NMFS (see Observer Program Fees section), and clarify the requirements for observer providers to monitor observer conduct and address observer misconduct. The latter clarifies requirements for provider action to rectify observer misconduct.

Observer Program Fees

NMFS is authorized under section 313 of the Magnuson-Stevens Act to require observer program participants in any North Pacific fishery to pay a fee for observer and EM monitoring provided the fee does not exceed 2 percent of the fishery ex-vessel value. To pay for video review services for vessels in the full coverage trawl EM category, this proposed rule would establish a new full coverage EM review fee in proposed regulations at § 679.56.

This new fee would be used by NMFS to pay for the costs of data review, storage, and transmission of EM data for vessels in the full coverage trawl EM category. The annual cost of EM review, data storage, and transmission would then be divided among full coverage vessels in the trawl EM category. NMFS would use the pollock catch history (*i.e.,* actual harvest amount) from the previous year to divide the cost equitably among full coverage participants in the trawl EM category that year. Invoices would be sent to vessel owners and payment would be required by May 31. Failure to pay the full coverage trawl EM fee would prevent a catcher vessel or tender vessel from being selected for the trawl EM category in the following year as specified at § 679.51(g)(1)(4).

Consistent with regulations at § 679.55, NMFS would use funds from the existing observer fees to pay for EM hardware and review services for vessels in the partial coverage category. Catcher vessels and tender vessels in the partial coverage category (vessels operating in the GOA and AI pollock fisheries) would continue to pay the existing observer fee as specified at § 679.55. The partial coverage observer category is funded through a system of fees collected from fishery participants (vessels and processors) under authority of section 313 of the Magnuson-Stevens Act. NMFS would use partial coverage fees to procure shoreside observers, deploy and support EM equipment on selected vessels, and pay for EM video review and data storage.

Other Regulatory Changes

In addition to the regulations necessary to implement the trawl EM category, NMFS proposes revising the following regulations for clarity and efficiency:

- Remove the expired prohibition at § 679.7(a)(17), specifying that neither catcher vessels nor catcher processors could act as a tender vessel until all groundfish or groundfish product was offloaded and that they could not harvest groundfish while operating as a

tender vessel. That prohibition was added as part of an emergency rule (66 FR 7276, January 22, 2001), which expired on July 17, 2001. To date, the regulation has not been removed. This proposed rule would remove the expired prohibition at § 679.7(a)(17) to prevent confusion, especially as § 679.7(a)(11) contains a similar prohibition.

- Regulations implementing EM for nontrawl vessels in the partial coverage category of the Observer Program are modified to remove the phrase ''*EM selection pool*'' and to add in its place ''*Nontrawl EM selection pool*'' to clearly identify regulations applicable to the different EM categories. Multiple gear types, excluding trawl, participate in the nontrawl EM selection pool, while only trawl vessels are eligible for the trawl EM category.
- This proposed rule would move regulations specifying salmon sorting and handling practice from § 679.21(f)(15)(ii)(C)(2) through (6) to proposed regulations at § 679.28(g)(9) and (10). This move is necessary to consolidate all CMCP related regulations into a single location. This does not change the salmon sorting and handling requirements currently applicable to processors accepting AFA deliveries and it will allow the public to more easily locate all applicable CMCP regulations.
- Replace all instances of ''video data storage device'' with ''EM data'' in § 679.51(f) to broaden the language to allow for future data formats.
- Remove fax numbers in §§ 679.28(g) and 679.51(g) to match current practice that has abandoned fax usage. These numbers were for industry or observers to communicate with, and make requests of, the Observer Program. As technology has advanced, fax has fallen out of use and the proposed language should be more inclusive of new forms of communication.

Classification

Pursuant to section 304(b) of the Magnuson-Stevens Act, the NMFS Assistant Administrator has determined that this proposed rule is consistent with the FMPs, other provisions of the Magnuson-Stevens Act, and other applicable law, subject to further consideration of comments received during the public comment period.

This proposed rule has been determined to be not significant for the purposes of Executive Order 12866.

Regulatory Impact Review

A Regulatory Impact Review was prepared to assess the costs and benefits of available regulatory alternatives. A copy of this analysis is available from NMFS (see **ADDRESSES**). The Council recommended and NMFS proposes these regulations based on those measures that maximize net benefits to the Nation.

Certification Under the Regulatory Flexibility Act

The Chief Counsel for Regulation of the Department of Commerce certified to the Chief Counsel for Advocacy of the Small Business Administration that this proposed rule, if adopted, would not have a significant economic impact on a substantial number of small entities.

This proposed rule would directly regulate the owners and operators of catcher vessels and tender vessels in the trawl EM category, shoreside processors or stationary floating processors that receive EM deliveries, EM service providers and observer providers.

Observers may also be indirectly impacted. Observers are individuals so they do not meet the Small Business Administration definition of a small entity. Therefore, observers are not considered directly regulated entities.

For Regulatory Flexibility Act (RFA) purposes only, NMFS has established a small business size standard for businesses, including their affiliates, whose primary industry is commercial fishing (see 50 CFR 200.2). A business primarily engaged in commercial fishing (NAICS code 11411) is classified as a small business if it is independently owned and operated, is not dominant in its field of operation (including its affiliates), and has combined annual receipts not in excess of $11 million for all its affiliated operations worldwide. Tender vessels, if owned by a processor, are considered together with the processor. Independently owned tender vessels (NAICS 424460) do not harvest or process fish and have a 100 employee small entity threshold (81 FR 4469, January 26, 2016). Shoreside processors and stationary floating processors fall under ''seafood product preparation and packaging'' (NAICS 31170) and have a small entity threshold of combined annual employment of fewer than 750 (81 FR 4469, January 26, 2016). Observer providers and EM service providers (NAICS 541990, ''other professional, scientific, and technical services'') have a threshold of $19.5 million in total annual revenue (87 FR 69118, November 17, 2022).

Based on the thresholds defined above, and considering known cooperative affiliations, 26 catcher vessels, and 9 of the 12 tender vessels that participated in the pollock fishery during 2020, 2021, or 2022 would be considered small entities. A total of 121 catcher vessels participated in the fishery during 2020 and 2021, or 2022. Of these, 73 were AFA cooperative affiliated vessels considered to be large entities via their AFA affiliations. Three of these vessels participated in the whiting fishery and are cooperative affiliated large entities. Additionally, 2 vessels participated in the whiting and Rockfish Program, and 41 vessels participated in Rockfish Program cooperatives. A total of 26 vessels were not part of a cooperative and are classified as small entities. Based on the 750 employee threshold, 3 of the 11 processors that took deliveries of pollock from catcher vessels from 2020 through 2022 that are directly regulated would be considered small entities. Catcher/processors and motherships are not directly regulated by this action.

Presently, there are two recognized EM service providers and three recognized observer providers operating in the North Pacific pollock fishery. One entity provides both observer and EM service. Thus, there are four unique entities within this category. There is not presently an information collection that documents revenue of these entities, thus, for purposes of the RFA, they are considered directly regulated small entities.

Six CDQ entities receive allocations in the BS pollock fishery. Historically, these allocations have been harvested exclusively by catcher/processors that are not directly regulated by this action. However, the analysis contained in the Regulatory Impact Review acknowledges that these CDQ entities could choose to have their pollock allocations harvested by catcher vessels that would be directly regulated by this action. Some of the catcher vessels that could be used to harvest CDQ allocations are wholly owned by for-profit subsidiaries of these CDQ entities and are not considered to be small entities solely based on their CDQ affiliations. The analysis of revenue discussed above includes such vessels and the small entity count is based on estimated revenue versus the appropriate small entity threshold.

NMFS anticipates that the trawl EM category would realize cost-efficiencies in the monitoring program, particularly for the BS, and that cost efficiencies could be realized in the GOA as well. The Council recognized that this action will shift some impacts, costs, and responsibilities from the harvest sector to the shoreside processors and stationary floating processors, and will expand the use of CMCPs at processors. However, these potential shifts in cost are expected to be de minimis, and, further, the process for requesting to

participate in the trawl EM category is voluntary and development of the program was requested and supported by industry. As a voluntary program, entities would participate, and thus be directly regulated, only if there is a net benefit to them in doing so. This proposed rule would not increase the fees that NMFS collects from directly regulated entities in the partial coverage category. This proposed rule will implement a new fee for full coverage category. This new fee would be used by NMFS to pay for the costs of data review, storage, and transmission of EM data for vessels in the full coverage trawl EM category. The Analysis prepared for this action identifies the operational costs of participating in the trawl EM category (see **ADDRESSES**). Directly regulated small entities that individually judge the operational costs of participating in the trawl EM category to be burdensome could continue fishing under the existing human observer selection protocols, with no change in the amount of fees that they would be assessed. Therefore, this proposed rule would not have a significant economic impact on a substantial number of small entities. As a result, an initial regulatory flexibility analysis is not required, and none has been prepared.

Paperwork Reduction Act

This proposed rule contains collection-of-information requirements subject to review and approval by the Office of Management and Budget (OMB) under the Paperwork Reduction Act (PRA). This proposed rule would revise existing collection-of information requirements for OMB Control Numbers 0648–0213 (Alaska Region Logbook and Activity Family of Forms); 0648–0330 (NMFS Alaska Region Scale and Catch Weighing Requirements); 0648–0515 (Alaska Interagency Electronic Reporting System); and 0648–0711 (Alaska Cost Recovery and Fee Programs); and revise and extend 0648–0318 (North Pacific Observer Program). Because of a concurrent action for 0648–0213, the revision to that collection of information for this proposed rule will be assigned a temporary control number that will later be merged into 0648–0213. OMB Control Numbers 0648–0812 (Electronic Logbook: Pacific Cod Trawl Cooperative Program Catcher Vessels Less Than 60 Ft. LOA) and 0648–0815 (Bering Sea/Aleutian Islands Pot Gear Catcher/Processor Monitoring) are being merged into –0515 and –0318, respectively, and –0812 and –0815 will be discontinued upon issuance of the final rule. The public reporting burden estimates provided below for the collections of information include the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information.

OMB Control Number 0648–TEMPORARY

This proposed rule would revise the collection of information under OMB Control Number 0648–0213, associated with paper logbooks. Due to a concurrent action for that collection, the collection-of-information requirements will be assigned a temporary control number that will later be merged into OMB Control Number 0648–0213. This proposed rule would require logbooks to be submitted by all catcher vessels in the trawl EM category. Catcher vessels in the trawl EM category may use either NMFS-approved paper logbooks (OMB Control Number 0648–0213) or electronic logbooks (OMB Control Number 0648–0515). Catcher vessels greater than 60 feet (18.3 meters) LOA already are required to maintain logbooks. Some catcher vessels less than 60 feet (18.3 meters) LOA that are not currently required to submit a logbook would need to begin doing so to participate in the trawl EM category; therefore, this proposed rule would increase the number of vessels required to submit a logbook. The temporary control number would cover the revisions necessary to –0213 for the catcher vessels that choose to submit paper logbooks. The public reporting burden per response is estimated to average 18 minutes for the Catcher Vessel Trawl Daily Fishing Logbook.

OMB Control Number 0648–0318

NMFS proposes to revise and extend for three years the existing requirements for OMB Control Number 0648–0318, which is associated with the North Pacific Observer Program. Additionally, OMB Control Number 0648–0815 is being merged into –0318 and will be discontinued upon issuance of the final rule. OMB Control Number 0648–0815 was established as a temporary collection (88 FR 77228, November 9, 2023) because –0318 was being revised by a concurrent action and was intended to be merged into –0318 following the completion of that action. OMB Control Number –0318 would be revised to include the following due to this proposed rule.

The owner or operator of a catcher vessel or tender vessel would be required to use ODDS to request placement in the trawl EM category. Catcher vessels in the trawl EM category would be required to log all fishing trips in ODDS. The public reporting burden per response is estimated to average 5 minutes to submit the request through ODDS and 15 minutes to log a fishing trip in ODDS.

The vessel owner or operator of a catcher vessel or tender vessel in the trawl EM category would be required to submit a VMP to NMFS. The public reporting burden per response for the VMP is estimated to average 48 hours.

Vessel operators in the trawl EM category would be required to submit EM data and associated documentation identified in their vessel's VMP to NMFS. The public reporting burden per response is estimated to average 1 hour.

A catcher vessel owner or operator would be required to be a member of a TEM IPA to be approved for the trawl EM partial coverage category. The TEM IPA representative would submit the proposed TEM IPA to NMFS. The representative of each approved TEM IPA would be required to submit a written annual report to the Council. The public reporting burden per response is estimated to average 40 hours for the TEM IPA and 40 hours for the TEM IPA annual report.

Prospective EM hardware service providers would need to apply, and be approved, for an EM hardware service provider permit. The public reporting burden per response for this permit is estimated to average 8 hours.

An administrative appeal may be submitted if NMFS would issue an IAD to deny a request to place a vessel in the trawl EM category, an IAD to disapprove a proposed TEM IPA, or and IAD for expiration of an EM hardware services provider permit. The public reporting burden per response for an administrative appeal is estimated to average 4 hours.

The submission time of the observer deployment/logistics report would be changed to within 24 hours of the observer assignment or daily by 4:30 p.m., Pacific Time, each business day with regard to each observer. Fax would be removed as a submission method for this report, and this proposed rule would allow any other method specified by NMFS. This report would no longer be required to include the location of any observer employed by the observer provider who is not assigned to a vessel, shoreside processor, or stationary floating processor. These changes are not expected to change the average response time for this report. The public reporting burden per response is estimated to average 7 minutes.

This proposed rule would allow for electronic submission of the reports that are submitted by an observer provider and used by NMFS to monitor and

enforce standards of observer conduct and identify problems on deployments that may compromise the observer's health or well-being otherwise. This proposed rule would also require the provider's responses to the violation in the report submitted by an observer provider for an observer who violated the observer provider's policy on conduct and behavior. These changes are not expected to change the average response time for these reports. The public reporting burden per response is estimated to average 2 hours.

This proposed rule would remove fax as an electronic communication method and allow other methods specified by NMFS for other observer provider responsibilities. The public reporting burden per response to these requirements is estimated to average 60 hours for the observer provider permit application; 8 hours for college transcripts; 1 hour for observer training registration; 7 minutes each for observer briefing registration and projected observer assignments; 5 minutes each for physical examination verification and updates to observer provider information; 12 minutes for certificates of insurance; and 30 minutes each for observer debriefing registration, observer provider contracts, and observer provider invoices.

OMB Control Number 0648–0330

The information collection for 0648–0330 would be revised because this proposed rule would require all shoreside processors and stationary floating processors receiving pollock from vessels in the trawl EM category to have NMFS-approved CMCPs in place before receiving deliveries from catcher vessels or tender vessels in the trawl EM category. Some processors that do not currently submit a CMCP would need to begin doing so; therefore, this would increase the number of respondents that submit a CMCP. The public reporting burden per response is estimated to average 40 hours for the new participants required to submit a CMCP and initially in the first two years after implementation for existing CMCPs, but in the following years the burden would be reduced.

OMB Control Number 0648–0515

The information collection for 0648–0515 would be revised due to this proposed rule. Additionally, OMB Control Number 0648–0812 is being merged into –0515 and will be discontinued upon issuance of the final rule. OMB Control Number 0648–0812 was established as a temporary collection (88 FR 53704, August 8, 2023) because –0515 was being revised by concurrent actions and was intended to be merged into –0515 following the completion of those actions. This proposed rule would require logbooks to be submitted by all catcher vessels in the trawl EM category. Catcher vessels in the trawl EM category may use either NMFS-approved electronic logbooks (OMB Control Number 0648–0515) or paper logbooks (OMB Control Number 0648–0213). Catcher vessels greater than 60 feet (18.3 meters) LOA already are required to maintain logbooks. Some catcher vessels less than 60 feet (18.3 meters) LOA that are not currently required to submit a logbook would need to begin doing so to participate in the trawl EM category; therefore, this proposed rule would increase the number of vessels required to submit a logbook. The revision to this collection of information due to the rule adds the catcher vessels less than 60 feet (18.3 meters) LOA that choose to submit electronic logbooks. The public reporting burden per response is estimated to average 15 minutes for the Catcher Vessel Electronic Logbook.

OMB Control Number 0648–0711

The information collection for 0648–0711 would be revised because this proposed rule would require the owner of a catcher vessel in the full coverage trawl EM category to submit the new full coverage trawl EM fee. The public reporting burden per response is estimated to average 1 minute for the fee payment.

Public Comment

Public comment is sought regarding: whether this 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 burden estimate; 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, including through the use of automated collection techniques or other forms of information technology. Submit comments on these or any other aspects of the collection of information at *https://www.reginfo.gov/public/do/PRAMain.*

Notwithstanding any other provisions of the law, no person is required to respond or, nor shall any person by subject to a penalty for failure to comply with, a collection of information subject to the requirements of the PRA, unless that collection of information displays a currently valid OMB control number.

List of Subjects in 50 CFR Part 679

Alaska, Fisheries, Reporting and recordkeeping requirements.

Dated: January 26, 2024.

Samuel D. Rauch, III,

Deputy Assistant Administrator for Regulatory Programs, National Marine Fisheries Service.

For the reasons set out in the preamble, NMFS proposes to amend 50 CFR part 679 as follows:

PART 679—FISHERIES OF THE EXCLUSIVE ECONOMIC ZONE OFF ALASKA

■ 1. The authority citation for part 679 continues to read as follows:

Authority: 16 U.S.C. 773 *et seq.;* 1801 *et seq.;* 3631 *et seq.;* Pub. L. 108–447; Pub. L. 111–281.

■ 2. Amend § 679.2 by:

■ a. Removing the definition of ''EM selection pool'';

■ b. Revising the definition of ''EM service provider'' and paragraph (3)(iv) of the definition of ''Fishing trip''; and

■ c. Adding in alphabetical order definitions of ''Nontrawl EM selection pool'', ''Trawl EM category'', and ''Trawl EM Incentive Plan Agreement (TEM IPA)''.

The revisions and additions read as follows:

§ 679.2 Definitions.

* * * * *

EM service provider means any person, including their employees or agents, that NMFS contracts with, or grants an EM hardware service provider permit to under § 679.52(d), to provide EM services, or to collect, review, interpret, or analyze EM data, as required under § 679.51. The two types of EM service providers are as follows:

(1) *EM hardware service provider* is a provider that NMFS grants a permit under § 679.52(d) and is authorized to deploy and service EM hardware aboard vessels in an EM category as specified in § 679.51.

(2) *EM data review service provider* is a provider that NMFS contracts with, or otherwise has an established business relationship with, to review, interpret, or analyze EM data as required under § 679.51.

* * * * *

Fishing trip means:

* * * * *

(3) * * *

(iv) *For a vessel in any EM category,* the period of time that begins when the vessel with an empty hold departs a port or tender vessel until the vessel

returns to a port or tender vessel and offloads or delivers all fish.

* * * * *

Nontrawl EM selection pool means the defined group of vessels from which NMFS will randomly select the vessels required to use an EM system under § 679.51(f).

* * * * *

Trawl EM category means the defined group of catcher vessels and tender vessels with a NMFS-approved VMP that are required to use an EM system as specified under § 679.51(g)(1).

Trawl EM Incentive Plan Agreement (TEM IPA) means a voluntary private contract in writing, approved by NMFS under § 679.57, that establishes incentives for partial coverage catcher vessels in the trawl EM category to keep catch within the limits to which vessels not in the trawl EM category are subject. These limits include the catcher vessel harvest limit for pollock in the Gulf of Alaska (§ 679.7(b)(2)) and MRAs (§ 679.20(e)).

* * * * *

■ 3. Amend § 679.5 by adding paragraph (a)(1)(iii)(H) and revising paragraph (a)(4)(i) to read as follows:

§ 679.5 Recordkeeping and reporting (R&R).

(a) * * *

(1) * * *

(iii) * * *

If harvest made under . . . program	Record the . . .	For more information, see . . .
*	*	*
(H) Trawl EM Category (TEM)	Management program modifier as TEM	§ 679.51

* * * * *

(4) * * *

(i) *Catcher vessels less than 60 ft (18.3 m) LOA.* The owner and operator of a catcher vessel less than 60 ft (18.3 m) LOA are required to comply with the vessel activity report described at paragraph (k) of this section, but otherwise are not required to comply with the R&R requirements of this section, except for:

(A) Vessels using pot gear as described in paragraph (c)(3)(i)(B)(*1*) of this section;

(B) Vessels participating in the PCTC Program as described in paragraph (x) of this section; and

(C) Catcher vessels in the trawl EM category as described in § 679.51(g).

* * * * *

■ 4. Amend § 679.7 by adding paragraph (a)(11)(iii), revising paragraphs (a)(14) and (a)(16), removing and reserving paragraph (a)(17), and revising paragraphs (b)(2)(i) through (iii), and (j).

The addition and revisions read as follows:

§ 679.7 Prohibitions.

(a) * * *

(11) * * *

(iii) *Tender vessel.* Use a catcher vessel or catcher/processor to harvest groundfish while operating as a tender vessel.

* * * * *

(14) *Trawl gear performance standard*—(i) *BSAI.* Except for catcher vessels in the trawl EM category, use a vessel to participate in a directed fishery for pollock using trawl gear and have on board the vessel, at any particular time, 20 or more crabs of any species that have a carapace width of more than 1.5 inches (38 mm) at the widest dimension.

(ii) *GOA.* Except for catcher vessels in the trawl EM category, use a vessel to participate in a directed fishery for pollock using trawl gear when directed fishing for pollock with nonpelagic trawl gear is closed and have on board the vessel, at any particular time, 20 or more crabs of any species that have a carapace width of more than 1.5 inches (38 mm) at the widest dimension.

* * * * *

(16) *Retention of groundfish bycatch species.* Except for catcher vessels in the trawl EM category, exceed the maximum retainable amount established under § 679.20(e).

* * * * *

(b) * * *

(2) * * *

(i) Except for catcher vessels in the trawl EM category, retain more than 300,000 lb (136 mt) of unprocessed pollock on board a catcher vessel issued a FFP at any time during a fishing trip as defined at § 679.2;

(ii) Except for catcher vessels in the trawl EM category, land more than 300,000 lb (136 mt) of unprocessed pollock harvested in any GOA reporting area from a catcher vessel issued a FFP to any processor or tender vessel during a calendar day as defined at § 679.2; and

(iii) Except for catcher vessels in the trawl EM category, land a cumulative amount of unprocessed pollock harvested from any GOA reporting area from a catcher vessel issued a FFP during a directed fishery that exceeds the amount in paragraph (b)(2)(ii) of this section multiplied by the number of calendar days that occur during the time period the directed fishery is open in that reporting area.

* * * * *

(j) *North Pacific Observer Program—Electronic Monitoring*—(1) *General.* (i) Fish without an EM system when a vessel is required to carry an EM system under § 679.51.

(ii) Fish with an EM system without a copy of a valid NMFS-approved VMP on board when directed fishing in a fishery subject to EM coverage.

(iii) Fail to comply with a NMFS-approved VMP when directed fishing in a fishery subject to EM coverage.

(iv) Fail to ensure an EM system is functioning prior to departing port on a fishing trip as specified at § 679.51(f)(5)(vi)(A).

(v) Fail to ensure an EM system is functional prior to departing on a fishing trip as specified at § 679.51(g)(3)(v).

(vi) Depart on a fishing trip without a functional EM system, per the VMP, unless approved to do so by NMFS, after the procedures at § 679.51(f)(5)(vi)(A)(*1*), or § 679.51(g), have been followed.

(vii) Fail to follow procedures related to EM system malfunctions as described at § 679.51(f)(5)(vi)(B) or § 679.51(g) prior to deploying each set of gear on a fishing trip selected for EM coverage.

(viii) Fail to make the EM system, associated equipment, logbooks, and other records available for inspection upon request by NMFS, OLE, or other NMFS-authorized officer.

(ix) Fail to submit EM data as specified under § 679.51(f)(5)(vii) or § 679.51(g).

(x) Tamper with, bias, disconnect, damage, destroy, alter, or in any other way distort, render useless, inoperative, ineffective, or inaccurate any component of the EM system, associated equipment, or data recorded by the EM system when the vessel is directed fishing in a fishery subject to EM coverage, unless the vessel operator is directed to make changes to the EM system by NMFS, the EM service

provider, or as directed in the troubleshooting guide of the VMP.

(xi) Assault, impede, intimidate, harass, sexually harass, bribe, or interfere with an EM service provider.

(xii) Interfere with or bias the sampling procedure employed in the EM selection pool, including either mechanically or manually sorting or discarding catch outside of the camera view or inconsistent with the NMFS-approved VMP.

(xiii) Fail to meet the vessel owner and operator responsibilities when using an EM system as specified at § 679.51(f)(5) or § 679.51(g)(5).

(2) *Trawl EM category*—(i) *Catcher vessels in the trawl EM category.* (A) Use a catcher vessel in the partial coverage trawl EM category to fish without being party to an approved trawl EM incentive plan agreement established under § 679.57;

(B) Use a catcher vessel in the trawl EM category to discard catch from the codend before it is brought on board the vessel unless required to maintain the safety and stability of the vessel. This includes ''codend dumping'' or ''codend bleeding'';

(C) Use a catcher vessel in the trawl EM category to deploy nonpelagic trawl gear;

(D) Use a catcher vessel in the trawl EM category to land catch to a tender vessel that is not in the trawl EM category or does not have a NMFS-approved VMP; or

(E) Use a catcher vessel in the trawl EM category to land catch to a shoreside processor or stationary floating processor that does not have a NMFS-approved CMCP.

(ii) *Shoreside processors and stationary floating processors.* (A) Receive any delivery from a vessel in the trawl EM category without being issued and following a NMFS-approved Catch Monitoring Control Plan as described in § 679.28(g).

(B) Store any non-salmon species in a designated salmon storage container as described in a NMFS-approved Catch Monitoring Control Plan per § 679.28(g).

(C) Allow any salmon species to be placed into any location other than the designated salmon storage container described in a NMFS-approved Catch Monitoring Control Plan per § 679.28(g) at a shoreside processor or stationary floating processor.

(D) Begin sorting a trawl EM category offload before an observer has completed the count of all salmon and the collection of scientific data and biological samples from the previous offload.

(E) Continue to sort trawl EM category catch if the salmon storage container described in a NMFS-approved Catch Monitoring Control Plan per § 679.28(g) is full.

(F) Allow any PSC harvested or delivered by a vessel in the trawl EM category to be sold, purchased, bartered, or traded.

(iii) *Tender vessels.* (A) Operate a tender vessel in the trawl EM category and receive a delivery from a catcher vessel in the trawl EM category and a catcher vessel not in the trawl EM category during the same fishing trip.

(B) Operate a tender vessel in the trawl EM category and receive a delivery from a catcher vessel in the trawl EM category without an approved VMP.

* * * * *

■ 5. Amend § 679.20 by revising paragraph (d)(2) to read as follows:

§ 679.20 General limitations.

* * * * *

(d) * * *

(2) *Groundfish as prohibited species closure.* When the Regional Administrator determines that the TAC of any target species specified under paragraph (c) of this section, or the share of any TAC assigned to any type of gear, has been or will be achieved prior to the end of a year, NMFS will publish notification in the **Federal Register** requiring that target species be treated in the same manner as a prohibited species, as described under § 679.21(a), for the remainder of the year, except:

(i) Rockfish species caught by catcher vessels using hook-and-line, pot, or jig gear as described in paragraph (j) of this section; and

(ii) Catcher vessels in the trawl EM category.

* * * * *

■ 6. Amend § 679.21 by adding paragraph (a)(2)(ii)(A), adding reserved paragraph (a)(2)(ii)(B), and revising paragraph (f)(15)(ii)(C) to read as follows:

§ 679.21 Prohibited species bycatch management.

(a) * * *

(2) * * *

(ii) * * *

(A) Vessels in the trawl EM category must retain all prohibited species catch for sampling by an observer.

* * * * *

(f) * * *

(15) * * *

(ii) * * *

(C) Shoreside processors and stationary floating processors must comply with the requirements in § 679.28(g)(9) and (10) for the receipt, sorting, and storage of salmon from deliveries of catch from the BS pollock fishery.

* * * * *

■ 7. Amend § 679.28 by:

■ a. Revising paragraphs (d)(10)(i) and (g)(1);

■ b. Adding paragraph (g)(2)(iv);

■ c. Revising paragraphs (g)(3) through (6), (g)(7) introductory text, and (g)(7)(v);

■ d. Removing paragraph (g)(7)(vi)(C);

■ e. Revising paragraphs (g)(7)(vii) through (xi); and

■ f. Adding paragraphs (g)(8) through (10).

The revisions and additions read as follows:

§ 679.28 Equipment and operational requirements.

* * * * *

(d) * * *

(10) * * *

(i) *How does a vessel owner arrange for an observer sampling station inspection?* The vessel owner must submit an Inspection Request for Observer Sampling Station with all the information fields accurately filled in to NMFS by emailing (*station.inspections@noaa.gov*), or completing the online request form, at least 10 working days in advance of the requested date of inspection. The request form is available on the NMFS Alaska Region website.

* * * * *

(g) * * *

(1) *What is a CMCP?* A CMCP is a plan submitted by the owner and manager of a processing plant, and approved by NMFS, detailing how the processor will meet the applicable catch monitoring and control standards detailed in paragraphs (g)(7) through (10) of this section.

(2) * * *

(iv) Any shoreside or stationary floating processor receiving any delivery from catcher vessels or tender vessels in the trawl EM category as defined at § 679.2.

(3) *How is a CMCP approved by NMFS?* NMFS will approve a CMCP if it meets all the applicable requirements specified in paragraphs (g)(7) through (10) of this section. The processor may be inspected by NMFS prior to approval of the CMCP to ensure that the processor conforms to the elements addressed in the CMCP. NMFS will complete its review of the CMCP within 14 working days of receipt. If NMFS disapproves a CMCP, the plant owner or manager may resubmit a revised CMCP or file an administrative appeal as set forth under the administrative appeals procedures described at § 679.43.

(4) *How is a CMCP inspection arranged?* The processor must submit a request for a CMCP inspection. The time

and place of a CMCP inspection may be arranged by submitting a written request to NMFS, Alaska Region, or other method of electronic communication designated by NMFS. NMFS will review the inspection request within 10 working days after receiving a complete application for an inspection. The inspection request must include:

(i) Name of the person submitting the application and the date of the application;

(ii) Address, telephone number, and email address of the person submitting the application;

(iii) A proposed CMCP detailing how the processor will meet each of the applicable performance standards in paragraphs (g)(7) through (10) of this section.

(5) *For how long is a CMCP approved?* NMFS will approve a CMCP for 1 year if it meets the applicable performance standards specified in paragraphs (g)(7) through (10) of this section. An owner or manager must notify NMFS in writing if changes are made in plant operations or layout that do not conform to the CMCP.

(6) *How do I make changes to my CMCP?* An owner and manager may change an approved CMCP by submitting a CMCP addendum to NMFS. NMFS will approve the modified CMCP if it continues to meet the applicable performance standards specified in paragraphs (g)(7) through (10) of this section. Depending on the nature and magnitude of the change requested, NMFS may require a CMCP inspection as described in paragraph (g)(3) of this section. A CMCP addendum must contain:

(i) Name of the person submitting the addendum;

(ii) Address, telephone number, and email address of the person submitting the addendum; and

(iii) A complete description of the proposed CMCP change.

(7) *Catch monitoring and control standards.* For all shoreside processors or stationary floating processors accepting any delivery from the fisheries listed in paragraph (g)(2) of this section:

* * * * *

(v) *Delivery point.* Each CMCP must identify a single delivery point. The delivery point is the first location where fish removed from a delivering catcher vessel can be sorted or diverted to more than one location. If the catch is pumped from the hold of a catcher vessel or a codend, the delivery point normally will be the location where the pump first discharges the catch. If catch is removed from a vessel by brailing, the delivery point normally will be the bin or belt where the brailer discharges the catch. The CMCP must describe how the catch will be offloaded at the delivery point.

* * * * *

(vii) *Scale Drawing of the Plant.* The CMCP must be accompanied by a scale drawing of the plant showing:

(A) The delivery point;

(B) Flow of fish;

(C) The observation area;

(D) The observer sampling station described in paragraph (g)(7)(ix) of this section;

(E) The location of each scale used to weigh catch;

(F) Each location where catch is sorted including the last location where sorting could occur; and

(G) Information to meet other requirements of this part, if requested by NMFS.

(viii) *Reasonable assistance.* Shoreside processors and stationary floating processors must provide reasonable assistance as described in § 679.51(e)(2)(vi), to observer(s) and to the Rockfish CMCP specialist. The CMCP must identify staff responsible for ensuring reasonable assistance is provided.

(ix) *Observer sampling station.* Each CMCP, except for the Rockfish Program, must identify and include an observer(s) sampling station for the exclusive use of observer(s). Unless otherwise approved by NMFS, the sampling station must meet the following criteria:

(A) *Location of observer sampling station.* (*1*) The observer sampling station must be located in an area protected from the weather where the observer has access to unsorted catch.

(*2*) The observer sampling station must be adjacent to the location where salmon will be counted and biological samples or scientific data are collected.

(*3*) Clear, unobstructed passage must be provided between the observer sampling station and observer sample collection point. The observer(s) must be able to monitor the collection and transport of unsorted catch to the observer sampling station.

(B) *Proximity of observer sampling station.* The observer sampling station must be located within 4 meters of the observer sample collection point without encountering safety hazards, or, reasonable assistance must be given to move samples into the observer sampling station upon request.

(C) *Minimum workspace requirements.* The observer sampling station must include: A working area of at least 4.5 square meters. The observer(s) must be able to stand upright and have a sampling area at least 0.9 meters deep in front of the table and scale.

(D) *Clear, unobstructed passage.* A clear and unobstructed passage is required between the observer sample collection point and sampling station, and within the observer sampling station. Passageways must be at least 65 centimeters wide at their narrowest point, and be free of tripping or head bumping hazards.

(E) *Table.* The observer sampling station must include a table at least 0.6 meters deep, 1.2 meters wide, 0.9 meters high, and no more than 1.1 meters high. The entire surface area of the table must be available for use by the observer(s). Any area used for the observer sampling scale is in addition to the minimum space requirements for the table specified at paragraph (g)(7)(ix)(B) of this section. The observer sampling table must be secure, and stable.

(F) *Observer Platform scale.* The observer sampling station must include a platform scale as described in paragraph (c)(4) of this section, and must meet the requirements specified in paragraph (c)(3)(v) of this section when tested by the observer. The platform scale must be located within 1 meter of the observer sampling table. The scale must be mounted so that the weighing surface is no more than 0.7 meters above the floor.

(G) *Lockable cabinet.* The observer work station must include a secure and lockable cabinet or locker of at least 0.5 cubic meters, and must be for the exclusive use of the observer(s).

(x) *Communication with observer.* The CMCP, except for the Rockfish Program, must describe what communication equipment such as radios or cellular phones is used to facilitate communications within the plant. The plant owner must ensure that the plant manager provides the observer(s) with the same communications equipment used by plant staff. The plant owner or plant manager must communicate the following information to the observer(s), including:

(A) Daily schedule of expected landings;

(B) Vessel name;

(C) Identify which management areas the vessel was operating in;

(D) If the delivering vessel is operating under the trawl EM category;

(E) Estimated tonnage onboard the vessel;

(F) If there is a deckload;

(G) Estimated time of arrival;

(H) Estimated time to complete the offload;

(I) If the vessel offload will be interrupted for any reason; and

(J) Any other information required by the applicable CMCP or VMP.

(xi) *Plant liaison.* The CMCP must designate a plant liaison. The plant liaison is responsible for:

(A) Orienting new observer(s) to the plant and providing a copy of the NMFS-approved CMCP and any subsequent addendums or revisions; and

(B) Assisting in the resolution of observer(s) concerns.

* * * * *

(8) *Rockfish Program.* In addition to compliance with requirements set forth at paragraph (g)(7) of this section, all shoreside processors or stationary floating processors receiving deliveries of groundfish harvested under the authority of a rockfish CQ permit must:

(i) *Rockfish CMCP specialist notification.* Describe how the Rockfish CMCP specialist will be notified of deliveries of groundfish harvested under the authority of a rockfish CQ permit.

(ii) [Reserved]

(9) *Processors receiving AFA pollock, CDQ pollock, and trawl EM category deliveries.* In addition to compliance with requirements set forth at paragraph (g)(7) of this section, all shoreside processors and stationary floating processors receiving deliveries from the fisheries described in paragraphs (g)(2)(i),(ii), and (iv) of this section, must comply with the following:

(i) *Salmon storage container.* (A) A salmon storage container must be designated for the exclusive purpose of storing salmon during an offload;

(B) The observer(s) must have a clear, unobstructed view of the salmon storage container to ensure no salmon of any species are removed without the observer's knowledge;

(C) The CMCP must describe the process of sorting and storing salmon; and

(D) The scale drawing of the plant must include the location of the salmon storage container.

(ii) *Salmon sorting and handling practices.* (A) Sort and transport all salmon to the salmon storage container identified in the CMCP (see paragraphs (g)(7)(vi)(C) and (g)(7)(x)(F) of this section). The salmon must remain in that salmon storage container and within the view of the observer(s) at all times during the offload;

(B) If, at any point during the offload, salmon are too numerous to be contained in the salmon storage container, cease the offload and all sorting and give the observer(s) the opportunity to count and collect scientific data or biological samples from all salmon in the storage bin. The counted salmon then must be removed from the area by plant personnel in the presence of the observer(s);

(C) At the completion of the offload, give the observer(s) the opportunity to count the salmon and collect scientific data or biological samples; and

(D) Before sorting of the next offload of any catch may begin, give the observer(s) the opportunity to complete the count of salmon and the collection of scientific data or biological samples from the previous offload of catch. When the observer(s) has completed all counting and sampling duties for the offload, plant personnel must remove the salmon in the presence of the observer(s), from the salmon storage container and location where salmon are counted and biological samples or scientific data are collected.

(iii) *Observer sample collection point.* The observer sample collection point is the location where the observer collects unsorted catch.

(A) The observer sample collection point (see paragraph (g)(7)(ix)(A)(*3*) of this section) must have a diverter mechanism to allow fish to be diverted from the belt directly into the observer's sampling baskets. The location and design of the diverter mechanism must be described in the CMCP; and

(B) The scale drawing of the plant, specified at paragraph (g)(7)(vii) of this section, must include the location of the observer sample collection point.

(iv) *Observer sampling scales and test weights.* (A) Identify by serial number each observer sampling scale in the CMCP;

(B) Provide observer sampling scales that are accurate and within the limits specified in paragraph (c)(4)(v) of this section;

(C) Test weights must be made available for the observer(s) use, be kept in good condition, be made of stainless steel or other corrosion-resistant material, and must meet requirements specified in paragraph (C)(4)(iii) of this section;

(D) List the serial numbers of the test weights to be used to test the observer sampling scale in the CMCP; and

(E) The CMCP must identify where the test weights will be stored. Test weights must be stored within the observer sampling station or reasonable assistance must be provided upon observer(s) request to move the weights form the storage location to the observer sampling scale.

(10) *AFA pollock and CDQ pollock.* In addition to paragraphs (g)(7) and (9) of this section, all shoreside processors and stationary floating processors accepting deliveries described in paragraph (g)(2)(i) of this section have the following additional requirements:

(i) Ensure no salmon of any species pass beyond the last point where sorting of fish occurs, as identified in the scale drawing of the plant, paragraph (g)(7)(vii) of this section, in the CMCP; and

(ii) The CMCP must describe the process that will be used to sort salmon, including the procedures for handling salmon that have passed beyond the last point where sorting of fish occurs;

(iii) Meet all salmon handling requirements as described in (g)(9) of this section.

* * * * *

■ 8. Amend § 679.51 by:

■ a. Removing the words ''NMFS Alaska Region website at *https://alaskafisheries.noaa.gov/*'', ''NMFS Alaska Region website *https://alaskafisheries.noaa.gov/*'', ''NMFS Alaska Region website at *http://alaskafisheries.noaa.gov*'', ''NMFS Alaska Region website *http://alaskafisheries.noaa.gov*'', and ''NMFS Alaska Region website (*http://alaskafisheries.noaa.gov*)'' wherever they appear, and adding, in their place, the words ''NMFS Alaska Region website'';

■ b. Adding paragraph (a)(1)(iv);

■ c. Revising paragraphs (a)(2)(ii) and (b)(2)(i);

■ d. Adding paragraph (b)(3);

■ e. In paragraph (c)(3), removing the phrase ''transmitted by facsimile to 206–526–4066'' and adding, in its place, the phrase ''other method specified by NMFS on the NMFS Observer Program website'';

■ f. In paragraph (f), removing the words ''EM selection pool'' wherever they appear and adding, in their place, the words ''nontrawl EM selection pool'';

■ g. Revising paragraph (f)(2) introductory text;

■ h. In paragraph (f)(3)(ii), removing the phrase ''the video data storage devices'' and adding in its place the phrase ''EM data'';

■ i. Revising paragraph (f)(4)(v);

■ j. Adding paragraph (f)(4)(vi);

■ k. In paragraph (f)(5)(vii), removing the phrase ''the video data storage device'' and adding, in its place, the words ''EM data''; and

■ l. Adding paragraph (g).

The additions and revisions read as follows:

§ 679.51 Observer and Electronic Monitoring System requirements for vessels and plants.

(a) * * *

(1) * * *

(iv) *Observer workload at shoreside processors and stationary floating*

processors. Regarding shoreside processors and stationary floating processors, the time required for an observer to complete sampling, data recording, and data communication duties, per this paragraph (a)(1), may not exceed 12 hours in each 24-hour period.

(2) * * *

(ii) *Observer coverage requirements.* A vessel listed in paragraphs (a)(2)(i)(A) through (C) of this section must have at least one observer aboard the vessel at all times. Some fisheries require additional observer coverage in accordance with paragraph (a)(2)(vi) of this section. The following exceptions apply:

(A) A vessel subject to the partial observer coverage category as per paragraph (a)(1)(i) of this section;

(B) A vessel approved to be in the full coverage trawl EM category; vessels in the full coverage trawl EM category are subject to observer coverage if NMFS determines that at-sea coverage is necessary in the Annual Deployment Plan.

* * * * *

(b) * * *

(2) * * *

(i) *Coverage level.* (A) An AFA inshore processor must provide an observer for each 12-consecutive-hour period of each calendar day during which the processor takes delivery of, or processes, groundfish harvested by a vessel engaged in a directed pollock fishery in the BS. An AFA inshore processor that, for more than 12 consecutive hours in a calendar day, takes delivery of or processes pollock harvested in the BS directed pollock fishery must provide two observers for each such day.

(B) The owner and operator of an AFA shoreside or stationary floating processor receiving deliveries from a catcher vessel in the trawl EM category must provide the necessary number of observers to meet the criteria prescribed by NMFS in the Annual Deployment Plan for each calendar day during which the processor takes delivery of, or processes, groundfish harvested by a vessel engaged in a directed pollock fishery in the BS.

* * * * *

(3) *Shoreside processor and stationary floating processor receiving a delivery from catcher or tender vessels in the trawl EM category*—(i) *Deadline to submit a request to receive trawl EM deliveries.* A shoreside processor and stationary floating processor must submit a request to NMFS by November 1 of the year prior to the fishing year in which they intend to receive deliveries from catcher vessels or tender vessels in the trawl EM category.

(ii) [Reserved]

* * * * *

(f) * * *

(2) *Notification of nontrawl EM trip selection.*

* * * * *

(4) * * *

(v) If, at any time, changes are required to the VMP to improve the data collection of the EM system or address fishing operation changes, the vessel owner or operator must work with NMFS and the EM service provider to amend the VMP. The vessel owner or operator must sign the amended VMP and submit these changes to the VMP to NMFS prior to departing on the next fishing trip selected for EM coverage.

(vi) The VMP will require information regarding:

(A) Vessel and contact information;

(B) Gear used;

(C) EM hardware functionality requirements;

(D) Requirements for meeting program objectives as specified in the Annual Deployment Plan;

(E) List of potential solutions for hardware malfunctions;

(F) Images of camera locations and camera views;

(G) EM hardware service provider information;

(H) Valid signatures from the EM hardware service provider and vessel owner or operator; and

(I) Any other information required by the applicable VMP.

* * * * *

(g) *Trawl EM category*—(1) *Vessel placement in the trawl EM category*—(i) *Applicability.* (A) The owner or operator of a catcher vessel with a pollock trawl endorsement (PTW) on their FFP in the partial coverage category under paragraph (a)(1)(i) of this section, or in the full coverage category in paragraph (a)(2)(i) of this section, may request to be placed in the trawl EM category.

(*1*) *Partial coverage trawl EM category.* Catcher vessels targeting pollock with pelagic trawl gear in the GOA or AI fisheries.

(*2*) *Full coverage trawl EM category.* Catcher vessels targeting pollock with pelagic trawl gear in the BS or CDQ fisheries.

(B) The owner or operator of a tender vessel must request to be placed in the trawl EM category before receiving a delivery from a catcher vessel in the trawl EM category.

(ii) *How to request placement in the trawl EM category.* The owner or operator of a vessel must complete the trawl EM category request and submit it to NMFS using ODDS. Access to ODDS is available through the NMFS Alaska Region website. ODDS is described in paragraph (a)(1)(ii) of this section.

(iii) *Deadline to submit a trawl EM category request.* A vessel owner or operator must submit an annual trawl EM category request in ODDS by November 1 of the year prior to the fishing year in which the vessel would be placed in the trawl EM category.

(iv) *Approval for placement in the trawl EM category.* NMFS may approve a vessel for placement in the trawl EM category based on criteria specified by NMFS in the Annual Deployment Plan, available through the NMFS Alaska Region website. Criteria for disapproval may include actions by the vessel leading to data gaps, noncompliance with program elements such as discarding of catch, vessel configuration or fishing practices that cannot provide the necessary camera views to meet data collection goals, failure to follow the trawl EM category VMP, and/or failure to adhere to an incentive plan agreement as specified in § 679.57 for partial coverage catcher vessels, or § 679.21(f)(12) for full coverage catcher vessels. For the trawl EM application to be considered complete, all fees due to NMFS from the owner or authorized representative of a catcher vessel subject to the fees specified at § 679.56 at the time of application must be paid.

(v) *Notification of approval for placement in the trawl EM category.* (A) NMFS will notify the owner or operator through ODDS of approval for the trawl EM category for the following fishing year. Catcher vessels remain subject to observer coverage under paragraphs (a)(1)(i) or (a)(2)(i) of this section unless and until NMFS approves the request for placement of the catcher vessel in the trawl EM category.

(B) Once NMFS notifies the vessel owner or operator that their request to be placed in the trawl EM category has been approved, the vessel owner or operator must comply with the responsibilities in paragraphs (g)(2) and (3) of this section and all further instructions set forth in ODDS.

(vi) *Initial Administrative Determination (IAD).* If NMFS denies a request to place a vessel in the trawl EM category, NMFS will provide an IAD to the vessel owner, which will explain the basis for the denial.

(vii) *Appeal.* If the vessel owner wishes to appeal NMFS's denial of a request to place the vessel in the trawl EM category, the owner may appeal the determination under the appeals procedure set out at 15 CFR part 906.

(viii) *Duration.* Once NMFS approves a vessel for placement in the trawl EM

category, that vessel will remain in the trawl EM category for the following upcoming fishing year or until:

(A) NMFS disapproves the vessel's VMP under paragraph (g)(2) of this section; or

(B) The vessel no longer meets the trawl EM category criteria specified by NMFS.

(ix) *Procurement of EM services*—(A) *Partial coverage category.* The owner or operator of a vessel approved for the trawl EM category must use the EM hardware service provider as outlined by NMFS in the Annual Deployment Plan.

(B) *Full coverage category.* The owner or operator of a vessel approved for the trawl EM category must arrange and pay for EM service provider services from a permitted EM hardware service provider.

(2) *Vessel Monitoring Plan (VMP).* Once approved for the trawl EM category, and prior to the first trawl EM fishing trip in the fishing year, the vessel owner or operator must develop a VMP with the EM hardware service provider following the VMP template available through the NMFS Alaska Region website.

(i) The vessel owner or operator must sign and submit the VMP to NMFS each fishing year.

(ii) NMFS may approve the VMP for the fishing year if it meets all the requirements specified in the VMP template available through the NMFS Alaska Region website.

(iii) If the VMP does not meet all the requirements specified in the VMP template, NMFS will provide the vessel owner or operator the opportunity to submit a revised VMP that meets all the requirements specified in the VMP template.

(iv) If NMFS does not approve the revised VMP, NMFS will issue an IAD to the vessel owner or operator that will explain the basis for the disapproval. The vessel owner or operator may file an administrative appeal under the administrative appeals procedures set out at 15 CFR part 906.

(v) If, at any time, changes must be made to the VMP to improve the data collection of the EM system or address fishing operation changes, the vessel owner or operator must work with NMFS and the EM hardware service provider to amend the VMP. The vessel owner or operator must sign the updated VMP and submit those changes to NMFS. NMFS must approve the amended VMP prior to departing on the next fishing trip selected for EM coverage.

(vi) The VMP will require information regarding:

(A) Vessel and contact information;

(B) Gear used;

(C) EM hardware functionality requirements;

(D) Requirements for meeting program objectives as specified in the Annual Deployment Plan;

(E) List of potential solutions for hardware malfunctions;

(F) Images of camera locations and camera views;

(G) EM hardware service provider information;

(H) Valid signatures from the EM hardware service provider and either the vessel owner or operator; and

(I) Any other information required by the applicable VMP.

(3) *Responsibilities.* To use an EM system under this section the vessel owner and operator must:

(i) Make the vessel available for the installation of EM equipment by an EM hardware service provider;

(ii) Provide access to the vessel's EM system and reasonable assistance to the EM hardware service provider;

(iii) Maintain a copy of a NMFS-approved VMP onboard the vessel at all times when the vessel is directed fishing in a fishery subject to EM coverage;

(iv) Comply with all elements of the VMP during fishing trips conducted under paragraph (g)(5) of this section;

(v) Maintain the EM system, including by doing the following:

(A) Ensure the EM system is functioning before departing on a fishing trip.

(B) Ensure power is maintained to the EM system for the duration of a trawl EM category fishing trip;

(C) Ensure the system is functioning for the entire fishing trip, camera views are unobstructed and clear in quality, and discards may be completely viewed, identified, and quantified; and

(D) Ensure EM system components are not tampered with, disabled, destroyed, or operated or maintained improperly.

(vi) Communicate catch information to the shoreside processor or stationary floating processor receiving catch through a NMFS approved system. The following information must be transmitted as outlined in the VMP:

(A) Vessel name;

(B) Identify which Management areas the vessel was operating in;

(C) Most precise estimate available of tonnage aboard the vessel;

(D) Estimated deckload size, if present;

(E) Estimated time of arrival at shoreside processor or stationary floating processor; and

(F) Information to meet other requirements of this part, if requested by NMFS.

(4) *EM coverage duration and duties.* (i) A fishing trip in the trawl EM category may not begin until all previously harvested fish have been landed.

(ii) At the end of the fishing trip in the trawl EM category, the vessel operator must follow the instructions in the VMP and submit the EM data and associated documentation identified in the VMP.

(iii) The vessel operator must complete daily tests of equipment functionality as instructed in the vessel's VMP.

(A) During a fishing trip in the trawl EM category, before each haul is retrieved, the vessel operator must verify all cameras are recording and all sensors and other required EM system components are functioning as instructed in the vessel's VMP.

(*1*) If a malfunction is detected prior to retrieving the haul the vessel operator must attempt to correct the problem using the instructions in the vessel's VMP.

(*2*) If the malfunction cannot be repaired at sea, the vessel operator must notify the EM hardware service provider of the malfunction at the end of the fishing trip. The malfunction must be repaired prior to departing on the next fishing trip in the trawl EM category.

(B) [Reserved]

(iv) Make the EM system and associated equipment available for inspection upon request by OLE, a NMFS-authorized officer, or other NMFS-authorized personnel.

(5) *ODDS requirements for trawl EM category catcher vessels in the partial coverage category.* (i) *EM trips.* Prior to embarking on each fishing trip, the operator of a catcher vessel in the partial coverage trawl EM category with a NMFS-approved VMP must register the anticipated trip with ODDS. The owner or operator must specify the use of pelagic trawl gear to determine trawl EM category participation for the upcoming fishing trip.

(ii) [Reserved]

* * * * *

■ 9. Amend § 679.52 by:

■ a. Revising paragraphs (b)(1)(iii)(A) and (b)(1)(iii) (B)(*2*), and (b)(3)(i) introductory text;

■ b. In paragraph (b)(11) introductory text, removing '', fax,'';

■ c. Revising paragraphs (b)(11)(iv) and (b)(11)(vii) introductory text;

■ d. In paragraph (b)(11)(ix), removing the word ''fax'' and adding, in its place, the phrase ''electronic submission (email, or online through NMFS-designated electronic system),'';

■ e. In paragraph (b)(11)(x) introductory text, removing the phrase ''fax or email''

and adding, in its place, the phrase ''electronic submission (email, or online through NMFS-designated electronic system)'';

■ f. Revising paragraph (b)(11)(x)(B); and

■ g. Adding paragraphs (d) and (e).

The revisions and additions read as follows:

§ 679.52 Observer provider permitting and responsibilities.

* * * * *

(b) * * *

(1) * * *

(iii) * * *

(A) That all of the observer's in-season catch messages (data) between the observer and NMFS are submitted to the Observer Program as outlined in the current Observer Sampling Manual.

(B) * * *

(*2*) The observer does not at any time during his or her deployment travel through a location where an Observer Program employee is available for an in-person data review and the observer completes a phone, email, or other NMFS-specified method for mid-deployment data review, as described in the Observer Sampling Manual; and

* * * * *

(3) * * *

(i) An observer provider must develop, maintain, implement, and enforce a policy addressing observer conduct and behavior for their employees that serve as observers. The policy shall address the following behavior and conduct regarding:

* * * * *

(11) * * *

(iv) *Observer deployment/logistics report.* An accurate deployment/logistics report must be submitted within 24 hours of the observer assignment, or daily by 4:30 p.m., Pacific time, each business day with regard to each observer. The deployment/logistics report must include the observer's name, cruise number, current vessel, shoreside processor, or stationary floating processor assignment and vessel/processor code, embarkation date, and estimated or actual disembarkation dates.

* * * * *

(vii) *Observer provider contracts.* Observer providers must submit to the Observer Program a completed and unaltered copy of each type of signed and valid contract (including all attachments, appendices, addendums, and exhibits incorporated into the contract) between the observer provider and those entities requiring observer services under § 679.51(a)(2) and (b)(2), by February 1 of each year. Observer providers must also submit to the Observer Program upon request, a completed and unaltered copy of the current or most recent signed and valid contract (including all attachments, appendices, addendums, and exhibits incorporated into the contract and any agreements or policies with regard to observer compensation or salary levels) between the observer provider and the particular entity identified by the Observer Program or with specific observers. The copies must be submitted by electronic transmission (email or through an electronic system as designated by NMFS), or other method specified by NMFS within 5 business days of the request for the contract at the address listed in § 679.51(c)(3). Signed and valid contracts include the contracts an observer provider has with:

* * * * *

(x) * * *

(B) Within 72 hours after the observer provider determines that an observer violated the observer provider's conduct and behavior policy described at paragraph (b)(3)(i) of this section; these reports shall include the underlying facts, circumstances, and provider responses to the violation, including the steps taken to enforce the provider's conduct and behavior policy.

* * * * *

(d) *EM hardware service provider permit*—(1) *Permit.* The Regional Administrator may issue a permit authorizing a person's participation as an EM hardware service provider for operations requiring EM system coverage per § 679.51(f) and (g). Persons seeking to provide EM services under this section must obtain an EM hardware service provider permit from the NMFS Alaska Region.

(2) *EM hardware service provider.* An applicant seeking an EM hardware service provider permit must submit a completed application to the Regional Administrator for review. This application can be found on the NMFS Alaska Region website.

(3) *Contents of application.* An application for an EM hardware service provider permit must contain the following:

(i) *Contact information.* (A) The permanent phone number and email address of the owner(s) of the EM hardware service provider.

(B) Current physical location, business mailing address, business telephone, and business email address for each office of the EM hardware service provider.

(ii) *Hardware testing.* Description of testing conducted to ensure that the EM hardware is capable of withstanding environmental conditions in the North Pacific Ocean. NMFS will provide specifications for EM hardware upon request.

(iii) *Data review.* Provide a sample of EM data to NMFS that can be reviewed by NMFS EM data review software for compliance with program objectives as specified in § 679.51(f) and (g).

(iv) *Conflict of interest.* A statement signed under penalty of perjury from each owner or, if the owner is an entity, each board member and officer, that they have no conflict of interest as described in paragraph (c) of this section.

(v) *Criminal convictions and Federal contracts.* A statement signed under penalty of perjury from each owner or, if the owner is an entity, each board member officer, if a corporation, describing:

(A) Any criminal convictions; and

(B) Any Federal contracts they have had and the performance rating they received for each such contract.

(vi) *Prior experience.* A description of any prior experience the EM hardware service provider may have in placing individuals in remote field and/or marine work environments. This includes recruiting, hiring, deployment, working with fishing fleets, and operations in remote areas.

(vii) *Responsibilities and Duties.* A description of the EM hardware service provider's ability to carry out the responsibilities and duties of an EM hardware service provider as set out under paragraph (e) of this section, and the arrangements to be used.

(4) *Application evaluation.* NMFS staff will evaluate the completeness of the application, the application's consistency with needs and objectives of the EM program, and other relevant factors. NMFS will provide specifications for EM hardware upon request.

(5) *Agency determination on an application.* NMFS will send the Agency's determination on the application to the EM hardware service provider. If an application is approved, NMFS will issue an EM hardware service provider permit to the applicant. If an application is denied, the reason for denial will be explained in the electronic determination.

(6) *Transferability.* An EM hardware service provider permit is not transferable. To prevent a lapse in authority to provide EM hardware services, a provider that experiences a change in ownership that involves a new person may submit a new permit application prior to sale and ask to have

the application approved under this paragraph (a) prior to date of sale.

(7) *Expiration of EM hardware service provider permit*—(i) *Permit duration.* An EM hardware service provider permit will expire after a period of 12 continuous months during which no EM services are provided to vessels in an EM category.

(ii) *Permit expiration.* The Regional Administrator will provide a written initial administrative determination (IAD) of permit expiration to a provider if NMFS records indicate that the provider has not provided EM services to vessels in an EM category during a period of 12 continuous months. A provider who receives an IAD of permit expiration may appeal the IAD under § 679.43. A provider that appeals an IAD will be issued an extension of the expiration date of the permit until after the final resolution of the appeal.

(8) *Removal of permit.* Performance of the EM hardware service provider will be assessed annually on the ability of the provider to meet program objectives as outlined in § 679.51 and the Annual Deployment Plan. If the EM hardware service provider is unable to meet program objectives, the permit will be removed.

(e) *Responsibilities of EM hardware service providers.* Responsibilities of EM hardware service providers are specified in section § 679.51(f) and (g).

■ 10. Add §§ 679.56 and 679.57 to subpart E to read as follows:

§ 679.56 Full coverage trawl Electronic Monitoring fee.

(a) *Full coverage trawl Electronic Monitoring (EM) category fee*—(1) *Responsibility.* The owner of a catcher vessel in the full coverage trawl EM category must comply with the requirements of this section. Subsequent opting out of the trawl EM category does not affect the FFP permit holder's liability for paying the full coverage trawl EM category fee for any fishing year in which the vessel was approved to be in the full coverage trawl EM category and made pollock landings. Subsequent transfer of an AFA catcher vessel or AFA permit does not affect the catcher vessel owner's liability for non-compliance with this section.

(2) *Landings subject to the observer fee.* The full coverage trawl EM fee is assessed on pollock landings by catcher vessels in the full coverage trawl EM category as specified in § 679.51(g).

(3) *Fee collection.* The owner of a catcher vessel (as identified under paragraph (a)(1) of this section) is responsible for paying the full coverage trawl EM fee for all pollock landings.

(4) *Payment*—(i) *Payment due date.* The owner of a catcher vessel (as identified under paragraph (a)(1) of this section) must submit all full coverage trawl EM fee payments to NMFS no later than May 31 of the fishing year following the year in which the pollock landings occurred.

(ii) *Payment recipient and method.* The owner of a catcher vessel (as identified under paragraph (a)(1) of this section) must make electronic payment to NMFS. Submit payment and related documents as instructed on the fee submission form. Payments must be made electronically through the NMFS Alaska Region website. Instructions for electronic payment will be made available on both the payment website and a fee liability summary letter mailed to each permit holder.

(b) *Full coverage standard ex-vessel value determination and use.* NMFS will use the standard prices calculated for AFA cost recovery per § 679.66(b).

(c) *Full coverage fee percentages*—(1) *Established percentages.* The trawl EM fee percentage is the amount as determined by the factors and methodology described in paragraph (c)(2) of this section. These amounts will be announced by publication in the **Federal Register** in accordance with paragraph (c)(3) of this section.

(2) *Calculating fee percentage value.* Each year NMFS will calculate and publish the trawl EM fee percentage for the full coverage trawl EM category catcher vessels according to the following factors and methodology:

(i) *Factors.* NMFS will use the following factors to determine the fee percentages:

(A) The catch to which the full coverage trawl EM fee will apply;

(B) The ex-vessel value of that catch; and

(C) The costs directly related to the EM data collection, EM data review, VMP approval, and trawl EM category data.

(ii) *Methodology.* NMFS will use the following equations to determine the trawl EM fee percentage: $100 \times DPC \div V$, where:

(A) *DPC* equals the trawl EM category costs for the directed full coverage pollock fisheries for the most recent fiscal year (October 1 through September 30) with any adjustments to the account from payments received in the previous year.

(B) *V* equals the total of the standard ex-vessel value of the catch subject to the trawl EM fee liability for the current year.

(iii) *Program costs.* Trawl EM category costs will be calculated only for catcher vessels that NMFS approves to be in the full coverage trawl EM category.

(3) *Publication*—(i) *General.* NMFS will calculate and announce the trawl EM fee percentage in a **Federal Register** notice by December 1 of the year following the year in which the full coverage pollock landings were made. NMFS will calculate the trawl EM fee percentage based on the calculations described in paragraph (c)(2) of this section.

(ii) *Effective period.* Effective period. NMFS will apply the calculated trawl EM fee percentage to all full coverage trawl EM category directed pollock landings made by vessels in the trawl EM category between January 1 and December 31 of the previous year.

(4) *Applicable percentage.* A designated representative must use the AFA fee percentage applicable at the time a Bering Sea directed pollock landing is debited from an AFA pollock fishery allocation to calculate the AFA fee liability for any retroactive payments for that landing.

§ 679.57 Trawl EM incentive plan agreements.

(a) *Parties to a trawl EM Incentive Plan Agreement (TEM IPA).* (1) A catcher vessel owner or operator must be a party to a TEM IPA to be approved for the trawl EM partial coverage category.

(2) Once a party to a TEM IPA, a catcher vessel owner or operator cannot withdraw from the TEM IPA, and must comply with the terms of the TEM IPA for the duration of the fishing year.

(b) *Request for approval of a proposed TEM IPA.* The TEM IPA representative must submit a proposed TEM IPA to NMFS. The proposed TEM IPA must contain the following information:

(1) *Affidavit.* The TEM IPA must include an affidavit affirming that each party to the TEM IPA is subject to the same terms and conditions.

(2) *Name.* Name of the TEM IPA.

(3) *Representative.* The TEM IPA must include the name, telephone number, and email address of the TEM IPA representative who is responsible for submitting the proposed TEM IPA on behalf of the TEM IPA parties, any proposed amendments to the TEM IPA, and the annual report required under paragraph (f) of this section.

(4) *Incentive plan.* The TEM IPA must contain provisions that address or contain the following:

(i) Restrictions, penalties, or performance criteria that will limit changes in fishing behavior.

(ii) Incentive measures to ensure that that catcher vessels do not retain or land pollock catch in excess of 300,000

pounds per fishing trip, on average in the GOA and an explanation of how the incentive(s) encourage vessel operators to limit landings in excess of 300,000 pounds of pollock per fishing trip in the GOA.

(iii) Incentive measures to prevent catcher vessels from exceeding the MRAs established in § 679.21(e) and how the incentives encourage vessel operators to avoid bycatch and avoid exceeding the maximum retainable amounts established in § 679.20(e).

(iv) Acknowledgment by the parties that NMFS will disclose to the public their vessels' performance under the TEM IPA and any restrictions, penalties, or performance criteria imposed under the TEM IPA by vessel name.

(5) *Compliance agreement.* The TEM IPA must include a provision that all parties to the TEM IPA agree to comply with all provisions of the TEM IPA.

(6) *Signatures.* The name and signature of the owner or operator for each vessel that is a party to the TEM IPA.

(c) *Deadline and duration*—(1) *Deadline for proposed TEM IPA.* A proposed TEM IPA must be received by NMFS no later than 1700 hours, A.l.t., on December 1 of the year prior to the fishing year for which the TEM IPA is proposed to be effective.

(2) *Duration.* Once approved, a TEM IPA is effective starting January 1 of the fishing year following the year in which NMFS approves the IPA, unless the TEM IPA is approved between January 1 and January 19, in which case the TEM IPA is effective starting in the year in which it is approved. Once approved, a TEM IPA is effective until December 31 of the first year in which it is effective or until December 31 of the year in which the TEM IPA representative notifies NMFS in writing that the TEM IPA is no longer in effect, whichever is later. A TEM IPA may not expire mid-year. No party may leave a TEM IPA once it is approved, except as allowed under paragraph (d)(3) of this section.

(d) *NMFS review of a proposed TEM IPA*—(1) *Approval.* A TEM IPA will be approved by NMFS if the TEM IPA meets the following requirements:

(i) Complies with the submission requirements of paragraphs (b) and (c) of this section; and

(ii) Contains the information required in paragraph (b) of this section.

(2) *Amendments to a TEM IPA.* Amendments in writing to an approved TEM IPA may be submitted to NMFS at any time and will be reviewed under the requirements of paragraph (b) of this section. An amendment to an approved TEM IPA is effective when NMFS notifies the TEM IPA representative in writing of NMFS approval.

(3) *Disapproval.* (i) NMFS will disapprove a proposed TEM IPA or a proposed amendment to a TEM IPA:

(A) If the proposed TEM IPA fails to meet any of the requirements of paragraph (b) of this section; or

(B) If a proposed amendment to a TEM IPA would cause the TEM IPA to no longer comply with the requirements of paragraph (b) of this section.

(ii) [Reserved]

(4) *Initial Administrative Determination (IAD).* If NMFS identifies deficiencies in the proposed TEM IPA, NMFS will notify the applicant in writing that the proposed TEM IPA will not be approved. The TEM IPA representative will be provided one 30-day period to address, in writing, all deficiencies identified by NMFS. Additional information or a revised TEM IPA received by NMFS after the expiration of the 30-day period specified by NMFS will not be considered. NMFS will evaluate any additional information submitted by the TEM IPA representative within the 30-day period. If the Regional Administrator determines that the additional information addresses the deficiencies in the proposed TEM IPA, the Regional Administrator will approve the proposed TEM IPA under paragraph (d) of this section. However, if NMFS determines that the proposed TEM IPA does not comply with the requirements of paragraph (b) of this section, NMFS will issue an IAD providing the reasons for disapproving the proposed TEM IPA.

(5) *Appeal.* A TEM IPA representative who receives an IAD disapproving a proposed TEM IPA may appeal under the procedures set forth at 15 CFR part 906. If the TEM IPA representative fails to timely file an appeal of the IAD pursuant to 15 CFR part 906, the IAD will become the final agency action. If the IAD is appealed and the final agency action approves the proposed TEM IPA, the TEM IPA will be effective as described in paragraph (c) of this section.

(6) *Pending approval.* While appeal of an IAD disapproving a proposed TEM IPA is pending, proposed parties to the TEM IPA subject to the IAD, which are not currently parties to an approved TEM IPA, are not authorized to participate in trawl EM category.

(e) *Public release of a TEM IPA and performance metrics.* Each fishing year NMFS will release to the public and publish on the NMFS Alaska Region website:

(1) Approved TEM IPAs and Approval Memos;

(2) List of parties to each approved TEM IPA; and

(3) Names of vessels covered by each approved TEM IPA that:

(i) On average, retain or land pollock catch in excess of 300,000 pounds per fishing trip in the GOA; and

(ii) Harvest bycatch in quantities that exceed MRAs.

(iii) Vessels' performance under the TEM IPA and any restrictions, penalties, or performance criteria imposed under the TEM IPA by vessel name.

(f) *TEM IPA Annual Report.* The representative of each approved TEM IPA must submit a written annual report to the Council at the address specified in § 679.61(f). The Council will make the annual report available to the public.

(1) *Submission deadline.* The TEM IPA Annual Report must be received by the Council no later than May 15 of the following fishing year.

(2) *Information requirements.* The TEM IPA Annual Report must contain the following information:

(i) A comprehensive description of the incentive measures in effect in the previous year;

(ii) A description of how these incentive measures affected individual vessels;

(iii) An evaluation of whether incentive measures were effective in limiting changes in vessel behavior including the effectiveness of:

(A) Measures to ensure that trips by participating vessels, on average, do not retain or land pollock catch in excess of 300,000 pounds per fishing trip in the GOA;

(B) Measures that incentivize participating vessels to avoid exceeding MRAs established in § 679.20(e) applicable to non-EM vessels;

(C) Restrictions, penalties, or performance criteria that were imposed to prevent vessels from consistently exceeding catcher vessel harvest limit for pollock in the GOA or MRAs relative to non-EM vessels by vessel name (see §§ 679.7(b)(2) and 679.20(e)); and

(D) The frequency of vessels exceeding the catcher vessel harvest limit for pollock in the GOA and MRA limit relative to non-EM vessels (see §§ 679.7(b)(2) and 679.20(e)).

(iv) A description of any amendments to the TEM IPA that were approved by NMFS since the last annual report and the reasons that the amendments to the TEM IPA were requested.

[FR Doc. 2024–01952 Filed 2–2–24; 8:45 am]

BILLING CODE 3510–22–P

Notices

Federal Register
Vol. 89, No. 24
Monday, February 5, 2024

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

DEPARTMENT OF AGRICULTURE

Farm Service Agency

[Docket ID FSA–2023–0024]

Information Collection Request; Volunteer Program

AGENCY: Farm Service Agency, USDA.

ACTION: Notice; request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act, the Farm Service Agency (FSA) is requesting comments from all interested individuals and organizations on an extension of a currently approved information collection associated with the Volunteer Program.

DATES: We will consider comments that we receive by April 5, 2024.

ADDRESSES: We invite you to submit comments on this notice. You may submit comments electronically through the Federal eRulemaking Portal: Go to *https://www.regulations.gov* and search for Docket ID FSA–2023–0024. Follow the online instructions for submitting comments. All comments received will be posted without change and will be publicly available on *https://www.regulations.gov.*

FOR FURTHER INFORMATION CONTACT: For specific questions related to collection activities, contact Toni Flax (785) 421–8373 (voice); or, by email at: *toni.flax@usda.gov.* Persons with disabilities who require alternative means for communication should contact the USDA Target Center at (202) 720–2600 (voice).

SUPPLEMENTARY INFORMATION:

Title: Volunteer Program.

OMB Control Number: 0560–0232.

OMB Expiration Date for Approval: May 31, 2024.

Type of Request: Extension.

Abstract: Section 1526 of the Agriculture and Food Act of 1981 (7 U.S.C. 2272) authorizes the Secretary of Agriculture to establish a program (''the Volunteer Program'') to use volunteers to perform a wide range of activities to carry out the programs of the Department of Agriculture. In addition, 5 U.S.C. 3111 grants agencies the authority to establish programs designed to provide educationally-related work assignments for students, in non-pay status. For FSA's volunteer program, each volunteer must follow the same responsibilities and guidelines for conduct that Federal government employees are expected to follow. The volunteers, who are mainly students participating in the sponsored volunteer program, must complete a service agreement, attendance records, and other forms, and provide the required supporting documents to FSA. The information will allow FSA to effectively recruit, train, and accept volunteers to carry out programs supported by the Department of Agriculture, thereby benefitting volunteers, the Department of Agriculture, and the general public.

Without the information, FSA will be unable to document the services provided by the volunteers. FSA will report the collected information to offices within the Department of Agriculture and the Office of Personnel Management that request information on the Volunteer Program.

FSA continues to use forms AD–2022, AD–2023, AD–2024, and AD–2025 in the Volunteer Program. The burden hours decreased by 10 due to the removal of travel times. The respondents go to the county offices to do regular and customary business with FSA; this means no travel times is required specifically for the information collection and therefore, it is no longer included in the burden hour reporting. For the following estimated total annual burden on respondents, the formula used to calculate the total burden hours is the estimated average time per response multiplied by the estimated total annual responses.

Estimate of Average Time to Respond: Public reporting burden for collecting information under this notice is estimated to average 15 minutes (0.25) per response for each of the 4 forms, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Therefore, the public reporting burden would be an average 0.25 hours per response in this collection.

Type of Respondents: Any individuals.

Estimated Number of Respondents: 20.

Estimated Number of Responses per Respondent: 4.

Estimated Total Annual Reponses: 80.

Estimated Average Time per Response: 0.25 hours.

Estimated Total Annual Burden on Respondents: 20 hours.

We are requesting comments on all aspects of this information to help us to:

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agency's estimate of the burden of the collection of information, including the validity of the methodology and assumptions used;

(3) Evaluate the quality, ability and clarity of the information technology; and

(4) Minimize the burden of the information collection on those who respond through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

All comments received in response to this notice, including names and addresses when provided, will be a matter of public record. Comments will be summarized and included in the submission for Office of Management and Budget Approval.

Zach Ducheneaux,

Administrator, Farm Service Agency.

[FR Doc. 2024–02156 Filed 2–2–24; 8:45 am]

BILLING CODE 3410–E2–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–580–908]

Passenger Vehicle and Light Truck Tires From the Republic of Korea: Final Results of Antidumping Duty Administrative Review; 2021–2022

AGENCY: Enforcement and Compliance, International Trade Administration, Department of Commerce.

SUMMARY: The U.S. Department of Commerce (Commerce) determines that Hankook Tire & Technology Co., Ltd. (Hankook TT), Nexen Tire Corporation (Nexen), and Kumho Tire Co., Inc. sold subject merchandise in the United States at prices below normal value during the period of review (POR) January 6, 2021, through June 30, 2022.

DATES: Applicable February 5, 2024.

FOR FURTHER INFORMATION CONTACT: Jun Jack Zhao or Charles DeFilippo, AD/CVD Operations, Office VII, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230; telephone: (202) 482–1396 and (202) 482–3979, respectively.

SUPPLEMENTARY INFORMATION:

Background

On August 3, 2023, Commerce published the *Preliminary Results* of this review in the **Federal Register**.[1] We invited interested parties to comment on the *Preliminary Results.*

On November 21, 2023, we extended the deadline for the final results, in accordance with section 751(a)(3)(A) of the Tariff Act of 1930, as amended (the Act), and 19 CFR 351.213(h)(2).[2] The deadline for the final results of this review is January 30, 2024.

These final results cover three producers and/or exporters of subject merchandise.[3] Based on an analysis of the comments received, we made certain changes to the weighted-average dumping margins determined for Hankook TT and Nexen. The weighted-average dumping margins are listed in the ''Final Results of Review'' section, below. Commerce conducted this review in accordance with section 751(a) of the Act.

Scope of the Order [4]

The merchandise covered by the *Order* is passenger vehicle and light truck tires.

For a complete description of the scope of the *Order, see* the Issues and Decision Memorandum.[5]

Analysis of Comments Received

We addressed all issues raised in the case and rebuttal briefs in the Issues and Decision Memorandum, which is hereby adopted with this notice. The issues are identified in the appendix to this notice. The Issues and Decision Memorandum is a public document and is on file electronically via Enforcement and Compliance's Antidumping and Countervailing Duty Centralized Electronic Service System (ACCESS). ACCESS is available to registered users at *https://access.trade.gov.* In addition, a complete version of the Issues and Decision Memorandum can be accessed directly at *https://access.trade.gov/public/FRNoticesListLayout.aspx.*

Changes Since the Preliminary Results

Based on our review and analysis of the comments received from parties, we made certain changes to Hankook TT's and Nexen's margin calculations. For a discussion of these changes, *see* the Issues and Decision Memorandum.

Rate for Non-Examined Companies

The statute and Commerce's regulations do not address the establishment of a rate to be applied to companies not selected for individual examination when Commerce limits its examination in an administrative review pursuant to section 777A(c)(2) of the Act. Generally, Commerce looks to section 735(c)(5) of the Act, which provides instructions for calculating the all-others rate in a market economy investigation, for guidance when calculating the rate for companies which were not selected for individual examination in an administrative review. Under section 735(c)(5)(A) of the Act, the all-others rate is normally ''an amount equal to the weighted-average of the estimated weighted-average dumping margins established for exporters and producers individually investigated, excluding any zero or *de minimis* margins, and any margins determined entirely {on the basis of facts available}.''

In this review, we have calculated a weighted-average dumping margin for Hankook TT and Nexen that are not zero, *de minimis,* or determined entirely on the basis of facts available. Accordingly, Commerce has assigned a dumping margin to the non-examined company, Kumho Tire Co., Inc., that is equal to the weighted average of the dumping margins calculated for Hankook TT and Nexen, weighted by the publicly ranged total U.S. sales value for each respondent, consistent with the guidance in section 735(c)(5)(A) of the Act.[6]

Final Results of Review

We are assigning the following estimated weighted-average dumping margins to the firms listed below for the period January 6, 2021, through June 30, 2022:

Producer or exporter	Weighted-average dumping margin (percent)
Hankook Tire & Technology Co., Ltd [7]	6.30
Nexen Tire Corporation	4.29
Kumho Tire Co., Inc	5.40

Disclosure

Commerce intends to disclose the calculations performed in connection with these final results of review to parties in this review within five days after public announcement of the final results or, if there is no public announcement, within five days of the date of publication of this notice in the **Federal Register**, in accordance with 19 CFR 351.224(b).

Assessment

Commerce intends to issue assessment instructions to CBP no earlier than 35 days after the date of publication of the final results of this review in the **Federal Register**.[8] If a timely summons is filed at the U.S. Court of International Trade, the assessment instructions will direct CBP not to liquidate relevant entries until the time for parties to file a request for a

[1] *See Passenger Vehicle and Light Truck Tires from the Republic of Korea: Preliminary Results of Antidumping Duty Administrative Review; 2021–2022;* 88 FR 51296 (August 3, 2023) (*Preliminary Results*), and accompanying Preliminary Decision Memorandum (PDM).

[2] *See* Memorandum, ''Extension of Deadline for the Final Results of Antidumping Duty Administrative Review,'' dated November 21, 2023.

[3] *See Initiation of Antidumping and Countervailing Duty Administrative Review,* 87 FR 54463 (September 6, 2022).

[4] *See Passenger Vehicle and Light Truck Tires From the Republic of Korea, Taiwan, and Thailand: Antidumping Duty Orders and Amended Final Affirmative Antidumping Duty Determination for Thailand,* 86 FR 38011 (July 19, 2021) (*Order*).

[5] *See* Memorandum, ''Decision Memorandum for the Final Results of the Antidumping Duty Administrative Review: Passenger Vehicle and Light Truck Tires from the Republic of Korea; 2021–2022,'' dated concurrently with, and hereby adopted by, this notice (Issues and Decision Memorandum).

[6] *See* Memorandum, ''Rate for Non-Examined Companies,'' dated concurrently with this notice.

[7] In the original investigation, Commerce noted that Hankook Tire Mfg. Co., Ltd. and Hankook Tire Co., Ltd. are alternative names for Hankook Tire & Technology Co. Ltd. *See Passenger Vehicle and Light Truck Tires from the Republic of Korea: Preliminary Affirmative Determination of Sales at Less than Fair Value, Postponement of Final Determination and Extension of Provisional Measures,* 86 FR 501 (January 6, 2021), and accompanying Preliminary Decision Memorandum at 2 (n. 9).

[8] *See Notice of Discontinuation of Policy to Issue Liquidation Instructions After 15 Days in Applicable Antidumping and Countervailing Duly Administrative Proceedings,* 86 FR 3995 (January 15, 2021).

statutory injunction has expired (*i.e.,* within 90 days of publication).

Where the respondent reported reliable entered values, we calculated importer—(or customer-) specific *ad valorem* rates by aggregating the dumping margins calculated for all U.S. sales to each importer (or customer) and dividing this amount by the total entered value of the sales to each importer (or customer).[9] Where Commerce calculated a weighted-average dumping margin by dividing the total amount of dumping for reviewed sales to that party by the total sales quantity associated with those transactions, Commerce will direct CBP to assess importer—(or customer-) specific assessment rates based on the resulting per-unit rates.[10] Where an importer—(or customer-) specific *ad valorem* or per-unit rate is greater than *de minimis* (*i.e.,* 0.50 percent), Commerce will instruct CBP to collect the appropriate duties at the time of liquidation.[11] Where an importer—(or customer-) specific *ad valorem* or per-unit rate is zero or *de minimis,* Commerce will instruct CBP to liquidate appropriate entries without regard to antidumping duties.[12]

For the company not selected for individual review, we will assign an assessment rate based on the methodology described in the ''Rates for Non-Examined Companies'' section, above.

Consistent with Commerce's assessment practice, for entries of subject merchandise during the POR produced by Hankook, Nexen, or the non-examined companies for which the producer did not know that its merchandise was destined for the United States, we will instruct CBP to liquidate unreviewed entries at the all-others rate if there is no rate for the intermediate company(ies) involved in the transaction.[13]

Cash Deposit Requirements

The following cash deposit requirements will be effective for all shipments of subject merchandise entered, or withdrawn from warehouse, for consumption on or after the publication date of the final results of this administrative review, as provided for by section 751(a)(2)(C) of the Act: (1) the cash deposit rates for the companies listed in these final results will be equal to the weighted-average dumping margins established in the final results of this review; (2) for merchandise exported by producers or exporters not covered in this review but covered in a prior segment of this proceeding, the cash deposit rate will continue to be the company-specific rate published for the most recently completed segment in which the company was reviewed; (3) if the exporter is not a firm covered in this review or the original less-than-fair-value (LTFV) investigation, but the producer is, the cash deposit rate will be the rate established for the most recently completed segment of this proceeding for the producer of the subject merchandise; and (4) the cash deposit rate for all other producers or exporters will continue to be 21.74 percent,[14] the all-others rate established in the LTFV investigation. These cash deposit requirements, when imposed, shall remain in effect until further notice.

Notification to Importers

This notice serves as a final reminder to importers of their responsibility under 19 CFR 351.402(f)(2) to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this POR. Failure to comply with this requirement could result in the presumption that reimbursement of antidumping duties occurred and the subsequent assessment of double antidumping duties.

Administrative Protective Order

This notice also serves as a reminder to parties subject to administrative protective order (APO) of their responsibility concerning the destruction of proprietary information disclosed under APO in accordance with 19 CFR 351.305(a)(3). Timely written notification of the return or destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and terms of an APO is a sanctionable violation.

Notification to Interested Parties

We are issuing and publishing these results in accordance with sections 751(a)(1) and 777(i)(1) of the Act and 19 CFR 351.213(h) and 351.221(b)(5) of Commerce's regulations.

Dated: January 30, 2024.

Abdelali Elouaradia,

Deputy Assistant Secretary for Enforcement and Compliance.

Appendix I

List of Topics Discussed in the Issues and Decision Memorandum

[FR Doc. 2024–02235 Filed 2–2–24; 8:45 am]

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DEPARTMENT OF COMMERCE

International Trade Administration

[A–533–824]

Polyethylene Terephthalate Film, Sheet, and Strip From India: Final Results of Antidumping Duty Administrative Review; Second Correction 2021–2022

AGENCY: Enforcement and Compliance, International Trade Administration, Department of Commerce.

SUMMARY: The U.S. Department of Commerce (Commerce) determines that SRF Limited/SRF Limited of India/SRF Limited Packaging Films (SRF) did not make sales of subject merchandise to the United States at less than normal value during the period of review (POR) July 1, 2021, through June 30, 2022. We will apply SRF's rate to Jindal Poly Films Ltd. (India) (Jindal) and Polyplex Corporation Ltd. (Polyplex) for these final results.

DATES: Applicable February 5, 2024.

FOR FURTHER INFORMATION CONTACT: Jacqueline Arrowsmith, AD/CVD Operations, Office VII, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230; telephone: (202) 482–5255.

[9] *See* 19 CFR 351.212(b)(1).

[10] *Id.*

[11] *Id.*

[12] *See* 19 CFR 351.106(c)(2).

[13] For a full discussion of this practice, *see Antidumping and Countervailing Duty Proceedings: Assessment of Antidumping Duties,* 68 FR 23954 (May 6, 2003).

[14] *See Passenger Vehicle and Light Truck Tires from the Republic of Korea, Taiwan, and Thailand: Antidumping Duty Orders and Amended Final Affirmative Antidumping Duty Determination for Thailand,* 86 FR 38011 (July 19, 2021).

SUPPLEMENTARY INFORMATION:

Background

On August 3, 2023, Commerce published the *Preliminary Results* and invited interested parties to comment on those results.[1] This review originally covered eight respondents: SRF; Jindal; Ester Industries Ltd.; Garware Polyester Ltd.; MTZ Polyesters, Ltd.; Polyplex; Uflex Ltd.; and Vacmet India Limited (Vacmet). We rescinded the review for six of these companies: Ester Industries Ltd.; Garware Polyester Ltd.; MTZ Polyesters, Ltd.; Polyplex; Uflex Ltd.; and Vacmet. We erroneously rescinded the review with respect to Polyplex, which we corrected in the *Preliminary Results Correction* on November 24, 2023.[2]

On September 26, 2023, Commerce issued a second supplemental questionnaire to SRF regarding sections B and C of the original questionnaire.[3] SRF submitted its response along with new home market and U.S. sales datasets on October 16, 2023.[4] We used these data sets for the final results along with SRF's original cost data set, submitted on February 9, 2023.[5]

On November 29, 2023, SRF submitted its response to the third supplemental questionnaire [6] in which Commerce requested further clarifications about the company name.[7] In its supplemental questionnaire response, SRF stated that ''SRF Limited'' is the official name of the company and that going forward, SRF Limited will use only that name.[8] In addition, SRF stated that ''SRF Limited'' is the official name of the company while ''Packaging Film'' is one division within the legal entity of SRF Limited.[9] Given that SRF Limited may have used all three of these names on subject merchandise, the company has been reviewed as SRF Limited/SRF Limited of India/SRF Limited Packaging Films.

Scope of the Order [10]

The products covered by the *Order* are all gauges of raw, pretreated, or primed PET film, whether extruded or coextruded. Excluded are metalized films and other finished films that have had at least one of their surfaces modified by the application of a performance enhancing resinous or inorganic layer of more than 0.00001 inches thick. Imports of polyethylene terephthalate film, sheet, and strip are currently classifiable in the Harmonized Tariff Schedule of the United States (HTSUS) under item number 3920.62.00.90. HTSUS subheadings are provided for convenience and customs purposes. The written description of the scope of the *Order* is dispositive.

Analysis of Comments Received

On August 31, 2023, Polyplex USA LLC (Polyplex USA) submitted a letter in lieu of a case brief.[11] In the letter, Polyplex USA explained that although Commerce ''recognizes in the *Preliminary Determination* {sic} {*Results*} that it 'initiated a review of eight companies,' it erroneously stat{e}s that the review request for Polyplex was 'timely withdrawn.' '' [12] We agreed with Polyplex USA and, on November 24, 2023, Commerce published a correction notice.[13] In the *Correction to the Preliminary Results,* we correctly assigned SRF's rate of zero percent to Polyplex.

Commerce received no comments on the *Preliminary Results* beyond the request to amend the *Preliminary Results* to include a review of Polyplex and apply the rate calculated for SRF. Moreover, the data SRF submitted in its supplemental questionnaire responses did not change the rate we calculated for SRF in the *Preliminary Results,* and we have not otherwise modified our analysis. Thus, although we are issuing a final calculation memorandum in these final results,[14] no issues and decision memorandum accompanies this **Federal Register** notice. We are adopting the analysis contained in the *Preliminary Results* as the final results of this review.

Second Correction to Partial Rescission

In the *Preliminary Results* and *Preliminary Results Correction,* we stated that we were rescinding the antidumping duty (AD) administrative review with respect to Vacmet India instead of Vacmet India Limited.[15] With the publication of this notice, Commerce is clarifying that we rescinded the AD administrative review with respect to Vacmet India Limited.

Final Results of Review

As a result of this review, Commerce determines that the following weighted-average dumping margin exists for the period July 1, 2021, through June 30, 2022:

Exporter/producer	Weighted-average dumping margin (percent)
Jindal Poly Films Ltd	0.00
SRF Limited/SRF Limited of India/SRF Limited Packaging Films	0.00
Polyplex Corporation Ltd	0.00

Disclosure and Public Comment

Commerce intends to disclose the calculations performed in connection with these final results of review to interested parties within five days after public announcement of the final results or, if there is no public announcement, within five days of the date of publication of this notice in the **Federal Register**, in accordance with 19 CFR 351.224(b).

Assessment Rates

Pursuant to section 751(a)(2) of the Tariff Act of 1930, as amended (the Act), and 19 CFR 351.212(b)(1), Commerce has determined, and U.S. Customs and Border Protection (CBP) shall assess, ADs on all appropriate entries covered by this review. Because we calculated a zero percent margin in the final results of this review for SRF and assigned a zero percent rate to Jindal and Polyplex, in accordance with 19 CFR 351.212, we will instruct CBP to liquidate the appropriate entries without regard to ADs.

Commerce intends to issue assessment instructions to CBP no earlier than 35 days after the date of

[1] *See Polyethylene Terephthalate Film, Sheet, and Strip from India: Preliminary Results and Partial Rescission of Antidumping Duty Administrative Reviews; 2021–2022,* 88 FR 51298 (August 3, 2023) (*Preliminary Results*), and accompanying Preliminary Decision Memorandum (PDM).

[2] *See Polyethylene Terephthalate Film, Sheet, and Strip from India: Preliminary Results of Antidumping Duty Administrative Review and Partial Rescission of Antidumping Duty Administrative Review; 2021–2022; Correction,* 88 FR 82321 (November 24, 2023) (*Preliminary Results Correction*); *see also* ''Analysis of Comments Received,'' below.

[3] *See* Commerce's Letter, ''Second Supplemental Questionnaire,'' dated September 26, 2023.

[4] *See* SRF's Letter, ''Submission of 2nd Supplemental response of Anti-Dumping Admin Review Questionnaire,'' dated October 16, 2023.

[5] *See* SRF's Letter, ''Cost Data,'' dated February 9, 2023.

[6] *See* SRF's Letter, ''Submission of 3rd Supplemental response of Anti-Dumping Admin Review Questionnaire,'' dated November 29, 2023 (SRF 3rd SQR).

[7] *See* Commerce's Letter, ''Supplemental Questionnaire,'' dated November 22, 2023.

[8] *See* SRF 3rd SQR at S3–1.

[9] *Id.*

[10] *See Notice of Amended Final Antidumping Duty Determination of Sales at Less Than Fair Value and Antidumping Duty Order: Polyethylene Terephthalate Film, Sheet, and Strip from India,* 67 FR 44175 (July 1, 2002) (*Order*).

[11] *See* Polyplex USA's Letter, ''Polyplex USA LLC's Letter in Lieu of Case Brief,'' dated August 31, 2023 (Polyplex USA's Letter).

[12] *See* Polyplex USA's Letter at 2; *see also Preliminary Results* at 51299.

[13] *See Preliminary Results Correction.*

[14] *See* Memorandum, ''SRF's Final Analysis Memorandum,'' dated concurrently with this **Federal Register** notice.

[15] *See Preliminary Results,* 88 FR at 51299; *see also Preliminary Results Correction,* 88 FR at 82321.

publication of the final results of this review in the **Federal Register**. If a timely summons is filed at the U.S. Court of International Trade, the assessment instructions will direct CBP not to liquidate relevant entries until the time for parties to file a request for a statutory injunction has expired (*i.e.,* within 90 days of publication).

Cash Deposit Requirements

The following cash deposit requirements will be effective upon publication of the final results of this administrative review for all shipments of the subject merchandise entered, or withdrawn from warehouse, for consumption on or after the publication date, as provided for by section 751(a)(2)(C) of the Act: (1) the cash deposit rate for SRF, Jindal, and Polyplex will be zero, the rate established in the final results of this review; (2) for previously reviewed or investigated companies not covered in this review, the cash deposit rate will continue to be the company-specific rate published for the most recent period; (3) if the exporter is not a firm covered in this or any previous review or in the original less-than-fair-value (LTFV) investigation but the manufacturer is, the cash deposit rate will be the rate established for the most recent period for the manufacturer of the merchandise; and (4) if neither the exporter nor the manufacturer is a firm covered in this or any previous review or the LTFV investigation, the cash deposit rate will continue to be the all-others rate of 5.71 percent, which is the all-others rate established by Commerce in the LTFV investigation.[16] These cash deposit requirements, when imposed, shall remain in effect until further notice.

Notification to Importers

This notice also serves as a final reminder to importers of their responsibility under 19 CFR 351.402(f)(2) to file a certificate regarding the reimbursement of ADs prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the Commerce's presumption that reimbursement of ADs occurred and the subsequent assessment of double ADs.

Administrative Protective Order

This notice also serves as a final reminder to parties subject to administrative protective order (APO) of their responsibility concerning the return or destruction of proprietary information disclosed under APO in accordance with 19 CFR 351.305(a)(3), which continues to govern business proprietary information in this segment of the proceeding. Timely written notification of the return or destruction of APO materials, or conversion to judicial protective order, is hereby requested. Failure to comply with the regulations and the terms of an APO is a sanctionable violation.

Notification to Interested Parties

These results are being issued and published in accordance with sections 751(a)(1) and 777(i)(1) of the Act, and 19 CFR 351.221(b)(5) and 19 CFR 351.213(h)(2).

Dated: January 29, 2024.

Abdelali Elouaradia,

Deputy Assistant Secretary for Enforcement and Compliance.

[FR Doc. 2024–02181 Filed 2–2–24; 8:45 am]

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[16] *See Order* at 44176 (showing the dumping margin computed for all other producers/exporters as 24.14 percent); and *Notice of Final Determination of Sales at Less Than Fair Value: Polyethylene Terephthalate Film, Sheet, and Strip from India,* 67 FR 34899, 34901 (May 16, 2002) (showing an adjustment of 18.43 percent for export subsidies found in the companion countervailing duty investigation). The cash deposit rate for all other exporters is the net of these figures (*i.e.,* 5.71 percent).

DEPARTMENT OF COMMERCE

International Trade Administration

[A–428–849]

Common Alloy Aluminum Sheet From Germany: Preliminary Results of Changed Circumstances Review, and Intent To Revoke the Antidumping Duty Order, in Part

AGENCY: Enforcement and Compliance, International Trade Administration, Department of Commerce.

SUMMARY: The U.S. Department of Commerce (Commerce) preliminarily intends to revoke, in part, the antidumping duty (AD) order on common alloy aluminum sheet (CAAS) from Germany with respect to certain lithographic-grade aluminum sheet. Interested parties are invited to comment on these preliminary results.

DATES: Applicable February 5, 2024.

FOR FURTHER INFORMATION CONTACT: Stephanie Trejo, AD/CVD Operations, Office IV, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230; telephone: (202) 482–4390.

SUPPLEMENTARY INFORMATION:

Background

On April 27, 2021, Commerce published the AD order on common alloy aluminum sheet from Germany.[1] On May 9, 2023, Eastman Kodak Company (Kodak), a U.S. importer of subject merchandise, requested that Commerce conduct a changed circumstances review (CCR), and revoke, in part, the *CAAS AD Germany Order* with respect to certain lithographic-grade aluminum sheet pursuant to section 751(b)(1) of the Tariff Act of 1930, as amended (the Act), and 19 CFR 351.216(b).[2] On July 24, 2023, Commerce issued proposed partial revocation language for the scope in which it omitted references to end-use certificates which had been included by Kodak and solicited interested parties comments on that language.[3] On July 31, 2023, Commerce initiated the requested CCR.[4] In the *Initiation Notice,* Commerce invited interested parties to provide comments and/or factual information regarding the CCR, including comments on industry support and the proposed partial revocation language.[5] On August 30, 2023, the Aluminum Association Common Alloy Aluminum Sheet Trade Enforcement Working Group and its individual members (Aluminum Association) and Kodak commented on the CCR.[6] On September 6, 2023, Kodak responded to the Aluminum Association's comments.[7]

Scope of the CAAS AD Germany Order

The products covered by the *Order* are common alloy aluminum sheet, which is a flat-rolled aluminum product

[1] *See Common Alloy Aluminum Sheet from Bahrain, Brazil, Croatia, Egypt, Germany, India, Indonesia, Italy, Oman, Romania, Serbia, Slovenia, South Africa, Spain, Taiwan and the Republic of Turkey: Antidumping Duty Orders,* 86 FR 22139 (April 27, 2021) (*CAAS AD Germany Order or Order*).

[2] *See* Kodak's Letter, ''Request for Expedited Changed Circumstances Review,'' dated May 9, 2023 (CCR Request); *see also* Kodak's Letter, ''Supplemental Questionnaire Response,'' dated June 9, 2023 (Kodak's Supplemental Questionnaire Response).

[3] *See* Memorandum, ''Proposed Exclusion Language,'' dated July 24, 2023.

[4] *See Common Alloy Aluminum Sheet from Germany: Notice of Initiation of Changed Circumstances Review, and Consideration of Revocation, in Part, of the Antidumping Duty Order,* 88 FR 49446 (July 31, 2023) (*Initiation Notice*).

[5] *Id.,* 88 FR at 49448.

[6] *See* Aluminum Association's Letter, ''Petitioners' Response to Department's Initiation Notice,'' dated August 30, 2023 (Aluminum Association's Comments) and Kodak's Letter, ''Comments on Changed Circumstances Review,'' dated August 30, 2023 (Kodak's Comments).

[7] *See* Kodak's Letter, ''Rebuttal Comments on Changed Circumstances Review,'' dated September 6, 2023.

having a thickness of 6.3 mm or less, but greater than 0.2 mm, in coils or cut-to-length, regardless of width. Common alloy sheet within the scope of the *Order* includes both not clad aluminum sheet, as well as multi-alloy, clad aluminum sheet. With respect to not clad aluminum sheet, common alloy sheet is manufactured from a 1XXX-, 3XXX-, or 5XXX-series alloy as designated by the Aluminum Association. With respect to multi-alloy, clad aluminum sheet, common alloy sheet is produced from a 3XXX-series core, to which cladding layers are applied to either one or both sides of the core. The use of a proprietary alloy or non-proprietary alloy that is not specifically registered by the Aluminum Association as a discrete 1XXX-, 3XXX-, or 5XXX-series alloy, but that otherwise has a chemistry that is consistent with these designations, does not remove an otherwise in-scope product from the scope.

Common alloy sheet may be made to ASTM specification B209–14 but can also be made to other specifications. Regardless of specification, however, all common alloy sheet meeting the scope description is included in the scope. Subject merchandise includes common alloy sheet that has been further processed in a third country, including but not limited to annealing, tempering, painting, varnishing, trimming, cutting, punching, and/or slitting, or any other processing that would not otherwise remove the merchandise from the scope of the order if performed in the country of manufacture of the common alloy sheet.

Excluded from the scope of the *Order* is aluminum can stock, which is suitable for use in the manufacture of aluminum beverage cans, lids of such cans, or tabs used to open such cans. Aluminum can stock is produced to gauges that range from 0.200 mm to 0.292 mm, and has an H–19, H–41, H–48, H–39, or H–391 temper. In addition, aluminum can stock has a lubricant applied to the flat surfaces of the can stock to facilitate its movement through machines used in the manufacture of beverage cans. Aluminum can stock is properly classified under Harmonized Tariff Schedule of the United States (HTSUS) subheadings 7606.12.3045 and 7606.12.3055.

Where the nominal and actual measurements vary, a product is within the scope if application of either the nominal or actual measurement would place it within the scope based on the definitions set for the above.

Common alloy sheet is currently classifiable under HTSUS subheadings 7606.11.3060, 7606.11.6000, 7606.12.3096, 7606.12.6000, 7606.91.3095, 7606.91.6095, 7606.92.3035, and 7606.92.6095. Further, merchandise that falls within the scope of the Order may also be entered into the United States under HTSUS subheadings 7606.11.3030, 7606.12.3015, 7606.12.3025, 7606.12.3035, 7606.12.3091, 7606.91.3055, 7606.91.6055, 7606.92.3025, 7606.92.6055, 7607.11.9090. Although the HTSUS subheadings are provided for convenience and customs purposes, the written description of the scope of the *Order* is dispositive.

Preliminary Results of CCR and Intent To Revoke the CAAS AD Germany Order, in Part

Pursuant to section 751(d)(1) of the Act, and 19 CFR 351.222(g), Commerce may revoke an order, in whole or in part, based on a review under section 751(b) of the Act (*i.e.,* a CCR). Section 751(b)(1) of the Act requires a CCR to be conducted upon receipt of a request which shows changed circumstances sufficient to warrant a review. Section 782(h)(2) of the Act gives Commerce the authority to revoke an order if producers accounting for substantially all of the production of the domestic like product have expressed a lack of interest in the order. Section 351.222(g) of Commerce's regulations provides that Commerce will conduct a CCR under 19 CFR 351.216, and may revoke an order (in whole or in part), if it concludes that: (i) producers accounting for substantially all of the production of the domestic like product to which the order pertains have expressed a lack of interest in the relief provided by the order, in whole or in part; or (ii) if other changed circumstances sufficient to warrant revocation exist. Thus, both the Act and Commerce's regulations require that ''substantially all'' domestic producers express a lack of interest in the order for Commerce to revoke the order, in whole or in part.[8] Commerce has interpreted ''substantially all'' to mean producers accounting for at least 85 percent of the total U.S. production of the domestic like product covered by the order.[9]

Information on the record indicates that the Aluminum Association and its individual members, as well as Kaiser Aluminum Corporation and Jupiter Aluminum Corporation—two U.S. producers of CAAS that are not part of the Aluminum Association—(collectively Domestic Producers), do not oppose Kodak's exclusion request. Moreover, record information indicates that in 2022 the Domestic Producers accounted for at least 85 percent of the total U.S. production of the domestic like product covered by the *Order.*[10]

In light of the above evidence and in the absence of any interested party comments claiming that the Domestic Producers do not account for substantially all of the production of the domestic like product to which the *CAAS AD Germany Order* pertains, we preliminarily determine that producers accounting for substantially all of the production of the domestic like product to which the *CAAS AD Germany Order* pertains lack interest in the relief provided by the *CAAS AD Germany Order* with respect to the lithographic-grade aluminum sheet identified by Kodak. Thus, we preliminarily determine that changed circumstances warrant revocation of the *CAAS AD Germany Order,* in part, with respect to the lithographic-grade aluminum sheet identified by Kodak.

Accordingly, we are notifying the public of our intent to revoke the *CAAS AD Germany Order,* in part, with respect to the following lithographic-grade aluminum sheet and include the following exclusion language in the scope of the *CAAS AD Germany Order:*

Also excluded from the scope of the *Order* is lithographic-grade aluminum sheet that meets the following criteria: (i) a Copper (Cu) content of no more than 0.01 percent, a Zinc (Zn) content of ≤0.05%, a Silicon (Si) content of 0.05%–0.20% and an Iron (Fe) content of 0.30%–0.50%; (ii) a thickness between 0.267 mm–0.3705 mm, (iii) a width of 500 mm–1650 mm, (iv) a maximum wave height of no more than 3.0 mm, (v) a tensile strength of 130 MPa or more (after baking), and (vi) a surface roughness less than or equal to Ra 0.26 μm.

We have not included the language regarding end-use certifications proposed by Kodak and supported by the Aluminum Association in the above exclusion language. Commerce's general practice is not to use end-use language in scopes [11] or end-use certifications

[8] *See* section 782(h) of the Act; and 19 CFR 351.222(g).

[9] *See, e.g., Honey from Argentina; Antidumping and Countervailing Duty Changed Circumstances Reviews; Preliminary Intent to Revoke Antidumping and Countervailing Duty Orders,* 77 FR 67790, 67791 (November 14, 2012), unchanged in *Honey from Argentina; Final Results of Antidumping and Countervailing Duty Changed Circumstances Reviews; Revocation of Antidumping and Countervailing Duty Orders,* 77 FR 77029 (December 31, 2012).

[10] *See* Kodak's Supplemental Questionnaire Response at 1 and Exhibit 1; *see also* Aluminum Association's Comments at 2 and Attachment 1.

[11] *See Raw Flexible Magnets from the People's Republic of China: Final Affirmative Countervailing Duty Determination,* 73 FR 39667 (July 10, 2008),

Continued

because such certifications ''are difficult to administer and to enforce'' [12] and ''depend on a generally un-verifiable supposition about the end-use of individual sales, and would be subject to manipulation.'' [13] While Commerce has implemented end-use certifications in some proceedings, it does so under limited circumstances [14] including where ''evidence had been proffered that would provide a reasonable basis to believe or suspect that substitution was occurring, and then would only apply the program {(*i.e.,* end-use certification program)} to products for which such evidence existed.'' [15] No such evidence has been provided in this review.

Moreover, Kodak stated that ''{l}ithographic-grade aluminum sheet is a niche product that is made to stringent specifications and is distinguishable from other aluminum sheet products'' [16] and the physical and chemical characteristics in the proposed scope exclusion language were ''narrowly tailored to cover only lithographic-grade aluminum sheet.'' [17] Neither Kodak, nor the Aluminum Association, has explained why the physical and chemical characteristics of lithographic-grade aluminum sheet included in the above scope exclusion do not sufficiently distinguish the product from subject CAAS.

Application of Revocation

Kodak requested retroactive application of this partial revocation starting October 15, 2020, the date of publication in the **Federal Register** of the preliminary determination in the underlying investigation and the date of institution of provisional measures.[18] Section 751(d)(3) of the Act provides that ''{a} determination under this section to revoke an order . . . shall apply with respect to unliquidated entries of the subject merchandise which are entered, or withdrawn from warehouse, for consumption on or after the date determined by the administering authority.'' Commerce's general practice is to instruct U.S. Customs and Border Protection (CBP) to liquidate without regard to antidumping and/or countervailing duties, and to refund any estimated antidumping and/or countervailing duties, on all unliquidated entries of the merchandise covered by a revocation that are not covered by the final results of an administrative review or automatic liquidation instruction.[19] However, Commerce has exercised its discretion and deviated from this general practice if the particular facts of a case have implications for the effective date of the partial revocation selected by Commerce.[20] Specifically, when selecting the effective date for partial revocation, Commerce has considered factors such as the effective date proposed by the petitioner (and/or the effective date agreed to by all parties),[21] the existence of unliquidated entries dating back to the requested effective date,[22] whether an interested party requested the effective date of the revocation,[23] and whether the requested effective date creates potential administrability issues (*e.g.,* the products covered by the partial revocation are in the sales database used in the dumping margin calculations for a completed administrative review with a period of review that overlaps with the date requested).[24]

The Domestic Producers have not proposed an effective date or specifically agreed to the effective date proposed by Kodak, Kodak has not provided any evidence of unliquidated entries dating back to the requested effective date, and the German producer from which Kodak obtains the lithographic-grade aluminum sheet, Speira GmbH,[25] is currently under review in the administrative review of the *CAAS AD Germany Order* covering the period April 1, 2022 through March 31, 2023.[26] Given the forgoing, we preliminarily determine to follow Commerce's general practice and apply the partial revocation to all unliquidated entries of the merchandise covered by this revocation that are not covered by the final results of an administrative review or automatic liquidation instruction (*i.e.,* unliquidated entries on or after April 1, 2023).[27]

and accompanying Issues and Decision Memorandum (IDM) at ''Scope Comments'' (''{a}s an initial matter, the Department does not generally define subject merchandise by end-use application.'').

[12] *See Certain New Pneumatic Off-The-Road Tires from the People's Republic of China: Final Affirmative Determination of Sales at Less Than Fair Value and Partial Affirmative Determination of Critical Circumstances,* 73 FR 40485 (July 15, 2008), and accompanying IDM at Comment 19.

[13] *Id.*

[14] *Id.* (''{a}lthough the Department has implemented such certification programs {(*i.e.,* end-use certification programs)} in the past, we generally do so only in limited circumstances.'').

[15] *Id.; see also Carbon and Alloy Seamless Standard, Line and Pressure Pipe (Under 4½ Inches) from Japan and Romania: Final Results of the Expedited Fourth Sunset Reviews of the Antidumping Duty Orders,* 88 FR 3970 (January 23, 2023), and accompanying IDM at ''Scope of the *Orders*'' (''{w}ith regard to the excluded products listed above, {Commerce} will not instruct CBP to require end-use certification until such time as {the petitioner} or other interested parties provide to {Commerce} a reasonable basis to believe or suspect that the products are being used in a covered application.'').

[16] *See* CCR Request at 5.

[17] *See* Kodak's Comments at 6.

[18] *See* CCR Request at 14–15.

[19] *See e.g., Certain Pasta from Italy: Final Results of Countervailing Duty Changed Circumstances Review and Revocation, In Part,* 76 FR 27634 (May 12, 2011); *Stainless Steel Bar from the United Kingdom: Notice of Final Results of Changed Circumstances Review and Revocation of Order, in Part,* 72 FR 65706 (November 23, 2007); *Notice of Final Results of Antidumping Duty Changed Circumstances Review and Revocation of Order In Part: Certain Corrosion-Resistant Carbon Steel Flat Products from Germany,* 71 FR 66163 (November 13, 2006); *Notice of Final Results of Antidumping Duty Changed Circumstances Reviews and Revocation of Orders in Part: Certain Corrosion-Resistant Carbon Steel Flat Products from Canada and Germany,* 71 FR 14498 (March 22, 2006); *Notice of Final Results of Antidumping Duty Changed Circumstances Review, and Determination to Revoke Order in Part: Certain Cased Pencils from the People's Republic of China,* 68 FR 62428 (November 4, 2003).

[20] *See* section 751(d)(3) of the Act; *Itochu Building Products* v. *United States,* Slip Op. 14–37 at 12 (CIT April 8, 2014) (*Itochu*) (''The statutory provision, as discussed above, provides Commerce with discretion in the selection of the effective date for a partial revocation following a changed circumstances review, but that discretion may not be exercised arbitrarily so as to decide the question presented without considering the relevant and competing considerations.'').

[21] *See, e.g., Carbon and Certain Alloy Steel Wire Rod from Brazil, Canada, Indonesia, Mexico, Moldova, Trinidad and Tobago, and Ukraine: Final Results of Changed Circumstances Review,* 68 FR 64079 (November 12, 2003); *Stainless Steel Hollow Products from Sweden; Termination of Antidumping Duty Administrative Reviews, Final Results of Changed Circumstances Antidumping Duty Administrative Review, and Revocation In Part of Antidumping Duty Order,* 60 FR 42529 (August 16, 1995).

[22] *See Steel Wire Garment Hangers from the People's Republic of China: Final Results of Changed Circumstances Review, and Revocation in Part of Antidumping Duty Order,* 74 FR 50956 (October 2, 2009); *Notice of Final Results of Antidumping Duty Changed Circumstances Review, and Determination To Revoke Order in Part: Certain Cased Pencils from the People's Republic of China,* 71 FR 13352 (March 15, 2006); *Stainless Steel Sheet and Strip in Coils from Japan: Final Results of Changed Circumstance Antidumping Duty Review, and Determination To Revoke Order in Part,* 65 FR 77578 (December 12, 2000).

[23] *See Large Newspaper Printing Presses and Components Thereof, Whether Assembled or Unassembled, from Japan: Final Results of Changed Circumstances Antidumping Duty Administrative Review and Intent To Revoke Antidumping Duty Order, In Part,* 64 FR 72315 (December 27, 1999).

[24] *See Itochu,* Slip Op. 14–37 at 3.

[25] *See* CCR Request at 14–15.

[26] *See Initiation of Antidumping and Countervailing Duty Administrative Reviews,* 88 FR 38021, 38023 (June 12, 2023).

[27] Commerce issued the final results of the administrative review of the *CAAS AD Germany Order* covering the period October 15, 2020 through March 31, 2022 on November 3, 2023. *See Common Alloy Aluminum Sheet from Germany: Final Results of Antidumping Duty Administrative Review; 2020–2022,* 88 FR 77556 (November 13, 2023). Commerce issued the automatic liquidation instruction for the administrative review of the *CAAS AD Germany Order* covering the period April 1, 2022 through March 31, 2023 on July 21, 2023. *See* CBP Message 3202416, ''Automatic Liquidation Instructions,'' dated July 21, 2023.

Public Comment

Interested parties are invited to comment on these preliminary results of review in accordance with 19 CFR 351.309(c)(1)(ii). Written comments may be submitted no later than 14 days after the date of publication of these preliminary results of review in the **Federal Register**. Rebuttal comments, limited to issues raised in written comments, may be filed no later than five days after the due date for comments.[28] All submissions must be filed electronically using Enforcement and Compliance's Antidumping and Countervailing Duty Centralized Electronic Service System (ACCESS).[29] ACCESS is available to registered users at *https://access.trade.gov.* An electronically filed document must be successfully received in its entirety by ACCESS, by 5 p.m. Eastern Time on the deadlines set forth in this notice.

Interested parties who submit case or rebuttal briefs must submit: (1) a table of contents listing each issue discussed in the brief; and (2) a table of authorities.[30] As provided under 19 CFR 351.309(c)(2) and (d)(2), in prior proceedings we have encouraged interested parties to provide an executive summary of their brief that should be limited to five pages total, including footnotes. In this review, we instead request that interested parties provide at the beginning of their briefs a public, executive summary for each issue raised in their briefs.[31] Further, we request that interested parties limit their executive summary of each issue to no more than 450 words, not including citations. We intend to use the executive summaries as the basis of the comment summaries included in the issues and decision memorandum that will accompany the final results in this review. We request that interested parties include footnotes for relevant citations in the executive summary of each issue. Note that Commerce has amended certain of its requirements pertaining to the service of documents in 19 CFR 351.303(f).[32]

Final Results of the CCR

Commerce will issue the final results of this CCR, which will include its analysis of any written comments, no later than 270 days after the date on which this review was initiated.[33] If, in the final results of this review, Commerce continues to determine that changed circumstances warrant the revocation of the *CAAS AD Germany Order,* in part, we will instruct CBP to liquidate without regard to antidumping duties, and to refund any estimated antidumping duties deposited on, all unliquidated entries of the merchandise covered by the revocation that are not covered by the final results of an administrative review or an automatic liquidation instruction to CBP. The current requirement for cash deposits of estimated antidumping duties on all entries of subject merchandise will continue unless it is modified pursuant to the final results of this CCR.

Notification to Interested Parties

These preliminary results of changed circumstances review and this notice are published in accordance with sections 751(b)(1) and 777(i) of the Act and 19 CFR 351.216, 19 CFR 351.221(c)(3), and 19 CFR 351.222.

Dated: January 30, 2024.

Abdelali Elouaradia,

Deputy Assistant Secretary for Enforcement and Compliance.

[FR Doc. 2024–02231 Filed 2–2–24; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[RTID 0648–XD590]

Fisheries of the Gulf of Mexico and South Atlantic; Southeast Data, Assessment, and Review (SEDAR); Public Meeting

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

ACTION: Notice of SEDAR 79 Assessment Webinar I for Gulf of Mexico and South Atlantic Mutton Snapper.

SUMMARY: The SEDAR 79 assessment process of Gulf of Mexico and South Atlantic mutton snapper will consist of a Data Workshop, and a series of assessment webinars, and a Review Workshop. See **SUPPLEMENTARY INFORMATION.**

DATES: The SEDAR 79 Assessment webinar I will be held February 23, 2024, from 1 p.m. until 4 p.m., eastern time. The established times may be adjusted as necessary to accommodate the timely completion of discussion relevant to the assessment process. Such adjustments may result in the meeting being extended from or completed prior to the time established by this notice.

ADDRESSES: The meeting will be held via webinar. The webinar is open to members of the public. Those interested in participating should contact Julie A. Neer at SEDAR (see **FOR FURTHER INFORMATION CONTACT**) to request an invitation providing webinar access information. Please request webinar invitations at least 24 hours in advance of each webinar.

SEDAR address: 4055 Faber Place Drive, Suite 201, North Charleston, SC 29405.

FOR FURTHER INFORMATION CONTACT: Julie A. Neer, SEDAR Coordinator; (843) 571–4366; email: *Julie.neer@safmc.net.*

SUPPLEMENTARY INFORMATION: The Gulf of Mexico, South Atlantic, and Caribbean Fishery Management Councils, in conjunction with NOAA Fisheries and the Atlantic and Gulf States Marine Fisheries Commissions have implemented the Southeast Data, Assessment and Review (SEDAR) process, a multi-step method for determining the status of fish stocks in the Southeast Region. SEDAR is a multi-step process including: (1) Data Workshop, (2) a series of assessment webinars, and (3) A Review Workshop. The product of the Data Workshop is a report that compiles and evaluates potential datasets and recommends which datasets are appropriate for assessment analyses. The assessment webinars produce a report that describes the fisheries, evaluates the status of the stock, estimates biological benchmarks, projects future population conditions, and recommends research and monitoring needs. The product of the Review Workshop is an Assessment Summary documenting panel opinions regarding the strengths and weaknesses of the stock assessment and input data. Participants for SEDAR Workshops are appointed by the Gulf of Mexico, South Atlantic, and Caribbean Fishery Management Councils and NOAA Fisheries Southeast Regional Office, HMS Management Division, and Southeast Fisheries Science Center. Participants include data collectors and database managers; stock assessment scientists, biologists, and researchers; constituency representatives including fishermen, environmentalists, and NGO's; International experts; and staff of Councils, Commissions, and State and Federal agencies.

[28] *See* 19 CFR 351.309(d); *see also Administrative Protective Order, Service, and Other Procedures in Antidumping and Countervailing Duty Proceedings,* 88 FR 67069, 67077 (September 29, 2023) (*APO and Final Service Rule*).

[29] *See, generally,* 19 CFR 351.303.

[30] *See* 19 351.309(c)(2) and (d)(2).

[31] We use the term ''issue'' here to describe an argument that Commerce would normally address in a comment of the Issues and Decision Memorandum.

[32] *See APO and Final Service Rule.*

[33] *See* 19 CFR 351.216(e).

The items of discussion during the Assessment webinar are as follows:

Panelists will review and discuss initial assessment modeling to date.

Although non-emergency issues not contained in this agenda may come before this group for discussion, those issues may not be the subject of formal action during this meeting. Action will be restricted to those issues specifically identified in this notice and any issues arising after publication of this notice that require emergency action under section 305(c) of the Magnuson-Stevens Fishery Conservation and Management Act, provided the public has been notified of the intent to take final action to address the emergency.

Special Accommodations

The meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to the Council office (see **ADDRESSES**) at least 5 business days prior to each workshop.

Note: The times and sequence specified in this agenda are subject to change.

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

Dated: January 31, 2024.

Rey Israel Marquez,

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

[FR Doc. 2024–02216 Filed 2–2–24; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[RTID 0648–XD677]

Pacific Fishery Management Council; Public Meeting

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

ACTION: Notice of public meeting.

SUMMARY: The Pacific Fishery Management Council (Pacific Council) will convene a Stock Assessment Review (STAR) Panel meeting to review the 2024 Pacific sardine stock assessment. The meeting will be co-hosted by the NOAA Southwest Fisheries Science Center.

DATES: The meeting will be held Wednesday, February 21 through Friday, February 23, 2024. The meeting will begin each day at 8:30 a.m. Pacific Standard Time and will continue until 5 p.m. or until business for the day has been completed.

ADDRESSES: This meeting will be held in person at the Pacific Room of the Southwest Fisheries Science Center at 8901 La Jolla Shores Drive, La Jolla, CA 92037. The meeting will be broadcast with opportunity for remote public comment. Specific meeting information and materials will be provided in the meeting announcement on the Pacific Council's website (see *www.pcouncil.org*).

Council address: Pacific Fishery Management Council, 7700 NE Ambassador Place, Suite 101, Portland, OR 97220–1384.

FOR FURTHER INFORMATION CONTACT: Jessi Doerpinghaus, Staff Officer, Pacific Council, telephone: (503) 820–2415; Dr. Annie Yau, Southwest Fisheries Science Center, email: *annie.yau@noaa.gov;* telephone: (858) 546–7170.

SUPPLEMENTARY INFORMATION: The primary purpose of the meeting is to provide a technical review of the Pacific sardine stock assessment. The review panel will consist of at least three members of the Pacific Council's Scientific and Statistical Committee's Subcommittee on Coastal Pelagic Species (CPS) and at least one independent expert from the Center for Independent Experts. Representatives of the Pacific Council's CPS Management Team and the CPS Advisory Subpanel will also participate in the review as advisers.

Although non-emergency issues not contained in the meeting agenda may be discussed, those issues may not be the subject of formal action during this meeting. Action will be restricted to those issues specifically listed in this document and any issues arising after publication of this document that require emergency action under section 305(c) of the Magnuson-Stevens Fishery Conservation and Management Act, provided the public has been notified of the intent to take final action to address the emergency.

Special Accommodations

Requests for sign language interpretation or other auxiliary aids should be directed to Dr. Annie Yau (*annie.yau@noaa.gov;* (858) 546–7170) at least 10 days prior to the meeting date.

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

Dated: January 31, 2024.

Rey Israel Marquez,

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

[FR Doc. 2024–02217 Filed 2–2–24; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF DEFENSE

Office of the Secretary

Defense Science Board; Notice of Federal Advisory Committee Meeting

AGENCY: Under Secretary of Defense for Research and Engineering, Department of Defense (DoD).

ACTION: Notice of Federal Advisory Committee meeting.

SUMMARY: The DoD is publishing this notice to announce that the following Federal Advisory Committee meeting of the Defense Science Board (DSB) will take place.

DATES: Closed to the public Tuesday, February 6, 2024, from 9:00 a.m. to 4:45 p.m.; closed to the public Wednesday, February 7, 2024 from 8:15 a.m. to 5:00 p.m.; closed to the public Thursday, February 8, 2024 from 8:15 a.m. to 4:00 p.m.

ADDRESSES: The addresses of the closed meeting are the Pentagon, Room 3A912A, Washington, DC, 20301 and 4075 Wilson Blvd., Suite 300, Arlington, VA 22203.

FOR FURTHER INFORMATION CONTACT: Ms. Elizabeth J. Kowalski, Designated Federal Officer (DFO): (703) 571–0081 (Voice), (703) 697–1860 (Facsimile), *elizabeth.j.kowalski.civ@mail.mil,* (Email). Mailing address is Defense Science Board, 3140 Defense Pentagon, Washington, DC 20301–3140. Website: *http://www.acq.osd.mil/dsb/.* The most up-to-date changes to the meeting agenda can be found on the website.

SUPPLEMENTARY INFORMATION: This meeting is being held under the provisions of chapter 10 of title 5, United States Code (U.S.C.) (commonly known as the ''Federal Advisory Committee Act'' or ''FACA''), 5 U.S.C. 552b (commonly known as the ''Government in the Sunshine Act''), and sections 102–3.140 and 102–3.150 of title 41, Code of Federal Regulations (CFR).

Due to circumstances beyond the control of the DFO, the DSB was unable to provide public notification required by 41 CFR 102–3.150(a) concerning its February 6—8, 2024 meeting. Accordingly, the Advisory Committee Management Officer for the DoD, pursuant to 41 CFR 102–3.150(b), waives the 15-calendar day notification requirement. *Purpose of the Meeting:* The mission of the DSB is to provide independent advice and recommendations on matters relating to the DoD's scientific and technical enterprise. The objective of the meeting is to obtain, review, and evaluate classified information related to the

DSB's mission. DSB membership will meet with DoD leadership to discuss classified current and future national security challenges and priorities within the DoD. DSB membership will also discuss the 2024 DSB Summer Study on Advanced Capabilities for Potential Future Conflict and classified strategies for continued development of symmetric and asymmetric capabilities.

Agenda: The meeting will begin on Tuesday, February 6, 2024 at 9:00 a.m. Ms. Betsy Kowalski, DSB DFO, and Dr. Eric Evans, DSB Chair, will provide classified opening remarks regarding ongoing studies. Following break, Lt. Gen. Charles Moore, United States Air Force (Ret.), the Chair of the DSB Task Force on Future Cyber Warfighting Capabilities of the DoD will provide a classified briefing on the Task Force's findings and recommendations, regarding technical evaluations of cyber capabilities, on which the DSB will then deliberate and vote. Following break, Dr. Katherine McGrady and Dr. Robert Wisnieff, Chairs of the DSB Task Force to Advise Implementation and Prioritization of National Security Innovation Activities will provide a classified briefing on the Task Force's findings and recommendations, regarding emerging hardware and materials areas with the most significant potential dual-use impact, on which the DSB will then deliberate and vote. After a break, Dr. Robert Grossman, study chair, will present the DSB Task Force on Digital Engineering's written report, regarding an independent assessment of the progress made by the DoD in implementing sections 23l (a) through (c) of the Fiscal Year 2020 National Defense Authorization Act, followed by classified deliberation and a vote. The DSB Task Force on Test and Evaluation, which studied the resources and capabilities of the test and evaluation organizations, facilities, and laboratories of the DoD and is chaired by Dr. Dave Van Wie and Dr. Johney Green, will present a minority opinion document followed by classified deliberation and a vote. Next, Dr. David Knoll, Director for Analysis and Study Director, Office of the Secretary of Defense (OSD) Policy; Mr. Elee Wakim, Project Lead, OSD Policy; CDR Matthew Noland, Study Member, OSD Policy; CPT T.S. Allen, U.S. Army, Study Member; and MAJ Bart Kennedy, Study Member, Joint Staff, from a Joint OSD Policy, Joint Staff J7, and Office of Net Assessment team will provide a classified briefing on lessons learned from the Russia-Ukraine conflict. Finally, Mr. Doug Beck, Director of the Defense Innovation Unit (DIU), will provide a classified briefing on DIU's strategy, challenges, and priorities. The meeting will adjourn at 4:45 p.m. On Wednesday, February 7, 2024 at 8:15 a.m., Ms. Betsy Kowalski, DSB DFO, and Dr. Eric Evans, DSB Chair, will provide opening remarks and a classified overview of the objectives of the 2024 Summer Study on Advanced Capabilities for Potential Future Conflict. Next, DSB members will meet to discuss classified strategies that best enable DoD's continued development of symmetric and asymmetric capabilities that will characterize future conflicts, including periodic breaks. Finally, the Honorable Heidi Shyu, Under Secretary of Defense for Research & Engineering, will provide a classified briefing on her view of symmetric and asymmetric capabilities that will characterize future conflicts. The meeting will adjourn at 5:00 p.m. On Thursday, February 8, 2024, starting at 8:15 a.m., the DSB members will continue to meet to discuss classified strategies that best enable DoD's continued development of symmetric and asymmetric capabilities that will characterize future conflicts, including periodic breaks. The meeting will adjourn at 4:00 p.m.

Meeting Accessibility: In accordance with 5 U.S.C. 1009(d) and 41 CFR 102–3.155, the DoD has determined that the DSB meeting will be closed to the public. Specifically, the Under Secretary of Defense for Research and Engineering (R&D), in consultation with the DoD Office of the General Counsel, has determined in writing that the meeting will be closed to the public because it will consider matters covered by 5 U.S.C. 552b(c)(1). The determination is based on the consideration that it is expected that discussions throughout will involve classified matters of national security concern. Such classified material is so intertwined with the unclassified material that it cannot reasonably be segregated into separate discussions without defeating the effectiveness and meaning of the overall meeting. To permit the meeting to be open to the public would preclude discussion of such matters and would greatly diminish the ultimate utility of the DSB's findings and recommendations to the Secretary of Defense and to the Under Secretary of Defense for R&D.

Written Statements: In accordance with 5 U.S.C. 1009(a)(3) and 41 CFR 102–3.105(j) and 102–3.140, interested persons may submit a written statement for consideration by the DSB at any time regarding its mission or in response to the stated agenda of a planned meeting. Individuals submitting a written statement must submit their statement to the DSB DFO at the email address provided in the **FOR FURTHER INFORMATION CONTACT** section at any point; however, if a written statement is not received at least three calendar days prior to the meeting, which is the subject of this notice, then it may not be provided to or considered by the DSB until a later date.

Dated: January 30, 2024.

Aaron T. Siegel,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 2024–02207 Filed 2–2–24; 8:45 am]

BILLING CODE 6001–FR–P

DEPARTMENT OF EDUCATION

[Docket No.: ED–2023–SCC–0198]

Agency Information Collection Activities; Submission to the Office of Management and Budget for Review and Approval; Comment Request; Privacy Act Request Form

AGENCY: Office of the Secretary (OS), Department of Education (ED).

ACTION: Notice.

SUMMARY: In accordance with the Paperwork Reduction Act (PRA) of 1995, the Department is proposing a new information collection request (ICR).

DATES: Interested persons are invited to submit comments on or before March 6, 2024.

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 Arthur Caliguiran, (202) 453–6489.

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: Privacy Act Request Form.

OMB Control Number: 1894–NEW.

Type of Review: New ICR.

Respondents/Affected Public: Individuals or Households.

Total Estimated Number of Annual Responses: 130.

Total Estimated Number of Annual Burden Hours: 65.

Abstract: The collection is necessary under 5 U.S.C. 552a(b) to collect information from individuals requesting information under the Privacy Act (PA). The Department will use the information to provide documents that are responsive to a Privacy Act or FOIA/Privacy Act request under the Freedom of Information Act. This Information Collection Request (ICR) was previously approved under 1880–0546 and ED is requesting a new number since this ICR is now under the Office of the Secretary (OS). There are no changes to the currently approved form.

Dated: January 30, 2024.

Stephanie Valentine,

PRA Coordinator, Strategic Collections and Clearance, Governance and Strategy Division, Office of Chief Data Officer, Office of Planning, Evaluation and Policy Development.

[FR Doc. 2024–02145 Filed 2–2–24; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

[Docket No.: ED–2023–SCC–0199]

Agency Information Collection Activities; Submission to the Office of Management and Budget for Review and Approval; Comment Request; FOIA Certification of Identity and Consent Form

AGENCY: Office of the Secretary (OS), Department of Education (ED).

ACTION: Notice.

SUMMARY: In accordance with the Paperwork Reduction Act (PRA) of 1995, the Department is proposing a new information collection request (ICR).

DATES: Interested persons are invited to submit comments on or before March 6, 2024.

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 Arthur Caliguiran, (202) 453–6489.

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: FOIA Certification of Identity and Consent Form.

OMB Control Number: 1894–NEW.

Type of Review: New ICR.

Respondents/Affected Public: Individuals or Households.

Total Estimated Number of Annual Responses: 130.

Total Estimated Number of Annual Burden Hours: 65.

Abstract: The collection is necessary under 5 U.S.C. 552a(b) to collect information from individuals requesting information under the Privacy Act (PA). The Department will use the information to provide documents that are responsive to a Privacy Act or FOIA/Privacy Act request under the Freedom of Information Act. This Information Collection Request (ICR) was previously approved under 1880–0545 and ED is requesting a new number since this ICR is now under the Office of the Secretary (OS). There are no changes to the currently approved form.

Dated: January 30, 2024.

Stephanie Valentine,

PRA Coordinator, Strategic Collections and Clearance, Governance and Strategy Division, Office of Chief Data Officer, Office of Planning, Evaluation and Policy Development.

[FR Doc. 2024–02146 Filed 2–2–24; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

[Docket No.: ED–2024–SCC–0019]

Agency Information Collection Activities; Comment Request; Vocational Rehabilitation Program Corrective Action Plan (CAP)

AGENCY: Office of Special Education and Rehabilitative Services (OSERS), Department of Education (ED).

ACTION: Notice.

SUMMARY: In accordance with the Paperwork Reduction Act (PRA) of 1995, the Department is proposing a reinstatement of a previously approved information collection request (ICR).

DATES: Interested persons are invited to submit comments on or before April 5, 2024.

ADDRESSES: To access and review all the documents related to the information collection listed in this notice, please use *http://www.regulations.gov* by searching the Docket ID number ED–2024–SCC–0019. Comments submitted in response to this notice should be submitted electronically through the Federal eRulemaking Portal at *http://www.regulations.gov* by selecting the Docket ID number or via postal mail, commercial delivery, or hand delivery. If the *regulations.gov* site is not available to the public for any reason, the Department will temporarily accept comments at *ICDocketMgr@ed.gov.* Please include the docket ID number and the title of the information collection request when requesting documents or submitting comments. Please note that comments submitted after the comment period will not be accepted. Written requests for information or comments submitted by postal mail or delivery should be addressed to the Manager of the Strategic Collections and Clearance Governance and Strategy Division, U.S. Department of Education, 400 Maryland Ave. SW, LBJ, Room 6W203, Washington, DC 20202–8240.

FOR FURTHER INFORMATION CONTACT: For specific questions related to collection activities, please contact Ed Vitelli, 202–453–6203.

SUPPLEMENTARY INFORMATION: The Department, in accordance with the Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3506(c)(2)(A)), provides the general public and Federal agencies with an opportunity to comment on proposed, revised, and continuing collections of information. This helps the Department assess the impact of its information collection requirements and minimize the public's reporting burden. It also helps the public understand the Department's information collection requirements and provide the requested data in the desired format. The Department is soliciting comments on the proposed information collection request (ICR) that is described below. 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: Vocational Rehabilitation Program Corrective Action Plan (CAP).

OMB Control Number: 1820–0694.

Type of Review: A reinstatement of a previously approved ICR.

Respondents/Affected Public: State, Local, and Tribal Governments.

Total Estimated Number of Annual Responses: 60.

Total Estimated Number of Annual Burden Hours: 975.

Abstract: Section 107(a)(1) of the Rehabilitation Act of 1973 (Rehabilitation Act) requires the Commissioner of the Rehabilitation Services Administration (RSA) to conduct annual reviews and periodic on-site monitoring of the vocational rehabilitation (VR) program to determine whether a state agency is complying substantially with the provisions of its State Plan under section 101 of the Rehabilitation Act and with the evaluation standards and performance indicators established under section 106 of the Rehabilitation Act subject to the performance accountability provisions described in section 116(b) of the Workforce Innovation and Opportunity Act (WIOA). To fulfill its monitoring responsibility, RSA reviews a maximum of 15 VR agencies in each Federal fiscal year. When, based on its monitoring, RSA determines that a state agency has not administered and operated the VR program in compliance with its State Plan, the Rehabilitation Act, and implementing regulations at 34 CFR part 361, the agency must develop a corrective action plan (CAP), established by RSA in accordance with the requirement of section 107(b)(2) of the Rehabilitation Act, for RSA approval within 45 days from the issuance of the final monitoring report.

Dated: January 30, 2024.

Juliana Pearson,

PRA Coordinator, Strategic Collections and Clearance, Governance and Strategy Division, Office of Chief Data Officer, Office of Planning, Evaluation and Policy Development.

[FR Doc. 2024–02147 Filed 2–2–24; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP24–40–000]

Leaf River Energy Center LLC; Notice of Application and Establishing Intervention Deadline

Take notice that on January 17, 2024, Leaf River Energy Center LLC (Leaf River), 2500 City West Boulevard, Suite 1050, Houston, Texas 77042, filed an application under section 7(c) of the Natural Gas Act (NGA), and part 157 of the Commission's regulations seeking to amend its certificate granted by the Commission in Docket No. CP08–8–000 for its Storage Facility in Smith, Jasper, and Clarke Counties, Mississippi. Leaf River requests authorization to use its underutilized leaching facilities for the development and maintenance of Hy Stor Energy LP's non-jurisdictional hydrogen storage caverns (Hydrogen Storage Project) in addition to their current use for the development and maintenance of Leaf River's Storage Facility. Specifically, Leaf River requests authorization to exclusively use the following leaching facilities for the Hydrogen Storage Project for a limited period: (1) four water supply wells; (2) five brine disposal wells; (3) one 5,000 barrel water tank; (4) one 5,000 barrel brine tank; (5) two 3,000 horsepower (HP) raw water pumps; (6) two 100 HP pond pumps; and (7) two 1,000 HP brine disposal pumps. Afterwards, Leaf River states that the leaching facilities will revert to developing and maintain natural gas storage capacity as well as maintaining the non-jurisdictional hydrogen storage caverns, all as more fully set forth in the application which is on file 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. Public access to records formerly available in the Commission's physical Public Reference Room, which was located at the Commission's headquarters, 888 First Street NE, Washington, DC 20426, are now available via the Commission's website. For assistance, contact the Federal Energy Regulatory Commission at *FercOnlineSupport@ferc.gov* or call toll-free, (886) 208–3676 or TTY (202) 502–8659.

Any questions regarding the proposed project should be directed to William P. Scharfenberg, Assistant General Counsel, NJR Service Corporation, 1415 Wyckoff Road, Wall, New Jersey 07719, by telephone at (732) 938–1134, or by email at *WScharfenberg@njresources.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 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

[1] 18 CFR (Code of Federal Regulations) 157.9.

the date of issuance of the Commission staff's FEIS or EA.

Public Participation

There are three ways to become involved in the Commission's review of this project: you can file comments on the project, you can protest the filing, 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 p.m. eastern time on February 20, 2024. How to file protests, motions to intervene, and comments is explained below.

The Commission's Office of Public Participation (OPP) supports meaningful public engagement and participation in Commission proceedings. OPP can help members of the public, including landowners, environmental justice communities, Tribal members and others, access publicly available information and navigate Commission processes. For public inquiries and assistance with making filings such as interventions, comments, or requests for rehearing, the public is encouraged to contact OPP at (202) 502–6595 or *OPP@ferc.gov.*

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.

Protests

Pursuant to sections 157.10(a)(4)[2] and 385.211[3] of the Commission's regulations under the NGA, any person[4] may file a protest to the application. Protests must comply with the requirements specified in section 385.2001[5] of the Commission's regulations. A protest may also serve as a motion to intervene so long as the protestor states it also seeks to be an intervenor.

To ensure that your comments or protests are timely and properly recorded, please submit your comments on or before February 20, 2024.

There are three methods you can use to submit your comments or protests to the Commission. In all instances, please reference the Project docket number CP24–40–000 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 or protests 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 or protests by mailing them to the following address below. Your written comments must reference the Project docket number (CP24–40–000).

To file via USPS: Debbie-Anne Reese, Acting Secretary, Federal Energy Regulatory Commission, 888 First Street NE, Washington, DC 20426

To file via any other courier: Debbie-Anne Reese, Acting 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,[6] 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[7] and the regulations under the NGA[8] by the intervention deadline for the project, which is February 20, 2024. 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 CP24–40–000 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. Your motion to intervene must reference the Project docket number CP24–40–000.

To file via USPS: Debbie-Anne Reese, Acting Secretary, Federal Energy Regulatory Commission, 888 First Street NE, Washington, DC 20426

To file via any other courier: Debbie-Anne Reese, Acting Secretary, Federal Energy Regulatory Commission, 12225 Wilkins Avenue, Rockville, Maryland 20852

The Commission encourages electronic filing of motions to intervene

[2] 18 CFR 157.10(a)(4).

[3] 18 CFR 385.211.

[4] Persons include individuals, organizations, businesses, municipalities, and other entities. 18 CFR 385.102(d).

[5] 18 CFR 385.2001.

[6] 18 CFR 385.102(d).

[7] 18 CFR 385.214.

[8] 18 CFR 157.10.

(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 at: William P. Scharfenberg, Assistant General Counsel, NJR Service Corporation, 1415 Wyckoff Road, Wall, New Jersey 07719 or at *WScharfenberg@njresources.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. Service can be via email with a link to the document.

All timely, unopposed [9] motions to intervene are automatically granted by operation of Rule 214(c)(1).[10] 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.[11] 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 *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 p.m. eastern time on February 20, 2024.

[9] The applicant has 15 days from the submittal of a motion to intervene to file a written objection to the intervention.

[10] 18 CFR 385.214(c)(1).

[11] 18 CFR 385.214(b)(3) and (d).

Dated: January 30, 2024.

Debbie-Anne A. Reese,

Acting Secretary.

[FR Doc. 2024–02200 Filed 2–2–24; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER24–1035–000]

20SD 8me LLC; Supplemental Notice That Initial Market-Based Rate Filing Includes Request for Blanket Section 204 Authorization

This is a supplemental notice in the above-referenced proceeding of 20SD 8me LLC's application for market-based rate authority, with an accompanying rate tariff, noting that such application includes a request for blanket authorization, under 18 CFR part 34, of future issuances of securities and assumptions of liability.

Any person desiring to intervene or to protest should file with the Federal Energy Regulatory Commission, 888 First Street NE, Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant.

Notice is hereby given that the deadline for filing protests with regard to the applicant's request for blanket authorization, under 18 CFR part 34, of future issuances of securities and assumptions of liability, is February 19, 2024.

The Commission encourages electronic submission of protests and interventions in lieu of paper, using the FERC Online links at *http://www.ferc.gov.* To facilitate electronic service, persons with internet access who will eFile a document and/or be listed as a contact for an intervenor must create and validate an eRegistration account using the eRegistration link. Select the eFiling link to log on and submit the intervention or protests.

Persons unable to file electronically may mail similar pleadings to the Federal Energy Regulatory Commission, 888 First Street NE, Washington, DC 20426. Hand delivered submissions in docketed proceedings should be delivered to Health and Human Services, 12225 Wilkins Avenue, Rockville, Maryland 20852.

In addition to publishing the full text of this document in the **Federal Register**, the Commission provides all interested persons an opportunity to view and/or print the contents of this document via the internet through the Commission's Home Page (*http://www.ferc.gov*) using the ''eLibrary'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. At this time, the Commission has suspended access to the Commission's Public Reference Room, due to the proclamation declaring a National Emergency concerning the Novel Coronavirus Disease (COVID–19), issued by the President on March 13, 2020. For assistance, contact the Federal Energy Regulatory Commission at *FERCOnlineSupport@ferc.gov* or call toll-free, (886) 208–3676 or TYY, (202) 502–8659.

The Commission's Office of Public Participation (OPP) supports meaningful public engagement and participation in Commission proceedings. OPP can help members of the public, including landowners, environmental justice communities, Tribal members and others, access publicly available information and navigate Commission processes. For public inquiries and assistance with making filings such as interventions, comments, or requests for rehearing, the public is encouraged to contact OPP at (202) 502–6595 or *OPP@ferc.gov.*

Dated: January 30, 2024.

Debbie-Anne A. Reese,

Acting Secretary.

[FR Doc. 2024–02198 Filed 2–2–24; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER24–1039–000]

Altona Solar, LLC; Supplemental Notice That Initial Market-Based Rate Filing Includes Request for Blanket Section 204 Authorization

This is a supplemental notice in the above-referenced proceeding of Altona Solar, LLC's application for market-based rate authority, with an accompanying rate tariff, noting that such application includes a request for blanket authorization, under 18 CFR part 34, of future issuances of securities and assumptions of liability.

Any person desiring to intervene or to protest should file with the Federal Energy Regulatory Commission, 888 First Street NE, Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice

and Procedure (18 CFR 385.211 and 385.214). Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant.

Notice is hereby given that the deadline for filing protests with regard to the applicant's request for blanket authorization, under 18 CFR part 34, of future issuances of securities and assumptions of liability, is February 19, 2024.

The Commission encourages electronic submission of protests and interventions in lieu of paper, using the FERC Online links at *http://www.ferc.gov.* To facilitate electronic service, persons with internet access who will eFile a document and/or be listed as a contact for an intervenor must create and validate an eRegistration account using the eRegistration link. Select the eFiling link to log on and submit the intervention or protests.

Persons unable to file electronically may mail similar pleadings to the Federal Energy Regulatory Commission, 888 First Street NE, Washington, DC 20426. Hand delivered submissions in docketed proceedings should be delivered to Health and Human Services, 12225 Wilkins Avenue, Rockville, Maryland 20852.

In addition to publishing the full text of this document in the **Federal Register**, the Commission provides all interested persons an opportunity to view and/or print the contents of this document via the internet through the Commission's Home Page (*http://www.ferc.gov*) using the ''eLibrary'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. At this time, the Commission has suspended access to the Commission's Public Reference Room, due to the proclamation declaring a National Emergency concerning the Novel Coronavirus Disease (COVID–19), issued by the President on March 13, 2020. For assistance, contact the Federal Energy Regulatory Commission at *FERCOnlineSupport@ferc.gov* or call toll-free, (886) 208–3676 or TYY, (202) 502–8659.

The Commission's Office of Public Participation (OPP) supports meaningful public engagement and participation in Commission proceedings. OPP can help members of the public, including landowners, environmental justice communities, Tribal members and others, access publicly available information and navigate Commission processes. For public inquiries and assistance with making filings such as interventions, comments, or requests for rehearing, the public is encouraged to contact OPP at (202) 502–6595 or *OPP@ferc.gov.*

Dated: January 30, 2024.

Debbie-Anne A. Reese,

Acting Secretary.

[FR Doc. 2024–02197 Filed 2–2–24; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 1744–054]

PacifiCorp; Notice of Intent To Prepare an Environmental Assessment

On April 18, 2023, as supplemented on June 23, 2023, PacifiCorp filed an application for a non-capacity amendment for the Weber Hydroelectric Project No. 1744. The project is located on the Weber River in Davis, Morgan and Weber Counties, Utah. The project occupies Federal lands managed by the U.S. Forest Service, administered by the Uinta-Wasatch-Cache National Forest.

The licensee proposes to amend its license to modernize intake components at the Weber Dam. Additionally, the licensee proposes the construction of three new auxiliary spillways sections to accommodate recently recalculated 100-year flood flows. The new intake and spillway equipment would require the destruction and replacement of the current gatehouse and the original, non-functional, fish ladder to accommodate new screens/trashracks. All components would be installed on previously disturbed ground, within the project boundary. Staging for the proposed actions would be partially located on lands administered by the U.S. Department of Agriculture's Forest Service. The proposed action would require temporary closure of some recreational facilities, closest to the work area, during the construction. A Notice of Application Accepted for Filing and Soliciting Comments, Motions to Intervene, and Protest was issued on July 20, 2023. No comments were received.

This notice identifies Commission staff's intention to prepare an environmental assessment (EA) for the proposed action. The planned schedule for the completion of the EA is October 2024.[1] Revisions to the schedule may be made as appropriate. The EA will be issued and made available for review by all interested parties. All comments filed on the EA will be reviewed by staff and considered in the Commission's final decision on the proceeding.

With this notice, the Commission is inviting Federal, State, local, and Tribal agencies with jurisdiction and/or special expertise with respect to environmental issues affected by the proposal to cooperate in the preparation of the EA planned to be issued October 2024. Agencies wishing to cooperate, or further discuss the benefits, responsibilities, and obligations of the cooperating agency role, should contact staff listed at the bottom of this notice by February 20, 2024. Cooperating agencies should note the Commission's policy that agencies that cooperate in the preparation of any environmental document cannot also intervene. *See* 94 FERC ¶ 61,076 (2001).

The Commission's Office of Public Participation (OPP) supports meaningful public engagement and participation in Commission proceedings. OPP can help members of the public, including landowners, environmental justice communities, Tribal members, and others to access publicly available information and navigate Commission processes. For public inquiries and assistance with making filings such as interventions, comments, or requests for rehearing, the public is encouraged to contact OPP at (202) 502–6595 or *OPP@ferc.gov.*

Any questions regarding this notice may be directed to Jeffrey V. Ojala at 202–502–8206 or *jeffrey.ojala@ferc.gov.*

Dated: January 30, 2024.

Debbie-Anne A. Reese,

Acting Secretary.

[FR Doc. 2024–02193 Filed 2–2–24; 8:45 am]

BILLING CODE 6717–01–P

[1] 42 U.S.C. 4336a(g)(1)(B) requires lead Federal agencies to complete EAs within 1 year of the agency's decision to prepare an EA.

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: PR24–44–000.

Applicants: Spire Storage Salt Plains LLC.

Description: § 284.123 Rate Filing: Salt Plains—Notification of Change in Circumstances to be effective N/A.

Filed Date: 1/29/24.

Accession Number: 20240129–5201.

Comment Date: 5 p.m. ET 2/20/24.

Docket Numbers: PR24–45–000.

Applicants: NorthWestern Energy Public Service Corporation.

Description: § 284.123 Rate Filing: Statement of Operating Conditions to be effective 1/30/2024.
Filed Date: 1/30/24.
Accession Number: 20240130–5098.
Comment Date: 5 p.m. ET 2/20/24.
Docket Numbers: RP24–348–000.
Applicants: Great Lakes Gas Transmission Limited Partnership.
Description: Compliance filing: Semi-Annual Transporter's Use Report January 2024 to be effective N/A.
Filed Date: 1/29/24.
Accession Number: 20240129–5170.
Comment Date: 5 p.m. ET 2/12/24.
Docket Numbers: RP24–349–000.
Applicants: Spire Storage West LLC.
Description: Compliance filing: Spire Storage West—Notification of Change in Circumstances to be effective N/A.
Filed Date: 1/29/24
Accession Number: 20240129–5199.
Comment Date: 5 p.m. ET 2/12/24.
Docket Numbers: RP24–350–000.
Applicants: El Paso Natural Gas Company, L.L.C.
Description: § 4(d) Rate Filing: Negotiated Rate Agreement Update (SoCal Feb 2024) to be effective 2/1/2024.
Filed Date: 1/29/24.
Accession Number: 20240129–5204.
Comment Date: 5 p.m. ET 2/12/24.
Docket Numbers: RP24–351–000.
Applicants: El Paso Natural Gas Company, L.L.C.
Description: § 4(d) Rate Filing: Negotiated Rate Agreement Filing (Pioneer Feb 2024) to be effective 2/1/2024.
Filed Date: 1/29/24.
Accession Number: 20240129–5205.
Comment Date: 5 p.m. ET 2/12/24.
Docket Numbers: RP24–352–000.
Applicants: Iroquois Gas Transmission System, L.P.
Description: § 4(d) Rate Filing: 1.30.24 Negotiated Rates—Emera Energy Services, Inc. R–2715–92 to be effective 2/1/2024.
Filed Date: 1/30/24.
Accession Number: 20240130–5023.
Comment Date: 5 p.m. ET 2/12/24.
Docket Numbers: RP24–353–000.
Applicants: Eastern Gas Transmission and Storage, Inc.
Description: § 4(d) Rate Filing: EGTS—January 30, 2024 Nonconforming Service Agreement to be effective 3/1/2024.
Filed Date: 1/30/24.
Accession Number: 20240130–5026.
Comment Date: 5 p.m. ET 2/12/24.
Docket Numbers: RP24–354–000.
Applicants: Enable Gas Transmission, LLC.
Description: § 4(d) Rate Filing: Amended NRA Filing—Summit Utilities to be effective 2/1/2024.
Filed Date: 1/30/24.
Accession Number: 20240130–5086.
Comment Date: 5 p.m. ET 2/12/24.
Docket Numbers: RP24–355–000.
Applicants: Enable Gas Transmission, LLC.
Description: § 4(d) Rate Filing: 1–30–24 Housekeeping Filing to be effective 3/1/2024.
Filed Date: 1/30/24.
Accession Number: 20240130–5087.
Comment Date: 5 p.m. ET 2/12/24.
Docket Numbers: RP24–356–000.
Applicants: Ruby Pipeline, L.L.C.
Description: § 4(d) Rate Filing: RP 2024–01–30 FL&U and EPC Rate Adjustment to be effective 3/1/2024.
Filed Date: 1/30/24.
Accession Number: 20240130–5103.
Comment Date: 5 p.m. ET 2/12/24.
Docket Numbers: RP24–358–000.
Applicants: Sierrita Gas Pipeline LLC.
Description: § 4(d) Rate Filing: 2024 Jan Quarterly FL&U Filing to be effective 3/1/2024.
Filed Date: 1/30/24.
Accession Number: 20240130–5117.
Comment Date: 5 p.m. ET 2/12/24.
Docket Numbers: RP24–359–000.
Applicants: Wyoming Interstate Company, L.L.C.
Description: § 4(d) Rate Filing: Fuel_LU Quarterly Update Filing Eff Mar 2024 to be effective 3/1/2024.
Filed Date: 1/30/24.
Accession Number: 20240130–5127.
Comment Date: 5 p.m. ET 2/12/24.
Docket Numbers: RP24–360–000.
Applicants: El Paso Natural Gas Company, L.L.C.
Description: § 4(d) Rate Filing: Negotiated Rate Agreements Update (Hartree 614700 615843 610670 Feb 2024) to be effective 2/1/2024.
Filed Date: 1/30/24.
Accession Number: 20240130–5129.
Comment Date: 5 p.m. ET 2/12/24.

Any person desiring to intervene, to protest, or to answer a complaint in any of the above proceedings must file in accordance with Rules 211, 214, or 206 of the Commission's Regulations (18 CFR 385.211, 385.214, or 385.206) on or before 5 p.m. Eastern time on the specified comment date. Protests may be considered, but intervention is necessary to become a party to the proceeding.

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.

The Commission's Office of Public Participation (OPP) supports meaningful public engagement and participation in Commission proceedings. OPP can help members of the public, including landowners, environmental justice communities, Tribal members and others, access publicly available information and navigate Commission processes. For public inquiries and assistance with making filings such as interventions, comments, or requests for rehearing, the public is encouraged to contact OPP at (202) 502–6595 or *OPP@ferc.gov*.

Dated: January 30, 2024.

Debbie-Anne A. Reese,

Acting Secretary.

[FR Doc. 2024–02202 Filed 2–2–24; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 382–108]

Southern California Edison Company; Notice of Intent To Prepare an Environmental Assessment

On May 1 and 2, 2023, as supplemented on May 16, 2023, Southern California Edison Company (SCE or licensee) filed an application to surrender its license and decommission the Borel Hydroelectric Project No. 382. The project is located on the Kern River, in the City of Bodfish in Kern County, California. The project occupies Federal lands administered by the U.S. Forest Service and the U.S. Army Corps of Engineers.

SCE is requesting to surrender its license for the Borel Hydroelectric Project and the disposition of all Borel Project facilities (*i.e.,* removal, modification, or abandonment in place). SCE is surrendering the Borel Project license because the U.S. Army Corps of Engineers (Corps) implemented a safety modification to its Lake Isabella Auxiliary Dam for which the Corps condemned land associated with the Borel Project and sealed off the existing section of conduit through the Auxiliary Dam by filling it with concrete and abandoning the conduit in place. This action rendered the Borel Project nonfunctional and therefore SCE is seeking to surrender the Project license.

A Notice of Application Accepted for Filing and Soliciting Comments, Motions to Intervene, and Protest was issued on June 13, 2023.

This notice identifies Commission staff's intention to prepare an environmental assessment (EA) for the proposed action. The planned schedule for the completion of the EA is July 2024.[1] Revisions to the schedule may be made as appropriate. The EA will be issued and made available for review by all interested parties. All comments filed on the EA will be reviewed by staff and considered in the Commission's final decision on the proceeding.

With this notice, the Commission is inviting Federal, State, local, and Tribal agencies with jurisdiction and/or special expertise with respect to environmental issues affected by the proposal to cooperate in the preparation of the EA planned to be issued July 2024. Agencies wishing to cooperate, or further discuss the benefits, responsibilities, and obligations of the cooperating agency role, should contact staff listed at the bottom of this notice by February 20, 2024. Cooperating agencies should note the Commission's policy that agencies that cooperate in the preparation of any environmental document cannot also intervene. *See* 94 FERC ¶ 61,076 (2001).

The Commission's Office of Public Participation (OPP) supports meaningful public engagement and participation in Commission proceedings. OPP can help members of the public, including landowners, environmental justice communities, Tribal members, and others to access publicly available information and navigate Commission processes. For public inquiries and assistance with making filings such as interventions, comments, or requests for rehearing, the public is encouraged to contact OPP at (202) 502–6595 or *OPP@ferc.gov.*

Any questions regarding this notice may be directed to Rebecca Martin at 202–502–6012 or *Rebecca.martin@ferc.gov.*

Dated: January 30, 2024.

Debbie-Anne A. Reese,

Acting Secretary.

[FR Doc. 2024–02194 Filed 2–2–24; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RM98–1–000]

Records Governing Off-the-Record Communications; Public Notice

This constitutes notice, in accordance with 18 CFR 385.2201(b), of the receipt of prohibited and exempt off-the-record communications.

Order No. 607 (64 FR 51222, September 22, 1999) requires Commission decisional employees, who make or receive a prohibited or exempt off-the-record communication relevant to the merits of a contested proceeding, to deliver to the Secretary of the Commission, a copy of the communication, if written, or a summary of the substance of any oral communication.

Prohibited communications are included in a public, non-decisional file associated with, but not a part of, the decisional record of the proceeding. Unless the Commission determines that the prohibited communication and any responses thereto should become a part of the decisional record, the prohibited off-the-record communication will not be considered by the Commission in reaching its decision. Parties to a proceeding may seek the opportunity to respond to any facts or contentions made in a prohibited off-the-record communication and may request that the Commission place the prohibited communication and responses thereto in the decisional record. The Commission will grant such a request only when it determines that fairness so requires. Any person identified below as having made a prohibited off-the-record communication shall serve the document on all parties listed on the official service list for the applicable proceeding in accordance with Rule 2010, 18 CFR 385.2010.

Exempt off-the-record communications are included in the decisional record of the proceeding, unless the communication was with a cooperating agency as described by 40 CFR 1501.6, made under 18 CFR 385.2201(e) (1) (v).

The following is a list of off-the-record communications recently received by the Secretary of the Commission. 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. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll free at (866) 208–3676, or for TTY, contact (202) 502–8659.

Docket Nos.	File date	Presenter or requester
Prohibited:		
1. CP17–117–000, CP17–118–000	1–17–2024	FERC Staff.[1]
2. CP17–117–000, CP17–118–000	1–17–2024	FERC Staff.[2]
3. CP17–117–000, CP17–118–000	1–17–2024	FERC Staff.[3]
4. CP17–117–000, CP17–118–000	1–17–2024	FERC Staff.[4]
5. CP17–117–000, CP17–118–000	1–18–2024	FERC Staff.[5]
6. CP22–21–000, CP22–22–000	1–18–2024	FERC Staff.[6]
7. CP22–22–000	1–18–2024	FERC Staff.[7]
8. CP17–117–000, CP17–118–000	1–18–2024	FERC Staff.[8]
9. CP17–117–000, CP17–118–000	1–19–2024	FERC Staff.[9]
10. CP17–117–000, CP17–118–000	1–22–2024	FERC Staff.[10]
11. CP22–21–000, CP17–117–000	1–22–2024	FERC Staff.[11]
12. CP17–117–000, CP17–118–000	1–22–2024	FERC Staff.[12]
13. CP17–117–000, CP17–118–000	1–23–2024	FERC Staff.[13]
14. CP17–117–000, CP17–118–000	1–23–2024	FERC Staff.[14]

[1] 42 U.S.C. 4336a(g)(1)(B) requires lead Federal agencies to complete EAs within 1 year of the agency's decision to prepare an EA.

[1] Emailed comments from Joshua Patton.

[2] Emailed comments from Walter Loomis.

[3] Emailed comments from Michael Pappas.

[4] Emailed comments from Joseph Nardecchia.

[5] Emailed comments from Joshua Swiatek.

[6] Emailed comments from Kay Reibold and Ronald Kardos.

[7] Emailed comments from Amanda Woolf and 5 other individuals.

[8] Emailed comments from Wayne Lorenzo.

[9] Emailed comments from Shohaib Sumar.

[10] Emailed comments from Walter Loomis, Bobby Fontenot, and Pete Floyd.

[11] Memorandum regarding ex parte communication voicemail on 1/18/24 from Liz Keith.

[12] Emailed comments from Walter Loomis and Ankit Bavariya.

[13] Emailed comments from Jian Xu.

[14] Emailed comments from Scott Brooks.

Docket Nos.	File date	Presenter or requester
15. CP17–117–000, CP17–118–000	1–23–2024	FERC Staff.[15]
16. CP17–117–000, CP17–118–000	1–25–2024	FERC Staff.[16]
17. CP17–117–000, CP17–118–000	1–25–2024	FERC Staff.[17]
18. CP17–117–000, CP17–118–000	1–29–2024	FERC Staff.[18]
19. CP17–117–000, CP17–118–000	1–29–2024	FERC Staff.[19]
Exempt:		
None.		

Dated: January 30, 2024.

Debbie-Anne A. Reese,

Acting Secretary.

[FR Doc. 2024–02190 Filed 2–2–24; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER24–1040–000]

BCD 2024 Fund 2 Lessee, LLC; Supplemental Notice That Initial Market-Based Rate Filing Includes Request for Blanket Section 204 Authorization

This is a supplemental notice in the above-referenced proceeding of BCD 2024 Fund 2 Lessee, LLC's application for market-based rate authority, with an accompanying rate tariff, noting that such application includes a request for blanket authorization, under 18 CFR part 34, of future issuances of securities and assumptions of liability.

Any person desiring to intervene or to protest should file with the Federal Energy Regulatory Commission, 888 First Street NE, Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant.

Notice is hereby given that the deadline for filing protests with regard to the applicant's request for blanket authorization, under 18 CFR part 34, of future issuances of securities and assumptions of liability, is February 19, 2024.

The Commission encourages electronic submission of protests and interventions in lieu of paper, using the FERC Online links at *http://www.ferc.gov.* To facilitate electronic service, persons with internet access who will eFile a document and/or be listed as a contact for an intervenor must create and validate an eRegistration account using the eRegistration link. Select the eFiling link to log on and submit the intervention or protests.

Persons unable to file electronically may mail similar pleadings to the Federal Energy Regulatory Commission, 888 First Street NE, Washington, DC 20426. Hand delivered submissions in docketed proceedings should be delivered to Health and Human Services, 12225 Wilkins Avenue, Rockville, Maryland 20852.

In addition to publishing the full text of this document in the **Federal Register**, the Commission provides all interested persons an opportunity to view and/or print the contents of this document via the internet through the Commission's Home Page (*http://www.ferc.gov*) using the ''eLibrary'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. At this time, the Commission has suspended access to the Commission's Public Reference Room, due to the proclamation declaring a National Emergency concerning the Novel Coronavirus Disease (COVID–19), issued by the President on March 13, 2020. For assistance, contact the Federal Energy Regulatory Commission at *FERCOnlineSupport@ferc.gov* or call toll-free, (886) 208–3676 or TYY, (202) 502–8659.

The Commission's Office of Public Participation (OPP) supports meaningful public engagement and participation in Commission proceedings. OPP can help members of the public, including landowners, environmental justice communities, Tribal members and others, access publicly available information and navigate Commission processes. For public inquiries and assistance with making filings such as interventions, comments, or requests for rehearing, the public is encouraged to contact OPP at (202) 502–6595 or *OPP@ferc.gov.*

Dated: January 30, 2024.

Debbie-Anne A. Reese,

Acting Secretary.

[FR Doc. 2024–02196 Filed 2–2–24; 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: EC24–45–000.

Applicants: Altona Solar, LLC, BCD 2024 Fund 2 Lessee, LLC.

Description: Joint Application for Authorization Under Section 203 of the Federal Power Act of Altona Solar, LLC, et al.

Filed Date: 1/29/24.

Accession Number: 20240129–5253.

Comment Date: 5 p.m. ET 2/20/24.

Take notice that the Commission received the following Complaints and Compliance filings in EL Dockets:

Docket Numbers: EL24–65–000.

Applicants: City of Tacoma, Department of Public Utilities, Light Division Tacoma Power v. California Independent System Operator Corporation.

Description: Complaint of City of Tacoma, Department of Public Utilities, Light Division Tacoma Power, v. California Independent System Operator Corporation.

Filed Date: 1/29/24.

Accession Number: 20240129–5167.

Comment Date: 5 p.m. ET 2/20/24.

Take notice that the Commission received the following electric rate filings:

Docket Numbers: ER10–1580–019.

Applicants: Saguaro Power Company LP.

Description: Notice of Non-Material Change in Status of Saguaro Power Company, A Limited Partnership.

Filed Date: 1/26/24.

Accession Number: 20240126–5238.

Comment Date: 5 p.m. ET 2/16/24.

Docket Numbers: ER10–1946–016; ER14–1468–013.

[15] Emailed comments from Dustin Fritz.

[16] Emailed comments from Andrew Mooney.

[17] Emailed comments from Douglass Miller.

[18] Emailed comments from Scott King.

[19] Emailed comments from Martin J. Houston (Matthew Phillips).

Applicants: KMC Thermo, LLC, Broad River Energy LLC.

Description: Supplement to October 31, 2022, Notice of Non-Material Change in Status of Broad River Energy LLC, et. al.

Filed Date: 11/20/23.

Accession Number: 20231120–5233.

Comment Date: 5 p.m. ET 2/20/24.

Docket Numbers: ER19–2343–004; ER10–2798–020; ER10–2799–020; ER10–2878–021; ER10–2879–020; ER21–2423–008; ER21–2424–008; ER22–1449–004; ER22–1450–004.

Applicants: GB II New Haven LLC, GB II Connecticut LLC, Generation Bridge M&M Holdings, LLC, Generation Bridge Connecticut Holdings, LLC, Montville Power LLC, Middleton Power LLC, Devon Power LLC, Connecticut Jet Power LLC, 2018 ESA Project Company, LLC.

Description: Notice of Non-Material Change in Status of 2018 ESA Project Company, LLC, et. al.

Filed Date: 1/30/24.

Accession Number: 20240130–5164.

Comment Date: 5 p.m. ET 2/20/24.

Docket Numbers: ER21–2818–003.

Applicants: Tri-State Generation and Transmission Association, Inc.

Description: Compliance filing: Revisions on Compliance to Rate Schedule No. 281 to be effective 11/1/2021.

Filed Date: 1/25/24.

Accession Number: 20240125–5214.

Comment Date: 5 p.m. ET 2/15/24.

Docket Numbers: ER22–784–004.

Applicants: CPV Maple Hill Solar, LLC.

Description: Notice of Change in Status of CPV Maple Hill Solar, LLC.

Filed Date: 1/30/24.

Accession Number: 20240130–5159.

Comment Date: 5 p.m. ET 2/20/24.

Docket Numbers: ER22–2689–001; ER22–2850–001

Applicants: Fall River Solar, LLC, MTSun LLC.

Description: Notice of Non-Material Change in Status of MTSun LLC, et. al.

Filed Date: 1/30/24.

Accession Number: 20240130–5145.

Comment Date: 5 p.m. ET 2/20/24.

Docket Numbers: ER23–2441–001.

Applicants: Chevelon Butte RE II LLC.

Description: Notice of Change in Status of Chevelon Butte RE II LLC.

Filed Date: 1/30/24.

Accession Number: 20240130–5149.

Comment Date: 5 p.m. ET 2/20/24.

Docket Numbers: ER23–2450–001.

Applicants: Great Cove Solar LLC.

Description: Notice of Change in Status of Great Cove Solar LLC.

Filed Date: 1/30/24.

Accession Number: 20240130–5154.

Comment Date: 5 p.m. ET 2/20/24.

Docket Numbers: ER23–2451–001.

Applicants: Great Cove Solar II LLC.

Description: Notice of Change in Status of Great Cove Solar II LLC.

Filed Date: 1/30/24.

Accession Number: 20240130–5158.

Comment Date: 5 p.m. ET 2/20/24.

Docket Numbers: ER23–2456–001.

Applicants: Platteview Solar, LLC.

Description: Notice of Change in Status of Platteview Solar, LLC.

Filed Date: 1/30/24.

Accession Number: 20240130–5153.

Comment Date: 5 p.m. ET 2/20/24.

Docket Numbers: ER24–465–001.

Applicants: Nestlewood Solar I LLC.

Description: Compliance filing: Informational Filing Pursuant to Schedule 2 of the PJM OATT & Request for Waiver to be effective N/A.

Filed Date: 1/30/24.

Accession Number: 20240130–5043.

Comment Date: 5 p.m. ET 2/20/24.

Docket Numbers: ER24–1037–000.

Applicants: Dominion Energy Services, Inc.

Description: Request for Limited Waiver, Shortened Comment Period, and Expedited Consideration of Dominion Energy Services, Inc.

Filed Date: 1/26/24.

Accession Number: 20240126–5235.

Comment Date: 5 p.m. ET 2/9/24.

Docket Numbers: ER24–1039–000.

Applicants: Altona Solar, LLC.

Description: Baseline eTariff Filing: Altona Solar, LLC MBR Tariff to be effective 3/29/2024.

Filed Date: 1/29/24.

Accession Number: 20240129–5175.

Comment Date: 5 p.m. ET 2/20/24.

Docket Numbers: ER24–1040–000.

Applicants: BCD 2024 Fund 2 Lessee, LLC.

Description: Baseline eTariff Filing: BCD 2024 Fund 2 Lessee, LLC MBR Tariff to be effective 3/29/2024.

Filed Date: 1/29/24.

Accession Number: 20240129–5177.

Comment Date: 5 p.m. ET 2/20/24.

Docket Numbers: ER24–1041–000.

Applicants: Keystone Appalachian Transmission Company, PJM Interconnection, L.L.C.

Description: § 205(d) Rate Filing: Keystone Appalachian Transmission Company submits tariff filing per 35.13(a)(2)(iii: KATCo submits amended IAs, SA Nos. 1395 and 2532 re: FirstEnergy Reorganization to be effective 1/1/2024.

Filed Date: 1/29/24.

Accession Number: 20240129–5219.

Comment Date: 5 p.m. ET 2/20/24.

Docket Numbers: ER24–1042–000.

Applicants: FirstEnergy Pennsylvania Electric Company, PJM Interconnection, L.L.C.

Description: § 205(d) Rate Filing: FirstEnergy Pennsylvania Electric Company submits tariff filing per 35.13(a)(2)(iii: FE PA submits amended IA, SA No. 4577 re: FirstEnergy Reorganization to be effective 1/1/2024.

Filed Date: 1/30/24.

Accession Number: 20240130–5059.

Comment Date: 5 p.m. ET 2/20/24.

Docket Numbers: ER24–1043–000.

Applicants: FirstEnergy Pennsylvania Electric Company, PJM Interconnection, L.L.C.

Description: § 205(d) Rate Filing: FirstEnergy Pennsylvania Electric Company submits tariff filing per 35.13(a)(2)(iii: FE PA submits Amended IA, SA No. 4362 re: FirstEnergy Organization to be effective 1/1/2024.

Filed Date: 1/30/24.

Accession Number: 20240130–5076.

Comment Date: 5 p.m. ET 2/20/24.

Docket Numbers: ER24–1044–000.

Applicants: Pattern Energy Management Services LLC.

Description: § 205(d) Rate Filing: Notice of Change in Status for MBR Tariff and Waiver Requests to be effective 1/31/2024.

Filed Date: 1/30/24.

Accession Number: 20240130–5089.

Comment Date: 5 p.m. ET 2/20/24.

Docket Numbers: ER24–1045–000.

Applicants: PJM Interconnection, L.L.C.

Description: § 205(d) Rate Filing: Amendment to ISA No. 7079 re: FirstEnergy Reorg (amend) to be effective 1/1/2024.

Filed Date: 1/30/24.

Accession Number: 20240130–5102.

Comment Date: 5 p.m. ET 2/20/24.

Docket Numbers: ER24–1046–000.

Applicants: SR McNeal, LLC.

Description: Compliance filing: Notice of Change in Status and Revised Market-Based Rate Tariff to be effective 1/31/2024.

Filed Date: 1/30/24.

Accession Number: 20240130–5113.

Comment Date: 5 p.m. ET 2/20/24.

Docket Numbers: ER24–1047–000.

Applicants: PJM Interconnection, L.L.C.

Description: Tariff Amendment: FE PA submits Cancellation of IAs SA Nos. 4692 and 5115 re: FE Reorg to be effective 1/1/2024.

Filed Date: 1/30/24.

Accession Number: 20240130–5131.

Comment Date: 5 p.m. ET 2/20/24.

Docket Numbers: ER24–1048–000.

Applicants: Public Service Company of New Mexico.

Description: § 205(d) Rate Filing: Third Revised WAPA NITSA/NOA to be effective 1/1/2024.

Filed Date: 1/30/24.

Accession Number: 20240130–5134.

Comment Date: 5 p.m. ET 2/20/24.

Docket Numbers: ER24–1049–000.

Applicants: NorthWestern Energy Public Service Corporation.

Description: Baseline eTariff Filing: New Baseline—Rate Schedules to be effective 1/31/2024.

Filed Date: 1/30/24.

Accession Number: 20240130–5152.

Comment Date: 5 p.m. ET 2/20/24.

Docket Numbers: ER24–1050–000.

Applicants: Gridflex Generation, LLC.

Description: § 205(d) Rate Filing: Market-Based Rate Tariff Update to Reflect Change in Seller's Category Status to be effective 3/30/2024.

Filed Date: 1/30/24.

Accession Number: 20240130–5156.

Comment Date: 5 p.m. ET 2/20/24.

Docket Numbers: ER24–1051–000.

Applicants: PJM Interconnection, L.L.C.

Description: Tariff Amendment: FE PA submits Cancellation of IA, SA No. 5114 re: FE Reorganization to be effective 1/1/2024.

Filed Date: 1/30/24.

Accession Number: 20240130–5165.

Comment Date: 5 p.m. ET 2/20/24.

Docket Numbers: ER24–1052–000.

Applicants: PJM Interconnection, L.L.C.

Description: Tariff Amendment: FE PA submits Cancellation of IA, SA No. 5111 re: FE Reorganization to be effective 1/1/2024.

Filed Date: 1/30/24.

Accession Number: 20240130–5172.

Comment Date: 5 p.m. ET 2/20/24.

Docket Numbers: ER24–1053–000.

Applicants: Wisconsin Public Service Corporation.

Description: § 205(d) Rate Filing: Filing of MSA_RS No. 103 and WDA_RS No. 104 to be effective 2/1/2024.

Filed Date: 1/30/24.

Accession Number: 20240130–5182.

Comment Date: 5 p.m. ET 2/20/24.

Docket Numbers: ER24–1054–000.

Applicants: OnPoint Energy Northeast, LLC.

Description: Tariff Amendment: Notice of Cancellation of Market-Based Rate Tariff to be effective 1/31/2024.

Filed Date: 1/30/24.

Accession Number: 20240130–5193.

Comment Date: 5 p.m. ET 2/20/24.

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, to protest, or to answer a complaint in any of the above proceedings must file in accordance with Rules 211, 214, or 206 of the Commission's Regulations (18 CFR 385.211, 385.214, or 385.206) on or before 5 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. The Commission's Office of Public Participation (OPP) supports meaningful public engagement and participation in Commission proceedings. OPP can help members of the public, including landowners, environmental justice communities, Tribal members and others, access publicly available information and navigate Commission processes. For public inquiries and assistance with making filings such as interventions, comments, or requests for rehearing, the public is encouraged to contact OPP at (202) 502–6595 or *OPP@ferc.gov* .

Dated: January 30, 2024.

Debbie-Anne A. Reese,

Acting Secretary.

[FR Doc. 2024–02206 Filed 2–2–24; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 2705–037]

Seattle City Light; Notice of Intent To Prepare an Environmental Assessment and Notice of Revised Schedule

On January 28, 2022, and supplemented on February 14 and December 12, 2022, and April 10 and October 24, 2023, Seattle City Light filed an application for surrender of license for the Newhalem Creek Hydroelectric Project No. 2705. The project is located on Newhalem Creek in Whatcom County, Washington. The project occupies Federal lands within the Ross Lake National Recreation Area managed by the National Park Service.

The licensee proposes to surrender the project due to the following issues: leaks in the power tunnel; maintenance needs at the headworks and powerhouse; and safety concerns along the access road due to an active landslide. The licensee proposes to: remove the diversion dam and associated headworks structures, tailrace fish barrier, and certain overhead transmission lines; seal the rock shaft and power tunnel; decommission the access road and powerhouse; and leave the powerhouse, tailrace, and penstock in place.

Based on the additional information needed to complete our analysis filed on October 24, 2023, this notice revises the schedule identified in Scoping Document 1, issued on August 29, 2022, in consultation with Seattle City Light. Commission staff's revised schedule for completion of the Environmental Assessment (EA) is by April 30, 2024.[1] Based on the project record, Commission staff plans to issue an EA to be made available for review and comment by all interested parties. All comments filed on the EA will be reviewed by staff and considered in the Commission's final decision on the proceeding.

With this notice and revised schedule, the Commission is inviting Federal, State, local, and Tribal agencies with jurisdiction and/or special expertise with respect to environmental issues affected by the proposal to cooperate in the preparation of the EA planned to be issued April 30, 2024. Agencies wishing to cooperate, or further discuss the benefits, responsibilities, and obligations of the cooperating agency role, should contact staff listed at the bottom of this notice by February 19, 2024. Cooperating agencies should note the Commission's policy that agencies that cooperate in the preparation of any environmental document cannot also intervene. *See* 94 FERC ¶ 61,076 (2001).

The Commission's Office of Public Participation (OPP) supports meaningful public engagement and participation in Commission proceedings. OPP can help members of the public, including landowners, environmental justice communities, Tribal members, and others to access publicly available information and navigate Commission processes. For public inquiries and assistance with making filings such as interventions, comments, or requests for rehearing, the public is encouraged to contact OPP at (202) 502–6595 or *OPP@ferc.gov.*

Any questions regarding this notice may be directed to Diana Shannon at 202–502–6136 or *diana.shannon@ferc.gov.*

[1] 42 U.S.C. 4336a(g) requires lead Federal agencies to complete EAs within 1 year of the agency's decision to prepare an EA, unless the schedule is extended in consultation with the applicant.

Dated: January 30, 2024.

Debbie-Anne A. Reese,

Acting Secretary.

[FR Doc. 2024–02192 Filed 2–2–24; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP20–527–000]

Columbia Gulf Transmission, LLC; Notice of Request for Extension of Time

Take notice that on January 19, 2024, Columbia Gulf Transmission, LLC (Columbia Gulf) requested that the Federal Energy Regulatory Commission (Commission) grant an extension of time (2024 Extension of Time Request), until September 25, 2025, to construct and make available for service the facilities that were authorized in the original certificate authorization issued on March 25, 2022 (Certificate Order).[1] The Certificate Order authorized the East Lateral XPress Project (Project) in St. Mary, Lafourche, Jefferson, and Plaquemines Parishes, Louisiana and required Columbia Gulf to complete construction of the Project facilities and make them available for service by March 25, 2024.

In its 2024 Extension of Time Request, Columbia Gulf states that due to delays in obtaining all Federal authorizations required for the Project, it requires additional time to complete construction of the authorized Project facilities. Specifically, Columbia Gulf explains that all required Federal permits were recently obtained and on December 5, 2023, as supplemented, Columbia Gulf filed a request with the Commission for Notice to Proceed with construction of the Project. On December 14, 2023, the Commission granted Columbia Gulf's request. Columbia Gulf states that it subsequently mobilized crews and commenced bona fide construction activities on December 21, 2023. Columbia Gulf states that construction is anticipated to be complete during the last quarter of 2024, with a Project in-service anticipated by February 1, 2025.

This notice establishes a 15-calendar day intervention and comment period deadline. Any person wishing to comment on Columbia Gulf's request for an extension of time may do so. No reply comments or answers will be considered. If you wish to obtain legal status by becoming a party to the proceedings for this request, you should, on or before the comment date stated below, file a motion to intervene in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the Regulations under the Natural Gas Act (NGA) (18 CFR 157.10).

As a matter of practice, the Commission itself generally acts on requests for extensions of time to complete construction for NGA facilities when such requests are contested before order issuance. For those extension requests that are contested,[2] the Commission will aim to issue an order acting on the request within 45 days.[3] The Commission will address all arguments relating to whether the applicant has demonstrated there is good cause to grant the extension.[4] The Commission will not consider arguments that re-litigate the issuance of the certificate order, including whether the Commission properly found the project to be in the public convenience and necessity and whether the Commission's environmental analysis for the certificate complied with the National Environmental Policy Act (NEPA).[5] At the time a pipeline requests an extension of time, orders on certificates of public convenience and necessity are final and the Commission will not re-litigate their issuance.[6] The Director of the Office of Energy Projects, or his or her designee, will act on all of those extension requests that are uncontested.

In addition to publishing the full text of this document in the **Federal Register**, the Commission provides all interested persons an opportunity to view and/or print the contents of this document via the internet through the Commission's Home Page (*http://www.ferc.gov*) using the ''eLibrary'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. Public access to records formerly available in the Commission's physical Public Reference Room, which was located at the Commission's headquarters, 888 First Street NE, Washington, DC 20426, are now available via the Commission's website. For assistance, contact FERC at *FERCOnlineSupport@ferc.gov* or call toll free, (866) 208–3676 or TTY (202) 502–8659.

The Commission strongly encourages electronic filings of comments in lieu of paper using the ''eFile'' link at *http://www.ferc.gov*. In lieu of electronic filing, you may submit a paper copy which must reference the Project docket number.

To file via USPS: Debbie-Anne Reese, Acting Secretary, Federal Energy Regulatory Commission, 888 First Street NE, Washington, DC 20426

To file via any other courier: Debbie-Anne Reese, Acting Secretary, Federal Energy Regulatory Commission, 12225 Wilkins Avenue, Rockville, Maryland 20852

The Commission's Office of Public Participation (OPP) supports meaningful public engagement and participation in Commission proceedings. OPP can help members of the public, including landowners, environmental justice communities, Tribal members and others, access publicly available information and navigate Commission processes. For public inquiries and assistance with making filings such as interventions, comments, or requests for rehearing, the public is encouraged to contact OPP at (202)502–6595 or *OPP@ferc.gov*.

Comment Date: 5 p.m. eastern time on February 14, 2024.

Dated: January 30, 2024.

Debbie-Anne A. Reese,

Acting Secretary.

[FR Doc. 2024–02201 Filed 2–2–24; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EL24–60–000]

Viridon Mid-Atlantic LLC; Notice of Institution of Section 206 Proceeding and Refund Effective Date

On January 29, 2024, the Commission issued an order in Docket No. EL24–60–000, pursuant to section 206 of the Federal Power Act (FPA), 16 U.S.C. 824e, instituting an investigation to determine whether Viridon Mid-Atlantic LLC's Formula Rate Template and Protocols are unjust, unreasonable, unduly discriminatory or preferential, or otherwise unlawful. *Viridon Mid-Atlantic LLC,* 186 FERC ¶ 61,074 (2024).

The refund effective date in Docket No. EL24–60–000, established pursuant

[1] *Columbia Gulf Transmission, LLC,* 172 FERC ¶ 61,260 (2020).

[2] Contested proceedings are those where an intervenor disputes any material issue of the filing. 18 CFR 385.2201(c)(1).

[3] *Algonquin Gas Transmission, LLC,* 170 FERC ¶ 61,144, at P 40 (2020).

[4] *Id.* at P 40.

[5] Similarly, the Commission will not re-litigate the issuance of an NGA section 3 authorization, including whether a proposed project is not inconsistent with the public interest and whether the Commission's environmental analysis for the permit order complied with NEPA.

[6] *Algonquin Gas Transmission, LLC,* 170 FERC ¶ 61,144, at P 40 (2020).

to section 206(b) of the FPA, will be the date of publication of this notice in the **Federal Register**.

Any interested person desiring to be heard in Docket No. EL24–60–000 must file a notice of intervention or motion to intervene, as appropriate, with the Federal Energy Regulatory Commission, in accordance with Rule 214 of the Commission's Rules of Practice and Procedure, 18 CFR 385.214 (2022), within 21 days of the date of issuance of the order.

In addition to publishing the full text of this document in the **Federal Register**, the Commission provides all interested persons an opportunity to view and/or print the contents of this document via the internet through the Commission's Home Page (*http://www.ferc.gov*) using the ''eLibrary'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. From FERC's Home Page on the internet, this information is available on eLibrary. The full text of this document is available on eLibrary in PDF and Microsoft Word format for viewing, printing, and/or downloading. To access this document in eLibrary, type the docket number excluding the last three digits of this document in the docket number field. User assistance is available for eLibrary and the FERC's website during normal business hours from FERC Online Support at 202–502–6652 (toll free at 1–866–208–3676) or email at *ferconlinesupport@ferc.gov,* or the Public Reference Room at (202) 502–8371, TTY (202) 502–8659. Email the Public Reference Room at *public.referenceroom@ferc.gov.*

The Commission strongly encourages electronic filings of comments, protests and interventions in lieu of paper using the ''eFile'' link at *http://www.ferc.gov.* In lieu of electronic filing, you may submit a paper copy. Submissions sent via the U.S. Postal Service must be addressed to: Debbie-Anne A. Reese, Acting Secretary, Federal Energy Regulatory Commission, 888 First Street NE, Room 1A, Washington, DC 20426. Submissions sent via any other carrier must be addressed to: Debbie-Anne A. Reese, Acting Secretary, Federal Energy Regulatory Commission, 12225 Wilkins Avenue, Rockville, Maryland 20852.

The Commission's Office of Public Participation (OPP) supports meaningful public engagement and participation in Commission proceedings. OPP can help members of the public, including landowners, environmental justice communities, Tribal members and others, access publicly available information and navigate Commission processes. For public inquiries and assistance with making filings such as interventions, comments, or requests for rehearing, the public is encouraged to contact OPP at (202) 502–6595 or *OPP@ferc.gov.*

Dated: January 30, 2024.

Debbie-Anne A. Reese,

Acting Secretary.

[FR Doc. 2024–02199 Filed 2–2–24; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 5679–041]

Energy Stream, LLC; Notice of Reasonable Period of Time for Water Quality Certification Application

On January 24, 2024, the Connecticut Department of Energy and Environmental Protection (Connecticut DEEP) submitted to the Federal Energy Regulatory Commission (Commission) notice that it received a complete request for a Clean Water Act section 401(a)(1) water quality certification from Energy Stream, LLC, in conjunction with the above captioned project on January 11, 2024. Pursuant to section 4.34(b)(5) of the Commission's regulations,[1] we hereby notify Connecticut DEEP of the following:

Date of Receipt of the Certification Request: January 11, 2024.

Reasonable Period of Time to Act on the Certification Request: One year, January 11, 2025.

If Connecticut DEEP fails or refuses to act on the water quality certification request on or before the above date, then the certifying authority is deemed waived pursuant to section 401(a)(1) of the Clean Water Act, 33 U.S.C. 1341(a)(1).

Dated: January 30, 2024.

Debbie-Anne A. Reese,

Acting Secretary.

[FR Doc. 2024–02191 Filed 2–2–24; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. IC24–07–000]

Commission Information Collection Activities (FERC–512)

AGENCY: Federal Energy Regulatory Commission.

ACTION: Notice of information collection and request for comments.

SUMMARY: In compliance with the requirements of the Paperwork Reduction Act of 1995 (PRA), the Federal Energy Regulatory Commission (Commission or FERC) is soliciting public comment on the currently approved information collection, FERC–512 (Preliminary Permit).

DATES: Comments on the collection of information are due April 5, 2024.

ADDRESSES: You may submit your comments (identified by Docket No. IC24–07–000) 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, not in scanned or picture format.
- For those unable to file electronically, comments may be filed by USPS mail or by other delivery methods:

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

○ *All other delivery services:* Federal Energy Regulatory Commission, Office of the Secretary, 12225 Wilkins Avenue, Rockville, MD 20852.

Instructions: All 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.*

FOR FURTHER INFORMATION CONTACT: Jean Sonneman may be reached by email at *DataClearance@FERC.gov,* telephone at (202) 502–6362.

SUPPLEMENTARY INFORMATION:

Title: FERC–512, Preliminary Permit.

OMB Control No.: 1902–0073.

Type of Request: Three-year approval of the FERC–512 information collection requirements, with no changes to the current reporting requirements.

Abstract: Sections 4(f) and 5(b) of the Federal Power Act authorize the Commission to issue a preliminary permit for a term of up to four years, extend a permit term once for not more than four additional years, and issue an additional permit after the end of an extension period.[1] The purpose of

[1] 18 CFR 4.34(b)(5).

[1] 16 U.S.C. 802 and 16 U.S.C. 798(b)(1).

obtaining a preliminary permit is to maintain priority status for an application for a license while the applicant conducts site examinations and surveys to inform a decision on whether to pursue a license for the project, and if so, prepare a license application. A preliminary permit neither authorizes construction of any facilities, nor provides the use of eminent domain to acquire lands for the project. No application for a preliminary permit or license submitted by another party can be accepted during the permit term. The FERC–512 is an application for a preliminary permit or to extend a preliminary permit term. Commission staff review preliminary permit applications to assess the scope of the proposed project, the technology to be used, and jurisdictional aspects of the project. The staff assessment includes a review of the proposed hydro development for conflicts with other current permits or licensed projects, and issuance of public notice of the permit application to solicit public and agency comments. An application for a preliminary permit includes the applicant's name and contact information, a description of the proposed project, the requested term of the permit, names and addresses of the affected political jurisdictions, a verification of the application's facts, and three exhibits, per 18 CFR 4.81.

Type of Respondents: Business or other for-profit and not-for-profit entities.

Estimate of Annual Burden [2] *and Cost:* [3] The Commission estimates as shown below in the table:

	Number of respondents	Annual number of responses per respondent	Total number of responses	Average burden hours & cost per response	Total annual burden hours & total annual cost	Average annual cost per respondent
	(1)	(2)	(1) * (2) = (3)	(4)	(3) * (4) = (5)	(5) ÷ (1)
FERC–512: (Preliminary Permit)						
Annual reporting and recordkeeping	65	1	65	24 hrs.; $2,400 ..	1,560 hrs.; $156,000	$2,400
Total FERC–512	65	1	65	24 hrs.; $2,400 ..	1,560 hrs.; $156,000	2,400

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: January 30, 2024.

Debbie-Anne A. Reese,

Acting Secretary.

[FR Doc. 2024–02195 Filed 2–2–24; 8:45 am]

BILLING CODE 6717–01–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OPP–2023–0070; FRL–10541–12–OCSPP]

Pesticide Product Registration; Receipt of Applications for New Active Ingredients (December 2023)

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: EPA has received applications to register pesticide products containing active ingredients not included in any currently registered pesticide products. Pursuant to the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), EPA is hereby providing notice of receipt and opportunity to comment on these applications.

DATES: Comments must be received on or before March 6, 2024.

ADDRESSES: Submit your comments, identified by docket identification (ID) number EPA–HQ–OPP–2023–0070, through the *Federal eRulemaking Portal* at *https://www.regulations.gov.* Follow the online instructions for submitting comments. Do not submit electronically any information you consider to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Additional instructions on commenting and visiting the docket, along with more information about dockets generally, is available at *https://www.epa.gov/dockets.*

FOR FURTHER INFORMATION CONTACT: Madison H. Le, Biopesticides and Pollution Prevention Division (BPPD) (7511M), main telephone number: (202) 566–1400, email address: *BPPDFRNotices@epa.gov.* The mailing address for each contact person is Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave. NW, Washington, DC 20460–0001. As part of the mailing address, include the contact person's name, division, and mail code. The division to contact is listed at the end of each application summary.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this action apply to me?

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

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

B. What should I consider as I prepare my comments for EPA?

1. *Submitting CBI.* Do not submit this information to EPA through *regulations.gov* or email. Clearly mark the part or all of the information that you claim to be CBI. For CBI information in a disk or CD–ROM that you mail to EPA, mark the outside of the disk or CD–ROM as CBI and then identify electronically within the disk or

[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. For further explanation of what is included in the information collection burden, refer to 5 CFR 1320.3.

[3] Commission staff estimates that the industry's skill set and cost (for wages and benefits) for FERC–512 are approximately the same as the Commission's average cost. The FERC 2024 average salary plus benefits for one FERC full-time equivalent (FTE) is $207,787/year (or $100/hour).

CD–ROM the specific information that is claimed as CBI. In addition to one complete version of the comment that includes information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public docket. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2.

2. *Tips for preparing your comments.* When preparing and submitting your comments, see the commenting tips at *https://www.epa.gov/dockets/commenting-epa-dockets.*

II. Registration Applications

EPA has received applications to register pesticide products containing active ingredients not included in any currently registered pesticide products. Pursuant to the provisions of FIFRA section 3(c)(4) (7 U.S.C. 136a(c)(4)), EPA is hereby providing notice of receipt and opportunity to comment on these applications. Notice of receipt of these applications does not imply a decision by the Agency on these applications. For actions being evaluated under EPA's public participation process for registration actions, there will be an additional opportunity for public comment on the proposed decisions. Please see EPA's public participation website for additional information on this process (*https://www2.epa.gov/pesticide-registration/public-participation-process-registration-actions*).

New Active Ingredients

1. *File Symbol:* 95213–I. *Docket ID number:* EPA–HQ–OPP–2023–0505. *Applicant:* Indigo Ag, Inc., 500 Rutherford Ave., Charlestown, MA 02129. *Product name: Pseudomonas oryzihabitans* strain SYM23945 Technical. *Active ingredient:* Nematicide—*Pseudomonas oryzihabitans strain SYM23945* at 100%. *Proposed use:* For use manufacturing pesticide products. *Contact:* BPPD.

2. *File Symbol:* 95213–O. *Docket ID number:* EPA–HQ–OPP–2023–0505. *Applicant:* Indigo Ag, Inc., 500 Rutherford Ave., Charlestown, MA 02129. *Product name: Pseudomonas oryzihabitans* strain SYM23945 MUP. *Active ingredient:* Nematicide—*Pseudomonas oryzihabitans* strain SYM23945 at 7.15%. *Proposed use:* For manufacturing pesticide products. *Contact:* BPPD.

3. *File Symbol:* 95213–RE. *Docket ID number:* EPA–HQ–OPP–2023–0621. *Applicant:* Indigo Ag, Inc., 500 Rutherford Ave., Charlestown, MA 02129. *Product name: Bacillus aryabhattai* strain SYM36613 MUP. *Active ingredient:* Fungicide—*Bacillus aryabhattai* strain SYM36613 at 100%. *Proposed use:* For manufacturing or formulating into a seed treatment end-use product. *Contact:* BPPD.

4. *File Symbol:* 95213–RG. *Docket ID number:* EPA–HQ–OPP–2023–0621. *Applicant:* Indigo Ag, Inc., 500 Rutherford Ave., Charlestown, MA 02129. *Product name:* Indigo 398 FP. *Active ingredient:* Fungicide—*Bacillus aryabhattai* strain SYM36613 at 3%. *Proposed use:* For use as a seed treatment to protect against and control fungal diseases on food crops. *Contact:* BPPD.

5. *File Symbol:* 95213–RN. *Docket ID number:* EPA–HQ–OPP–2023–0505. *Applicant:* Indigo Ag, Inc., 500 Rutherford Ave., Charlestown, MA 02129. *Product name:* Indigo 407 FP. *Active ingredient:* Nematicide—*Pseudomonas oryzihabitans* strain SYM23945 at 0.215%. *Proposed use:* For use as a seed treatment on food crops. *Contact:* BPPD.

6. *File Symbol:* 95213–RR. *Docket ID number:* EPA–HQ–OPP–2023–0621. *Applicant:* Indigo Ag, Inc., 500 Rutherford Ave., Charlestown, MA 02129. *Product name: Bacillus aryabhattai* strain SYM36613 Technical. *Active ingredient:* Fungicide—*Bacillus aryabhattai* strain SYM36613 at 100%. *Proposed use:* For manufacturing or formulating into a seed treatment end-use product. *Contact:* BPPD.

7. *File Symbol:* 95213–RU. *Docket ID number:* EPA–HQ–OPP–2023–0621. *Applicant:* Indigo Ag, Inc., 500 Rutherford Ave., Charlestown, MA 02129. *Product name:* Indigo 398 WD. *Active ingredient:* Fungicide—*Bacillus aryabhattai* strain SYM36613 at 5%. *Proposed use:* For use as an in-furrow and seed treatment to protect against and control fungal diseases on food crops. *Contact:* BPPD.

Authority: 7 U.S.C. 136 *et seq.*

Dated: January 19, 2024.

Delores Barber,

Director, Information Technology and Resources Management Division, Office of Program Support.

[FR Doc. 2024–02244 Filed 2–2–24; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

[OMB 3060–1158; FR ID 200253]

Information Collection Being Reviewed by the Federal Communications Commission

AGENCY: Federal Communications Commission.

ACTION: Notice and request for comments.

SUMMARY: As part of its continuing effort to reduce paperwork burdens, and as required by the Paperwork Reduction Act (PRA) of 1995, the Federal Communications Commission (FCC or the Commission) invites the general public and other Federal agencies to take this opportunity to comment on the following information collection. Comments are requested concerning: whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; the accuracy of the Commission's burden estimate; ways to enhance the quality, utility, and clarity of the information collected; ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology; and ways to further reduce the information collection burden on small business concerns with fewer than 25 employees.

DATES: Written PRA comments should be submitted on or before April 5, 2024. If you anticipate that you will be submitting comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the contact listed below as soon as possible.

ADDRESSES: Direct all PRA comments to Nicole Ongele, FCC, via email *PRA@fcc.gov* and to *nicole.ongele@fcc.gov.*

FOR FURTHER INFORMATION CONTACT: For additional information about the information collection, contact Nicole Ongele, (202) 418–2991.

SUPPLEMENTARY INFORMATION: The FCC may not conduct or sponsor a collection of information unless it displays a currently valid control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the PRA that does not display a valid Office of Management and Budget (OMB) control number.

OMB Control Number: 3060–1158.

Title: Transparency Rule Disclosures, Restoring Internet Freedom, Report and Order, WC Docket No. 17–108.

Form Number: N/A.

Type of Review: Extension of a currently-approved collection.

Respondents: Business or other for-profit entities, not-for-profit entities; State, local, or Tribal governments.

Number of Respondents and Responses: 2,384 respondents; 2,384 responses.

Estimated Time per Response: 26 hours.

Frequency of Response: On occasion reporting requirement; third party disclosure requirement.

Obligation to Respond: Mandatory. Statutory authority for these collections is contained in section 257 of the Communications Act of 1934, as amended, 47 U.S.C. 257.

Total Annual Burden: 61,984 hours.

Total Annual Cost: $510,000.

Needs and Uses: The Restoring Internet Freedom Report and Order (*Restoring Internet Freedom Order*) revised the information collection requirements applicable to Internet service providers (ISPs). The *Open Internet Order,* adopted in 2010, required ISPs to disclose certain network management processes, performance characteristics, and other attributes of broadband Internet access service. These disclosure requirements were significantly increased by the *Title II Order,* adopted in 2015. The *Restoring Internet Freedom Order* eliminated the additional collection imposed by the *Title II Order,* and added a few discrete elements to the *Open Internet Order*'s information collection requirements. The *Restoring Internet Freedom Order* requires an ISP to publicly disclose network management practices, performance, and commercial terms of its broadband Internet access service sufficient to enable consumers to make informed choices regarding the purchase and use of such services, and entrepreneurs and other small businesses to develop, market, and maintain Internet offerings. As part of these disclosures, the rule requires ISPs to disclose their congestion management, application-specific behavior, device attachment rules, and security practices, as well as any blocking, throttling, affiliated prioritization, or paid prioritization in which they engage. The rule also requires ISPs to disclose performance characteristics, including a service description and the impact of nonbroadband Internet access services data services. Finally, the rule requires ISPs to disclose the price of the service, privacy policies, and redress options. The rule requires ISPs to make such disclosures available either via a publicly-available, easily accessible website or through transmittal to the Commission, which will make such disclosures available via a publicly-available, easily accessible website. The information collection will assist the Commission in its statutory obligation to report to Congress on market entry barriers in the telecommunications market. The Commission anticipates that the revised disclosures would empower consumers and businesses with information about their broadband Internet access service, protecting the openness of the Internet. Although this collection was bifurcated in 2016 with respect to fixed and mobile ISPs, the Commission seeks to have this collection encompass both fixed and mobile ISPs.

Federal Communications Commission.

Marlene Dortch,

Secretary, Office of the Secretary.

[FR Doc. 2024–02149 Filed 2–2–24; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

[OMB 3060–0751; FR ID 200385]

Information Collection Being Reviewed by the Federal Communications Commission Under Delegated Authority

AGENCY: Federal Communications Commission.

ACTION: Notice and request for comments.

SUMMARY: As part of its continuing effort to reduce paperwork burdens, and as required by the Paperwork Reduction Act of 1995 (PRA), the Federal Communications Commission (FCC or Commission) invites the general public and other Federal agencies to take this opportunity to comment on the following information collections. Comments are requested concerning: whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; the accuracy of the Commission's burden estimate; ways to enhance the quality, utility, and clarity of the information collected; ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology; and ways to further reduce the information collection burden on small business concerns with fewer than 25 employees. The FCC may not conduct or sponsor a collection of information unless it displays a currently valid Office of Management and Budget (OMB) control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the PRA that does not display a valid OMB control number.

DATES: Written PRA comments should be submitted on or before April 5, 2024. If you anticipate that you will be submitting comments but find it difficult to do so within the period of time allowed by this notice, you should advise the contact listed below as soon as possible.

ADDRESSES: Direct all PRA comments to Cathy Williams, FCC, via email to *PRA@fcc.gov* and to *Cathy.Williams@fcc.gov.*

FOR FURTHER INFORMATION CONTACT: For additional information about the information collection, contact Cathy Williams at (202) 418–2918.

SUPPLEMENTARY INFORMATION:

OMB Control No.: 3060–0751.

Title: Contracts and Concessions, 47 CFR 43.51.

Form No.: N/A.

Type of Review: Extension of a currently approved collection.

Respondents: Business or other for-profit entities.

Number of Respondents/Responses: 12 respondents, 12 responses.

Estimated Time per Response: 6–8 hours.

Frequency of Response: On occasion reporting requirement.

Obligation to Respond: Required to obtain or retain benefits. The statutory authority for this information collection is contained in 47 U.S.C. 154, 211, 219 and 220.

Total Annual Burden: 76 hours.

Annual Cost Burden: No cost.

Needs and Uses: This collection will be submitted as an extension (no change in reporting or recordkeeping requirements) after this 60-day comment period to the Office of Management and Budget (OMB) in order to obtain the full three-year clearance.

The Commission has determined that the authorized resale of international private lines inter-connected to the U.S. public switched network would tend to divert international message telephone service (IMTS) traffic from the settlements process and increase the U.S. net settlements deficit. The information will be used by the Commission in reviewing the impact, if any, that end-user private line interconnections have on the Commission's international settlements

policy. The data will also enhance the ability of both the Commission and interested parties to monitor the unauthorized resale of international private lines that are interconnected to the U.S. public switched network.

Federal Communications Commission.

Marlene Dortch,

Secretary, Office of the Secretary.

[FR Doc. 2024–02148 Filed 2–2–24; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL ELECTION COMMISSION

Sunshine Act Meetings

TIME AND DATE: Thursday, February 8, 2024, at 10:00 a.m.

PLACE: Hybrid meeting: 1050 First Street NE, Washington, DC (12th floor) and virtual.

Note: For those attending the meeting in person, current COVID–19 safety protocols for visitors, which are based on the CDC COVID–19 hospital admission level in Washington, DC, will be updated on the Commission's contact page by the Monday before the meeting. See the contact page at *https://www.fec.gov/contact/*. If you would like to virtually access the meeting, see the instructions below.

STATUS: This meeting will be open to the public, subject to the above-referenced guidance regarding the COVID–19 hospital admission level and corresponding health and safety procedures. To access the meeting virtually, go to the Commission's website *www.fec.gov* and click on the banner to be taken to the meeting page.

MATTERS TO BE CONSIDERED:

Draft Advisory Opinion 2024–02: Congresswoman Maxine Waters and Citizens for Waters

Audit Division Recommendation Memorandum on the Madison Project, Inc. (A21–11)

Draft Notice of Inquiry in REG 2014–10 and REG 2019–04 (Segregated Party Accounts)

Management and Administrative Matters

CONTACT PERSON FOR MORE INFORMATION:

Judith Ingram, Press Officer

Telephone: (202) 694–1220

Individuals who plan to attend in person and who require special assistance, such as sign language interpretation or other reasonable accommodations, should contact Laura E. Sinram, Secretary and Clerk, at (202) 694–1040 or *secretary@fec.gov,* at least 72 hours prior to the meeting date.

(Authority: Government in the Sunshine Act, 5 U.S.C. 552b)

Laura E. Sinram,

Secretary and Clerk of the Commission.

[FR Doc. 2024–02393 Filed 2–1–24; 4:15 pm]

BILLING CODE 6715–01–P

FEDERAL FINANCIAL INSTITUTIONS EXAMINATION COUNCIL

[Docket No. AS24–04]

Agency Information Collection Activities; Renewal of an Approved Information Collection: Reporting Information for the AMC Registry

AGENCY: Appraisal Subcommittee of the Federal Financial Institutions Examination Council (ASC).

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, the ASC invites public comments on our intention to request the Office of Management and Budget (OMB) approval to renew an information collection request entitled ''Reporting information for the AMC Registry.''

DATES: Written comments must be received on or before April 5, 2024 to be assured of consideration.

ADDRESSES: Commenters are encouraged to submit comments by the Federal eRulemaking Portal or email, if possible. You may submit comments, identified by Docket Number AS24–04, by any of the following methods:

- *Federal eRulemaking Portal: https://www.Regulations.gov*. Follow the instructions for submitting comments. Click on the ''Help'' tab on the *Regulations.gov* home page to get information on using *Regulations.gov*, including instructions for submitting public comments.
- *E-Mail: webmaster@asc.gov*. Include the docket number in the subject line of the message.
- *Fax:* (202) 289–4101. Include the docket number of fax cover sheet.
- *Mail:* Address to Appraisal Subcommittee, Attn: Lori Schuster, Management and Program Analyst, 1325 G Street NW, Suite 500, Washington, DC 20005.
- *Hand Delivery/Courier:* 1325 G Street NW, Suite 500, Washington, DC 20005.

In general, the ASC will enter all comments received into the docket and publish those comments on the *Regulations.gov* website without change, including any business or personal information that you provide, such as name and address information, email addresses, or phone numbers. Comments received, including attachments and other supporting materials, are part of the public record and subject to public disclosure. Do not enclose any information in your comment or supporting materials that you consider confidential or inappropriate for public disclosure. The ASC will summarize and/or include your comments in the request for OMB's clearance of this information collection.

You may review comments and other related materials that pertain to this action by any of the following methods:

- *Viewing Comments Electronically:* Go to *https://www.Regulations.gov*. Enter ''Docket ID AS24–04'' in the Search box and click ''Search.'' Click on the ''Help'' tab on the *Regulations.gov* home page to get information on using *Regulations.gov*, including instructions for viewing public comments, viewing other supporting and related materials, and viewing the docket after the close of the comment period.
- *Viewing Comments Personally:* You may personally inspect comments at the ASC office, 1325 G Street NW, Suite 500, Washington, DC 20005. To make an appointment, please call Lori Schuster at (202) 595–7578.

FOR FURTHER INFORMATION CONTACT: Lori Schuster, Management and Program Analyst, at (202) 595–7578, Appraisal Subcommittee, 1325 G Street NW, Suite 500, Washington, DC 20005.

SUPPLEMENTARY INFORMATION:

Title: Reporting information for the AMC Registry.

OMB Number: 3139–0009.

Abstract: The Dodd-Frank Act requires the ASC to maintain the National Registry of Appraisal Management Companies (AMC Registry) of those AMCs that are either: (1) registered with and subject to supervision by a State that has elected to register and supervise AMCs; or (2) are Federally regulated AMCs. In order for a State to enter an AMC on the AMC Registry, the following items are required entries by the State via extranet application on the AMC Registry:

State Abbreviation
State Registration Number for AMC
Employer Identification Number (EIN)
AMC Name
  Street Address
  City
  State
  Zip
License or Registration Status
  Effective Date
  Expiration Date
AMC Type (State or multi-State)
Disciplinary Action
  Effective Date

Expiration Date
Number of Appraisers (for invoicing registry fee)

States listing AMCs on the AMC Registry enter the above information for each AMC for the initial entry only. After the initial entry, the information is retained on the AMC Registry, and will only need to be amended, if necessary, by the State. The estimate for burden assumes that 51 States will continue to register and supervise AMCs, and that the average number of AMCs in a State will be 101. This estimate is based on information currently available on the AMC Registry, and will be high for some States, and low for other States. As of January 16, 2024, 49 States are submitting data to the AMC Registry. The initial entry by a State on a single AMC is estimated to take 15 minutes. Subsequent entries to amend information on an AMC, annually or periodically, are estimated to also be 15 minutes.

Current Action: Annual burden has been increased from 1,148 hours to 1,275 as the number of 90 that was used in the previous collection renewal estimate has been increased to 101.

Type of Review: Extension of a currently approved collection.

Affected Public: States.

Estimated Number of Respondents: 51 States.

Estimated burden per Response: 15 minutes.

Frequency of Response: Annually and on occasion.

Estimated total Annual Burden: 1,275 hours.

By the Appraisal Subcommittee.

James R. Park,

Executive Director.

[FR Doc. 2024–02184 Filed 2–2–24; 8:45 am]

BILLING CODE 6700–01–P

FEDERAL TRADE COMMISSION

Revised Jurisdictional Thresholds for Section 7A of the Clayton Act

AGENCY: Federal Trade Commission.

ACTION: Annual notice of revision.

SUMMARY: The Federal Trade Commission announces the revised thresholds for the Hart-Scott-Rodino Antitrust Improvements Act of 1976 required by the 2000 amendment of section 7A of the Clayton Act; and the revised filing fee schedule for the same Act required by division GG of the 2023 Consolidated Appropriations Act.

DATES: March 6, 2024.

FOR FURTHER INFORMATION CONTACT: Nora Whitehead (202–326–3100), Bureau of Competition, Premerger Notification Office, 400 7th Street SW, Room 5301, Washington, DC 20024.

SUPPLEMENTARY INFORMATION: This document announces updates to (1) the thresholds for the Hart-Scott-Rodino Antitrust Improvements Act of 1976, as required by the 2000 amendment of section 7A of the Clayton Act; and (2) the filing fee schedule for the same Act, as required by division GG of the 2023 Consolidated Appropriations Act. Both updates are discussed in more detail below.

(1) The Jurisdictional Thresholds

Section 7A of the Clayton Act, 15 U.S.C. 18a, as added by the Hart-Scott-Rodino Antitrust Improvements Act of 1976, Public Law 94–435, 90 Stat. 1390 (''the Act''), requires all persons contemplating certain mergers or acquisitions, which meet or exceed the jurisdictional thresholds in the Act, to file notification with the Commission and the Assistant Attorney General and to wait a designated period of time before consummating such transactions. Section 7A(a)(2) requires the Federal Trade Commission to revise those thresholds annually, based on the change in gross national product, in accordance with section 8(a)(5).

The new jurisdictional thresholds, which take effect 30 days after publication in the **Federal Register**, are as follows:

Subsection of 7A	Original jurisdictional threshold (million)	Adjusted jurisdictional threshold (million)
7A(a)(2)(A)	$200	$478
7A(a)(2)(B)(i)	50	119.5
7A(a)(2)(B)(i)	200	478
7A(a)(2)(B)(ii)(i)	10	23.9
7A(a)(2)(B)(ii)(i)	100	239
7A(a)(2)(B)(ii)(II)	10	23.9
7A(a)(2)(B)(ii)(II)	100	239
7A(a)(2)(B)(ii)(III)	100	239
7A(a)(2)(B)(ii)(III)	10	23.9

Any reference to the jurisdictional thresholds and related thresholds and limitation values in the HSR rules (16 CFR parts 801 through 803) and the Antitrust Improvements Act Notification and Report Form (''the HSR Form'') and its Instructions will also be adjusted, where indicated by the term ''(as adjusted)'', as follows:

Original threshold	Adjusted threshold
$10 million	$23.9 million.
$50 million	$119.5 million.
$100 million	$239 million.
$110 million	$262.9 million.
$200 million	$478 million.
$500 million	$1.195 billion.
$1 billion	$2.39 billion.

(2) The Filing Fee Thresholds

Section 605 of Public Law 101–162 (15 U.S.C. 18a note) requires the Federal Trade Commission to assess and collect filing fees from persons acquiring voting securities or assets under the Act. The current filing fee thresholds are set forth in Section 605. Division GG of the 2023 Consolidated Appropriations Act,

Public Law 117–328, 136 Stat. 4459, requires the Federal Trade Commission to revise these filing fee thresholds and amounts based on the percentage change in the GNP for such fiscal year compared to the GNP for the year ending September 30, 2022 (for the filing fee thresholds) and the percentage increase, if any, in the Consumer Price Index, as determined by the Department of Labor or its successor, for the year then ended over the level so established for the year ending September 30, 2022 (for the fee amounts).

Any reference to the fee thresholds and related values in the HSR rules (16 CFR parts 801 through 803) and the HSR Form and its Instructions will also be adjusted, where indicated by the term ''(as adjusted)'', as follows:

Original filing fee	Original applicable size of transaction *	2024 Adjusted filing fee	2024 Adjusted applicable size of transaction *
$30,000	less than $161.5 million	$30,000	less than $173.3 million.
100,000	not less than $161.5 million but less than $500 million.	105,000	not less than $173.3 million but less than $536.5 million.
250,000	not less than $500 million but less than $1 billion.	260,000	not less than $536.5 million but less than $1.073 billion.
400,000	not less than $1 billion but less than $2 billion	415,000	not less than $1.073 billion but less than $2.146 billion.
800,000	not less than $2 billion but less than $5 billion	830,000	not less than $2.146 billion but less than $5.365 billion.
2,250,000	$5 billion or more	2,335,000	$5.365 billion or more.

* As determined under Section 7A(a)(2) of the Act.

By direction of the Commission.

Joel Christie,

Acting Secretary.

[FR Doc. 2024–02227 Filed 2–2–24; 8:45 am]

BILLING CODE 6750–01–P

GENERAL SERVICES ADMINISTRATION

[OMB Control No. 3090–0315; Docket No. 2024–0001; Sequence No. 1]

Information Collection; Ombudsman Inquiry/Request Instrument

AGENCY: Office of Acquisition Policy, Office of the Procurement Ombudsman (OPO), General Services Administration (GSA).

ACTION: Notice and request for comments.

SUMMARY: Under the provisions of the Paperwork Reduction Act, the Regulatory Secretariat Division will be submitting to the OMB a request to review and approve a renewal to an existing information collection requirement regarding OMB Control No: 3090–0315; Ombudsman Inquiry/ Request Instrument.

DATES: Submit comments on or before April 5, 2024.

ADDRESSES: Submit comments regarding this collection via *http://www.regulations.gov* and follow the instructions on the site. Submit comments via the Federal eRulemaking portal by searching the OMB control number. Select the link ''Comment Now'' that corresponds with ''Information Collection 3090–0315.'' Please include your name, company name (if any) and ''Information Collection 3090–0315, Ombudsman Inquiry Request/Request Instrument'' on your attached document.

Instructions: Please submit comments only and cite Information Collection 3090–0315; Ombudsman Inquiry/ Request Instrument, in all correspondence related to this collection. Comments received generally will be posted without change to *http://www.regulations.gov,* including any personal and/or business confidential information provided. To confirm receipt of your comment(s), please check *www.regulations.gov,* approximately two-to-three days after submission to verify posting. If there are difficulties submitting comments, contact the GSA Regulatory Secretariat Division at *GSARegSec@gsa.gov.*

FOR FURTHER INFORMATION CONTACT: Frederick Landry, GSA Procurement Ombudsman & Industry Liaison, at telephone 202–501–4755.

SUPPLEMENTARY INFORMATION:

A. Purpose

The online intake Instrument on the GSA Ombudsman's web page receives inquiries from vendors who are currently doing business with or interested in doing business with GSA. The inquiries are collected by the GSA Ombudsman and routed to the appropriate office for resolution and/or implementation in the case of recommendations for process or program improvements. Reporting of the data collected helps highlight thematic issues that vendors encounter with GSA acquisition programs, processes, or policies, and identify areas where training is needed. The information collected also assists in identifying and analyzing patterns and trends to help improve efficiencies and lead to improvements in current practices.

B. Annual Reporting Burden

Maximum Potential Respondents: 118.

Responses per Respondent: 1.

Total Maximum Potential Annual Responses: 118.

Hours per Response: .25.

Total Burden Hours: 29.5.

C. Public Comments

Public comments are particularly invited on: Whether this collection of information is necessary, whether it will have practical utility; whether our estimate of the public burden of this collection of information is accurate, and based on valid assumptions and methodology; ways to enhance the quality, utility, and clarity of the information to be collected; and ways in which we can minimize the burden of the collection of information on those who are to respond, through the use of appropriate technological collection techniques or other forms of information technology.

Obtaining Copies: Requesters may obtain a copy of the information collection documents from the GSA Regulatory Secretariat Division at *GSARegSec@gsa.gov.* Please cite OMB Control No. 3090–0315, Ombudsman Inquiry/Request Instrument, in all correspondence.

Lesley Briante,

Deputy Chief Information Officer.

[FR Doc. 2024–02189 Filed 2–2–24; 8:45 am]

BILLING CODE 6820–61–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

National Center for Health Statistics, Meeting of the ICD–10 Coordination and Maintenance Committee

AGENCY: Centers for Disease Control and Prevention (CDC), Department of Health and Human Services (HHS).

ACTION: Notice of meeting.

SUMMARY: The Centers for Disease Control and Prevention (CDC), National Center for Health Statistics (NCHS), Classifications and Public Health Data Standards Staff, announces the following meeting of the ICD–10 Coordination and Maintenance (C&M) Committee. This meeting is open to the public, limited only by the number of audio lines available. Online registration is required.

DATES: The meeting will be held on March 19, 2024, from 9 a.m. to 5 p.m., EDT, and March 20, 2024, from 9 a.m. to 5 p.m., EDT.

ADDRESSES: This is a virtual meeting. Register in advance at *https://cms.zoomgov.com/webinar/register/WN_zqbhSXNtSEmAVWJhs4-4kA.* The Webinar ID is 161 010 6901; the Passcode is 681647. After registering, you will receive a confirmation email containing information about joining the meeting. Further information will be provided on each of the respective web pages when it becomes available. For CDC, NCHS: *https://www.cdc.gov/nchs/icd/icd10cm_maintenance.htm.* For the Centers for Medicare & Medicaid Services, Department of Health and Human Services: *https://www.cms.gov/medicare/coding-billing/icd-10-codes/icd-10-coordination-maintenance-committee-materials.*

FOR FURTHER INFORMATION CONTACT: Traci Ramirez, Medical Classification Specialist, National Center for Health Statistics, Centers for Disease Control and Prevention, 3311 Toledo Road, Hyattsville, Maryland 20782–2064. Telephone: (301) 458–4454; Email: *TRamirez@cdc.gov.*

SUPPLEMENTARY INFORMATION:

Purpose: The ICD–10 Coordination and Maintenance (C&M) Committee is a public forum for the presentation of proposed modifications to the International Classification of Diseases, Tenth Revision, Clinical Modification (CM) and ICD–10 Procedure Coding System (PCS).

Matters to be Considered: The tentative agenda will include discussions on the ICD–10–CM and ICD–10–PCS topics listed below. Agenda items are subject to change as priorities dictate. Please refer to the posted agenda for updates one month prior to the meeting.

ICD–10–PCS Topics:

1. Restriction Using Thoracoabdominal Branch Endoprosthesis *
2. Tibiotalocalcaneal Fusion with Fixation Implant *
3. Fiber Optic 3D Real-time Device Guidance **
4. Visualization and Analysis of Brain Networks in Magnetic Resonance Imaging *
5. Lymphatic Bypass
6. Performance of Circulatory Filtration
7. Quantitative Antimicrobial Susceptibility Testing of Blood Cultures
8. Transcatheter Tricuspid Valve Replacement *
9. Cellular Assessment via Microfluidic Deformability Cytometry **
10. Fixation of Lumbar Facet Joint
11. Extracorporeal Blood Pathogen Removal **
12. Application of prademagene zamikeracel **
13. Adoptive Immune Therapy
14. Administration of dasiglucagon
15. Drug-eluting Resorbable Scaffold System
16. Continuous Monitoring and Assessment of Vascular Blood Flow *
17. Paclitaxel-coated Balloon Catheter for Percutaneous Coronary Intervention
18. Division of Bioprosthetic Aortic Valve Leaflets **
19. Computer-aided Triage and Notification for Measurement of Intracranial Cerebrospinal Fluid Flow *
20. Implantation of Bioengineered Vessel **
21. Rapid Antimicrobial Susceptibility Testing of Blood Cultures *
22. Stereoelectroencephalographic Radiofrequency Ablation of Brain and Nervous Tissue
23. Insertion of Antibiotic Instilling Joint Spacer **
24. Posterior Fixation of the Thoracolumbar Spine *
25. Section X Updates
26. Addenda and Key Updates
27. Administration of bentracimab **
28. Administration of cefepime-taniborbactam *
29. Administration of ceftobiprole medocaril *
30. Administration of obecabtagene autoleucel **
31. Administration of odronextamab *
32. Administration of Orca-T **
33. Administration of RP–L201 (marnetegragene autotemcel) *
34. Administration of zanidatamab **
35. Donislecel-jujn Allogeneic Pancreatic Islet Cellular Suspension for Hepatic Portal Vein Infusion *

* Requestor has submitted a new technology add-on payment (NTAP) application for FY 2025 consideration.

** Request is for an October 1, 2024, implementation date, and the requestor intends to submit an NTAP application for FY 2026 consideration.

Presentations for procedure code requests are conducted by both the requestor and the Centers for Medicare & Medicaid Services (CMS) during the C&M Committee meeting. Discussion from the requestor generally focuses on the clinical issues for the procedure or technology, followed by the proposed coding options from a CMS analyst. Topics presented may also include requests for new procedure codes that relate to a new technology add-on payment (NTAP) policy request.

CMS has modified the approach for presenting the new NTAP-related ICD–10–PCS procedure code requests that involve the administration of a therapeutic agent. For the March 19–20, 2024, ICD–10 C&M Committee meeting, consistent with the requirements of section 1886(d)(5)(K)(iii) of the Social Security Act, applicants submitted requests to create a unique procedure code to describe the administration of a therapeutic agent, such as the option to create a new code in Section X within the ICD–10–PCS procedure code classification. CMS will initially display only those meeting materials associated with the NTAP-related ICD–10–PCS procedure code requests that involve the administration of a therapeutic agent on the CMS website in early March 2024 at: *https://www.cms.gov/medicare/coding-billing/icd-10-codes/icd-10-coordination-maintenance-committee-materials.*

The nine NTAP-related ICD–10–PCS procedure code requests that involve the administration of a therapeutic agent are:

1. Administration of bentracimab **
2. Administration of cefepime-taniborbactam *
3. Administration of ceftobiprole medocaril *
4. Administration of obecabtagene autoleucel **
5. Administration of odronextamab *
6. Administration of Orca-T **
7. Administration of RP–L201 (marnetegragene autotemcel) *
8. Administration of zanidatamab **
9. Donislecel-jujn Allogeneic Pancreatic Islet Cellular Suspension for Hepatic Portal Vein Infusion *

* Requestor has submitted an NTAP application for FY 2025 consideration.

** Request is for an October 1, 2024, implementation date, and the requestor intends to submit an NTAP application for FY 2026 consideration.

These topics will not be presented during the March 19–20, 2024, meeting. CMS will solicit public comments regarding any clinical questions or coding options included for these procedure code topics in advance of the meeting continuing through the end of the respective public comment periods. Members of the public should send any questions or comments to the CMS mailbox at: *ICDProcedureCodeRequest@cms.hhs.gov.*

CMS intends to post a question-and-answer document in advance of the meeting to address any clinical or coding questions that members of the public may have submitted. Following the conclusion of the meeting, CMS will post an updated question-and-answer document to address any additional clinical or coding questions that members of the public may have submitted during the meeting that CMS was not able to address or that were submitted after the meeting.

The NTAP-related ICD–10–PCS procedure code requests that do not involve the administration of a therapeutic agent and all non-NTAP-related procedure code requests will continue to be presented during the virtual meeting on March 19, 2024, consistent with the standard meeting process.

CMS will make all meeting materials and related documents available at: *https://www.cms.gov/medicare/coding-billing/icd-10-codes/icd-10-coordination-maintenance-committee-materials.* Any inquiries related to the procedure code topics scheduled for the March 19, 2024, ICD–10 C&M Committee meeting day that are under consideration for October 1, 2024, implementation should be sent to the CMS mailbox at: *ICDProcedureCodeRequest@cms.hhs.gov.*

ICD–10–CM Topics:

1. Abnormal Anti-cyclic Citrullinated Peptide Antibody and/or Rheumatoid Factor Without Current or Prior Clinical Diagnosis of Rheumatoid Arthritis
2. APOL1-mediated Kidney Disease
3. Baked Egg Tolerance
4. Baked Milk Tolerance
5. Coding of Firearms Injuries Default
6. DLG4-related Synaptopathy
7. Flank Anatomical Specificity
8. Glutamate Receptor, Ionotropic, Gene-related Neurodevelopmental Disorders
9. Gulf War Illness
10. Hyperoxaluria
11. Post-exertional Malaise
12. SCN2A-related Disorders
13. SLC6A1-related Disorders
14. STXBP1-related Disorders
15. Usher Syndrome
16. Addenda

The Director, Office of Strategic Business Initiatives, 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, Office of Strategic Business Initiatives, Office of the Chief Operating Officer, Centers for Disease Control and Prevention.

[FR Doc. 2024–02178 Filed 2–2–24; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[30Day–24–1402]

Agency Forms Undergoing Paperwork Reduction Act Review

In accordance with the Paperwork Reduction Act of 1995, the Centers for Disease Control and Prevention (CDC) has submitted the information collection request titled ''Surveillance of HIV-related service barriers among Individuals with Early or Late HIV Diagnoses (SHIELD)'' to the Office of Management and Budget (OMB) for review and approval. CDC previously published a ''Proposed Data Collection Submitted for Public Comment and Recommendations'' notice on October 06, 2023, to obtain comments from the public and affected agencies. CDC received two comments to the previous notice. This notice serves to allow an additional 30 days for public and affected agency comments.

CDC will accept all comments for this proposed information collection project. The Office of Management and Budget is particularly interested in comments that:

(a) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(b) Evaluate the accuracy of the agencies estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(c) Enhance the quality, utility, and clarity of the information to be collected;

(d) Minimize the burden of the collection of information on those who are to respond, including, through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses; and

(e) Assess information collection costs.

To request additional information on the proposed project or to obtain a copy of the information collection plan and instruments, call (404) 639–7570. Comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to *www.reginfo.gov/public/do/PRAMain* Find this particular information collection by selecting ''Currently under 30-day Review—Open for Public Comments'' or by using the search function. Direct written comments and/or suggestions regarding the items contained in this notice to the Attention: CDC Desk Officer, Office of Management and Budget, 725 17th Street NW, Washington, DC 20503 or by fax to (202) 395–5806. Provide written comments within 30 days of notice publication.

Proposed Project

Surveillance of HIV-related service barriers among Individuals with Early or Late HIV Diagnoses (SHIELD) (OMB Control No. 0920–1402, Exp. 05/31/2026)—Revision—National Center for HIV, Viral Hepatitis, STD, and TB Prevention (NCHHSTP), Centers for Disease Control and Prevention (CDC).

Background and Brief Description

National HIV Surveillance System (NHSS) data indicate that 36,940 adolescents and adults received an HIV diagnosis in the United States and dependent areas in 2019. During 2015–2019, the overall rate of annual diagnoses decreased only slightly, from 12.4 to 11.1 per 100,000 persons. Although not every jurisdiction reports complete laboratory data needed to identify the stage of infection, data from the majority of jurisdictions show that many of these cases were classified as Stage 0 (6.9%) or Stage 3 (21.5%) infection (*i.e.,* cases diagnosed in early infection or late infection, respectively). Early and late diagnoses represent recent failures in prevention and testing systems, and opportunities to

understand needed improvements in these systems.

The NHSS would classify HIV infections as Stage 0 if the first positive HIV test were within six months of a negative HIV test. Persons who received a diagnosis at Stage 0 (*i.e.,* early diagnosis) could access HIV testing shortly after infection yet could not benefit from biomedical and behavioral interventions to prevent HIV infection. The federal Ending the HIV Epidemic in the U.S. (EHE) initiative prioritizes the provision of HIV preexposure prophylaxis (PrEP), syringe services programs, treatment as prevention efforts, and other proven interventions—as part of the Prevent pillar of the EHE initiative—to prevent new HIV infections.

HIV infections are classified as Stage 3 (AIDS) by the presence of an AIDS-defining opportunistic infection or by the lowest CD4 lymphocyte test result. Persons with Stage 3 infection at the time of their initial HIV diagnosis (*i.e.,* late diagnosis) did not benefit from timely receipt of testing or HIV prevention interventions. They were likely unaware of their infection for a substantial length of time.

Nationally, an estimated 13.3% of persons with HIV are unaware of their infection, contributing to an estimated 40% of all ongoing transmission. Increasing early diagnosis is a crucial pillar of efforts to end HIV in the United States. Given the continued occurrence of HIV infections in the United States, the barriers and gaps associated with low uptake of HIV testing and prevention services must be addressed to reduce new infections and facilitate timely diagnosis and treatment. Individual- and systems-level factors likely contribute to barriers and gaps in testing and prevention. Therefore, CDC is sponsoring this data collection to improve understanding of barriers and gaps associated with new infection and late diagnosis in the era of multiple testing modalities and prevention options such as PrEP. These enhanced surveillance activities will identify actionable missed opportunities for early diagnosis and prevention, thus informing allocation of resources, development and prioritization of interventions, and evidence-based local and national decisions to improve HIV testing and address prevention gaps.

The changes proposed in this request add a new qualitative data collection activity that encompasses a new consent form and a new data collection tool (In-depth Interview Guide) to conduct qualitative interviews to meet prevailing information needs and enhance the value of SHIELD data and minor edits to the approved SHIELD survey while remaining within the scope of the currently approved project purpose. The annualized burden hours of the project increased by 158 hours with these additions, for a total of 3,074 annualized burden hours. There are no costs to respondents other than time.

ESTIMATED ANNUALIZED BURDEN HOURS

Type of respondent	Form name	Number of respondents	Number of responses per respondent	Average burden per response (in hours)
Potential Eligible Participant	Recruitment Script English	2,000	1	15/60
Potential Eligible Participant	Recruitment Script Spanish	500	1	15/60
Eligible Participant	Consent for quantitative survey—English	2,000	1	5/60
Eligible Participant	Consent—Spanish	500	1	5/60
Eligible Participant	Survey—English	2,000	1	50/60
Eligible Participant	Survey—Spanish	500	1	50/60
Eligible Participant	Consent for qualitative interview—English	50	1	5/60
Eligible Participant	Consent for qualitative interview—Spanish	50	1	5/60
Eligible Participant	In-depth Interview—English	50	1	90/60
Eligible Participant	In-depth Interview—Spanish	50	1	90/60

Jeffrey M. Zirger,

Lead, Information Collection Review Office, Office of Public Health Ethics and Regulations, Office of Science, Centers for Disease Control and Prevention.

[FR Doc. 2024–02172 Filed 2–2–24; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[60Day–24–0199; Docket No. CDC–2024–0008]

Proposed Data Collection Submitted for Public Comment and Recommendations

AGENCY: Centers for Disease Control and Prevention (CDC), Department of Health and Human Services (HHS).

ACTION: Notice with comment period.

SUMMARY: The Centers for Disease Control and Prevention (CDC), as part of its continuing effort to reduce public burden and maximize the utility of government information, invites the general public and other federal agencies the opportunity to comment on a continuing information collection, as required by the Paperwork Reduction Act of 1995. This notice invites comment on a proposed information collection project titled Import Permit. The goal of the information collection is to support the Public Health Service (PHS) Act and prevent the introduction, transmission, or spread of communicable diseases from foreign countries into the States or possessions, or from one State or possession into any other State or possession.

DATES: CDC must receive written comments on or before April 5, 2024.

ADDRESSES: You may submit comments, identified by Docket No. CDC–2024–0008 by either of the following methods:

- *Federal eRulemaking Portal: www.regulations.gov.* Follow the instructions for submitting comments.
- *Mail:* Jeffrey M. Zirger, Information Collection Review Office, Centers for Disease Control and Prevention, 1600 Clifton Road NE, MS H21–8, Atlanta, Georgia 30329.

Instructions: All submissions received must include the agency name and Docket Number. CDC will post, without change, all relevant comments to *www.regulations.gov.*

Please note: Submit all comments through the Federal eRulemaking portal (*www.regulations.gov*) or by U.S. mail to the address listed above.

FOR FURTHER INFORMATION CONTACT: To request more information on the proposed project or to obtain a copy of the information collection plan and

instruments, contact Jeffrey M. Zirger, Information Collection Review Office, Centers for Disease Control and Prevention, 1600 Clifton Road NE, MS H21–8, Atlanta, Georgia 30329; Telephone: 404–639–7570; Email: *omb@cdc.gov.*

SUPPLEMENTARY INFORMATION: Under the Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3501–3520), Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. In addition, the PRA also requires Federal agencies to provide a 60-day notice in the **Federal Register** concerning each proposed collection of information, including each new proposed collection, each proposed extension of existing collection of information, and each reinstatement of previously approved information collection before submitting the collection to the OMB for approval. To comply with this requirement, we are publishing this notice of a proposed data collection as described below.

The OMB is particularly interested in comments that will help:

1. Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

2. Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

3. Enhance the quality, utility, and clarity of the information to be collected;

4. Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submissions of responses; and

5. Assess information collection costs.

Proposed Project

Import Permit Applicatons (42 CFR 71.54) (OMB Control No. 0920–0199, Exp. 8/31/2024)—Revision—Office of Readiness and Response (ORR), Centers for Disease Control and Prevention (CDC).

Background and Brief Description

Section 361 of the Public Health Service Act (42 U.S.C. 264), as amended, authorizes the Secretary of Health and Human Services to make and enforce such regulations as are necessary to prevent the introduction, transmission, or spread of communicable diseases from foreign countries into the States or possessions, or from one State or possession into any other State or possession. Part 71 of Title 42, Code of Federal Regulations (Foreign Quarantine) sets forth provisions to prevent the introduction, transmission, and spread of communicable disease from foreign countries into the United States. Subpart F—Importations—contains provisions for the importation of infectious biological agents, infectious substances, and vectors (42 CFR 71.54); requiring persons that import these materials to obtain a permit issued by the CDC. The Application for Permit to Import Biological Agents, Infectious Substances and Vectors of Human Disease into the United States form is used by laboratory facilities, such as those operated by government agencies, universities, and research institutions to request a permit for the importation of biological agents, infectious substances, or vectors of human disease. This form currently requests applicant and sender contact information; description of material for importation; facility isolation and containment information; and personnel qualifications. Based on questions we have received from prior applicants, CDC is proposing to reduce open text questions and replace them with more streamlined check boxes. The goal is that this will clarify what is being asked of applicants and will increase efficiency and speed of processing by reducing back and forth communication necessary to clarify to applicants.

The Application for Permit to Import or Transport Live Bats form is used by laboratory facilities such as those operated by government agencies, universities, research institutions, and for educational, exhibition, or scientific purposes to request a permit for the importation, and any subsequent distribution after importation, of live bats. This form currently requests the applicant and sender contact information; a description and intended use of bats to be imported; and facility isolation and containment information. CDC does not plan to revise this application.

The Application for Permit to Import Infectious Human Remains into the United States is used by facilities that will bury/cremate the imported cadaver and educational facilities to request a permit for the importation and subsequent transfers throughout the U.S. of human remains or body parts that contains biological agents, infectious substances, or vectors of human disease. This form will request applicant and sender contact information; facility processing human remains; cause of death; biosafety and containment information; and final destination(s) of imported infectious human remains. CDC does not plan to revise this application.

The Importer Certification Statement is a new form and will be used as an attestation by an importer stating that they are importing only noninfectious biological agent(s) or biological substance(s). The noninfectious, imported agent or substance must be accompanied by an importer certification statement confirming that the material is not known to contain or suspected of containing an infectious biological agent or has been rendered noninfectious. This form requests a detailed description of the material, statements affirming that the material is not known or suspected to contain an infectious biological agent, and one of the following: (1) How the person knows that the material does not contain an infectious biological agent; (2) Why there is no reason to suspect that the material contains an infectious biological agent; or (3) A detailed description of how the material was rendered noninfectious.

Annualized burden hours were calculated based on data obtained from CDC import permit database on the number of permits issued on annual basis since 2015, which is 2,000 respondents. The total estimated burden for the data collection is 2,097. There is an increase in burden from 1,097 hours to 2,097 hours which reflects the new, proposed form (Importer Certification Statement), to this project.

ESTIMATED ANNUALIZED BURDEN HOURS

Type of respondents	Form name	Number of respondents	Number of responses per respondent	Average burden per response (in hours)	Total burden (in hours)
Applicants Requesting to Import Biological Agents, Infectious Substances and Vectors.	Application for Permit to Import Biological Agents, Infectious Substances and Vectors of Human Disease into the United States.	2,000	1	30/60	1,000
Applicants Requesting to Import Biological Agents, Infectious Substances and Vectors.	Application for Permit to Import Biological Agents, Infectious Substances and Vectors of Human Disease into the United States Subsequent Transfer.	380	1	10/60	63
Applicants Requesting to Import Live Bats.	Application for a Permit to Import Live Bats.	3	1	20/60	1
Applicants Requesting to Import Infectious Human Remains into the United States.	Application for Permit to Import Infectious Human Remains into the United States.	100	1	20/60	33
Importers of Non-infectious Materials to the United States.	Importer Certification Statement	2,000	1	30/60	1,000
Total	.....	.....	.....	.....	2,097

Jeffrey M. Zirger,

Lead, Information Collection Review Office, Office of Public Health Ethics and Regulations, Office of Science, Centers for Disease Control and Prevention.

[FR Doc. 2024–02173 Filed 2–2–24; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Lead Exposure and Prevention Advisory Committee (LEPAC); Notice of Charter Renewal

AGENCY: Centers for Disease Control and Prevention (CDC), Department of Health and Human Services (HHS).

ACTION: Notice of charter renewal.

SUMMARY: This gives notice under the Federal Advisory Committee Act of October 6, 1972, that the Lead Exposure and Prevention Advisory Committee (LEPAC), Centers for Disease Control and Prevention, Department of Health and Human Services, has been renewed for a 2-year period through January 17, 2026.

FOR FURTHER INFORMATION CONTACT: Paul Allwood, Ph.D., MPH, Designated Federal Officer, National Center for Environmental Health, Centers for Disease Control and Prevention, Department of Health and Human Services, 1600 Clifton Road NE, MS S106–5, Atlanta, Georgia 30329–4018. Telephone (770) 488–6774; *PAllwood@cdc.gov*.

SUPPLEMENTARY INFORMATION: CDC is providing notice under 5 U.S.C. 1001–1014 of the renewal of the charter of the Lead Exposure and Prevention Advisory Committee, Centers for Disease Control and Prevention, Department of Health and Human Services. This charter has been renewed for a two-year period through January 17, 2026.

The Director, Office of Strategic Business Initiatives, 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, Office of Strategic Business Initiatives, Office of the Chief Operating Officer, Centers for Disease Control and Prevention.

[FR Doc. 2024–02179 Filed 2–2–24; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[Docket No. CDC–2024–0009; NIOSH–278]

Meeting of the Board of Scientific Counselors, National Institute for Occupational Safety and Health

AGENCY: Centers for Disease Control and Prevention (CDC), Department of Health and Human Services (HHS).

ACTION: Notice of meeting and request for comment.

SUMMARY: In accordance with the Federal Advisory Committee Act, the Centers for Disease Control and Prevention (CDC) announces the following meeting of the Board of Scientific Counselors, National Institute for Occupational Safety and Health (BSC, NIOSH). This is a virtual meeting. It is open to the public, limited only by the number of web conference lines (500 lines are available). Time will be available for public comment.

DATES: The meeting will be held on March 13, 2024, from 10 a.m. to 3:30 p.m., EDT.

Written comments must be received on or before March 6, 2024.

ADDRESSES: If you wish to attend the meeting, please register at the NIOSH website at *https://www.cdc.gov/niosh/bsc/* or by telephone at (202) 245–0649 no later than March 6, 2024.

You may submit comments, identified by Docket No. CDC–2024–0009; NIOSH–278, by either of the methods listed below. CDC does not accept comments by email.

- *Federal eRulemaking Portal: https://www.regulations.gov*. Follow the instructions for submitting comments.
- *Mail:* Ms. Sherri Diana, NIOSH Docket Office, National Institute for Occupational Safety and Health, 1090 Tusculum Avenue, Mailstop C–34, Cincinnati, Ohio 45226. Attn: Docket No. CDC–2024–0009; NIOSH–278.

Instructions: All submissions received must include the Agency name and docket number. Docket number CDC–2024–0009; NIOSH–278 will close March 6, 2024.

FOR FURTHER INFORMATION CONTACT: Maria Strickland, M.P.H., Designated Federal Officer, Board of Scientific

Counselors, National Institute for Occupational Safety and Health, Centers for Disease Control and Prevention, Constitution Center, 400 7th Street SW, Suite 5W, Washington, District of Columbia 20024. Telephone: (202) 245–0649; Email: *MStrickland2@cdc.gov*.

SUPPLEMENTARY INFORMATION:

Background: The Secretary of Health and Human Services, the Assistant Secretary for Health, and by delegation the Director, Centers for Disease Control and Prevention, are authorized under Sections 301 and 308 of the Public Health Service Act to conduct directly, or by grants or contracts, research, experiments, and demonstrations relating to occupational safety and health and to mine health.

Purpose: The Board of Scientific Counselors, National Institute for Occupational Safety and Health (BSC, NIOSH) provides advice to the Director, National Institute for Occupational Safety and Health, on NIOSH research and prevention programs. The Board also provides guidance on the Institute's research activities related to developing and evaluating hypotheses, systematically documenting findings, and disseminating results. In addition, the Board evaluates the degree to which the activities of NIOSH: (1) conform to those standards of scientific excellence appropriate for Federal scientific institutions in accomplishing objectives in occupational safety and health; (2) address currently relevant needs in the fields of occupational safety and health either alone or in conjunction with other known activities inside and outside of NIOSH; and (3) produce their intended results in addressing important research questions in occupational safety and health, both in terms of applicability of the research findings and dissemination of the findings.

Matters To Be Considered: The agenda for the meeting addresses the NIOSH Evaluation Capacity Building Plan (ECB Plan) and Scoring Progress on the ECB Plan; Diversity, Equity, and Inclusion at NIOSH; and a National Firefighter Registry Subcommittee Update. Agenda items are subject to change as priorities dictate.

The agenda is also posted on the NIOSH website at *https://www.cdc.gov/niosh/bsc/*.

Public Participation

Written Public Comment: Written comments will be accepted per the instructions provided in the addresses section above. Comments received in advance of the meeting are part of the public record and are subject to public disclosure. Written comments will be included in the official record of the meeting. Do not include any information in your comment or supporting materials that you consider confidential or inappropriate for public disclosure. If you include your name, contact information, or other information that identifies you in the body of your comments, that information will be on public display. CDC will review all submissions and may choose to redact, or withhold, submissions containing private or proprietary information such as Social Security numbers, medical information, inappropriate language, or duplicate/near-duplicate examples of a mass-mail campaign. CDC will carefully consider all comments submitted into the docket.

Written comments received by March 6, 2024, will be provided to the Board prior to the meeting.

Oral Public Comment: The public is welcome to participate during the public comment period, from 1 p.m. to 1:15 p.m., EDT, March 13, 2024. Each commenter will be provided up to five minutes for comment. A limited number of time slots are available and will be assigned on a first-come, first-served basis. Members of the public who wish to address the BSC, NIOSH are requested to contact the Designated Federal Officer for scheduling purposes (see **FOR FURTHER INFORMATION CONTACT** above).

The Director, Office of Strategic Business Initiatives, 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, Office of Strategic Business Initiatives, Office of the Chief Operating Officer, Centers for Disease Control and Prevention.

[FR Doc. 2024–02180 Filed 2–2–24; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[30Day–24–0728]

Agency Forms Undergoing Paperwork Reduction Act Review

In accordance with the Paperwork Reduction Act of 1995, the Centers for Disease Control and Prevention (CDC) has submitted the information collection request titled ''National Notifiable Diseases Surveillance System (NNDSS)'' to the Office of Management and Budget (OMB) for review and approval. CDC previously published a ''Proposed Data Collection Submitted for Public Comment and Recommendations'' notice on November 14, 2023 to obtain comments from the public and affected agencies. CDC received one comment related to the previous notice. This notice serves to allow an additional 30 days for public and affected agency comments.

CDC will accept all comments for this proposed information collection project. The Office of Management and Budget is particularly interested in comments that:

(a) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(b) Evaluate the accuracy of the agencies estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(c) Enhance the quality, utility, and clarity of the information to be collected;

(d) Minimize the burden of the collection of information on those who are to respond, including, through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses; and

(e) Assess information collection costs.

To request additional information on the proposed project or to obtain a copy of the information collection plan and instruments, call (404) 639–7570. Comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to *www.reginfo.gov/public/do/PRAMain.* Find this particular information collection by selecting ''Currently under 30-day Review—Open for Public Comments'' or by using the search function. Direct written comments and/or suggestions regarding the items contained in this notice to the Attention: CDC Desk Officer, Office of Management and Budget, 725 17th Street NW, Washington, DC 20503 or by fax to (202) 395–5806. Provide written comments within 30 days of notice publication.

Proposed Project

National Notifiable Diseases Surveillance System (NNDSS) (OMB Control No. 0920–0728, Exp. 03/31/2026)—Revision—Office of Public Health Data, Surveillance, and Technology (OPHDST), Centers for Disease Control and Prevention (CDC).

Background and Brief Description

The Public Health Services Act (42 U.S.C. 241) authorizes CDC to disseminate nationally notifiable condition information. The National Notifiable Diseases Surveillance System (NNDSS) is based on data collected at the state, territorial and local levels because of legislation and regulations in those jurisdictions that require health care providers, medical laboratories, and other entities to submit health-related data on reportable conditions to public health departments. These reportable conditions, which include infectious and non-infectious diseases, vary by jurisdiction depending upon each jurisdiction's health priorities and needs. Each year, the Council of State and Territorial Epidemiologists (CSTE), supported by CDC, determines which reportable conditions should be designated nationally notifiable or under standardized surveillance. CDC requests a three-year approval for a Revision of the NNDSS (OMB Control No. 0920–0728, Exp. Date 03/31/2026). This Revision includes requests for approval to: (1) receive case notification data for Cronobacter and Ehrlichiosis, new notifiable conditions; (2) receive case notification data for Congenital cytomegalovirus infection and Toxoplasmosis, new conditions under standardized surveillance; and (3) receive new disease-specific data elements for Cronobacter, Hansen's Disease (Leprosy), and Leptospirosis.

The NNDSS currently facilitates the submission and aggregation of case notification data voluntarily submitted to CDC from 60 jurisdictions: public health departments in every U.S. state, New York City, Washington DC, five U.S. territories (American Samoa, the Commonwealth of Northern Mariana Islands, Guam, Puerto Rico, and the U.S. Virgin Islands), and three freely associated states (Federated States of Micronesia, the Republic of the Marshall Islands, and the Republic of Palau). This information is shared across jurisdictional boundaries and both surveillance and prevention and control activities are coordinated at regional and national levels.

Approximately 90% of case notifications are encrypted and submitted to NNDSS electronically from already existing databases by automated electronic messages. When automated transmission is not possible, case notifications are faxed, emailed, uploaded to a secure network or entered into a secure website. All case notifications that are faxed or emailed are done so in the form of an aggregate weekly or annual report, not individual cases. These different mechanisms used to send case notifications to CDC vary by the jurisdiction and the disease or condition. Jurisdictions remove most personally identifiable information (PII) before data are submitted to CDC, but some data elements (*e.g.,* date of birth, date of diagnosis, county of residence) could potentially be combined with other information to identify individuals. Private information is not disclosed unless otherwise compelled by law. All data are treated in a secure manner consistent with the technical, administrative, and operational controls required by the Federal Information Security Management Act of 2002 (FISMA) and the 2010 National Institute of Standards and Technology (NIST) Recommended Security Controls for Federal Information Systems and Organizations. Weekly tables of nationally notifiable diseases are available through CDC WONDER and *data.cdc.gov.* Annual summaries of finalized nationally notifiable disease data are published on CDC WONDER and *data.cdc.gov* and disease-specific data are published by individual CDC programs.

The burden estimates include the number of hours that the public health department uses to process and send case notification data from their jurisdiction to CDC. Specifically, the burden estimates include separate burden hours incurred for automated and non-automated transmissions, separate weekly burden hours incurred for modernizing surveillance systems as part of CDC's Data Modernization Initiative (DMI) implementation, separate burden hours incurred for annual data reconciliation and submission, and separate one-time burden hours incurred for the addition of new diseases and data elements. The burden estimates for the one-time burden for reporting jurisdictions are for the addition of case notification data for Cronobacter and Ehrlichiosis, new notifiable conditions; the addition of case notification data for Congenital cytomegalovirus infection and Toxoplasmosis, new conditions under standardized surveillance; and the addition of new disease-specific data elements for Cronobacter, Hansen's Disease (Leprosy) and Leptospirosis. The estimated annual burden for the 257 respondents is 18,414 hours. The total burden hours decreased from 18,594 to 18,414 since the last Revision because there were fewer disease-specific data elements added compared to the previous Revision. There are no costs to respondents other than their time to participate.

ESTIMATED ANNUALIZED BURDEN HOURS

Type of respondent	Form name	Number of respondents	Number of responses per respondent	Average burden per response (in hours)
States	Weekly (Automated)	50	52	20/60
States	Weekly (Non-automated)	10	52	2
States	Weekly (DMI Implementation)	50	52	4
States	Annual	50	1	75
States	One-time Addition of Diseases and Data Elements	50	1	3
Territories	Weekly (Automated)	5	52	20/60
Territories	Weekly, Quarterly (Non-automated)	5	56	20/60
Territories	Weekly (DMI Implementation)	5	52	4
Territories	Annual	5	1	5
Territories	One-time Addition of Diseases and Data Elements	5	1	3
Freely Associated States	Weekly (Automated)	3	52	20/60
Freely Associated States	Weekly, Quarterly (Non-automated)	3	56	20/60
Freely Associated States	Annual	3	1	5
Freely Associated States	One-time Addition of Diseases and Data Elements	3	1	3

ESTIMATED ANNUALIZED BURDEN HOURS—Continued

Type of respondent	Form name	Number of respondents	Number of responses per respondent	Average burden per response (in hours)
Cities	Weekly (Automated)	2	52	20/60
Cities	Weekly (Non-automated)	2	52	2
Cities	Weekly (DMI Implementation)	2	52	4
Cities	Annual	2	1	75
Cities	One-time Addition of Diseases and Data Elements	2	1	3

Jeffrey M. Zirger,

Lead, Information Collection Review Office, Office of Public Health Ethics and Regulations, Office of Science, Centers for Disease Control and Prevention.

[FR Doc. 2024–02171 Filed 2–2–24; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Disease, Disability, and Injury Prevention and Control Special Emphasis Panel (SEP)—CE24–011, Grants To Support New Investigators in Conducting Research Related To Understanding Drug Use and Overdose Risk and Protective Factors (K01); Cancellation of Meeting

AGENCY: Centers for Disease Control and Prevention, Department of Health and Human Services.

ACTION: Notice.

FOR FURTHER INFORMATION CONTACT: Aisha L. Wilkes, M.P.H., Scientific Review Officer, National Center for Injury Prevention and Control, Centers for Disease Control and Prevention, 4770 Buford Highway NE, Mailstop S106–9, Atlanta, Georgia 30341–3717. Telephone: (404) 639–6473; Email: *AWilkes@cdc.gov.*

SUPPLEMENTARY INFORMATION: Notice is hereby given of a change in the meeting of the Disease, Disability, and Injury Prevention and Control Special Emphasis Panel (SEP)—CE24–011, Grants to Support New Investigators in Conducting Research Related to Understanding Drug Use and Overdose Risk and Protective Factors (K01); Cancellation of Meeting; March 5, 2024, 8:30 a.m.–5 p.m., EST., in the original **Federal Register** notice FRN. The web conference was published in the **Federal Register** on Tuesday, October 24, 2023, 88 FR 73020.

This meeting is being canceled in its entirety.

The Director, Office of Strategic Business Initiatives, 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, Office of Strategic Business Initiatives, Office of the Chief Operating Officer, Centers for Disease Control and Prevention.

[FR Doc. 2024–02208 Filed 2–2–24; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[60Day-24–0696; Docket No. CDC–2024–0006]

Proposed Data Collection Submitted for Public Comment and Recommendations

AGENCY: Centers for Disease Control and Prevention (CDC), Department of Health and Human Services (HHS).

ACTION: Notice with comment period.

SUMMARY: The Centers for Disease Control and Prevention (CDC), as part of its continuing effort to reduce public burden and maximize the utility of government information, invites the general public and other Federal agencies the opportunity to comment on a continuing information collection, as required by the Paperwork Reduction Act of 1995. This notice invites comment on a proposed information collection project titled National HIV Prevention Program Monitoring and Evaluation (NHM&E). NHM&E collects standardized HIV prevention program evaluation data from health departments and community-based organizations (CBOs) who receive federal funds for HIV prevention activities.

DATES: CDC must receive written comments on or before April 5, 2024.

ADDRESSES: You may submit comments, identified by Docket No. CDC–2024–0006 by either of the following methods:

- *Federal eRulemaking Portal: www.regulations.gov.* Follow the instructions for submitting comments.
- *Mail:* Jeffrey M. Zirger, Information Collection Review Office, Centers for Disease Control and Prevention, 1600 Clifton Road NE, MS H21–8, Atlanta, Georgia 30329.

Instructions: All submissions received must include the agency name and Docket Number. CDC will post, without change, all relevant comments to *www.regulations.gov*.

Please note: Submit all comments through the Federal eRulemaking portal (*www.regulations.gov*) or by U.S. mail to the address listed above.

FOR FURTHER INFORMATION CONTACT: To request more information on the proposed project or to obtain a copy of the information collection plan and instruments, contact Jeffrey M. Zirger, Information Collection Review Office, Centers for Disease Control and Prevention, 1600 Clifton Road NE, MS H21–8, Atlanta, Georgia 30329; Telephone: 404–639–7118; Email: *omb@cdc.gov*.

SUPPLEMENTARY INFORMATION: Under the Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3501–3520), Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. In addition, the PRA also requires Federal agencies to provide a 60-day notice in the **Federal Register** concerning each proposed collection of information, including each new proposed collection, each proposed extension of existing collection of information, and each reinstatement of previously approved information collection before submitting the collection to the OMB for approval. To comply with this requirement, we are publishing this notice of a proposed data collection as described below.

The OMB is particularly interested in comments that will help:

1. Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
2. Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
3. Enhance the quality, utility, and clarity of the information to be collected;
4. Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submissions of responses; and
5. Assess information collection costs.

Proposed Project

National HIV Prevention Program Monitoring and Evaluation (NHM&E) (OMB Control No. 0920–0696, Exp. 10/31/2024)—Extension—National Center for HIV/AIDS, Viral Hepatitis, STD, and TB Prevention (NCHHSTP), Centers for Disease Control and Prevention (CDC).

Background and Brief Description

CDC seeks to request a three-year Office of Management and Budget (OMB) approval to extend the previously approved project and continue the collection of standardized HIV prevention program evaluation data from health departments and community-based organizations (CBOs) who receive federal funds for HIV prevention activities. Health department grantees have the options to key-enter or upload data to a CDC-provided web-based software application (EvaluationWeb). CBO grantees may only key-enter data to the CDC-provided web-based software application.

The evaluation and reporting process is necessary to ensure that CDC receives standardized, accurate, thorough evaluation data from both health department and CBO grantees. For these reasons, CDC developed standardized NHM&E variables through extensive consultation with representatives from health departments, CBOs, and national partners (*e.g.,* The National Alliance of State and Territorial AIDS Directors and Urban Coalition of HIV/AIDS Prevention Services). CDC requires CBOs and health departments who receive federal funds for HIV prevention to report nonidentifying, HIV test-level and aggregate level, standardized evaluation data to: (1) accurately determine the extent to which HIV prevention efforts are carried out, what types of agencies are providing services, what resources are allocated to those services, to whom services are being provided, and how these efforts have contributed to a reduction in HIV transmission; (2) improve ease of reporting to better meet these data needs; and (3) be accountable to stakeholders by informing them of HIV prevention activities and use of funds in HIV prevention nationwide.

CDC HIV prevention program grantees will collect, enter or upload, and report agency-identifying information, budget data, intervention information, and client demographics and behavioral risk characteristics with an estimated annualized burden of 190,294 hours. Data collection activities will include searching existing data sources, gathering and maintaining data, document compilation, review of data, and data entry or upload into the web-based system. There are no costs to respondents other than their time.

ESTIMATED ANNUALIZED BURDEN HOURS

Type of respondent	Form name	Number of respondents	Number of responses per respondent	Average burden per response (in hr)	Total burden (in hr)
Health Departments	Health Department Reporting	61	2	1427	174,094
Community-based Organizations	Community-based Organization Reporting.	150	2	54	16,200
Total					190,294

Jeffrey M. Zirger,

Lead, Information Collection Review Office, Office of Public Health Ethics and Regulations, Office of Science, Centers for Disease Control and Prevention.

[FR Doc. 2024–02174 Filed 2–2–24; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[60Day-24–1322; Docket No. CDC–2024–0007]

Proposed Data Collection Submitted for Public Comment and Recommendations

AGENCY: Centers for Disease Control and Prevention (CDC), Department of Health and Human Services (HHS).

ACTION: Notice with comment period.

SUMMARY: The Centers for Disease Control and Prevention (CDC), as part of its continuing effort to reduce public burden and maximize the utility of government information, invites the general public and other Federal agencies the opportunity to comment on a continuing information collection, as required by the Paperwork Reduction Act of 1995. This notice invites comment on a proposed information collection project titled Capacity Building Assistance Program: Data Management, Monitoring, and Evaluation. The goal of the study is to allow CDC to evaluate the CDC cooperative agreement program entitled CDC–RFA–PS19–1904 in order to improve the evaluation design and methods used to capture PS19–1904 outcomes, and to increase access and use of PS19–1904 data for continuous quality improvement and performance reporting.

DATES: CDC must receive written comments on or before April 5, 2024.

ADDRESSES: You may submit comments, identified by Docket No. CDC–2024–0007 by either of the following methods:

- *Federal eRulemaking Portal: www.regulations.gov*. Follow the instructions for submitting comments.
- *Mail:* Jeffrey M. Zirger, Information Collection Review Office, Centers for Disease Control and Prevention, 1600 Clifton Road NE, MS H21–8, Atlanta, Georgia 30329.

Instructions: All submissions received must include the agency name and Docket Number. CDC will post, without change, all relevant comments to *www.regulations.gov*.

Please note: Submit all comments through the Federal eRulemaking portal (*www.regulations.gov*) or by U.S. mail to the address listed above.

FOR FURTHER INFORMATION CONTACT: To request more information on the proposed project or to obtain a copy of the information collection plan and instruments, contact Jeffrey M. Zirger, Information Collection Review Office, Centers for Disease Control and Prevention, 1600 Clifton Road NE, MS H21–8, Atlanta, Georgia 30329; Telephone: 404–639–7118; Email: *omb@cdc.gov*.

SUPPLEMENTARY INFORMATION: Under the Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3501–3520), Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. In addition, the PRA also requires Federal agencies to provide a 60-day notice in the **Federal Register** concerning each proposed collection of information, including each new proposed collection, each proposed extension of existing collection of information, and each reinstatement of previously approved information collection before submitting the collection to the OMB for approval. To comply with this requirement, we are publishing this notice of a proposed data collection as described below.

The OMB is particularly interested in comments that will help:

1. Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

2. Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

3. Enhance the quality, utility, and clarity of the information to be collected;

4. Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submissions of responses; and

5. Assess information collection costs.

Proposed Project

Capacity Building Assistance Program: Data Management, Monitoring, and Evaluation (OMB Control No. 0920–1322, Exp. 02/29/2024)—Extension—National Center for HIV, Viral Hepatitis, STD, and TB Prevention (NCHHSTP), Centers for Disease Control and Prevention (CDC).

Background and Brief Description

The Centers for Disease Control and Prevention (CDC) partners with the national HIV prevention workforce to: (1) ensure that persons with HIV (PWH) are aware of their infection and successfully linked to medical care and treatment to achieve viral suppression; and (2) expand access to pre-exposure prophylaxis (PrEP), condoms, and other proven strategies for communities over-represented in the HIV epidemic. CDC funds state and local health departments and community-based organizations (CBOs) to optimally plan, integrate, implement, and sustain comprehensive HIV prevention programs and services for communities in the HIV epidemic, including blacks/African Americans; Hispanics/Latinos; all races/ethnicities of gay, bisexual, and other men who have sex with men (collectively referred to as MSM); people who inject drugs (PWID); and transgender persons.

Through the CDC cooperative agreement program entitled CDC–RFA–PS19–1904: Capacity Building Assistance (CBA) for High Impact HIV Prevention Program Integration, the CDC Division of HIV Prevention (DHP) funds the CBA Provider Network (CPN) to deliver CBA to CDC funded health departments and CBOs. CBA provided by the CPN include trainings and technical assistance (TA) that enable the HIV prevention workforce to optimally plan, implement, integrate, and sustain high-impact prevention interventions and strategies to reduce HIV infections and HIV related morbidity, mortality, and health disparities across the United States and its territories. This information collection evaluates CDC–RFA–PS19–1904. Specifically, the CDC is requesting the Office of Management and Budget (OMB) to grant a three-year extension to collect data through the use of four web based instruments that will be administered to recipients of CBA services and their program managers: (1) Learning Group Registration; (2) Post-Training Evaluation (PTE); (3) Post-Technical Assistance Evaluation (PTAE); and (4) Training and Technical Assistance Follow-up Survey (TTAFS).

CBA training participants will complete the Learning Group Registration Form as part of the process for enrolling in a CBA training. The Learning Group Registration Form collects demographic information about training participants including: (1) business contact information (*e.g.,* email and telephone number); (2) primary [employment] functional role; (3) employment setting; and (4) programmatic and population areas of focus.

After an online or in-person training event is completed, training participants are invited to complete the PTE. The PTE is designed to elicit information from training participants about their satisfaction with the training delivery method and course content. Similar to the PTE, the PTAE consists of questions designed to elicit information from TA participants about their satisfaction with aspects of TA such as the relevance of the materials provided or created, responsiveness of the TA provider, TA participants' changes in knowledge or skills as a result of the TA, and barriers and facilitators to implementation of interventions/public health strategies. The TTAFS collects organizational-level data every six months from the program managers within CDC-funded programs. Program managers provide information about the implementation status of the intervention/public health strategy for which their staff received training and/or TA. Program managers are also asked to describe how their organization applied the training and TA (*e.g.,* planning or adapting an intervention/public health strategy).

The Learning Group Registration Form, PTE, and PTAE will be administered to CDC-funded program staff who participate in a training or TA event offered by a CBA provider funded under PS19–1904. The TTAFS will be administered to the program managers of state and local health department staff and CBO staff who participate in a CBA training or TA event. Respondents will provide information electronically through an online survey. The option to complete surveys via a telephone interview will be offered to respondents who do not complete the online survey within seven days. The number of respondents is calculated based on an average of the number of health professionals, including doctors, nurses, health educators, and disease intervention specialists, trained by CBA providers during the years 2016–2022.

We estimate 3,800 health professionals will provide one response for the Learning Group Registration; 3,800 health professionals will provide a response for the PTE for each training episode; 3,650 health professionals will provide a response for the PTAE for each TA episode; and 189 program managers will provide two responses to the TTAFS in the web-based or telephone survey per year. The total annualized burden is 1,671 hours. There are no other costs to respondents other than their time.

ESTIMATED ANNUALIZED BURDEN HOURS

Type of respondent	Form name	Number of respondents	Number of responses per respondent	Average burden per response (in hr)	Total burden (in hr)
Healthcare Professionals	Learning Group Registration	3,800	1	5/60	317
Healthcare Professionals	Post-Training Evaluation	3,800	2	5/60	633
Healthcare Professionals	Post-Technical Assistance Evaluation	3,650	2	5/60	608
Program Managers	Training and TA Follow-up Survey	139	2	18/60	83
Program Managers	Training and TA Telephone Script	50	2	18/60	30
Total					1,671

Jeffrey M. Zirger,

Lead, Information Collection Review Office, Office of Public Health Ethics and Regulations, Office of Science, Centers for Disease Control and Prevention.

[FR Doc. 2024–02175 Filed 2–2–24; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

[Document Identifier: CMS–10434]

Agency Information Collection Activities: Proposed Collection; Comment Request

AGENCY: Centers for Medicare & Medicaid Services, Department of Health and Human Services.

ACTION: Notice.

SUMMARY: On May 28, 2010, the Office of Management and Budget (OMB) issued Paperwork Reduction Act (PRA) guidance related to the ''generic'' clearance process. Generally, this is an expedited clearance process by which agencies may obtain OMB's approval of collection of information requests that are ''usually voluntary, low-burden, and uncontroversial,'' do not raise any substantive or policy issues, and do not require policy or methodological review. The process requires the submission of an overarching plan that defines the scope of the individual collections that may be submitted under that umbrella. This notice is intended to advise the public of our intent to extend OMB's approval of our MACPro (Medicaid and CHIP Program) umbrella and all of the individual generic collection of information requests that fall under that umbrella. This notice also provides the public with general instructions for obtaining documents that are associated with such collections and for submitting comments.

DATES: Comments must be received by April 5, 2024.

ADDRESSES: *Submitting Comments* When commenting, please reference the applicable collection's CMS ID number and/or the OMB control number (both numbers are listed below under the **SUPPLEMENTARY INFORMATION** caption). To be assured consideration, comments and recommendations must be submitted in any one of the following ways and by the applicable due date:

1. *Electronically.* We encourage you to submit comments through the Federal eRulemaking portal at the applicable web address listed below under the **SUPPLEMENTARY INFORMATION** caption under ''Docket Information.'' If needed, instructions for submitting such comments can be found on that website.

2. *By regular mail.* Alternatively, you can submit written comments to the following address: CMS, Office of Strategic Operations and Regulatory Affairs (OSORA), Division of Regulations Development, Attention: CMS–10434/OMB 0938–1188, Room C4–26–05, 7500 Security Boulevard, Baltimore, MD 21244–1850.

Obtaining Documents To obtain copies of supporting statements and any related forms and supporting documents for the collections listed in this notice, please refer to the following instructions:

1. We encourage you to access the Federal eRulemaking portal at the applicable web address listed below under the **SUPPLEMENTARY INFORMATION** caption under ''Docket Information.'' If needed, follow the online instructions for accessing the applicable docket and the documents contained therein.

FOR FURTHER INFORMATION CONTACT: For general information contact William N. Parham at 410–786–4669. For policy related questions, contact the individual listed below under the **SUPPLEMENTARY INFORMATION** caption under ''Docket Information.''

SUPPLEMENTARY INFORMATION: Under the PRA (44 U.S.C. 3501–3520), federal agencies must obtain approval from OMB for each collection of information that they conduct or sponsor. The term ''collection of information'' is defined in 44 U.S.C. 3502(3) and 5 CFR 1320.3(c). Generally, it applies to voluntary and mandatory requirements that are related to any one or more of the following activities: the collection of information, the reporting of information, the disclose of information to a third-party, and/or recordkeeping.

While there are some exceptions (such as collections having non-substantive changes and collections requesting emergency approval) section 3506(c)(2)(A) of the PRA requires federal agencies to publish a 60-day notice in the **Federal Register** and solicit comment on each of its proposed collections of information, including: new collections, extensions of existing collections, revisions of existing collections, and reinstatements of previously approved collections before submitting such collections to OMB for approval. To comply with this requirement, CMS is publishing this notice.

Interested parties are invited to submit comments regarding our burden estimates or any other aspect of the collection, including: the necessity and utility of the proposed information collection for the proper performance of our agency's functions; the accuracy of burden estimates; ways to enhance the quality, utility, and clarity of the information to be collected; and the use of automated collection techniques or other forms of information technology to

minimize the information collection burden. See **DATES** and **ADDRESSES** for instructions for submitting comments.

While we will review all comments received, we may choose not to post off-topic or inappropriate comments. Otherwise, all comments will be posted without edit under the applicable docket number, including any personal information that the commenter provides. Our response to such comments will be posted at reginfo.gov under the applicable OMB control number.

Medicaid and CHIP Program (MACPro)

At this time, MACPro is made up of the main umbrella (see collection number 1 in the following list) and nine individual generic collections of information (see collection numbers 2 through 10 in the following list). Details such as the collection's requirements and burden estimates can be found in the collection's supporting statement and associated materials (see **ADDRESSES** for instructions for obtaining such documents).

Docket Information

1. *Title:* Medicaid and CHIP Program (MACPro).
Type of Request: Revision of a currently approved collection.
CMS ID Number: CMS–10434.
OMB Control Number: 0938–1188.
eRulemaking Docket ID Number: CMS–2023–0080.
Docket Web Address: https://www.regulations.gov/docket/CMS-2023-0080.
For Policy Related Questions, Contact: William N. Parham at 410–786–4669.

2. *Title:* Initial Application.
Type of Request: Extension of a currently approved collection.
CMS ID Number: CMS–10434 #1.
OMB Control Number: 0938–1188.
eRulemaking Docket ID Number: CMS–2023–0081.
Docket Web Address: https://www.regulations.gov/docket/CMS-2023-0081.
For Policy Related Questions, Contact: Stephanie Bell at 410–786–0617.

3. *Title:* CHIP State Plan Eligibility.
Type of Request: Extension of a currently approved collection.
CMS ID Number: CMS–10434 #2.
OMB Control Number: 0938–1188.
eRulemaking Docket ID Number: CMS–2023–0082.
Docket Web Address: https://www.regulations.gov/docket/CMS-2023-0082.
For Policy Related Questions, Contact: Stephanie Bell at 410–786–0617.

4. *Title:* Alternative Benefit Plans (ABPs).
Type of Request: Extension of a currently approved collection.
CMS ID Number: CMS–10434 #3.
OMB Control Number: 0938–1188.
eRulemaking Docket ID Number: CMS–2023–0083.
Docket Web Address: https://www.regulations.gov/docket/CMS-2023-0083.
For Policy Related Questions, Contact: Adrienne Delozier at 410–786–0278.

5. *Title:* Medicaid State Plan Eligibility.
Type of Request: Extension of a currently approved collection.
CMS ID Number: CMS–10434 #15.
OMB Control Number: 0938–1188.
eRulemaking Docket ID Number: CMS–2023–0090.
Docket Web Address: https://www.regulations.gov/docket/CMS-2023-0090.
For Policy Related Questions, Contact: Suzette Seng at 410–786–4703.

6. *Title:* Health Home State Plan Amendment (SPA).
Type of Request: Extension of a currently approved collection.
CMS ID Number: CMS–10434 #22.
OMB Control Number: 0938–1188.
eRulemaking Docket ID Number: CMS–2023–0084.
Docket Web Address: https://www.regulations.gov/docket/CMS-2023-0084.
For Policy Related Questions, Contact: Mary Pat Farkas at 410–786–5731.

7. *Title:* Medicaid Adult and Child Core Set Measures.
Type of Request: Extension of a currently approved collection.
CMS ID Number: CMS–10434 #26.
OMB Control Number: 0938–1188.
eRulemaking Docket ID Number: CMS–2023–0085.
Docket Web Address: https://www.regulations.gov/docket/CMS-2023-0085.
For Policy Related Questions, Contact: Virginia (Gigi) Raney at 410–786–6117.

8. *Title:* Maternal and Infant Health Quality.
Type of Request: Extension of a currently approved collection.
CMS ID Number: CMS–10434 #45.
OMB Control Number: 0938–1188.
eRulemaking Docket ID Number: CMS–2023–0086.
Docket Web Address: https://www.regulations.gov/docket/CMS-2023-0086.
For Policy Related Questions, Contact: Virginia (Gigi) Raney at 410–786–6117.

9. *Title:* Health Home Core Sets.
Type of Request: Extension of a currently approved collection.
CMS ID Number: CMS–10434 #47.
OMB Control Number: 0938–1188.
eRulemaking Docket ID Number: CMS–2023–0087.
Docket Web Address: https://www.regulations.gov/docket/CMS-2023-0087.
For Policy Related Questions, Contact: Mary Pat Farkas at 410–786–5731.

10. *Title:* Medicaid Extended Postpartum Coverage and Continuous Eligibility for Children.
Type of Request: Extension of a currently approved collection.
CMS ID Number: CMS–10434 #77.
OMB Control Number: 0938–1188.
eRulemaking Docket ID Number: CMS–2023–0088.
Docket Web Address: https://www.regulations.gov/docket/CMS-2023-0088.
For Policy Related Questions, Contact: Alexa Turner at 410–786–8823.

William N. Parham, III,

Director, Division of Information Collections and Regulatory Impacts, Office of Strategic Operations and Regulatory Affairs.

[FR Doc. 2024–02243 Filed 2–2–24; 8:45 am]

BILLING CODE 4120–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

Submission for Office of Management and Budget (OMB) Review; Advance Planning Document (APD) Process (OMB #0970–0417)

AGENCY: Office of Child Support Services; Administration for Children and Families, Department of Health and Human Services.

ACTION: Request for public comments.

SUMMARY: The Administration for Children and Families' (ACF) Office of Child Support Services (OCSS) requests a 3-year extension for the Advance Planning Document (APD) process (OMB #0970–0417). No changes are proposed.

DATES: *Comments due within 30 days of publication.* OMB must make a decision about the collection of information between 30 and 60 days after publication of this document in the **Federal Register**. Therefore, a comment is best assured of having its full effect if OMB receives it within 30 days of publication.

ADDRESSES: Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to *www.reginfo.gov/public/do/PRAMain.* Find this particular information collection by selecting ''Currently under 30-day Review—Open

for Public Comments'' or by using the search function. You can also obtain copies of the proposed collection of information by emailing *infocollection@acf.hhs.gov.* Identify all emailed requests by the title of the information collection.

SUPPLEMENTARY INFORMATION:

Description: State child support agencies are required to establish and operate a federally approved statewide Automated Data Processing (ADP) and information retrieval system to assist in child support services. The APD process, established at 45 CFR part 95, subpart F, is the procedure by which states request and obtain approval for Federal Financial Participation (FFP) in their cost of acquiring ADP equipment and services. The ACF OCSS Division of State and Tribal Systems (DSTS) oversees this process.

States are required to submit an initial APD, containing information to assist the Secretary of the Department of Health and Human Services (HHS) in determining if the state computerized support enforcement project planning and implementation meets federal certification requirements for approving FFP. States are then required to submit annual APD updates to HHS to report project status and request ongoing FFP for systems development, enhancements, operations, and maintenance. As-needed APDs are also submitted to acquire FFP when major milestones are missed or significant changes to project schedules occur. Based on an assessment of the information provided in the APD, states that do not meet the federal requirements necessary for approval are required to conduct periodic independent verification and validation services for high-risk project oversight.

In addition to the APDs providing HHS/ACF/OCSS with the information necessary to determine the allowable level of federal funding for state systems projects, states also submit associated procurement and data security documents, such as requests for proposals (RFPs), contracts, contract amendments, and the biennial security review reports.

Respondents: State child support agencies.

ANNUAL BURDEN ESTIMATES

Instrument	Total number of respondents	Total number of responses per respondent	Average burden hours per response	Total burden hours	Annual burden hours
RFP and Contract	50	4.5	4	900	300
Emergency Funding Request	21	1	2	42	14
Biennial Reports	54	1.5	1.5	121.5	40.5
Advance Planning Document	44	3.6	120	19,008	6,336
Operational Advance Planning Document	10	3	30	900	300
Independent Verification and Validation (ongoing)	3	12	10	360	120
Independent Verification and Validation (semiannually)	4	6	16	384	128
Independent Verification and Validation (quarterly)	10	12	30	3,600	1,200
System Certification	3	3	240	2,160	720

Estimated Total Annual Burden Hours: 9,158.50.

Authority: 45 CFR part 95, subpart F.

Mary B. Jones,

ACF/OPRE Certifying Officer.

[FR Doc. 2024–02166 Filed 2–2–24; 8:45 am]

BILLING CODE 4184–41–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2024–N–0018]

Oncologic Drugs Advisory Committee; Notice of Meeting; Establishment of a Public Docket; Request for Comments

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice; establishment of a public docket; request for comments.

SUMMARY: The Food and Drug Administration (FDA) announces a forthcoming public advisory committee meeting of the Oncologic Drugs Advisory Committee (the Committee). The general function of the Committee is to provide advice and recommendations to FDA on regulatory issues. The meeting will be open to the public. FDA is establishing a docket for public comment on this document.

DATES: The meeting will be held on March 15, 2024, from 8:30 a.m. to 5:30 p.m. eastern time.

ADDRESSES: All meeting participants will be heard, viewed, captioned, and recorded for this advisory committee meeting via an online teleconferencing and/or video conferencing platform.

Answers to commonly asked questions about FDA advisory committee meetings may be accessed at: *https://www.fda.gov/AdvisoryCommittees/AboutAdvisoryCommittees/ucm408555.htm.*

FDA is establishing a docket for public comment on this meeting. The docket number is FDA–2024–N–0018. The docket will close on March 14, 2024. Please note that late, untimely filed comments will not be considered. The *https://www.regulations.gov* electronic filing system will accept comments until 11:59 p.m. eastern time at the end of March 14, 2024. Comments received by mail/hand delivery/courier (for written/paper submissions) will be considered timely if they are received on or before that date.

Comments received on or before March 1, 2024, will be provided to the Committee. Comments received after that date will be taken into consideration by FDA. In the event that the meeting is cancelled, FDA will continue to evaluate any relevant applications or information, and consider any comments submitted to the docket, as appropriate.

You may submit comments 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–2024–N–0018 for ''Oncologic Drugs Advisory Committee; Notice of Meeting; Establishment of a Public Docket; Request for Comments.'' Received comments, those filed in a timely manner (see **ADDRESSES**), will be placed in the docket and, except for those submitted as ''Confidential Submissions,'' publicly viewable at *https://www.regulations.gov* or at the Dockets Management Staff between 9 a.m. and 4 p.m., Monday through Friday, 240–402–7500.

• Confidential Submissions—To submit a comment with confidential information that you do not wish to be made publicly available, submit your comments only as a written/paper submission. You should submit two copies total. One copy will include the information you claim to be confidential with a heading or cover note that states ''THIS DOCUMENT CONTAINS CONFIDENTIAL INFORMATION.'' FDA 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 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 the information as ''confidential.'' Any information marked as ''confidential'' will not be disclosed except in accordance with 21 CFR 10.20 and other applicable disclosure law. For more information about FDA's posting of comments to public dockets, see 80 FR 56469, September 18, 2015, or access the information at: *https://www.govinfo.gov/content/pkg/FR-2015-09-18/pdf/2015-23389.pdf.*

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

FOR FURTHER INFORMATION CONTACT: Joyce Frimpong, Center for Drug Evaluation and Research, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 31, Rm. 2417, Silver Spring, MD 20993–0002, 240–402–5343, email: *ODAC@fda.hhs.gov,* or FDA Advisory Committee Information Line, 1–800–741–8138 (301–443–0572 in the Washington, DC area). A notice in the **Federal Register** about last-minute modifications that impact a previously announced advisory committee meeting cannot always be published quickly enough to provide timely notice. Therefore, you should always check the FDA's website at *https://www.fda.gov/AdvisoryCommittees/default.htm* and scroll down to the appropriate advisory committee meeting link, or call the advisory committee information line to learn about possible modifications before the meeting.

SUPPLEMENTARY INFORMATION:

Agenda: The meeting presentations will be heard, viewed, captioned, and recorded through an online teleconferencing and/or video conferencing platform. During the morning session, the Committee will discuss supplemental biologics license application (sBLA) 125746.74 for CARVYKTI (ciltacabtagene autoleucel), suspension for intravenous infusion, submitted by Janssen Biotech, Inc. The proposed indication for this product is for the treatment of adult patients with relapsed or refractory multiple myeloma, who have received at least one prior line of therapy, including a proteasome inhibitor, and an immunomodulatory agent, and are refractory to lenalidomide. The Committee will have a general discussion focused on the overall survival data in the Study MMY3002 (CARTITUDE–4) and the risk and benefit of ciltacabtagene autoleucel in the intended population. During the afternoon session, the Committee will discuss sBLA 125736.218 for ABECMA (idecabtagene vicleucel), suspension for intravenous infusion, submitted by Celgene Corp., a Bristol-Myers Squibb Co. The proposed indication is for the treatment of adult patients with relapsed or refractory multiple myeloma who have received an immunomodulatory agent, a proteasome inhibitor, and an anti-CD38 monoclonal antibody. The Committee will have a general discussion focused on the overall survival data in the Study MM–003 (KarMMa–3) and the risk and benefit of idecabtagene vicleucel in the intended population.

FDA intends to make background material available to the public no later than 2 business days before the meeting. If FDA is unable to post the background material on its website prior to the meeting, the background material will be made publicly available on FDA's website at the time of the advisory committee meeting. Background material and the link to the online teleconference and/or video conference meeting will be available at *https://www.fda.gov/AdvisoryCommittees/Calendar/default.htm.* Scroll down to the appropriate advisory committee meeting link. The meeting will include slide presentations with audio and video components to allow the presentation of materials in a manner that most closely resembles an in-person advisory committee meeting.

Procedure: Interested persons may present data, information, or views, orally or in writing, on issues pending before the Committee. All electronic and written submissions to the Docket (see **ADDRESSES**) on or before March 1, 2024, will be provided to the Committee. Oral presentations from the public will be scheduled between approximately 11:10 a.m. to 11:40 a.m. and 4 p.m. to 4:30 p.m. eastern time. Those individuals interested in making formal oral presentations should notify the contact person and submit a brief statement of the general nature of the evidence or arguments they wish to present, the names and addresses of proposed participants, and an indication of the approximate time requested to make their presentation on or before February 22, 2024. Time allotted for each presentation may be limited. If the number of registrants requesting to speak is greater than can be reasonably accommodated during the scheduled open public hearing session, FDA may

conduct a lottery to determine the speakers for the scheduled open public hearing session. The contact person will notify interested persons regarding their request to speak by February 23, 2024.

For press inquiries, please contact the Office of Media Affairs at *fdaoma@fda.hhs.gov* or 301–796–4540.

FDA welcomes the attendance of the public at its advisory committee meetings and will make every effort to accommodate persons with disabilities. If you require accommodations due to a disability, please contact Joyce Frimpong (see **FOR FURTHER INFORMATION CONTACT**) at least 7 days in advance of the meeting.

FDA is committed to the orderly conduct of its advisory committee meetings. Please visit our website at *https://www.fda.gov/AdvisoryCommittees/AboutAdvisoryCommittees/ucm111462.htm* for procedures on public conduct during advisory committee meetings.

Notice of this meeting is given under the Federal Advisory Committee Act (5 U.S.C. 1001 *et seq.*). This meeting notice also serves as notice that, pursuant to 21 CFR 10.19, the requirements in 21 CFR 14.22(b), (f), and (g) relating to the location of advisory committee meetings are hereby waived to allow for this meeting to take place using an online meeting platform. This waiver is in the interest of allowing greater transparency and opportunities for public participation, in addition to convenience for advisory committee members, speakers, and guest speakers. The conditions for issuance of a waiver under 21 CFR 10.19 are met.

Dated: January 30, 2024.

Lauren K. Roth,

Associate Commissioner for Policy.

[FR Doc. 2024–02229 Filed 2–2–24; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Resources and Services Administration

Agency Information Collection Activities: Proposed Collection: Public Comment Request; Information Collection Request Title: Small Health Care Provider Quality Improvement Program, OMB No. 0915–0387—Extension

AGENCY: Health Resources and Services Administration (HRSA), Department of Health and Human Services.

ACTION: Notice.

SUMMARY: In compliance with the requirement for opportunity for public comment on proposed data collection projects of the Paperwork Reduction Act of 1995, HRSA announces plans to submit an Information Collection Request (ICR), described below, to the Office of Management and Budget (OMB). Prior to submitting the ICR to OMB, HRSA seeks comments from the public regarding the burden estimate, below, or any other aspect of the ICR.

DATES: Comments on this ICR should be received no later than April 5, 2024.

ADDRESSES: Submit your comments to *paperwork@hrsa.gov* or mail the HRSA Information Collection Clearance Officer, Room 14N39, 5600 Fishers Lane, Rockville, Maryland 20857.

FOR FURTHER INFORMATION CONTACT: To request more information on the proposed project or to obtain a copy of the data collection plans and draft instruments, email *paperwork@hrsa.gov* or call Joella Roland, the HRSA Information Collection Clearance Officer, at (301) 443–3983.

SUPPLEMENTARY INFORMATION: When submitting comments or requesting information, please include the ICR title for reference.

Information Collection Request Title: Small Health Care Provider Quality Improvement Program, OMB No. 0915–0387—Extension.

Abstract: This program is authorized by the Public Health Service Act, section 330A(g) (42 U.S.C. 254c(g)). This authority permits the Federal Office of Rural Health Policy (FORHP) to award Small Health Care Provider Quality Improvement grants that expand access to, coordinate, and improve the quality of basic health care services, and enhance the delivery of health care, in rural areas. Specifically, FORHP may award grants to provide for the planning and implementation of Small Health Care Provider Quality Improvement activities, including activities related to increasing care coordination, enhancing chronic disease management, and improving patient health outcomes.

The purpose of the Small Health Care Provider Quality Improvement Grant Program is to provide support to rural primary care providers for implementation of quality improvement activities. The goal of the program is to promote the development of an evidence-based culture and delivery of coordinated care in the primary care setting. Additional objectives of the program include improved health outcomes for patients, enhanced chronic disease management, and better engagement of patients and their caregivers. Organizations participating in the program are required to use an evidence-based quality improvement model, perform tests of change focused on improvement, and use health information technology (HIT) to collect and report data. HIT may include an electronic patient registry or an electronic health record and is a critical component for improving quality and patient outcomes. With HIT it is possible to generate timely and meaningful data, which helps providers track and plan care. HRSA collects information from grant recipients that participate in this program using an OMB-approved set of performance measures and seeks to extend its approved information collection.

Need and Proposed Use of the Information: For this program, performance measures were drafted to provide data to the program and to enable HRSA to provide aggregate program data required by Congress under the Government Performance and Results Act of 1993. These measures cover the principal topic areas of interest to FORHP, including: (1) access to care, (2) population demographics, (3) staffing, (4) consortium/network, (5) sustainability, and (6) project specific domains. All measures will speak to FORHP's progress toward meeting the goals set. FORHP collects this information to quantify the impact of grant funding on access to health care, quality of services, and improvement of health outcomes. FORHP uses the data for program improvement and grantees use the data for performance tracking. No changes are proposed from the current data collection effort, but FORHP estimates fewer respondents to align with the current cohort of grantees.

Likely Respondents: The respondents would be the grant recipients (program grantees, not patients who receive health care services) of the Small Health Care Provider Quality Improvement Program grants.

Burden Statement: Burden in this context means the time expended by persons to generate, maintain, retain, disclose, or provide the information requested. This includes the time needed to review instructions; to develop, acquire, install, and utilize technology and systems for the purpose of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; to train personnel and to be able to respond to a collection of information; to search data sources; to complete and review the collection of information; and to transmit or otherwise disclose the information. The total annual burden

hours estimated for this ICR are summarized in the table below.

TOTAL ESTIMATED ANNUALIZED BURDEN HOURS

Form name	Number of respondents	Number of responses per respondent	Total responses	Average burden per response (in hours)	Total burden hours
Performance Improvement and Measurement Systems (PIMS)	21	1	21	8	168
Total	21	1	21	8	168

HRSA specifically requests comments on: (1) the necessity and utility of the proposed information collection for the proper performance of the agency's functions; (2) the accuracy of the estimated burden; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) the use of automated collection techniques or other forms of information technology to minimize the information collection burden.

Maria G. Button,

Director, Executive Secretariat.

[FR Doc. 2024–02242 Filed 2–2–24; 8:45 am]

BILLING CODE 4165–15–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Allergy and Infectious Diseases; Notice of Closed Meeting

Pursuant to section 1009 of the Federal Advisory Committee Act, as amended, notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Allergy and Infectious Diseases Special Emphasis Panel; PAR–23–065, NIAID Resource Related Research Projects (R24 Clinical Trial Not Allowed).

Date: February 29, 2024.

Time: 10:00 a.m. to 12:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institute of Allergy and Infectious Diseases, National Institutes of Health, 5601 Fishers Lane, Room 3G56, Rockville, MD 20892 (Video Assisted Meeting).

Contact Person: Maryam Rohani, Ph.D., Scientific Review Officer, Scientific Review Program, Division of Extramural Activities, National Institute of Allergy and Infectious Diseases, National Institutes of Health, 5601 Fishers Lane, Room 3G56, Rockville, MD 20852, (301) 761–6656, *maryam.rohani@nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.855, Allergy, Immunology, and Transplantation Research; 93.856, Microbiology and Infectious Diseases Research, National Institutes of Health, HHS)

Dated: January 30, 2024.

Lauren A. Fleck,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2024–02152 Filed 2–2–24; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute on Drug Abuse; Notice of Closed Meeting

Pursuant to section 1009 of the Federal Advisory Committee Act, as amended, notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute on Drug Abuse Special Emphasis Panel; Racial Equity Visionary Award Program for Research at Minority Serving Institutions on Substance Use and Racial Equity.

Date: March 28, 2024.

Time: 10:30 a.m. to 6:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institute of Health, National Institute on Drug Abuse, 301 North Stonestreet Avenue, Bethesda, MD 20892.

Contact Person: Sheila Pirooznia, Ph.D., Scientific Review Officer, Division of Extramural Review, Scientific Review Branch, National Institute on Drug Abuse, NIH, 301 North Stonestreet Avenue, MSC 6021, Bethesda, MD 20892, (301) 496–9350, *sheila.pirooznia@nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.277, Drug Abuse Scientist Development Award for Clinicians, Scientist Development Awards, and Research Scientist Awards; 93.278, Drug Abuse National Research Service Awards for Research Training; 93.279, Drug Abuse and Addiction Research Programs, National Institutes of Health, HHS)

Dated: January 30, 2024.

Lauren A. Fleck,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2024–02154 Filed 2–2–24; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Neurological Disorders and Stroke; Notice of Closed Meeting

Pursuant to section 1009 of the Federal Advisory Committee Act, as amended, notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Neurological Disorders and Stroke Special Emphasis Panel; Translational and Brain Devices Panel.

Date: February 21, 2024.

Time: 2:00 p.m. to 6:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Neuroscience Center, 6001 Executive Boulevard, Rockville, MD 20852.

Contact Person: M. Catherine Bennett, Ph.D., Scientific Review Officer, Scientific Review Branch, Division of Extramural Activities, NINDS/NIH/HHS NSC, 6001 Executive Boulevard, Rockville, MD 20852, 301–435–1766, *bennettc3@csr.nih.gov.*

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

(Catalogue of Federal Domestic Assistance Program Nos. 93.853, Clinical Research Related to Neurological Disorders; 93.854, Biological Basis Research in the Neurosciences, National Institutes of Health, HHS.)

Dated: January 31, 2024.

Lauren A. Fleck,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2024–02219 Filed 2–2–24; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Cancer Institute; Amended Notice of Meeting

Notice is hereby given of a change in the meeting of the National Cancer Advisory Board, February 8, 2024, 05:00 p.m., National Cancer Institute Shady Grove, 9609 Medical Center Drive, Bethesda, MD 20892 (Virtual Meeting) which was published in the **Federal Register** on November 7, 2023, FR Doc 2023–24578, 88 FR 76836.

This meeting notice is being amended to change the times for the National Cancer Advisory Board (NCAB) Subcommittee Meetings, Open Session, and Closed Session on February 8, 2024. The NCAB Subcommittee Meetings will now be held from 10:00 a.m. to 1:10 p.m. instead of from 11:00 a.m. to 1:05 p.m. The NCAB Open Session will now be held from 1:15 p.m. to 4:15 p.m. instead of from 1:15 p.m. to 3:30 p.m. The NCAB Closed Session will now be held from 4:25 p.m. to 5:30 p.m. instead of from 3:30 p.m. to 5:00 p.m. The NCAB Subcommittee Meetings and NCAB Open Session can be accessed from the NIH Videocast at the following link: *https://videocast.nih.gov/.* The meeting is partially Closed to the public.

Dated: January 31, 2024.

Melanie J. Pantoja,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2024–02222 Filed 2–2–24; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF THE INTERIOR

Geological Survey

[GX24EN05ESBJF00]

Public Meeting of the Advisory Council for Climate Adaptation Science

AGENCY: U.S. Geological Survey, Department of the Interior.

ACTION: Notice of meeting.

SUMMARY: In accordance with the Federal Advisory Committee Act (FACA) of 1972, the U.S. Geological Survey (USGS) is publishing this notice to announce that a Federal advisory committee meeting of the Advisory Council for Climate Adaptation Science (ACCAS) will take place and is open to members of the public.

DATES: The meeting will be held in person on Tuesday, February 27, 2024, from 8:30 a.m. to 5 p.m., and on Wednesday, February 28, 2024, from 8:30 a.m. to 3 p.m. eastern standard time. A virtual option for attendance will be provided. The final schedule will be made available in advance of the meeting at: *https://www.usgs.gov/programs/climate-adaptation-science-centers/advisory-council-climate-adaptation-science.*

ADDRESSES: The meeting will be held at the Stewart Lee Udall Department of the Interior Building, 1849 C Street NW, Conference Room 5160, Washington, DC 20240.

FOR FURTHER INFORMATION CONTACT: Holly Chandler, ACCAS Designated Federal Officer, USGS, by email at *casc@usgs.gov* or by telephone at (406) 207–9500.

SUPPLEMENTARY INFORMATION: This meeting is being held consistent with the provisions of the FACA (5 U.S.C. ch. 10), the Government in the Sunshine Act of 1976 (5 U.S.C. 552B, as amended), and 41 CFR part 102–3.

Purpose of the Meeting: The ACCAS advises the Secretary of the Interior on the operations of the USGS Climate Adaptation Science Centers (CASCs). ACCAS members represent State and local governments; Tribes and Indigenous organizations; non-governmental organizations; academia; and the private sector. Additional information about the ACCAS is available at: *https://www.usgs.gov/programs/climate-adaptation-science-centers/advisory-council-climate-adaptation-science.*

Agenda Topics: Agenda topics will cover background information about the CASCs; the development of priorities and a workplan for the ACCAS; and discussion of possible ACCAS subcommittees. The final agenda will be made available in advance of the meeting at: *https://www.usgs.gov/programs/climate-adaptation-science-centers/advisory-council-climate-adaptation-science.* The meeting will include opportunities for public comment on February 27 and 28. Comments may also be submitted to ACCAS by email to *casc@usgs.gov.*

Meeting Accessibility/Special Accommodations: The meeting is open to the public; however, seating may be limited due to room capacity. A virtual option for attendance will be provided to those who register. Public attendees should register by completing this form: *https://www.usgs.gov/programs/climate-adaptation-science-centers/advisory-council-climate-adaptation-science.* Registrations are due by February 20, 2024.

Please make requests in advance for sign-language interpreter services, assistive listening devices, or other reasonable accommodations. We ask that you contact *casc@usgs.gov* at least seven (7) business days prior to the meeting to give the Department of the Interior sufficient time to process your request. All reasonable accommodation requests are managed on a case-by-case basis.

Individuals in the United States who are deaf, blind, 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.

Public Disclosure of Comments: There will be an opportunity for public comment during the meeting. Depending on the number of people who wish to speak and the time available, the time for individual comments may be limited. Written comments may also be sent to the ACCAS for consideration. To allow for full consideration of information by ACCAS members, written comments must be provided by email to *casc@usgs.gov* at least three (3) business days prior to the meeting.

Before including your address, phone number, email address, or other personally identifiable information (PII) in your comment, you should be aware

that your entire comment—including your PII—may be made publicly available at any time. While you may ask us in your comment to withhold your PII from public review, we cannot guarantee that we will be able to do so.

Authority: 5 U.S.C. ch. 10.

Holly A. Chandler,

Designated Federal Officer, Advisory Council for Climate Adaptation Science, U.S. Geological Survey.

[FR Doc. 2024–02210 Filed 2–2–24; 8:45 am]

BILLING CODE 4338–11–P

INTERNATIONAL TRADE COMMISSION

[Investigation No. 332–598]

Greenhouse Gas Emissions Intensities of the U.S. Steel and Aluminum Industries at the Product Level; Submission of Questionnaire and Information Collection Plan for Office of Management and Budget Review

AGENCY: United States International Trade Commission.

ACTION: Notice of submission of request for approval of a questionnaire and information collection to the Office of Management and Budget.

SUMMARY: The information requested by the questionnaire is for use by the Commission in connection with Investigation No. 332–598, *Greenhouse Gas Emissions Intensities of the U.S. Steel and Aluminum Industries at the Product Level.*

ADDRESSES: All Commission offices are located in the U.S. International Trade Commission Building, 500 E Street SW, Washington, DC. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202–205–2000.

FOR FURTHER INFORMATION CONTACT: The project leaders for this investigation are Caroline Peters, Shova KC, Alexander Melton, and Kristin Smyth. Please direct all questions and comments about this investigation to Shova KC at 202–780–0230 or via email at *sa.emissions@usitc.gov.* The Commission is not accepting paper correspondence for this investigation.

Comments about the proposal should be provided to the Office of Management and Budget, Office of Information and Regulatory Affairs through the Information Collection Review Dashboard at *https://www.reginfo.gov.* All comments should be specific, indicating which part of the questionnaire is objectionable, describing the concern in detail, and including specific suggested revisions or language changes. Copies of any comments should be provided electronically to the Commission's survey team via an email to *sa.emissions@usitc.gov.*

The public record for this investigation may be viewed on the Commission's electronic docket (EDIS) at *https://edis.usitc.gov.* General information concerning the Commission may be obtained by accessing its internet address (*https://www.usitc.gov*). Hearing-impaired individuals are advised that information on this matter can be obtained by contacting the TDD terminal on 202–205–1810.

SUPPLEMENTARY INFORMATION: The information requested by the questionnaire is for use by the Commission in connection with Investigation No. 332–598, *Greenhouse Gas Emissions Intensities of the U.S. Steel and Aluminum Industries at the Product Level,* instituted under the authority of section 332(g) of the Tariff Act of 1930 (19 U.S.C. 1332(g)). This investigation and report were requested by the United States Trade Representative in a letter dated June 5, 2023. This investigation was instituted on July 5, 2023, and the notice of investigation was published in the **Federal Register** on July 10, 2023 (88 FR 43633). The Commission will deliver its report to the Trade Representative by January 28, 2025.

As stated in the notice of investigation, the Trade Representative requested that the Commission generate estimates of the greenhouse gas (GHG) emissions intensities of a broad range of U.S. steel and aluminum products. The U.S.-produced individual products that are covered under this investigation are enumerated in attachment B to the request letter. GHG emissions intensities will be developed from the scope 1 and 2 emissions related to the production of covered steel and aluminum products and the scope 3 emissions associated with the material and resource inputs for the production of covered steel and aluminum products in 2022. These intensity estimates will be developed, to the extent practicable, for a set of specific product category groupings listed in attachment A of the request letter, though the Commission may present emissions intensities at further levels of disaggregation from these groupings. Because the information necessary to generate these estimates is not available in the requested specificity from governmental and other public sources, the Trade Representative directed the Commission to obtain much of such information through a survey. The survey aims to collect data on scope 1, 2, and 3 emissions, production, and parameters that will allow for the allocation of the emissions to the product categories. Responses will be used as inputs in the Commission's calculation of emissions intensities.

The Commission intends to submit the following draft information collection plan to OMB:

(1) *Number of forms submitted:* 2.

(2) *Title of forms:* Greenhouse Gas (GHG) Emissions Intensities Questionnaire: Company-Level and Greenhouse Gas (GHG) Emissions Intensities Questionnaire: Facility-Level.

(3) *Type of request:* New.

(4) *Frequency of use:* Industry questionnaire, single data gathering, scheduled for 2024.

(5) *Description of respondents:* Companies with U.S. facilities that produced steel and aluminum products in 2022 and those facilities.

(6) *Estimated number of questionnaires to be distributed:* 5,250 total (1,750 companies, 3,500 facilities).

(7) *Estimated total number of hours to complete the questionnaire per respondent:* 5 hours for the company-level questionnaire and 30 hours for the facility-level questionnaire for each facility.

(8) Information obtained from the questionnaires that qualifies as confidential business information will be so treated by the Commission and not disclosed in a manner that would reveal the individual operations of a business at the company or facility level.

Information about the investigation and other supplementary documents can be accessed on the USITC website at *https://www.usitc.gov/saemissions.*

By order of the Commission.

Issued: January 31, 2024.

Lisa Barton,

Secretary to the Commission.

[FR Doc. 2024–02232 Filed 2–2–24; 8:45 am]

BILLING CODE 7020–02–P

INTERNATIONAL TRADE COMMISSION

[Investigation No. 332–602]

Apparel: Export Competitiveness of Certain Foreign Suppliers to the United States

AGENCY: United States International Trade Commission

ACTION: Notice of a new date for the public hearing.

SUMMARY: The Commission has changed the date of its public hearing for

Investigation No. 332–602: *Apparel: Export Competitiveness of Certain Foreign Suppliers to the United States* from March 7, 2024, to March 11, 2024. Related filing deadlines have also been adjusted.

DATES:

February 23, 2024: Deadline for filing requests to appear at the public hearing.

February 27, 2024: Deadline for filing prehearing briefs and statements.

March 4, 2024: Deadline for filing electronic copies of oral hearing statements.

March 11, 2024: Public hearing.

March 25, 2024: Deadline for filing posthearing briefs, statements, and all other written submissions.

August 30, 2024: Transmittal of Commission report to the Trade Representative.

ADDRESSES: All Commission offices, including the Commission's hearing rooms, are located in the U.S. International Trade Commission Building, 500 E Street SW, Washington, DC. All written submissions should be addressed to the Secretary, U.S. International Trade Commission, 500 E Street SW, Washington, DC 20436. The public record for this investigation may be viewed on the Commission's electronic docket (EDIS) at *https://edis.usitc.gov.*

FOR FURTHER INFORMATION CONTACT: Project Leader Alissa Tafti (202–205–3244 or *alissa.tafti@usitc.gov*) or Deputy Project Leaders Elizabeth Howlett (202–205–3458 or *elizabeth.howlett@usitc.gov*) and Junie Joseph (202–205–3363 or *junie.joseph@usitc.gov*) for information specific to this investigation. For information on the legal aspects of this investigation, contact Brian Allen (202–205–3034 or *brian.allen@usitc.gov*) or William Gearhart (202–205–3091 or *william.gearhart@usitc.gov*) of the Commission's Office of the General Counsel. The media should contact Jennifer Andberg, Office of External Relations (202–205–3404 or *jennifer.andberg@usitc.gov*). Hearing-impaired individuals are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on 202–205–1810. General information concerning the Commission may be obtained by accessing its internet address (*https://www.usitc.gov*). Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202–205–2000.

SUPPLEMENTARY INFORMATION: The Commission published notice of institution of the investigation in the **Federal Register** on January 19, 2024 (89 FR 3962, January 19, 2024). In that notice, the Commission announced it would hold a public hearing on March 7, 2024, and set dates by which requests to appear at the hearing, briefs, and other written submissions should be filed. To facilitate the receipt of testimony and information in this investigation, the Commission has rescheduled the public hearing and the dates by which requests to appear at the hearing, briefs, and other written submissions should be filed. Please note the Secretary's Office will accept only electronic filings at this time. Filings must be made through the Commission's Electronic Document Information System (EDIS, *https://edis.usitc.gov*). No in-person paper-based filings or paper copies of any electronic filings will be accepted until further notice. The scope of the investigation remains the same as published in the **Federal Register** on January 19, 2024.

Public Hearing: A public hearing in connection with this investigation will be held beginning at 9:30 a.m., March 11, 2024, in the Main Hearing Room of the U.S. International Trade Commission, 500 E Street SW, Washington DC 20436. The hearing can also be accessed remotely using the WebEx videoconference platform. A link to the hearing will be posted on the Commission's website at *https://www.usitc.gov/calendarpad/calendar.html.*

Requests to appear at the hearing should be filed with the Secretary to the Commission no later than 5:15 p.m., February 23, 2024, in accordance with the requirements in the ''Written Submissions'' section below. Any requests to appear as a witness via videoconference must be included with your request to appear. Requests to appear as a witness via videoconference must include a statement explaining why the witness cannot appear in person; the Chairman, or other person designated to conduct the investigation, may at their discretion for good cause shown, grant such requests. Requests to appear as a witness via videoconference due to illness or a positive COVID–19 test result may be submitted by 3 p.m. the business day prior to the hearing.

All prehearing briefs and statements should be filed no later than 5:15 p.m., February 27, 2024. To facilitate the hearing, including the preparation of an accurate written public transcript of the hearing, oral testimony to be presented at the hearing must be submitted to the Commission electronically no later than noon, March 4, 2024. All posthearing briefs and statements should be filed no later than 5:15 p.m., March 25, 2024. Posthearing briefs and statements should address matters raised at the hearing. For a description of the different types of written briefs and statements, see the ''Definitions'' section below.

In the event that, as of the close of business on February 23, 2024, no witnesses are scheduled to appear at the hearing, the hearing will be canceled. Any person interested in attending the hearing as an observer or nonparticipant should check the Commission website as indicated above for information concerning whether the hearing will be held.

Written submissions: In lieu of or in addition to participating in the hearing, interested persons are invited to file written submissions concerning this investigation. All written submissions should be addressed to the Secretary, and should be received no later than 5:15 p.m., March 25, 2024. All written submissions must conform to the provisions of section 201.8 of the Commission's *Rules of Practice and Procedure* (19 CFR 201.8), as temporarily amended by 85 FR 15798 (March 19, 2020). Under that rule waiver, the Office of the Secretary will accept only electronic filings at this time. Filings must be made through the Commission's Electronic Document Information System (EDIS, *https://edis.usitc.gov*). No in-person paper-based filings or paper copies of any electronic filings will be accepted until further notice. Persons with questions regarding electronic filing should contact the Office of the Secretary, Docket Services Division (202–205–1802), or consult the Commission's Handbook on Filing Procedures.

Definitions of types of documents that may be filed; Requirements: In addition to requests to appear at the hearing, this notice provides for the possible filing of four types of documents: prehearing briefs, oral hearing statements, posthearing briefs, and other written submissions.

(1) *Prehearing briefs* refers to written materials relevant to the investigation and submitted in advance of the hearing, and includes written views on matters that are the subject of the investigation, supporting materials, and any other written materials that you consider will help the Commission in understanding your views. You should file a prehearing brief particularly if you plan to testify at the hearing on behalf of an industry group, company, or other organization, and wish to provide detailed views or information that will support or supplement your testimony.

(2) *Oral hearing statements (testimony)* refers to the actual oral statement that you intend to present at the hearing. Do not include any confidential business information (CBI) in that statement. If you plan to testify, you must file a copy of your oral statement by the date specified in this notice. This statement will allow Commissioners to understand your position in advance of the hearing and will also assist the court reporter in preparing an accurate transcript of the hearing (*e.g.,* names spelled correctly).

(3) *Posthearing briefs* refers to submissions filed after the hearing by persons who appeared at the hearing. Such briefs: (a) should be limited to matters that arose during the hearing; (b) should respond to any Commissioner and staff questions addressed to you at the hearing; (c) should clarify, amplify, or correct any statements you made at the hearing; and (d) may, at your option, address or rebut statements made by other participants in the hearing.

(4) *Other written submissions* refers to any other written submissions that interested persons wish to make, regardless of whether they appeared at the hearing, and may include new information or updates of information previously provided.

In accordance with the provisions of section 201.8 of the Commission's Rules of Practice and Procedure (19 CFR 201.8), the document must identify on its cover (1) the investigation number and title and the type of document filed (*i.e.,* prehearing brief, oral statement of (name), posthearing brief, or written submission), (2) the name and signature of the person filing it, (3) the name of the organization that the submission is filed on behalf of, and (4) whether it contains CBI. If it contains CBI, it must comply with the marking and other requirements set out below in this notice relating to CBI. Submitters of written documents (other than oral hearing statements) are encouraged to include a short summary of their position or interest at the beginning of the document, and a table of contents when the document addresses multiple issues.

Confidential business information: Any submissions that contain CBI must also conform to the requirements of section 201.6 of the Commission's Rules of Practice and Procedure (19 CFR 201.6). Section 201.6 of the rules requires that the cover of the document and the individual pages be clearly marked as to whether they are the ''confidential'' or ''nonconfidential'' version, and that the CBI is clearly identified by means of brackets. All written submissions, except for CBI, will be made available for inspection by interested persons.

As requested by the Trade Representative, the Commission will not include any CBI in its report. However, all information, including CBI, submitted in this investigation may be disclosed to and used by: (i) the Commission, its employees and offices, and contract personnel (a) for developing or maintaining the records of this or a related proceeding, or (b) in internal investigations, audits, reviews, and evaluations relating to the programs, personnel, and operations of the Commission, including under 5 U.S.C. Appendix 3; or (ii) U.S. government employees and contract personnel for cybersecurity purposes. The Commission will not otherwise disclose any CBI in a way that would reveal the operations of the firm supplying the information.

Summaries of written submissions: Persons wishing to have a summary of their position included in the report should include a summary with their written submission on or before March 25, 2024, and should mark the summary as having been provided for that purpose. The summary should be clearly marked as ''summary for inclusion in the report'' at the top of the page. The summary may not exceed 500 words and should not include any CBI. The summary will be published as provided if it meets these requirements and is germane to the subject matter of the investigation. The Commission will list the name of the organization furnishing the summary and will include a link where the written submission can be found.

By order of the Commission.

Issued: January 31, 2024.

Lisa Barton,

Secretary to the Commission.

[FR Doc. 2024–02249 Filed 2–2–24; 8:45 am]

BILLING CODE 7020–02–P

INTERNATIONAL TRADE COMMISSION

Notice of Receipt of Complaint; Solicitation of Comments Relating to the Public Interest

AGENCY: International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that the U.S. International Trade Commission has received a complaint regarding *Certain Oil Vaporizing Devices, Components Thereof, and Products Containing the Same,* DN 3720; 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: Lisa R. Barton, 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 PAX Labs, Inc. on January 30, 2024. 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 certain oil vaporizing devices, components thereof, and products containing the same. The complaint names as respondents: STIIIZY IP LLC f/k/a STIIIZY, LLC of Los Angeles, CA; ALD Group Limited, of China; ALD (Hong Kong) Holdings Limited of Hong Kong; and STIIIZY Inc. d/b/a Shryne Group Inc. of Los Angeles, CA. The complainant requests that the Commission issue a limited exclusion order, cease and desist orders, and impose a bond upon respondents' 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, notwithstanding § 201.14(a) of the Commission's Rules of Practice and Procedure. 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. 3720'') in a prominent place on the cover page and/or the first page. (*See* Handbook for Electronic Filing Procedures, Electronic Filing Procedures).[1] Please note the Secretary's Office will accept only electronic filings during this time. Filings must be made through the Commission's Electronic Document Information System (EDIS, *https://edis.usitc.gov.*) No in-person paper-based filings or paper copies of any electronic filings will be accepted until further notice. Persons with questions regarding filing should contact the Secretary at *EDIS3Help@usitc.gov.*

Any person desiring to submit a document to the Commission in confidence must request confidential treatment. All such requests should be directed to the Secretary to the Commission and must include a full statement of the reasons why the Commission should grant such treatment. *See* 19 CFR 201.6. Documents for which confidential treatment by the Commission is properly sought will be treated accordingly. All information, including confidential business information and documents for which confidential treatment is properly sought, submitted to the Commission for purposes of this Investigation may be disclosed to and used: (i) by the Commission, its employees and Offices, and contract personnel (a) for developing or maintaining the records of this or a related proceeding, or (b) in internal investigations, audits, reviews, and evaluations relating to the programs, personnel, and operations of the Commission including under 5 U.S.C. Appendix 3; or (ii) by U.S. government employees and contract personnel,[2] solely for cybersecurity purposes. All nonconfidential written submissions will be available for public inspection at the Office of the Secretary and on EDIS.[3]

This action is taken under the authority of section 337 of the Tariff Act of 1930, as amended (19 U.S.C. 1337), and of §§ 201.10 and 210.8(c) of the Commission's Rules of Practice and Procedure (19 CFR 201.10, 210.8(c)).

By order of the Commission.

Issued: January 30, 2024.

Lisa Barton,

Secretary to the Commission.

[FR Doc. 2024–02144 Filed 2–2–24; 8:45 am]

BILLING CODE 7020–02–P

[1] Handbook for Electronic Filing Procedures: *https://www.usitc.gov/documents/handbook_on_filing_procedures.pdf.*

[2] All contract personnel will sign appropriate nondisclosure agreements.

[3] Electronic Document Information System (EDIS): *https://edis.usitc.gov.*

DEPARTMENT OF JUSTICE

Antitrust Division

Notice Pursuant to the National Cooperative Research and Production Act of 1993—ODVA, Inc.

Notice is hereby given that, on December 8, 2023, pursuant to section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* (''the Act''), ODVA, Inc. (''ODVA'') has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing changes in its membership. The notifications were filed for the purpose of extending the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Specifically, EN2CORE Technology Inc., Yuseong-gu, SOUTH KOREA; Binarix Corporation, Tokyo, JAPAN; VWR International, LLC, Radnor, PA; Doosan Robotics Inc., Gyeonggi-do, SOUTH KOREA; RT-Labs AB, Göteborg, SWEDEN; STROKMATIC AUTOMAÇÃO INDUSTRIAL LTDA, Joinville, BRAZIL; PSTEK Co., Ltd, Gyeonggi-do, SOUTH KOREA; UGL Engineering Pty Limited, North Sydney, AUSTRALIA; LEWCO Inc., Sandusky, OH; Schaeffler Monitoring Services GmbH, Herzogenrath, GERMANY; and Veo Robotics, Inc., Waltham, MA, have been added as parties to this venture.

Also, TRIDIMEO, Villebon-Sur-Yvette, FRANCE; and Perle Systems Limited, Markham, Ontario, CANADA, have withdrawn as parties to this venture.

Additionally, I–CON Industry Tech, JiaXing, ZheJiang, PEOPLE'S REPUBLIC OF CHINA, has been removed as a party to this venture.

No other changes have been made in either the membership or planned activity of the group research project. Membership in this group research project remains open, and ODVA intends to file additional written notifications disclosing all changes in membership.

On June 21, 1995, ODVA filed its original notification pursuant to section 6(a) of the Act. The Department of Justice published a notice in the **Federal Register** pursuant to section 6(b) of the Act on February 15, 1996 (61 FR 6039).

The last notification was filed with the Department on August 29, 2023. A notice was published in the **Federal**

Register pursuant to section 6(b) of the Act on October 6, 2023 (88 FR 69671).

Suzanne Morris,

Deputy Director Civil Enforcement Operations, Antitrust Division.

[FR Doc. 2024–02224 Filed 2–2–24; 8:45 am]

BILLING CODE P

DEPARTMENT OF JUSTICE

Antitrust Division

Notice Pursuant to the National Cooperative Research and Production Act of 1993—Pistoia Alliance, Inc.

Notice is hereby given that, on October 4, 2023, pursuant to section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* (the ''Act''), Pistoia Alliance, Inc. filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing changes in its membership. The notifications were filed for the purpose of extending the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Specifically, ISOMETRICA, Calne, UNITED KINGDOM; GO FAIR Foundation, Leiden, NETHERLANDS; IQD (AURP), College Park, MD; and Patrick Pijanowski (individual member), Greenwood, MO; have been added as parties to this venture.

Also, Zapata Computing Inc., Cambridge, MA; Kalleid, Cambridge, MA; BLS Group, Cormano, ITALY; and Kvantify, Copenhagen, DENMARK have withdrawn as parties to this venture.

No other changes have been made in either the membership or planned activity of the group research project. Membership in this group research project remains open, and Pistoia Alliance, Inc. intends to file additional written notifications disclosing all changes in membership.

On May 28, 2009, Pistoia Alliance, Inc. filed its original notification pursuant to section 6(a) of the Act. The Department of Justice published a notice in the **Federal Register** pursuant to section 6(b) of the Act on July 15, 2009 (74 FR 34364).

The last notification was filed with the Department on July 7, 2023. The Department of Justice published a notice in the **Federal Register** pursuant to section 6(b) of the Act on September 26, 2023 (88 FR 66058).

Suzanne Morris,

Deputy Director Civil Enforcement Operations, Antitrust Division.

[FR Doc. 2024–02221 Filed 2–2–24; 8:45 am]

BILLING CODE P

DEPARTMENT OF JUSTICE

Antitrust Division

Notice Pursuant to the National Cooperative Research and Production Act of 1993—OpenJS Foundation

Notice is hereby given that, on December 20, 2023, pursuant to section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* (''the Act''), OpenJS Foundation has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing changes in its membership. The notifications were filed for the purpose of extending the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Specifically, Tafsol Technologies, Karachi, PAKISTAN, has been added as a party to this venture.

Also, FlowForge has changed its name to FlowFuse, San Francisco, CA.

No other changes have been made in either the membership or planned activity of the group research project. Membership in this group research project remains open, and OpenJS Foundation intends to file additional written notifications disclosing all changes in membership.

On August 17, 2015, OpenJS Foundation filed its original notification pursuant to section 6(a) of the Act. The Department of Justice published a notice in the **Federal Register** pursuant to section 6(b) of the Act on September 28, 2015 (80 FR 58297).

The last notification was filed with the Department on July 27, 2023. A notice was published in the **Federal Register** pursuant to section 6(b) of the Act on October 6, 2023 (88 FR 69670).

Suzanne Morris,

Deputy Director Civil Enforcement Operations, Antitrust Division.

[FR Doc. 2024–02225 Filed 2–2–24; 8:45 am]

BILLING CODE P

DEPARTMENT OF JUSTICE

Antitrust Division

Notice Pursuant to the National Cooperative Research and Production Act of 1993—Rust Foundation

Notice is hereby given that, on December 15, 2023, pursuant to section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* (''the Act''), Rust Foundation has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing changes in its membership. The notifications were filed for the purpose of extending the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Specifically, Lynx Software Technologies, San Jose, CA; and xFusion Digital Technologies Co., Ltd., Zhengzhou City, PEOPLE'S REPUBLIC OF CHINA, have been added as parties to this venture.

No other changes have been made in either the membership or planned activity of the group research project. Membership in this group research project remains open, and Rust Foundation intends to file additional written notifications disclosing all changes in membership.

On April 14, 2022, Rust Foundation filed its original notification pursuant to section 6(a) of the Act. The Department of Justice published a notice in the **Federal Register** pursuant to section 6(b) of the Act on May 13, 2022 (87 FR 29384).

The last notification was filed with the Department on October 3, 2023. A notice was published in the **Federal Register** pursuant to section 6(b) of the Act on December 15, 2023 (88 FR 86935).

Suzanne Morris,

Deputy Director Civil Enforcement Operations, Antitrust Division.

[FR Doc. 2024–02218 Filed 2–2–24; 8:45 am]

BILLING CODE P

DEPARTMENT OF JUSTICE

[OMB Number 1121–0NEW]

Agency Information Collection Activities; Proposed eCollection eComments Requested; National Prisoner Statistics Program: Maternal Health Supplement

AGENCY: Bureau of Justice Statistics, Department of Justice.

ACTION: 30-Day notice.

SUMMARY: The Bureau of Justice Statistics, Department of Justice (DOJ), will be submitting the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995. The proposed information collection was previously published in the **Federal Register**, on November 11, 2023, allowing a 60-day comment period.

DATES: Comments are encouraged and will be accepted for 30 days until March 6, 2024.

FOR FURTHER INFORMATION CONTACT: If you have comments especially on the estimated public burden or associated response time, suggestions, or need a copy of the proposed information collection instrument with instructions or additional information, please contact: Laura Maruschak, Statistician, Bureau of Justice Statistics, 810 Seventh Street NW, Washington, DC 20531 (email: *laura.maruschak@usdoj.gov;* telephone: 202–598–0802).

SUPPLEMENTARY INFORMATION: Written comments and suggestions from the public and affected agencies concerning the proposed collection of information are encouraged. Your comments should address one or more of the following four points:

—Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

—Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

—Enhance the quality, utility, and clarity of the information to be collected; and/or

—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.

Written comments and recommendations for this information collection should be submitted within 30 days of the publication of this notice on the following website *www.reginfo.gov/public/do/PRAMain.* Find this particular information collection by selecting ''Currently under 30-day Review—Open for Public Comments'' or by using the search function and entering the title of the information collection. This information collection request may be viewed at *www.reginfo.gov.* Follow the instructions to view Department of Justice, information collections currently under review by OMB.

DOJ seeks PRA authorization for this information collection for three (3) years. OMB authorization for an ICR cannot be for more than three (3) years without renewal. The DOJ notes that information collection requirements submitted to the OMB for existing ICRs receive a month-to-month extension while they undergo review.

Overview of This Information Collection

1. *Type of Information Collection:* New collection.

2. *Title of the Form/Collection:* National Prisoner Statistics program: Maternal Health Supplement (NPS-MatHealth).

3. *Agency form number, if any, and the applicable component of the Department of Justice sponsoring the collection:* NPS-MatHealth/Bureau of Justice Statistics.

4. *Affected public who will be asked or required to respond, as well as a brief abstract:*

Affected Public: State and Federal Government.

Abstract: In fiscal year 2021, the United States House Committee on Appropriations directed that BJS include statistics in its data collections that relate to the health needs of incarcerated pregnant women in the criminal justice system, including, but not limited to, the number of pregnant women in custody, outcomes of pregnancies, the provision of pregnancy care and services, health status of pregnant women, and racial and ethnic disparities in maternal health, at the Federal, State, Tribal, and local levels. To address the directive at the State and Federal level, BJS developed the NPS-MatHealth survey, a 1-time supplement to the National Prisoners Statistics program. The survey will request information on maternal health and pregnancy outcomes between January 1, 2023 and December 31, 2023, including provide the annual count of female admissions to prison tested for pregnancy, the number of those tests that were positive, and the number of pregnancy outcomes by outcome type. Additionally, the data collected will capture maternal health services and accommodations among State DOCs and the BOP and provide a 1-day count (December 31, 2023) of pregnant women by race/Hispanic origin, and the number of women residing in a nursery or residential program in which the infant resides with the mother.

5. *Obligation to Respond:* Voluntary.

6. *Total Estimated Number of Respondents:* 51.

7. *Estimated Time per Respondent:* 2.5 hours.

8. *Frequency:* One-time.

9. *Total Estimated Annual Time Burden:* 126 hours.

10. *Total Estimated Annual Other Costs Burden:* $4,851.

If additional information is required, contact: Darwin Arceo, Department Clearance Officer, Policy and Planning Staff, Justice Management Division, United States Department of Justice, Two Constitution Square, 145 N Street NE, 4W–218, Washington, DC 20530.

Dated: January 31, 2024.

John R. Carlson,

Department Clearance Officer for PRA, U.S. Department of Justice.

[FR Doc. 2024–02213 Filed 2–2–24; 8:45 am]

BILLING CODE 4410–18–P

DEPARTMENT OF LABOR

Employee Benefits Security Administration

Agency Information Collection Activities; Request for Public Comment

AGENCY: Employee Benefits Security Administration (EBSA), Department of Labor.

ACTION: Notice.

SUMMARY: The Department of Labor (the Department), in accordance with the Paperwork Reduction Act, provides the general public and Federal agencies with an opportunity to comment on proposed and continuing collections of information. This helps the Department assess the impact of its information collection requirements and minimize the public's reporting burden. It also helps the public understand the Department's information collection requirements and provide the requested data in the desired format. The Employee Benefits Security Administration (EBSA) is soliciting comments on the proposed extension of the information collection requests (ICRs) contained in the documents described below. A copy of the ICRs may be obtained by contacting the office listed in the **ADDRESSES** section of this notice. ICRs also are available at reginfo.gov (*http://www.reginfo.gov/public/do/PRAMain*).

DATES: Written comments must be submitted to the office shown in the

ADDRESSES section on or before April 5, 2024.

ADDRESSES: James Butikofer, Department of Labor, Employee Benefits Security Administration, 200 Constitution Avenue NW, Room N–5718, Washington, DC 20210, or *ebsa.opr@dol.gov*.

SUPPLEMENTARY INFORMATION:

I. Current Actions

This notice requests public comment on the Department's request for extension of the Office of Management and Budget's (OMB) approval of ICRs contained in the rules and prohibited transaction exemptions described below. This action is not related to any pending rulemakings and the Department is not proposing any changes to the existing ICRs at this time. An agency may not conduct or sponsor, and a person is not required to respond to, an information collection unless it displays a valid OMB control number. A summary of the ICRs and the burden estimates follows:

Agency: Employee Benefits Security Administration, Department of Labor.

Title: Employee Retirement Income Security Act Section 408(b)(2) Regulation.

Type of Review: Extension of a currently approved collection of information.

OMB Number: 1210–0133.

Affected Public: Private sector, Business or other for profits.

Respondents: 56,891.

Responses: 1,643,991.

Estimated Total Burden Hours: 1,134,055.

Estimated Total Burden Cost (Operating and Maintenance): $258,506.

Description: The prohibited transaction described in section 406(a)(1)(C) of ERISA generally prohibits the furnishing of goods, services, or facilities between a plan and a party in interest to the plan. Because ERISA defines any person furnishing services to the plan as a ''party in interest'' to the plan, a service relationship between a plan and a service provider would constitute a prohibited transaction under section 406(a)(1)(C) in the absence of relief. Section 408(b)(2) of ERISA provides relief, however, for service contracts or arrangements if the contract or arrangement is ''reasonable,'' if the services are necessary for the establishment or operation of the plan, and if no more than ''reasonable'' compensation is paid for the services. The Department's final rule under ERISA section 408(b)(2) (29 CFR 2550.408b–2) requires reasonable contracts or arrangements between employee pension benefit plans and certain providers of services to such plans include specified information to assist plan fiduciaries in assessing the reasonableness of the compensation paid for services and the conflicts of interest that may affect a service provider's performance of services.

The Department also issued a class prohibited transaction exemption as part of the final rule. The class exemption grants plan fiduciaries relief from liability for a prohibited transaction resulting from the service provider's failure to comply with the regulation's disclosure requirements. The Department recognizes that a plan fiduciary may on occasion *unknowingly* enter into a contract or arrangement that does not meet the requirements of the regulation for relief under ERISA section 408(b)(2), in the reasonable belief that the service provider has divulged the requisite information. If the requirements of the rule are not satisfied, a prohibited transaction occurs for both the service provider and the plan fiduciary, but for the availability of the class exemption.

The Department has received approval from OMB for this ICR under OMB Control No. 1210–0133. The current approval is scheduled to expire on August 31, 2024.

Agency: Employee Benefits Security Administration, Department of Labor.

Title: Mental Health Parity and Addiction Equity Act of 2008 Notices.

Type of Review: Extension of a currently approved collection of information.

OMB Number: 1210–0138.

Affected Public: Individuals or households, private sector, not-for-profit institutions, businesses or other for-profits.

Respondents: 1,323,153.

Responses: 1,323,153.

Estimated Total Burden Hours: 941,555.

Estimated Total Burden Cost (Operating and Maintenance): $1,091,047.

Description: The Paul Wellstone and Pete Domenici Mental Health Parity and Addiction Equity Act of 2008 (MHPAEA) was enacted on October 3, 2008 as sections 511 and 512 of the Tax Extenders and Alternative Minimum Tax Relief Act of 2008 (division C of Pub. L. 110–343). MHPAEA amends the Employee Retirement Income Security Act of 1974 (ERISA), the Public Health Service Act (PHS Act), and the Internal Revenue Code of 1986 (the Code). In 1996, Congress enacted the Mental Health Parity Act of 1996, which required parity in aggregate lifetime and annual dollar limits for mental health (MH) benefits and medical/surgical benefits, and codified those provisions in section 712 of ERISA, section 2705 of the PHS Act, and section 9812 of the Code. The changes made by MHPAEA are codified in these same sections and include provisions to apply the mental health parity requirements to substance use disorder (SUD) benefits and impose additional requirements for financial requirements and treatment limitations for group health plans and health insurance coverage offered in connection with a group health plan. MHPAEA does not apply to small employers that have between two and 50 employees.

MHPAEA and the final regulations (29 CFR 2590.712(d)) require plan administrators to provide two disclosures regarding MH/SUD benefits—one providing criteria for medical necessity determinations (medical necessity disclosure) and the other providing the reason for denial of claims reimbursement (claims denial disclosure).

Section 203 of title II of division BB of the Consolidated Appropriations Act (CAA, 2021) was enacted on December 27, 2020 and amended MHPAEA, in part, by requiring group health plans and health insurance issuers offering group or individual health insurance coverage that offer both medical/surgical benefits and MH/SUD benefits and that impose NQTLs on MH/SUD benefits to perform and document their comparative analyses of the design and application of NQTLs.

The CAA, 2021 also provides that the Departments of the Treasury, Labor, and Health and Human Services (collectively, the Departments) shall request that a group health plan or issuer submit the comparative analyses for plans that involve potential violations of MHPAEA or complaints regarding noncompliance with MHPAEA that concern NQTLs, and any other instances in which the Departments determine appropriate. The CAA, 2021 further requires the Departments, after review of the comparative analyses, to share information on findings of compliance and noncompliance with the State where the plan is located or the State where the issuer is licensed to do business.

The Department has received approval from OMB for this ICR under OMB Control No. 1210–0138. The

current approval is scheduled to expire on October 31, 2024.[1]

Agency: Employee Benefits Security Administration, Department of Labor.

Title: Pension Benefit Statement.

Type of Review: Extension of a currently approved collection of information.

OMB Number: 1210–0166.

Affected Public: Private sector, businesses or other for-profits, not-for-profit institutions.

Respondents: 721,876.

Responses: 410,933,333.

Estimated Total Burden Hours: 19,675.

Estimated Total Burden Cost (Operating and Maintenance): $498,958,393.

Description: Section 105(a) of the Employee Retirement Income Security Act (ERISA) requires administrators of defined contribution plans and defined benefit plans to provide periodic pension benefit statements to participants and certain beneficiaries. If a defined contribution plan permits participants and beneficiaries to direct their own investments, benefit statements must be provided at least once each quarter. If the defined contribution plan does not permit participants and beneficiaries to direct their own investments, benefit statements must be provided at least once each year. In the case of defined benefit plans, benefit statements generally must be provided at least once every three years. Section 105(a)(2)(A)(i)(I) requires a benefit statement to indicate the participant's or beneficiary's ''total benefits accrued.''

On December 20, 2019, ERISA section 105 was amended by section 203 of the Setting Every Community Up for Retirement Enhancement Act of 2019 (SECURE Act). As amended, ERISA section 105 requires, in relevant part, that ''a lifetime income disclosure . . . be included in only one pension benefit statement provided to participants of defined contribution plans during any one 12-month period.'' A lifetime income disclosure ''shall set forth the lifetime income stream equivalent of the total benefits accrued with respect to the participant or beneficiary.'' A lifetime income stream equivalent means the amount of monthly payments the participant or beneficiary would receive if the total accrued benefits of such participant or beneficiary were used to provide a single life annuity and a qualified joint and survivor annuity.

The Department has received approval from OMB for this ICR under OMB Control No. 1210–0166. The current approval is scheduled to expire on October 31, 2024.

Agency: Employee Benefits Security Administration, Department of Labor.

Title: Employee Retirement Income Security Act Procedure 1976–1; Advisory Opinion Procedure.

Type of Review: Extension of a currently approved collection of information.

OMB Number: 1210–0066.

Affected Public: Private sector, Business or other for-profits, Not-for-profit institutions.

Respondents: 18.

Responses: 18.

Estimated Total Burden Hours: 182.

Estimated Total Burden Cost (Operating and Maintenance): $477,089.

Description: In 1976, the Department issued ERISA Procedure 76–1, the Procedure for ERISA Advisory Opinions (ERISA Procedure), in order to establish a public process for requesting guidance from the Employee Benefits Security Administration (EBSA) on the application of ERISA to particular circumstances. The ERISA Procedure sets forth specific administrative procedures for requesting either an advisory opinion or an information letter and describes the types of questions that may be submitted.

As part of the ERISA Procedure, requesters are instructed to provide information to EBSA concerning the circumstances governing their request. Section 6 of ERISA Procedure 76–1 lists the information that must be supplied by the party requesting an advisory opinion. This information includes identifying information (name, type of plan, EIN Number, etc.), a detailed description of the act(s) or transaction(s) with respect to which an advisory opinion is being requested, a discussion of the issues presented by the act(s) or transaction(s), a statement of the party's views concerning the issues to be resolved and the legal basis for such views. The requesting party must also include copies of the relevant documents and may also request a conference with EBSA in the event that EBSA is considering issuing an adverse opinion.

The Department has received approval from OMB for this ICR under OMB Control No. 1210–0066. The current approval is scheduled to expire on November 30, 2024.

Agency: Employee Benefits Security Administration, Department of Labor.

Title: Employee Retirement Income Security Act of 1974 Technical Release 1991–1.

Type of Review: Extension of a currently approved collection of information.

OMB Number: 1210–0084.

Affected Public: Private sector, business or other for-profits.

Respondents: 6.

Responses: 18,419.

Estimated Total Burden Hours: 623.

Estimated Total Burden Cost (Operating and Maintenance): $839.

Description: Section 101(e) of ERISA establishes notice requirements that must be satisfied before an employer may transfer excess assets from a defined benefit pension plan to a retiree health benefit account, as permitted under the conditions set forth in section 420 of the Internal Revenue Code of 1986, as amended (the Code).

The notice requirements of ERISA section 101(e) are two-fold. First, subsection (e)(1) requires plan administrators to provide advance written notification of such transfers to participants and beneficiaries. Second, subsection (e)(2)(A) requires employers to provide advance written notification of such transfers to the Secretaries of Labor and the Treasury, the plan administrator, and each employee organization representing participants in the plan. Both notices must be given at least 60 days before the transfer date. The two subsections prescribe the information to be included in each type of notice and further give the Secretary of Labor the authority to prescribe how notice to participants and beneficiaries must be given, and how any additional reporting requirements are deemed necessary.

On May 8, 1991, the Department published ERISA Technical Release 91–1, to provide guidance on how to satisfy the notice requirements prescribed by ERISA section 101(e). The Technical Release made two changes in the statutory requirements for the second type of notice. First, it required the notice to include a filing date and the intended asset transfer date. Second, it simplified the statutory filing requirements by providing that filing with the Department of Labor would be deemed sufficient notice to both the Department and the Department of the Treasury as required under the statute.

The Department has received approval from OMB for this ICR under OMB Control No. 1210–0084. The current approval is scheduled to expire on November 30, 2024.

Agency: Employee Benefits Security Administration, Department of Labor.

Title: Disclosures by Insurers to General Account Policyholders.

[1] This request for extension of the OMB approval for ICR is not related to finalizing the proposed rules published on August 3, 2023 at 88 FR 51552.

Type of Review: Extension of a currently approved collection of information.

OMB Number: 1210–0114.

Affected Public: Private sector, business or other for-profits.

Respondents: 353.

Responses: 26,981.

Estimated Total Burden Hours: 114,670.

Estimated Total Burden Cost (Operating and Maintenance): $10,792.

Description: Section 1460 of the Small Business Job Protection Act of 1996 (Pub. L. 104–188) (SBJPA) amended ERISA by adding section 401(c). This section requires the Department to promulgate a regulation providing guidance, applicable only to insurance policies issued on or before December 31, 1998, to or for the benefit of employee benefit plans, to clarify the extent to which assets held in an insurer's general account under such contracts are ''plan assets'' within the meaning of ERISA, because the policies are not ''guaranteed benefit policies'' within the meaning of section 401(b) of ERISA. SBJPA further directed the Department to set standards for how insurers should manage the specified insurance policies (called Transition Policies). Pursuant to the authority and direction given under SBJPA, the Department promulgated a final rule on January 5, 2000 (65 FR 714) that is codified at 29 CFR 2550.401c–1.

Regulation section 29 CFR 2550.401(c)–1 imposes specific requirements on insurers that are parties to Transition Policies in order to ensure that the fiduciaries acting on behalf of plans have adequate information and understanding of how the Transition Policies work. This information collection requires that an insurer that issues and maintains a Transition Policy to or for the benefit of an employee benefit plan must disclose to the plan fiduciary, initially upon issuance of the policy and on an annual basis, to the extent that the policy is not a guaranteed benefit policy: (1) the methods by which income and expenses of the insurer's general account are allocated to the policy, the actual annual return to the plan, and other pertinent information; (2) the extent to which alternative arrangements supported by the assets of the insurer's separate accounts are available; (3) any rights under the policy to transfer funds to a separate account and the terms governing such right; and (4) the extent to which support by assets of the insurer's separate accounts might pose differing risks to the plan.

The Department has received approval from OMB for this ICR under OMB Control No. 1210–0114. The current approval is scheduled to expire on November 30, 2024.

Agency: Employee Benefits Security Administration, Department of Labor.

Title: Registration for EFAST–2 Credentials.

Type of Review: Extension of a currently approved collection of information.

OMB Number: 1210–0117.

Affected Public: Private sector, not-for-profit institutions, businesses or other for-profits.

Respondents: 248,985.

Responses: 248,985.

Estimated Total Burden Hours: 82,995.

Estimated Total Burden Cost (Operating and Maintenance): $0.

Description: The Employee Retirement Income Security Act of 1974 (ERISA) section 104 requires administrators of employee benefits plans (pension and welfare plans) and employers sponsoring certain fringe benefit plans and other plans of deferred compensation to file returns/reports annually with the Secretary of Labor concerning the financial condition and operation of plans. Reporting requirements are satisfied by filing the Form 5500 in accordance with its instructions and the related regulations. Form 5500 filings are processed under the ERISA Filing Acceptance System 2 (EFAST–2), which is designed to simplify and expedite the receipt and processing of the Form 5500 by relying on internet-based forms and electronic filing technologies.

In order to file electronically, employee benefit plan Filing authors, Schedule authors, Filing signers, Form 5500 transmitters, and entities developing software to complete and/or transmit the Form 5500 are required to register for EFAST–2 credentials through the EFAST2 website. The information requested for registration includes: Applicant type (Filing Author, Filing Signer, Schedule Author, Transmitter, or software developer); mailing address; fax number (optional); email address; company name, contact person; and daytime telephone number. Registrants must also provide an answer to a challenge question (''What is your date of birth?'' or ''Where is your place of birth?''), which enables users to retrieve forgotten credentials. In addition, registrants must accept a Privacy Agreement; PIN Agreement; and, under penalty of perjury, a Signature Agreement.

The Department has received approval from OMB for this ICR under OMB Control No. 1210–0117. The current approval is scheduled to expire on November 30, 2024.

Agency: Employee Benefits Security Administration, Department of Labor.

Title: Employee Retirement Income Security Act Blackout Period Notice.

Type of Review: Extension of a currently approved collection of information.

OMB Number: 1210–0122.

Affected Public: Private sector, businesses or other for-profits, not-for-profit institutions.

Respondents: 47,250.

Responses: 7,409,220.

Estimated Total Burden Hours: 88,905.

Estimated Total Burden Cost (Operating and Maintenance): $324,524.

Description: The Sarbanes-Oxley Act (SOA), enacted on July 30, 2002, amended ERISA to include a blackout period disclosure requirement in subsection 101(i). This information collection requires administrators of individual account pension plans (*e.g.,* a profit sharing plan, 401(k) type plan or money purchase pension plan) to provide at least 30 days advance written notice to the affected participants and beneficiaries in advance of any ''blackout period'' during which their existing rights to direct or diversify their investments under the plan, or obtain a loan or distribution from the plan will be temporarily suspended. The term ''blackout period'' is generally defined as any period of more than three consecutive business days during which time the ability of plan participants and beneficiaries to direct or diversify investments or to obtain loans or distributions is suspended, limited or restricted.

The Department has received approval from OMB for this ICR under OMB Control No. 1210–0122. The current approval is scheduled to expire on November 30, 2024.

Agency: Employee Benefits Security Administration, Department of Labor.

Title: Coverage of Certain Preventive Services under the Affordable Care Act—Private Sector.

Type of Review: Extension of a currently approved collection of information.

OMB Number: 1210–0150.

Affected Public: Individuals or households, private sector, businesses or other for-profits, not-for-profit institutions.

Respondents: 114.

Responses: 777,363.

Estimated Total Burden Hours: 181.

Estimated Total Burden Cost (Operating and Maintenance): $194,963.

Description: The Patient Protection and Affordable Care Act, Public Law

111–148, (the Affordable Care Act) was enacted on March 23, 2010 and amended by the Health Care and Education Reconciliation Act of 2010, Public Law 111–152 on March 30, 2010. The Affordable Care Act added section 2713 to the Public Health Service (PHS) Act and incorporated this provision into ERISA and the Code. The Departments of Health and Human Services, Labor, and Treasury first published interim final rules on July 19, 2010, which implements the requirements of PHS Act section 2713, including the requirement that non-grandfathered group health insurance coverage to provide benefits for certain preventive services without cost sharing, including benefits for certain women's preventive health services as provided for in comprehensive guidelines supported by the Health Resources and Services Administration. The Departments subsequently published regulations establishing an exemption for certain religious objectors with respect to the requirement to cover contraception pursuant to comprehensive guidelines supported by HRSA.

In 2013, the Department issued final rules, which clarified the definition of religious employer for purposes of the religious employer exemption and also provided accommodations for health coverage established or maintained or arranged by certain nonprofit religious organizations with religious objections to contraceptive services (eligible organizations). The 2018 final rules expanded the exemption to include additional entities (any kind of employer) and persons that object based on religious beliefs or moral convictions objecting to contraceptive or sterilization coverage, and by making the accommodation compliance process optional for eligible organizations instead of mandatory. The regulations contain the following collections of information. First, each organization seeking to be treated as an eligible organization for the optional accommodation process offered under the regulation must either notify an issuer or third-party administrator using the EBSA Form 700 method of self-certification or provide notice to HHS of its religious or moral objection to coverage of all or a subset of contraceptive services. Second, a health insurance issuer or third-party administrator providing or arranging separate payments for contraceptive services for participants and beneficiaries in insured plans (or student enrollees and covered dependents in student health insurance coverage) of eligible organizations is required to provide a written notice to plan participants and beneficiaries (or student enrollees and covered dependents) informing them of the availability of such payments. The notice must be separate from but, contemporaneous with (to the extent possible) any application materials distributed in connection with enrollment (or re-enrollment) in group or student coverage of the eligible organization in any plan year to which the accommodation is to apply and will be provided annually. To satisfy the notice requirement, issuers may, but are not required to, use the model language set forth in the 2018 final rules or substantially similar language. Third, an eligible organization may also revoke its use of the accommodation process and must provide participants and beneficiaries written notice of such revocation as soon as possible.

The Department has received approval from OMB for this ICR under OMB Control No. 1210–0150. The current approval is scheduled to expire on November 30, 2024.[2]

Agency: Employee Benefits Security Administration, Department of Labor.

Title: EBSA Participant Assistance Program Customer Survey.

Type of Review: Extension of a currently approved collection of information.

OMB Number: 1210–0161.

Affected Public: Individuals or households.

Respondents: 11,200.

Responses: 11,200.

Estimated Total Burden Hours: 1,867.

Estimated Total Burden Cost (Operating and Maintenance): $0.

Description: EBSA conducts the surveys to evaluate the Participant Assistance Program (PAP) provided by the benefits advisor staff nationwide to understand how well the Agency is meeting service delivery goals by; (1) assessing EBSA's customers' perception of the services provided by the EBSA benefit advisors, and (2) determining what actions the performance data indicate could enable each regional office to provide the best possible participant assistance service; and (3) establishing a current baseline for EBSA's (Government Performance and Accountability Act GPRA) measurement. EBSA will use the data from the survey to track the agency's progress on accomplishing it's GPRA measurement goal.

The PAP Customer Survey collects customer satisfaction data for a sample of private citizens who call into the participant assistance program to ask about their private sector employer provided benefits such as pensions, retirement savings, and health benefits. Three types of callers are queried: (1) those who need benefit claim assistance, (2) those who have a valid benefit claim, and (3) those who have an invalid benefit claim will be queried. The results of the survey will be analyzed to provide actionable data that could be used to improve program performance. The study includes data from the EBSA regional offices in Atlanta, Boston, Chicago, Cincinnati, Dallas, Kansas City, Los Angeles, New York, Philadelphia, and San Francisco, as well as the District offices in Miami, Seattle, and Washington.

The Department has received approval from OMB for this ICR under OMB Control No. 1210–0161. The current approval is scheduled to expire on November 30, 2024.

II. Focus of Comments

The Department is particularly interested in comments that:

- Evaluate whether the collections of information are necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the collections of information, including the validity of the methodology and assumptions used;
- Enhance the quality, utility, and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* by permitting electronic submissions of responses.

Comments submitted in response to this notice will be summarized and/or included in the ICR for OMB approval of the information collection; they will also become a matter of public record.

Signed at Washington, DC, this 29th day of January 2024.

Lisa M. Gomez,

Assistant Secretary, Employee Benefits Security Administration, U.S. Department of Labor.

[FR Doc. 2024–02176 Filed 2–2–24; 8:45 am]

BILLING CODE P

[2] This request for extension of the OMB approval for ICR is not related to finalizing the proposed rules published on February 2, 2023 at 88 FR 7236.

DEPARTMENT OF LABOR

Mine Safety and Health Administration

Petition for Modification of Application of Existing Mandatory Safety Standard

AGENCY: Mine Safety and Health Administration, Labor.

ACTION: Notice.

SUMMARY: This notice is a summary of a petition for modification submitted to the Mine Safety and Health Administration (MSHA) by the party listed below.

DATES: All comments on the petition must be received by MSHA's Office of Standards, Regulations, and Variances on or before March 6, 2024.

ADDRESSES: You may submit comments identified by Docket No. MSHA–2023–0059 by any of the following methods:

1. *Federal eRulemaking Portal: https://www.regulations.gov.* Follow the instructions for submitting comments for MSHA–2023–0059.
2. *Fax:* 202–693–9441.
3. *Email: petitioncomments@dol.gov.*
4. *Regular Mail or Hand Delivery:* MSHA, Office of Standards, Regulations, and Variances, 201 12th Street South, 4th Floor West, Arlington, Virginia 22202–5452.

Attention: S. Aromie Noe, Director, Office of Standards, Regulations, and Variances. Persons delivering documents are required to check in at 4th Floor West. Individuals may inspect copies of the petition and comments during normal business hours at the address listed above. Before visiting MSHA in person, call 202–693–9455 to make an appointment, in keeping with the Department of Labor's COVID–19 policy. Special health precautions may be required.

FOR FURTHER INFORMATION CONTACT: S. Aromie Noe, Office of Standards, Regulations, and Variances at 202–693–9440 (voice), *Petitionsformodification@dol.gov* (email), or 202–693–9441 (fax). [These are not toll-free numbers.]

SUPPLEMENTARY INFORMATION: Section 101(c) of the Federal Mine Safety and Health Act of 1977 and title 30 of the Code of Federal Regulations (CFR) part 44 govern the application, processing, and disposition of petitions for modification.

I. Background

Section 101(c) of the Federal Mine Safety and Health Act of 1977 (Mine Act) allows the mine operator or representative of miners to file a petition to modify the application of any mandatory safety standard to a coal or other mine if the Secretary of Labor determines that:

1. An alternative method of achieving the result of such standard exists which will at all times guarantee no less than the same measure of protection afforded the miners of such mine by such standard; or
2. The application of such standard to such mine will result in a diminution of safety to the miners in such mine.

In addition, sections 44.10 and 44.11 of 30 CFR establish the requirements for filing petitions for modification.

II. Petition for Modification

Docket Number: M–2023–029–C.

Petitioner: Fossil Rock Resources, LLC, 5125 North Cottonwood Road, Orangeville, Utah 84537.

Mine: Fossil Rock Mine, MSHA ID No. 42–01211, located in Emery County, Utah.

Regulation Affected: 30 CFR 75.500(d) (Permissible electric equipment).

Modification Request: The petitioner requests a modification of 30 CFR 75.500(d) to permit the use of non-permissible battery powered electronic surveying equipment in or inby the last open crosscut.

The petitioner states that:

(a) In order to comply with requirements of 30 CFR 75.372 and 30 CFR 75.1200, use of the most practical and accurate surveying equipment is necessary.

(b) Underground mining by its nature, size and complexity of mine plans requires that accurate and precise measurements be completed in a prompt and efficient manner. Use of electronic surveying equipment provides significant safety benefits.

The petitioner proposes the following alternative method:

(a) Non-permissible battery powered electronic surveying equipment to be used include:

(1) Topcon Electric Total Station Model ES–103
(2) Topcon Total Station GM–103
(3) Sokkia IM–52–2
(4) Sokkia CX–103
(5) Spectra Precision Ranger 7
(6) Tripod Data System Ranger
(7) Spectra Precision Ranger TSC3

(b) The equipment used is low voltage or battery-powered non-permissible total stations and theodolites. All non-permissible electronic total stations and theodolites shall have an ingress protection (IP) 66 or greater rating.

(c) The operator shall maintain a logbook for electronic surveying equipment with the equipment, or in the location where mine record books are kept or in the location where the surveying record books are kept. The logbook shall contain the date of manufacture and/or purchase of each piece of electronic surveying equipment. The logbook shall be made available to MSHA upon request.

(d) All non-permissible electronic surveying equipment to be used in return air outby the last open crosscut shall be examined by the person to operate the equipment prior to taking the equipment underground to ensure the equipment is being maintained in safe operating condition. These examinations shall include:

(1) Checking the instrument for any physical damage and the integrity of the case;

(2) Removing the battery and inspecting for corrosion;

(3) Inspecting the contact points to ensure a secure connection to the battery;

(4) Reinserting the battery and powering up and shutting down to ensure proper connections; and

(5) Checking the battery compartment cover or battery attachment to ensure that is securely fastened.

The results of this examination shall be recorded in the logbook.

(e) The equipment shall be examined at least weekly by a qualified person as defined in 30 CFR 75.153. The examination results shall be recorded weekly in the equipment's logbook. These records shall be retained for 1 year.

(f) The operator shall ensure that all non-permissible electronic surveying equipment is serviced according to the manufacturer's recommendations. Dates of service shall be recorded in the equipment's logbook and shall include a description of the work performed.

(g) The non-permissible electronic surveying equipment to be used in or inby the last open crosscut shall not be put into service until MSHA has initially inspected the equipment and determined that it is in compliance with all the terms and conditions of the Proposed Decision and Order (PDO) granted by MSHA.

(h) Non-permissible electronic surveying equipment shall not be used if methane is detected in concentrations at or above 1.0 percent. When 1.0 percent or more of methane is detected while the non-permissible electronic surveying equipment is being used, the equipment shall be de-energized immediately and withdrawn from in or inby the last open crosscut. All requirements of 30 CFR 75.323 shall be complied with prior to entering in or inby the last open crosscut.

(i) Before setting up and energizing nonpermissible electronic surveying

equipment in or inby the last open crosscut, the surveyor(s) shall conduct a visual examination of the immediate area for evidence that the area appears to be sufficiently rock-dusted and for the presence of accumulated float coal dust. If the rock-dusting appears insufficient or the presence of accumulated float coal dust is observed, the nonpermissible electronic surveying equipment shall not be energized until sufficient rock dust has been applied and/or the accumulations of float coal dust have been removed. If nonpermissible electronic surveying equipment is to be used in an area that has not been rock-dusted within 40 feet of a working face where a continuous mining machine is used to extract coal, the area shall be rock-dusted prior to energizing the non-permissible electronic surveying equipment.

(j) All hand-held methane detectors shall be MSHA-approved and maintained in permissible and proper operating condition as defined by 30 CFR 75.320. All methane detectors shall provide visual and audible warnings when methane is detected at or above 1.0 percent.

(k) Prior to energizing any of the non-permissible electronic surveying equipment in or inby the last open crosscut, methane tests shall be made in accordance with 30 CFR 75.323(a).

(l) All areas to be surveyed must be pre-shifted according to 30 CFR 75.360 prior to surveying. If the area was not pre-shifted, a supplemental examination according to 30 CFR 75.361 shall be performed before any non-certified person enters the area. If the area has been examined according to 30 CFR 75.360 or 30 CFR 75.361, additional examination is not required.

(m) A qualified person as defined in 30 CFR 75.151 shall continuously monitor for methane immediately before and during the use of non-permissible electronic surveying equipment in or inby the last open crosscut. A second person in the surveying crew, if there are two people in the crew, shall also continuously monitor for methane. That person shall be a qualified person as defined in 30 CFR 75.151 or be in the process of being trained to be a qualified person but have yet to ''make such tests for a period of 6 months'' as required by 30 CFR 75.150. Upon completion of the 6-month training period, the second person on the surveying crew shall become qualified to continue on the surveying crew. If the surveying crew consists of only one person, the person shall monitor for methane with two separate devices.

(n) Batteries contained in the non-permissible electronic surveying equipment shall be changed out or charged in intake air outby the last open crosscut. Replacement batteries for the non-permissible electronic surveying equipment shall be carried only in the electronic equipment carrying case spare battery compartment. Before each surveying shift, all batteries for the non-permissible electronic surveying equipment shall be charged sufficiently so that they are not expected to be replaced on that shift.

(o) When using non-permissible electronic surveying equipment in or inby the last open crosscut, the surveyor shall confirm by measurement or by inquiry of the person in charge of the section that the air quantity on the section, on that shift, in return air outby the last open crosscut is at least the minimum quantity required by the mine's ventilation plan.

(p) Personnel engaged in the use of non-permissible electronic surveying equipment shall be properly trained to recognize the hazards and limitations associated with the use of non-permissible electronic surveying equipment in areas where methane could be present.

(q) All members of the surveying crew shall receive specific training on the terms and conditions of the PDO granted by MSHA before using non-permissible electronic surveying equipment in or inby the last open crosscut. A record of the training shall be kept with the other training records.

(r) Within 60 days after the PDO granted by MSHA becomes final, the operator shall submit proposed revisions for its approved 30 CFR part 48 training plans to the Coal Mine Safety and Health District Manager. These proposed revisions shall specify initial and refresher training regarding the terms and conditions of the PDO. When training is conducted on the terms and conditions of the PDO, a MSHA Certificate of Training (Form 5000–23) shall be completed and shall include comments indicating it was surveyor training.

(s) The operator shall replace or retire from service any non-permissible electronic surveying instrument acquired prior to December 31, 2004, within 1 year of the PDO granted by MSHA becoming final. Within 3 years of the date the PDO becomes final, the operator shall replace or retire from service any theodolite acquired more than 5 years prior to the date the granted PDO became final and any total station or other electronic surveying equipment identified in the PDO acquired more than10 years prior to the date the PDO became final. After 5 years, the operator shall maintain a cycle of purchasing new electronic surveying equipment so that theodolites shall be no older than 5 years from the date of manufacture and total stations and other electronic surveying equipment shall be no older than 10 years from the date of manufacture.

(t) The operator is responsible for ensuring that all surveying contractors hired by the operator use non-permissible electronic surveying equipment in accordance with the requirements of paragraph (s) of the PDO granted by MSHA. The conditions of use specified in the PDO shall apply to all non-permissible electronic surveying equipment used in or inby the last open crosscut, regardless of whether the equipment is used by the operator or by an independent contractor.

(u) Non-permissible electronic surveying equipment may be used when production is occurring, subject to these conditions:

(1) On a mechanized mining unit (MMU) where production is occurring, non-permissible electronic surveying equipment shall not be used downwind of the discharge point of any face ventilation controls, such as tubing (including controls such as ''baloney skins'') or curtains.

(2) Production may continue while non-permissible electronic surveying equipment is used if the surveying equipment is used in a separate split of air from where production is occurring.

(3) Non-permissible electronic surveying equipment shall not be used in a split of air ventilating an MMU if any ventilation controls will be disrupted during such surveying. Disruption of ventilation controls means any change to the mine's ventilation system that causes the ventilation system not to function in accordance with the mine's approved ventilation plan.

(4) If a surveyor must disrupt ventilation while surveying, the surveyor shall cease surveying and communicate to the section foreman that ventilation must be disrupted. Production shall stop while ventilation is disrupted. Ventilation controls shall be reestablished immediately after the disruption is no longer necessary. Production shall only resume after all ventilation controls are reestablished and are in compliance with approved ventilation or other plans and other applicable laws, standards, or regulations.

(5) Any disruption in ventilation shall be recorded in the logbook required by the PDO. The logbook shall include a description of the nature of the disruption, the location of the disruption, the date and time of the

disruption, the date and time the surveyor communicated the disruption to the section foreman, the date and time production ceased, the date and time ventilation was reestablished, and the date and time production resumed.

(6) All surveyors, section foremen, section crew members, and other personnel who will be involved with or affected by surveying operations shall receive training in accordance with 30 CFR 48.7 on the requirements of the PDO granted by MSHA within 60 days of the date the PDO becomes final. Such training shall be completed before any non-permissible electronic surveying equipment can be used while production is occurring. The operator shall keep a record of such training and provide it to MSHA upon request.

(7) The operator shall provide annual retraining to all personnel who will be involved with or affected by surveying operations in accordance with 30 CFR 48.8. The operator shall train new miners on the requirements of the PDO granted by MSHA in accordance with 30 CFR 48.5 and shall train experienced miners, as defined in 30 CFR 48.6, on the requirements of the PDO in accordance with 30 CFR 48.6. The operator shall keep a record of such training and provide it to MSHA upon request.

The petitioner asserts that the alternate method proposed will at all times guarantee no less than the same measure of protection afforded the miners under the mandatory standard.

Song-ae Aromie Noe,

Director, Office of Standards, Regulations, and Variances.

[FR Doc. 2024–02169 Filed 2–2–24; 8:45 am]

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DEPARTMENT OF LABOR

Mine Safety and Health Administration

Petition for Modification of Application of Existing Mandatory Safety Standard

AGENCY: Mine Safety and Health Administration, Labor.

ACTION: Notice.

SUMMARY: This notice is a summary of a petition for modification submitted to the Mine Safety and Health Administration (MSHA) by the party listed below.

DATES: All comments on the petition must be received by MSHA's Office of Standards, Regulations, and Variances on or before March 6, 2024.

ADDRESSES: You may submit comments identified by Docket No. MSHA–2023–0060 by any of the following methods:

1. *Federal eRulemaking Portal: https://www.regulations.gov.* Follow the instructions for submitting comments for MSHA–2023–0060.
2. *Fax:* 202–693–9441.
3. *Email: petitioncomments@dol.gov.*
4. *Regular Mail or Hand Delivery:* MSHA, Office of Standards, Regulations, and Variances, 201 12th Street South, 4th Floor West, Arlington, Virginia 22202–5452.

Attention: S. Aromie Noe, Director, Office of Standards, Regulations, and Variances. Persons delivering documents are required to check in at 4th Floor West. Individuals may inspect copies of the petition and comments during normal business hours at the address listed above. Before visiting MSHA in person, call 202–693–9455 to make an appointment, in keeping with the Department of Labor's COVID–19 policy. Special health precautions may be required.

FOR FURTHER INFORMATION CONTACT: S. Aromie Noe, Office of Standards, Regulations, and Variances at 202–693–9440 (voice), *Petitionsformodification@dol.gov* (email), or 202–693–9441 (fax). [These are not toll-free numbers.]

SUPPLEMENTARY INFORMATION: Section 101(c) of the Federal Mine Safety and Health Act of 1977 and title 30 of the Code of Federal Regulations (CFR) part 44 govern the application, processing, and disposition of petitions for modification.

I. Background

Section 101(c) of the Federal Mine Safety and Health Act of 1977 (Mine Act) allows the mine operator or representative of miners to file a petition to modify the application of any mandatory safety standard to a coal or other mine if the Secretary of Labor determines that:

1. An alternative method of achieving the result of such standard exists which will at all times guarantee no less than the same measure of protection afforded the miners of such mine by such standard; or
2. The application of such standard to such mine will result in a diminution of safety to the miners in such mine.

In addition, sections 44.10 and 44.11 of 30 CFR establish the requirements for filing petitions for modification.

II. Petition for Modification

Docket Number: M–2023–030–C.

Petitioner: Fossil Rock Resources, LLC, 5125 North Cottonwood Road, Orangeville, Utah 84537.

Mine: Fossil Rock Mine, MSHA ID No. 42–01211, located in Emery County, Utah.

Regulation Affected: 30 CFR 75.507–1(a) (Electric equipment other than power-connection points; outby the last open crosscut; return air; permissibility requirements).

Modification Request: The petitioner requests a modification of 30 CFR 75.507–1(a) to permit the use of non-permissible battery powered electronic surveying equipment in return air outby the last open crosscut.

The petitioner states that:

(a) In order to comply with requirements of 30 CFR 75.372 and 30 CFR 75.1200, use of the most practical and accurate surveying equipment is necessary.

(b) Underground mining by its nature, size and complexity of mine plans requires that accurate and precise measurements be completed in a prompt and efficient manner. Use of electronic surveying equipment provides significant safety benefits.

The petitioner proposes the following alternative method:

(a) Non-permissible battery powered electronic surveying equipment to be used include:

(1) Topcon Electric Total Station Model ES–103
(2) Topcon Total Station GM–103
(3) Sokkia IM–52–2
(4) Sokkia CX–103
(5) Spectra Precision Ranger 7
(6) Tripod Data System Ranger
(7) Spectra Precision Ranger TSC3

(b) The equipment used is low voltage or battery-powered non-permissible total stations and theodolites. All non-permissible electronic total stations and theodolites shall have an ingress protection (IP) 66 or greater rating.

(c) The operator shall maintain a logbook for electronic surveying equipment with the equipment, or in the location where mine record books are kept or in the location where the surveying record books are kept. The logbook shall contain the date of manufacture and/or purchase of each piece of electronic surveying equipment. The logbook shall be made available to MSHA upon request.

(d) All non-permissible electronic surveying equipment to be used in return air outby the last open crosscut shall be examined by the person to operate the equipment prior to taking the equipment underground to ensure the equipment is being maintained in safe operating condition. These examinations shall include:

(1) Checking the instrument for any physical damage and the integrity of the case;

(2) Removing the battery and inspecting for corrosion;

(3) Inspecting the contact points to ensure a secure connection to the battery;

(4) Reinserting the battery and powering up and shutting down to ensure proper connections; and

(5) Checking the battery compartment cover or battery attachment to ensure that is securely fastened.

The results of this examination shall be recorded in the logbook.

(e) The equipment shall be examined at least weekly by a qualified person as defined in 30 CFR 75.153. The examination results shall be recorded weekly in the equipment's logbook. These records shall be retained for 1 year.

(f) The operator shall ensure that all non-permissible electronic surveying equipment is serviced according to the manufacturer's recommendations. Dates of service shall be recorded in the equipment's logbook and shall include a description of the work performed.

(g) The non-permissible electronic surveying equipment to be used in return air outby the last open crosscut shall not be put into service until MSHA has initially inspected the equipment and determined that it is in compliance with all the terms and conditions of the Proposed Decision and Order (PDO) granted by MSHA.

(h) Non-permissible electronic surveying equipment shall not be used if methane is detected in concentrations at or above 1.0 percent. When 1.0 percent or more of methane is detected while the non-permissible electronic surveying equipment is being used, the equipment shall be de-energized immediately and withdrawn out of the return air outby the last open crosscut. All requirements of 30 CFR 75.323 shall be complied with prior to entering in return air outby the last open crosscut.

(i) Before setting up and energizing nonpermissible electronic surveying equipment in return air outby the last open crosscut, the surveyor(s) shall conduct a visual examination of the immediate area for evidence that the area appears to be sufficiently rock-dusted and for the presence of accumulated float coal dust. If the rock-dusting appears insufficient or the presence of accumulated float coal dust is observed, the nonpermissible electronic surveying equipment shall not be energized until sufficient rock dust has been applied and/or the accumulations of float coal dust have been removed. If nonpermissible electronic surveying equipment is to be used in an area that has not been rock-dusted within 40 feet of a working face where a continuous mining machine is used to extract coal, the area shall be rock-dusted prior to energizing the non-permissible electronic surveying equipment.

(j) All hand-held methane detectors shall be MSHA-approved and maintained in permissible and proper operating condition as defined by 30 CFR 75.320. All methane detectors shall provide visual and audible warnings when methane is detected at or above 1.0 percent.

(k) Prior to energizing any of the non-permissible electronic surveying equipment in return air outby the last open crosscut, methane tests shall be made in accordance with 30 CFR 75.323(a).

(l) All areas to be surveyed must be pre-shifted according to 30 CFR 75.360 prior to surveying. If the area was not pre-shifted, a supplemental examination according to 30 CFR 75.361 shall be performed before any non-certified person enters the area. If the area has been examined according to 30 CFR 75.360 or 30 CFR 75.361, additional examination is not required.

(m) A qualified person as defined in 30 CFR 75.151 shall continuously monitor for methane immediately before and during the use of non-permissible electronic surveying equipment in return air outby the last open crosscut. A second person in the surveying crew, if there are two people in the crew, shall also continuously monitor for methane. That person shall be a qualified person as defined in 30 CFR 75.151 or be in the process of being trained to be a qualified person but have yet to ''make such tests for a period of 6 months'' as required by 30 CFR 75.150. Upon completion of the 6-month training period, the second person on the surveying crew shall become qualified to continue on the surveying crew. If the surveying crew consists of only one person, the person shall monitor for methane with two separate devices.

(n) Batteries contained in the non-permissible electronic surveying equipment shall be changed out or charged in intake air outby the last open crosscut. Replacement batteries for the non-permissible electronic surveying equipment shall be carried only in the electronic equipment carrying case spare battery compartment. Before each surveying shift, all batteries for the non-permissible electronic surveying equipment shall be charged sufficiently so that they are not expected to be replaced on that shift.

(o) When using non-permissible electronic surveying equipment in return air outby the last open crosscut, the surveyor shall confirm by measurement or by inquiry of the person in charge of the section that the air quantity on the section, on that shift, in return air outby the last open crosscut is at least the minimum quantity required by the mine's ventilation plan.

(p) Personnel engaged in the use of non-permissible electronic surveying equipment shall be properly trained to recognize the hazards and limitations associated with the use of non-permissible electronic surveying equipment in areas where methane could be present.

(q) All members of the surveying crew shall receive specific training on the terms and conditions of the PDO granted by MSHA before using non-permissible electronic surveying equipment in return air outby the last open crosscut. A record of the training shall be kept with the other training records.

(r) Within 60 days after the PDO granted by MSHA becomes final, the operator shall submit proposed revisions for its approved 30 CFR part 48 training plans to the Coal Mine Safety and Health District Manager. These proposed revisions shall specify initial and refresher training regarding the terms and conditions of the PDO. When training is conducted on the terms and conditions of the PDO, a MSHA Certificate of Training (Form 5000–23) shall be completed and shall include comments indicating it was surveyor training.

(s) The operator shall replace or retire from service any non-permissible electronic surveying instrument acquired prior to December 31, 2004, within 1 year of the PDO granted by MSHA becoming final. Within 3 years of the date the PDO becomes final, the operator shall replace or retire from service any theodolite acquired more than 5 years prior to the date the granted PDO became final and any total station or other electronic surveying equipment identified in the PDO acquired more than10 years prior to the date the PDO became final. After 5 years, the operator shall maintain a cycle of purchasing new electronic surveying equipment so that theodolites shall be no older than 5 years from the date of manufacture and total stations and other electronic surveying equipment shall be no older than 10 years from the date of manufacture.

(t) The operator is responsible for ensuring that all surveying contractors hired by the operator use non-permissible electronic surveying equipment in accordance with the requirements of paragraph (s) of this PDO granted by MSHA. The conditions of use specified in the PDO shall apply to all non-permissible electronic surveying equipment used in return air

outby the last open crosscut, regardless of whether the equipment is used by the operator or by an independent contractor.

(u) Non-permissible electronic surveying equipment may be used when production is occurring, subject to these conditions:

(1) On a mechanized mining unit (MMU) where production is occurring, non-permissible electronic surveying equipment shall not be used downwind of the discharge point of any face ventilation controls, such as tubing (including controls such as ''baloney skins'') or curtains.

(2) Production may continue while non-permissible electronic surveying equipment is used if the surveying equipment is used in a separate split of air from where production is occurring.

(3) Non-permissible electronic surveying equipment shall not be used in a split of air ventilating an MMU if any ventilation controls will be disrupted during such surveying. Disruption of ventilation controls means any change to the mine's ventilation system that causes the ventilation system not to function in accordance with the mine's approved ventilation plan.

(4) If a surveyor must disrupt ventilation while surveying, the surveyor shall cease surveying and communicate to the section foreman that ventilation must be disrupted. Production shall stop while ventilation is disrupted. Ventilation controls shall be reestablished immediately after the disruption is no longer necessary. Production shall only resume after all ventilation controls are reestablished and are in compliance with approved ventilation or other plans and other applicable laws, standards, or regulations.

(5) Any disruption in ventilation shall be recorded in the logbook required by the PDO. The logbook shall include a description of the nature of the disruption, the location of the disruption, the date and time of the disruption, the date and time the surveyor communicated the disruption to the section foreman, the date and time production ceased, the date and time ventilation was reestablished, and the date and time production resumed.

(6) All surveyors, section foremen, section crew members, and other personnel who will be involved with or affected by surveying operations shall receive training in accordance with 30 CFR 48.7 on the requirements of the PDO within 60 days of the date the PDO becomes final. Such training shall be completed before any non-permissible electronic surveying equipment can be used while production is occurring. The operator shall keep a record of such training and provide it to MSHA upon request.

(7) The operator shall provide annual retraining to all personnel who will be involved with or affected by surveying operations in accordance with 30 CFR 48.8. The operator shall train new miners on the requirements of the PDO granted by MSHA in accordance with 30 CFR 48.5 and shall train experienced miners, as defined in 30 CFR 48.6, on the requirements of the PDO in accordance with 30 CFR 48.6. The operator shall keep a record of such training and provide it to MSHA upon request.

The petitioner asserts that the alternate method proposed will at all times guarantee no less than the same measure of protection afforded the miners under the mandatory standard.

Song-ae Aromie Noe,

Director, Office of Standards, Regulations, and Variances.

[FR Doc. 2024–02168 Filed 2–2–24; 8:45 am]

BILLING CODE 4520–43–P

DEPARTMENT OF LABOR

Mine Safety and Health Administration

Petition for Modification of Application of Existing Mandatory Safety Standard

AGENCY: Mine Safety and Health Administration, Labor.

ACTION: Notice.

SUMMARY: This notice is a summary of a petition for modification submitted to the Mine Safety and Health Administration (MSHA) by the party listed below.

DATES: All comments on the petition must be received by MSHA's Office of Standards, Regulations, and Variances on or before March 6, 2024.

ADDRESSES: You may submit comments identified by Docket No. MSHA–2023–0058 by any of the following methods:

1. *Federal eRulemaking Portal: https://www.regulations.gov.* Follow the instructions for submitting comments for MSHA–2023–0058.
2. *Fax:* 202–693–9441.
3. *Email: petitioncomments@dol.gov.*
4. *Regular Mail or Hand Delivery:* MSHA, Office of Standards, Regulations, and Variances, 201 12th Street South, 4th Floor West, Arlington, Virginia 22202–5452.

Attention: S. Aromie Noe, Director, Office of Standards, Regulations, and Variances. Persons delivering documents are required to check in at 4th Floor West. Individuals may inspect copies of the petition and comments during normal business hours at the address listed above. Before visiting MSHA in person, call 202–693–9455 to make an appointment, in keeping with the Department of Labor's COVID–19 policy. Special health precautions may be required.

FOR FURTHER INFORMATION CONTACT: S. Aromie Noe, Office of Standards, Regulations, and Variances at 202–693–9440 (voice), *Petitionsformodification@dol.gov* (email), or 202–693–9441 (fax). [These are not toll-free numbers.]

SUPPLEMENTARY INFORMATION: Section 101(c) of the Federal Mine Safety and Health Act of 1977 and title 30 of the Code of Federal Regulations (CFR) part 44 govern the application, processing, and disposition of petitions for modification.

I. Background

Section 101(c) of the Federal Mine Safety and Health Act of 1977 (Mine Act) allows the mine operator or representative of miners to file a petition to modify the application of any mandatory safety standard to a coal or other mine if the Secretary of Labor determines that:

1. An alternative method of achieving the result of such standard exists which will at all times guarantee no less than the same measure of protection afforded the miners of such mine by such standard; or

2. The application of such standard to such mine will result in a diminution of safety to the miners in such mine.

In addition, sections 44.10 and 44.11 of 30 CFR establish the requirements for filing petitions for modification.

II. Petition for Modification

Docket Number: M–2023–028–C.

Petitioner: Fossil Rock Resources, LLC, 5125 North Cottonwood Road, Orangeville, Utah 84537.

Mine: Fossil Rock Mine, MSHA ID No. 42–01211, located in Emery County, Utah.

Regulation Affected: 30 CFR 75.1002(a) (Installation of electrical equipment and conductors; permissibility).

Modification Request: The petitioner requests a modification of 30 CFR 75.1002(a) to permit the use of non-permissible battery powered electronic surveying equipment within 150 feet of pillar workings or longwall faces.

The petitioner states that:

(a) In order to comply with requirements of 30 CFR 75.372 and 30 CFR 75.1200, use of the most practical and accurate surveying equipment is necessary.

(b) Underground mining by its nature, size and complexity of mine plans requires that accurate and precise measurements be completed in a prompt and efficient manner. Use of electronic surveying equipment provides significant safety benefits.

The petitioner proposes the following alternative method:

(a) Non-permissible battery powered electronic surveying equipment to be used include:

(1) Topcon Electric Total Station Model ES–103
(2) Topcon Total Station GM–103
(3) Sokkia IM–52–2
(4) Sokkia CX–103
(5) Spectra Precision Ranger 7
(6) Tripod Data System Ranger
(7) Spectra Precision Ranger TSC3

(b) The equipment used is low voltage or battery-powered non-permissible total stations and theodolites. All non-permissible electronic total stations and theodolites shall have an Ingress Protection (IP) 66 or greater rating.

(c) The operator shall maintain a logbook for electronic surveying equipment with the equipment, or in the location where mine record books are kept or in the location where the surveying record books are kept. The logbook shall contain the date of manufacture and/or purchase of each piece of electronic surveying equipment. The logbook shall be made available to MSHA upon request.

(d) All non-permissible electronic surveying equipment to be used within 150 feet of pillar workings or longwall faces shall be examined by the person to operate the equipment prior to taking the equipment underground to ensure the equipment is being maintained in safe operating condition. These examinations shall include:

(1) Checking the instrument for any physical damage and the integrity of the case;

(2) Removing the battery and inspecting for corrosion;

(3) Inspecting the contact points to ensure a secure connection to the battery;

(4) Reinserting the battery and powering up and shutting down to ensure proper connections; and

(5) Checking the battery compartment cover or battery attachment to ensure that is securely fastened.

The results of this examination shall be recorded in the logbook.

(e) The equipment shall be examined at least weekly by a qualified person as defined in 30 CFR 75.153. The examination results shall be recorded weekly in the equipment's logbook. These records shall be retained for 1 year.

(f) The operator shall ensure that all non-permissible electronic surveying equipment is serviced according to the manufacturer's recommendations. Dates of service shall be recorded in the equipment's logbook and shall include a description of the work performed.

(g) The non-permissible electronic surveying equipment to be used within 150 feet of pillar workings or longwall faces shall not be put into service until MSHA has initially inspected the equipment and determined that it is in compliance with all the terms and conditions of the Proposed Decision and Order (PDO) granted by MSHA.

(h) Non-permissible electronic surveying equipment shall not be used if methane is detected in concentrations at or above 1.0 percent. When 1.0 percent or more of methane is detected while the non-permissible electronic surveying equipment is being used, the equipment shall be de-energized immediately and withdrawn Within 150 feet of pillar workings or longwall faces. All requirements of 30 CFR 75.323 shall be complied with prior to entering within 150 feet of pillar workings or longwall faces.

(i) Before setting up and energizing nonpermissible electronic surveying equipment within 150 feet of pillar workings or longwall faces, the surveyor(s) shall conduct a visual examination of the immediate area for evidence that the area appears to be sufficiently rock-dusted and for the presence of accumulated float coal dust. If the rock-dusting appears insufficient or the presence of accumulated float coal dust is observed, the nonpermissible electronic surveying equipment shall not be energized until sufficient rock dust has been applied and/or the accumulations of float coal dust have been removed. If nonpermissible electronic surveying equipment is to be used in an area that has not been rock-dusted within 40 feet of a working face where a continuous mining machine is used to extract coal, the area shall be rock-dusted prior to energizing the non-permissible electronic surveying equipment.

(j) All hand-held methane detectors shall be MSHA-approved and maintained in permissible and proper operating condition as defined by 30 CFR 75.320. All methane detectors shall provide visual and audible warnings when methane is detected at or above 1.0 percent.

(k) Prior to energizing any of the non-permissible electronic surveying equipment within 150 feet of pillar workings or longwall faces, methane tests shall be made in accordance with 30 CFR 75.323(a).

(l) All areas to be surveyed must be pre-shifted according to 30 CFR 75.360 prior to surveying. If the area was not pre-shifted, a supplemental examination according to 30 CFR 75.361 shall be performed before any non-certified person enters the area. If the area has been examined according to 30 CFR 75.360 or 30 CFR 75.361, additional examination is not required.

(m) A qualified person as defined in 30 CFR 75.151 shall continuously monitor for methane immediately before and during the use of non-permissible electronic surveying equipment within 150 feet of pillar workings or longwall faces. A second person in the surveying crew, if there are two people in the crew, shall also continuously monitor for methane. That person shall be a qualified person as defined in 30 CFR 75.151 or be in the process of being trained to be a qualified person but have yet to ''make such tests for a period of 6 months'' as required by 30 CFR 75.150. Upon completion of the 6-month training period, the second person on the surveying crew shall become qualified to continue on the surveying crew. If the surveying crew consists of only one person, the person shall monitor for methane with two separate devices.

(n) Batteries contained in the non-permissible electronic surveying equipment shall be changed out more than 150 feet of pillar workings or longwall faces. Replacement batteries for the non-permissible electronic surveying equipment shall be carried only in the electronic equipment carrying case spare battery compartment. Before each surveying shift, all batteries for the non-permissible electronic surveying equipment shall be charged sufficiently so that they are not expected to be replaced on that shift.

(o) When using non-permissible electronic surveying equipment within 150 feet of pillar workings or longwall faces, the surveyor shall confirm by measurement or by inquiry of the person in charge of the section that the air quantity on the section, on that shift, in return air outby the last open crosscut is at least the minimum quantity required by the mine's ventilation plan.

(p) Personnel engaged in the use of non-permissible electronic surveying equipment shall be properly trained to recognize the hazards and limitations associated with the use of non-permissible electronic surveying equipment in areas where methane could be present.

(q) All members of the surveying crew shall receive specific training on the terms and conditions of the PDO

granted by MSHA before using non-permissible electronic surveying equipment within 150 feet of pillar workings or longwall faces. A record of the training shall be kept with the other training records.

(r) Within 60 days after the PDO granted by MSHA becomes final, the operator shall submit proposed revisions for its approved 30 CFR part 48 training plans to the Coal Mine Safety and Health District Manager. These proposed revisions shall specify initial and refresher training regarding the terms and conditions of the PDO. When training is conducted on the terms and conditions of the PDO, a MSHA Certificate of Training (Form 5000–23) shall be completed and shall include comments indicating it was surveyor training.

(s) The operator shall replace or retire from service any non-permissible electronic surveying instrument acquired prior to December 31, 2004, within 1 year of the PDO granted by MSHA becoming final. Within 3 years of the date the PDO becomes final, the operator shall replace or retire from service any theodolite acquired more than 5 years prior to the date the granted PDO became final and any total station or other electronic surveying equipment identified in the PDO acquired more than10 years prior to the date the PDO became final. After 5 years, the operator shall maintain a cycle of purchasing new electronic surveying equipment so that theodolites shall be no older than 5 years from the date of manufacture and total stations and other electronic surveying equipment shall be no older than 10 years from the date of manufacture.

(t) The operator is responsible for ensuring that all surveying contractors hired by the operator use non-permissible electronic surveying equipment in accordance with the requirements of paragraph (s) of the PDO granted by MSHA. The conditions of use specified in the PDO shall apply to all non-permissible electronic surveying equipment used within 150 feet of pillar workings or longwall faces, regardless of whether the equipment is used by the operator or by an independent contractor.

(u) Non-permissible electronic surveying equipment may be used when production is occurring, subject to these conditions:

(1) On a mechanized mining unit (MMU) where production is occurring, non-permissible electronic surveying equipment shall not be used downwind of the discharge point of any face ventilation controls, such as tubing (including controls such as ''baloney skins'') or curtains.

(2) Production may continue while non-permissible electronic surveying equipment is used if the surveying equipment is used in a separate split of air from where production is occurring.

(3) Non-permissible electronic surveying equipment shall not be used in a split of air ventilating an MMU if any ventilation controls will be disrupted during such surveying. Disruption of ventilation controls means any change to the mine's ventilation system that causes the ventilation system not to function in accordance with the mine's approved ventilation plan.

(4) If a surveyor must disrupt ventilation while surveying, the surveyor shall cease surveying and communicate to the section foreman that ventilation must be disrupted. Production shall stop while ventilation is disrupted. Ventilation controls shall be reestablished immediately after the disruption is no longer necessary. Production shall only resume after all ventilation controls are reestablished and are in compliance with approved ventilation or other plans and other applicable laws, standards, or regulations.

(5) Any disruption in ventilation shall be recorded in the logbook required by the PDO. The logbook shall include a description of the nature of the disruption, the location of the disruption, the date and time of the disruption, the date and time the surveyor communicated the disruption to the section foreman, the date and time production ceased, the date and time ventilation was reestablished, and the date and time production resumed.

(6) All surveyors, section foremen, section crew members, and other personnel who will be involved with or affected by surveying operations shall receive training in accordance with 30 CFR 48.7 on the requirements of the PDO granted by MSHA within 60 days of the date the PDO becomes final. Such training shall be completed before any non-permissible electronic surveying equipment can be used while production is occurring. The operator shall keep a record of such training and provide it to MSHA upon request.

(7) The operator shall provide annual retraining to all personnel who will be involved with or affected by surveying operations in accordance with 30 CFR 48.8. The operator shall train new miners on the requirements of the PDO granted by MSHA in accordance with 30 CFR 48.5 and shall train experienced miners, as defined in 30 CFR 48.6, on the requirements of the PDO in accordance with 30 CFR 48.6. The operator shall keep a record of such training and provide it to MSHA upon request.

The petitioner asserts that the alternate method proposed will at all times guarantee no less than the same measure of protection afforded the miners under the mandatory standard.

Song-ae Aromie Noe,

Director, Office of Standards, Regulations, and Variances.

[FR Doc. 2024–02170 Filed 2–2–24; 8:45 am]

BILLING CODE 4520–43–P

DEPARTMENT OF LABOR

Wage and Hour Division

Agency Information Collection Activities; Comment Request; Information Collections Pertaining to Special Employment Under the Fair Labor Standards Act

AGENCY: Wage and Hour Division, Department of Labor.

ACTION: Notice.

SUMMARY: The Department of Labor (Department) is soliciting comments concerning a proposed revision of the information collection request (ICR) titled ''Information Collections Pertaining to Special Employment Under the Fair Labor Standards Act.'' This comment request is part of continuing Departmental efforts to reduce paperwork and respondent burden in accordance with the Paperwork Reduction Act of 1995 (PRA). The Department proposes to revise and extend the existing information collection with minor clarifying changes to the collection instruments. This program helps to ensure that requested data can be provided in the desired format, reporting burden (time and financial resources) is minimized, collection instruments are clearly understood, and the impact of collection requirements on respondents can be properly assessed. A copy of the proposed information request can be obtained by contacting the office listed below in the **FOR FURTHER INFORMATION CONTACT** section of this notice.

DATES: Written comments must be submitted to the office listed in the **ADDRESSES** section below on or before April 5, 2024.

ADDRESSES: You may submit comments identified by Control Number 1235–0001 by either one of the following methods: *Email: WHDPRAComments@dol.gov; Mail, Hand Delivery, Courier:* Division of Regulations, Legislation, and

Interpretation, Wage and Hour, U.S. Department of Labor, Room S–3502, 200 Constitution Avenue NW, Washington, DC 20210.

Instructions: Please submit one copy of your comments by only one method. All submissions received must include the agency name and Control Number identified above for this information collection. Commenters are encouraged to transmit their comments electronically via email or to submit them by mail early. Comments, including any personal information provided, become a matter of public record. They will also be summarized and/or included in the request for Office of Management and Budget (OMB) approval of the information collection request.

FOR FURTHER INFORMATION CONTACT: Robert Waterman, Division of Regulations, Legislation, and Interpretation, Wage and Hour Division, U.S. Department of Labor, Room S–3502, 200 Constitution Avenue NW, Washington, DC 20210; telephone: (202) 693–0406 (this is not a toll-free number). Alternative formats are available upon request by calling 1–866–487–9243. If you are deaf, hard of hearing, or have a speech disability, please dial 7–1–1 to access telecommunications relay services.

SUPPLEMENTARY INFORMATION:

I. Background: The Department's Wage and Hour Division (WHD) administers the Fair Labor Standards Act (FLSA), 29 U.S.C. 201, *et seq.,* which sets the Federal minimum wage, overtime pay, recordkeeping, and youth employment standards of most general application. *See* 29 U.S.C. 206, 207, 211, 212. FLSA section 14(c) provides that the Secretary of Labor (Secretary), ''to the extent necessary to prevent curtailment of opportunities for employment, shall by regulation or order provide for the employment, under special certificates, of individuals'' whose productivity for the work performed is limited by disability at subminimum wages commensurate with the individual's productivity. 29 U.S.C. 214(c). In accordance with section 14(c), WHD regulates the employment of individuals with disabilities under special certificates and governs the application and approval process for obtaining the certificates. *See* 29 CFR part 525. The information collections on the forms (Form WH–226, the Application for Authority to Employ Workers with Disabilities at Subminimum Wages, and Form WH–226A, the Supplemental Data Sheet for Application for Authority to Employ Workers with Disabilities at Subminimum Wages) assists the Department in fulfilling its statutory directive to administer and enforce the section 14(c) program, including the conditions introduced to section 14(c) certificate holders pursuant to the Workforce Innovation and Opportunity Act (WIOA), which was signed into law on July 22, 2014.

In addition, section 11(d) of the FLSA authorizes the Secretary to regulate, restrict, or prohibit industrial homework as necessary to prevent circumvention or evasion of the minimum wage requirements of the FLSA. 29 U.S.C. 211(d). Pursuant to section 11(d), WHD issues special certificates governing the employment of individual homeworkers and employers of homeworkers. The Department restricts homework in seven industries (*i.e.,* knitted outwear, women's apparel, jewelry manufacturing, gloves and mittens, button and buckle manufacturing, handkerchief manufacturing, and embroideries) to those employers that obtain certificates. *See* 29 CFR 530.1, 530.2. The Department may issue individual certificates in those industries for an individual homeworker (1) who is unable to adjust to factory work because of a disability or who must remain at home to care for a person with a disability in the home, and (2) who has been engaged in industrial homework in the particular industry prior to certain specified dates as set forth in the regulations or is engaged in industrial homework under the supervision of a State Vocational Rehabilitation Agency. *See* 29 CFR 530.3, 530.4. The Department also allows employers to obtain general (employer) certificates to employ homeworkers in all restricted industries, except women's apparel and hazardous jewelry manufacturing operations. *See* 29 CFR 530.101. Form WH–2, the Application for Special Industrial Homeworker's Certificate, and Form WH–46, the Application for Certificate to Employ Homeworkers, are used in the application process for obtaining these certificates, and Form WH–75, Homeworker Handbook, is used to assist with recordkeeping.

The FLSA also requires that the Secretary, to the extent necessary to prevent curtailment of employment opportunities, provide certificates authorizing the employment of full-time students at (1) not less than 85 percent of the applicable minimum wage or less than $1.60, whichever is higher, in retail or service establishments or in institutions of higher education (29 U.S.C. 214(b)(1), (3); 29 CFR part 519); and (2) not less than 85 percent of the applicable minimum wage or less than $1.30, whichever is higher, in agriculture (29 U.S.C. 214(b)(2), 29 CFR part 519). The FLSA and the regulations set forth the application requirements as well as the terms and conditions for the employment of full-time students at subminimum wages under certificates and temporary authorization to employ such students at subminimum wages. The forms used to apply for these certificates are WH–200 (retail, service, or agricultural employers seeking to employ full-time students for 10 percent or more of total monthly hours of employment), WH–201 (institution of higher learning seeking to employ its students), and WH–202 (retail, service, or agricultural employers seeking to employ six or fewer full-time students).

Under section 14(a) of the FLSA, the Secretary is required to provide, by regulation or order, a special certificate for the employment of learners, apprentices, and messengers who may be paid less than the Federal minimum wage set by section 6(a) of the FLSA. *See* 29 U.S.C. 214(a). The certificates are only issued to the extent necessary to prevent the curtailment of employment opportunities. This section also authorizes the Secretary to set limitations on such employment as to time, number, proportion, and length of service. The regulations at 29 CFR part 520 contain the provisions that implement the section 14(a) requirements. Form WH–205 is the application an employer uses to obtain a certificate to employ student-learners at wages lower than the Federal minimum wage. Form WH–209 is the application an employer uses to request a certificate authorizing the employer to employ learners and/or messengers at subminimum wage rates. Regulations issued by the Department's Office of Apprenticeship no longer permit the payment of subminimum wages to apprentices in an approved program, and the Department therefore has not issued apprentice certificates since 1987. *See* 29 CFR 29.5(b)(5). However, WHD must maintain the information collection for apprentice certificates to fulfill its statutory obligation under FLSA to maintain this program.

II. Review Focus: The Department is particularly interested in comments that:

• 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;

• Enhance the quality, utility, and clarity of the information to be collected;

• 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;

• Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submissions of responses.

III. Current Actions: The Department seeks approval for a revision of this information collection in order to ensure effective administration of various special employment programs.

Type of Review: Revision.

Agency: Wage and Hour Division.

Title: Information Collections Pertaining to Special Employment Under the Fair Labor Standards Act.

OMB Control Number: 1235–0001.

Affected Public: Business or other for-profit, not-for-profit institutions, Federal, State, local, or Tribal government.

Agency Numbers: Forms WH–226, WH–226A, WH–2, WH–46, WH–75, WH–200, WH–201, WH–202, WH–205, WH–209.

Total Respondents: 335,167.

Total Annual Responses: 1,338,561.

Estimated Total Burden Hours: 671,464.

Estimated Time per Response: Varies with type of request.

Frequency: On occasion.

Total Burden Cost (capital/startup): $2,249.66.

Dated: January 30, 2024.

Amy Hunter,

Director, Division of Regulations, Legislation, and Interpretation.

[FR Doc. 2024–02177 Filed 2–2–24; 8:45 am]

BILLING CODE 4510–27–P

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice: (24–007)]

Aerospace Safety Advisory Panel; Meeting

AGENCY: National Aeronautics and Space Administration (NASA).

ACTION: Notice of meeting.

SUMMARY: In accordance with the Federal Advisory Committee Act, as amended, the National Aeronautics and Space Administration announces a forthcoming meeting of the Aerospace Safety Advisory Panel (ASAP). The ASAP will hold its First Quarterly Meeting for 2024. This discussion is pursuant to carrying out its statutory duties for which the Panel reviews, identifies, evaluates, and advises on those program activities, systems, procedures, and management activities that can contribute to program risk. Priority is given to those programs that involve the safety of human flight.

DATES: Wednesday, February 28, 2024, 11 a.m. to 12:30 p.m., eastern time.

ADDRESSES: Public attendance will be virtual only. See dial-in information below under **SUPPLEMENTARY INFORMATION**.

FOR FURTHER INFORMATION CONTACT: Ms. Lisa M. Hackley, ASAP Administrative Officer, NASA Headquarters, Washington, DC 20546, (202) 358–1947 or *lisa.m.hackley@nasa.gov.*

SUPPLEMENTARY INFORMATION: As noted above, this meeting is only available telephonically. Any interested person must use a touch-tone phone to participate in this meeting. Any interested person may call the USA toll free conference call number 888–566–6133; passcode 8343253 and then the # sign. At the beginning of the meeting, members of the public may make a verbal presentation to the Panel limited to the subject of safety in NASA, not to exceed 5 minutes in length. To do so, members of the public must contact Ms. Lisa M. Hackley at *lisa.m.hackley@nasa.gov* or at (202) 358–1947 at least 48 hours in advance. Any member of the public is permitted to file a written statement with the Panel via electronic submission to Ms. Hackley at the email address previously noted. Written statements should be limited to the subject of safety in NASA.

The agenda for the meeting includes the following topics:

—Updates on the International Space Station Program

—Updates on the Commercial Crew Program

—Updates on the Moon to Mars Program

It is imperative that the meeting be held on this date to accommodate the scheduling priorities of the key participants.

Carol J. Hamilton,

Aerospace Safety Advisory Panel, Executive Director, National Aeronautics and Space Administration.

[FR Doc. 2024–02248 Filed 2–2–24; 8:45 am]

BILLING CODE P

POSTAL REGULATORY COMMISSION

[Docket Nos. CP2023–45; MC2024–170 and CP2024–176; MC2024–171 and CP2024–177; MC2024–172 and CP2024–178; MC2024–173 and CP2024–179; MC2024–174 and CP2024–180]

New Postal Products

AGENCY: Postal Regulatory Commission.

ACTION: Notice.

SUMMARY: The Commission is noticing a recent Postal Service filing for the Commission's consideration concerning a negotiated service agreement. This notice informs the public of the filing, invites public comment, and takes other administrative steps.

DATES: *Comments are due:* February 7, 2024.

ADDRESSES: Submit comments electronically via the Commission's Filing Online system at *http://www.prc.gov.* Those who cannot submit comments electronically should contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section by telephone for advice on filing alternatives.

FOR FURTHER INFORMATION CONTACT: David A. Trissell, General Counsel, at 202–789–6820.

SUPPLEMENTARY INFORMATION:

Table of Contents

I. Introduction

The Commission gives notice that the Postal Service filed request(s) for the Commission to consider matters related to negotiated service agreement(s). The request(s) may propose the addition or removal of a negotiated service agreement from the Market Dominant or the Competitive product list, or the modification of an existing product currently appearing on the Market Dominant or the Competitive product list.

Section II identifies the docket number(s) associated with each Postal

Service request, the title of each Postal Service request, the request's acceptance date, and the authority cited by the Postal Service for each request. For each request, the Commission appoints an officer of the Commission to represent the interests of the general public in the proceeding, pursuant to 39 U.S.C. 505 (Public Representative). Section II also establishes comment deadline(s) pertaining to each request.

The public portions of the Postal Service's request(s) can be accessed via the Commission's website (*http://www.prc.gov*). Non-public portions of the Postal Service's request(s), if any, can be accessed through compliance with the requirements of 39 CFR 3011.301.[1]

The Commission invites comments on whether the Postal Service's request(s) in the captioned docket(s) are consistent with the policies of title 39. For request(s) that the Postal Service states concern Market Dominant product(s), applicable statutory and regulatory requirements include 39 U.S.C. 3622, 39 U.S.C. 3642, 39 CFR part 3030, and 39 CFR part 3040, subpart B. For request(s) that the Postal Service states concern Competitive product(s), applicable statutory and regulatory requirements include 39 U.S.C. 3632, 39 U.S.C. 3633, 39 U.S.C. 3642, 39 CFR part 3035, and 39 CFR part 3040, subpart B. Comment deadline(s) for each request appear in section II.

II. Docketed Proceeding(s)

1. *Docket No(s).:* CP2023–45; *Filing Title:* USPS Notice of Amendment to Priority Mail, First-Class Package Service & Parcel Select Contract 4, Filed Under Seal; *Filing Acceptance Date:* January 30, 2024; *Filing Authority:* 39 CFR 3035.105; *Public Representative:* Almaroof Agoro; *Comments Due:* February 7, 2024.

2. *Docket No(s).:* MC2024–170 and CP2024–176; *Filing Title:* USPS Request to Add Priority Mail & USPS Ground Advantage Contract 177 to Competitive Product List and Notice of Filing Materials Under Seal; *Filing Acceptance Date:* January 30, 2024; *Filing Authority:* 39 U.S.C. 3642, 39 CFR 3040.130 through 3040.135, and 39 CFR 3035.105; *Public Representative:* Samuel Robinson; *Comments Due:* February 7, 2024.

3. *Docket No(s).:* MC2024–171 and CP2024–177; *Filing Title:* USPS Request to Add Priority Mail & USPS Ground Advantage Contract 178 to Competitive Product List and Notice of Filing Materials Under Seal; *Filing Acceptance Date:* January 30, 2024; *Filing Authority:* 39 U.S.C. 3642, 39 CFR 3040.130 through 3040.135, and 39 CFR 3035.105; *Public Representative:* Christopher C. Mohr; *Comments Due:* February 7, 2024.

4. *Docket No(s).:* MC2024–172 and CP2024–178; *Filing Title:* USPS Request to Add Priority Mail & USPS Ground Advantage Contract 179 to Competitive Product List and Notice of Filing Materials Under Seal; *Filing Acceptance Date:* January 30, 2024; *Filing Authority:* 39 U.S.C. 3642, 39 CFR 3040.130 through 3040.135, and 39 CFR 3035.105; *Public Representative:* Christopher C. Mohr; *Comments Due:* February 7, 2024.

5. *Docket No(s).:* MC2024–173 and CP2024–179; *Filing Title:* USPS Request to Add Priority Mail Express, Priority Mail & USPS Ground Advantage Contract 44 to Competitive Product List and Notice of Filing Materials Under Seal; *Filing Acceptance Date:* January 30, 2024; *Filing Authority:* 39 U.S.C. 3642, 39 CFR 3040.130 through 3040.135, and 39 CFR 3035.105; *Public Representative:* Christopher C. Mohr; *Comments Due:* February 7, 2024.

6. *Docket No(s).:* MC2024–174 and CP2024–180; *Filing Title:* USPS Request to Add Priority Mail Express, Priority Mail, USPS Ground Advantage & Parcel Select Contract 4 to Competitive Product List and Notice of Filing Materials Under Seal; *Filing Acceptance Date:* January 30, 2024; *Filing Authority:* 39 U.S.C. 3642, 39 CFR 3040.130 through 3040.135, and 39 CFR 3035.105; *Public Representative:* Christopher C. Mohr; *Comments Due:* February 7, 2024.

This Notice will be published in the **Federal Register**.

Jennie L. Jbara,

Alternate Certifying Officer.

[FR Doc. 2024–02188 Filed 2–2–24; 8:45 am]

BILLING CODE 7710–FW–P

[1] *See* Docket No. RM2018–3, Order Adopting Final Rules Relating to Non-Public Information, June 27, 2018, Attachment A at 19–22 (Order No. 4679).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–99451; File No. SR–MRX–2024–02]

Self-Regulatory Organizations; Nasdaq MRX, LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Amend Options 7, Section 6

January 30, 2024.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on January 16, 2024, Nasdaq MRX, LLC (''MRX'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I, II, and III, below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend its Rules at Options 7, Section 6, Ports and Other Services.[3]

The text of the proposed rule change is available on the Exchange's website at *https://listingcenter.nasdaq.com/rulebook/mrx/rules,* at the principal office of the Exchange, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to amend Options 7, Section 6, Ports and Other Services. Specifically, the Exchange proposes to amend the monthly caps for

[3] The Exchange initially filed the proposed pricing changes on November 28, 2023 (SR–MRX–2023–23) to be effective on December 1, 2023. On December 5, 2023, the Exchange withdrew SR–MRX–2023–23 and replaced it with SR–MRX–2023–25. On January 16, 2023, the Exchange withdrew SR–MRX–2023–25 and submitted this filing.

SQF Ports [4] and SQF Purge Ports.[5] The Exchange also proposes to remove unnecessary rule text from Options 7, Section 6 related to a technology migration. Both changes are explained below.

Today, MRX assesses $1,250 per port, per month for an SQF Port as well as an SQF Purge Port. Today, MRX waives one SQF Port fee per Market Maker per month. Also, today, SQF Ports and SQF Purge Ports are subject to a monthly cap of $17,500, which cap is applicable to Market Makers.

At this time, the Exchange proposes to increase the SQF Port and SQF Purge Port monthly cap fee of $17,500 per month to $27,500 per month.[6] The Exchange is not amending the $1,250 per port, per month SQF Port and SQF Purge Port fees and the Exchange would continue to waive one SQF Port fee per Market Maker per month. As is the case today, the Exchange would not assess a Member an SQF Port or SQF Purge Port fee beyond the monthly cap once the Member has exceeded the monthly cap for the respective month. Despite increasing the monthly cap for SQF Ports and SQF Purge Ports from $17,500 per month to $27,500 per month, the Exchange will continue to offer Members the opportunity to cap their SQF Port and SQF Purge Port fees so that they would not be assessed these fees beyond the cap. Further, an MRX Market Maker requires only one SQF Port to submit quotes in its assigned options series into MRX. An MRX Market Maker may submit all quotes through one SQF Port and utilize one SQF Purge Port to view its purge requests. While a Market Maker may elect to obtain multiple SQF Ports and SQF Purge Ports to organize its business,[7] only one SQF Port and SQF Purge Port is necessary for a Market Maker to fulfill its regulatory quoting obligations.[8]

The Exchange proposes to remove the italicized language in Options 7, Section 6 related to a technology migration that took place in 2022. In 2022, MRX filed a pricing change [9] to permit Members to request certain duplicative ports at no additional cost, from November 1, 2022 through December 30, 2022, to facilitate a technology migration. The rule text related to the 2022 technology migration is no longer necessary because the migration is complete and the pricing is no longer applicable. At this time, the Exchange proposes to remove this rule text.

2. Statutory Basis

The Exchange believes that its proposal is consistent with section 6(b) of the Act,[10] in general, and furthers the objectives of sections 6(b)(4) and 6(b)(5) of the Act,[11] in particular, in that it provides for the equitable allocation of reasonable dues, fees, and other charges among members and issuers and other persons using any facility, and is not designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

The proposed pricing change to increase the monthly cap applicable to SQF Ports and SQF Purge Ports is reasonable in several respects. As a threshold matter, the Exchange is subject to significant competitive forces in the market for options securities transaction services that constrain its pricing determinations in that market. The fact that this market is competitive has long been recognized by the courts. In *NetCoalition* v. *Securities and Exchange Commission,* the D.C. Circuit stated as follows: ''[n]o one disputes that competition for order flow is 'fierce.' . . . As the SEC explained, '[i]n the U.S. national market system, buyers and sellers of securities, and the broker-dealers that act as their order-routing agents, have a wide range of choices of where to route orders for execution'; [and] 'no exchange can afford to take its market share percentages for granted' because 'no exchange possesses a monopoly, regulatory or otherwise, in the execution of order flow from broker dealers'. . . .'' [12]

The Commission and the courts have repeatedly expressed their preference for competition over regulatory intervention in determining prices, products, and services in the securities markets. In Regulation NMS, while adopting a series of steps to improve the current market model, the Commission highlighted the importance of market forces in determining prices and SRO revenues and, also, recognized that current regulation of the market system ''has been remarkably successful in promoting market competition in its broader forms that are most important to investors and listed companies.'' [13]

Numerous indicia demonstrate the competitive nature of this market. Within this environment, market participants can freely and often do shift their order flow among the Exchange and competing venues in response to changes in their respective pricing schedules.

The proposed pricing change to increase the SQF Port and SQF Purge Port monthly cap from $17,500 per month to $27,500 per month is reasonable because despite the increase in the monthly cap, the Exchange will continue to offer Members the opportunity to cap their SQF Port and SQF Purge Port fees so that they would not be assessed these fees beyond the cap. Additionally, an MRX Market Maker requires only one SQF Port to submit quotes in its assigned options

[4] ''Specialized Quote Feed'' or ''SQF'' is an interface that allows Market Makers to connect, send, and receive messages related to quotes, Immediate-or-Cancel Orders, and auction responses to the Exchange. Features include the following: (1) options symbol directory messages (*e.g.,* underlying and complex instruments); (2) system event messages (*e.g.,* start of trading hours messages and start of opening); (3) trading action messages (*e.g.,* halts and resumes); (4) execution messages; (5) quote messages; (6) Immediate-or-Cancel Order messages; (7) risk protection triggers and purge notifications; (8) opening imbalance messages; (9) auction notifications; and (10) auction responses. The SQF Purge Interface only receives and notifies of purge requests from the Market Maker. Market Makers may only enter interest into SQF in their assigned options series. Immediate-or-Cancel Orders entered into SQF are not subject to the (i) Order Price Protection, Market Order Spread Protection, and Size Limitation Protection in Options 3, Section 15(a)(1)(A), (1)(B), and (2)(B) respectively, for single leg orders, or (ii) Complex Order Price Protection as defined in Options 3, Section 16(c)(1) for Complex Orders. *See* Supplementary Material .03(c) to Options 3, Section 7.

[5] SQF Purge is a specific port for the SQF interface that only receives and notifies of purge requests from the Market Maker. Dedicated SQF Purge Ports enable Market Makers to seamlessly manage their ability to remove their quotes in a swift manner. The SQF Purge Port is designed to assist Market Makers in the management of, and risk control over, their quotes. Market Makers may utilize a purge port to reduce uncertainty and to manage risk by purging all quotes in their assigned options series. Of note, Market Makers may only enter interest into SQF in their assigned options series. Additionally, the SQF Purge Port may be utilized by a Market Maker in the event that the Member has a system issue and determines to purge its quotes from the order book.

[6] Today, 63% of Market Makers cap their SQF Ports and SQF Purge Ports on MRX. The Exchange notes that of the Market Makers currently registered on MRX, there is a mix of size of Market Makers that cap.

[7] For example, a Market Maker may desire to utilize multiple SQF Ports for accounting purposes, to measure performance, for regulatory reasons or other determinations that are specific to that Member.

[8] MRX Market Makers have various regulatory requirements as provided for in Options 2, Section 4. Additionally, MRX Market Makers have certain quoting requirements with respect to their assigned options series as provided in Options 2, Section 5. SQF Ports are the only quoting protocol available on MRX and only Market Makers may utilize SQF Ports. The same is true for SQF Purge Ports.

[9] *See* Securities Exchange Act Release No. 96120 (October 21, 2022), 87 FR 65105 (October 27, 2022) (SR–MRX–2022–21) (Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Amend Options 7 in Connection With a Technology Migration).

[10] 15 U.S.C. 78f(b).

[11] 15 U.S.C. 78f(b)(4) and (5).

[12] *NetCoalition* v. *SEC,* 615 F.3d 525, 539 (D.C. Cir. 2010) (quoting Securities Exchange Act Release No. 59039 (December 2, 2008), 73 FR 74770, 74782–83 (December 9, 2008) (SR–NYSEArca–2006–21)).

[13] Securities Exchange Act Release No. 51808 (June 9, 2005), 70 FR 37496, 37499 (June 29, 2005) (''Regulation NMS Adopting Release'').

series into MRX. An MRX Market Maker may submit all quotes through one SQF Port and utilize one SQF Purge Port to view its purge requests. While a Market Maker may elect to obtain multiple SQF Ports and SQF Purge Ports to organize its business,[14] only one SQF Port and SQF Purge Port is necessary for a Market Maker to fulfill its regulatory quoting obligations.[15] Additionally, the Exchange believes that the caps are reasonable for two reasons.

First, SQF Ports are a secure method for Market Makers to submit quotes into the Exchange's match engine and for the Exchange to send messages related to those quotes to Market Makers. MRX must manage the security and message traffic, among other things, for each port. Utilizing the cap to manage a Market Maker's costs while also managing the quantity of SQF Ports issued on MRX has led the Exchange to select $27,500 as the amended monthly cap for SQF Ports and SQF Purge Ports. By capping the ports at a different level, the Exchange is considering the message traffic and message rates associated with the current number of outstanding ports and its ability to process messages. The ability to have a cap and amend that cap permits the Exchange to scale its needs with respect to processing messages in an efficient manner.

Second, the Exchange notes that multiple ports are not necessary, however, to the extent that some Market Makers elect to obtain multiple ports, the Exchange is offering to cap their total port cost at $27,500 per month. MRX believes the existence of a cap allows for efficiencies and permits Market Makers to increase their number of ports beyond the cap. The cap levels the playing field by allowing those Market Makers that want to obtain a larger number of ports to do so with the certainty of a fee cap. Without the cap, MRX Market Makers may pay more to obtain multiple ports on MRX.

The Exchange's proposed pricing change to increase the SQF Port and SQF Purge Port monthly cap from $17,500 per month to $27,500 per month is equitable and not unfairly discriminatory because the Exchange would uniformly not assess any Market Makers that exceeded the proposed monthly cap any SQF Port and SQF Purge Port fees for that month beyond the cap. Market Makers are the only market participants that are assessed SQF Port and SQF Purge Port fees because they are the only market participants that are permitted to quote on the Exchange. Unlike other market participants, Market Makers are subject to market making and quoting obligations.[16] These liquidity providers are critical market participants in that they are the only market participants that provide liquidity to MRX on a continuous basis. In addition, the Exchange notes that Lead Market Makers are required to submit quotes in the Opening Process to open an options series.[17] Market Makers are subject to a number of fees, unlike other market participants. Market Makers pay separate Membership Fees,[18] and CMM Trading Right Fees,[19] in addition to other fees paid by other market participants. Providing Market Makers a means to cap their cost related to quoting and enabling all Market Makers to acquire SQF Ports and SQF Purge Ports at no cost beyond a certain dollar amount enables these market participants to provide the necessary liquidity to MRX at lower costs.

In 2022, NYSE Arca, Inc. (''NYSE Arca'') proposed to restructure fees relating to OTPs for Market Makers.[20] In that rule change,[21] NYSE Arca argued that,

> Market Makers serve a unique and important function on the Exchange (and other options exchanges) given the quote-driven nature of options markets. Because options exchanges rely on actively quoting Market Makers to facilitate a robust marketplace that attracts order flow, options exchanges must attract and retain Market Makers, including by setting competitive Market Maker permit fees. Stated otherwise, changes to Market Maker permit fees can have a direct effect on the ability of an exchange to compete for order flow. The Exchange also believes that the number of options exchanges on which Market Makers can effect option transactions also ensures competition in the marketplace and constrains the ability of exchanges to charge supracompetitive fees for access to its market by Market Makers.

Further, NYSE ARCA noted that,[22]

> The Exchange further believes that its ability to set Market Maker permit fees is constrained by competitive forces based on the fact that Market Makers can, and have, chosen to terminate their status as a Market Maker if they deem Market Maker permit fees to be unreasonable or excessive. Specifically, the Exchange notes that a BOX participant modified its access to BOX in connection with the implementation of a proposed change to BOX's Market Maker permit fees. The Exchange has also observed that another options exchange group experienced decreases in market share following its proposed modifications of its access fees (including Market Maker trading permit fees), suggesting that market participants (including Market Makers) are sensitive to changes in exchanges' access fees and may respond by shifting their order flow elsewhere if they deem the fees to be unreasonable or excessive.
>
> There is no requirement, regulatory or otherwise, that any Market Maker connect to and access any (or all of) the available options exchanges. The Exchange also is not aware of any reason why a Market Maker could not cease being a permit holder in response to unreasonable price increases. The Exchange does not assess any termination fee for a Market Maker to drop its OTP, nor is the Exchange aware of any other costs that would be incurred by a Market Maker to do so.

The Exchange likewise believes that its ability to cap SQF Port and SQF Purge fees is constrained by competitive forces and that its proposed modifications to the SQF Port and SQF Purge Fee cap is reasonably designed in consideration of the competitive environment in which the Exchange operates, by balancing the value of the enhanced benefits available to Market Makers due to the current level of activity on the Exchange with a fee structure that will continue to incent Market Makers to support increased liquidity, quote competition, and trading opportunities on the Exchange, for the benefit of all market participants.

The Exchange's proposal to remove the italicized language in Options 7, Section 6 related to a technology migration that took place in 2022 is reasonable, equitable and not unfairly discriminatory because the rule text related to the technology migration is no longer necessary because the migration is complete and the fees are no longer applicable. No Member is subject to the pricing described for the 2022 technology migration.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose

[14] For example, a Market Maker or may desire to utilize multiple SQF Ports for accounting purposes, to measure performance, for regulatory reasons or other determinations that are specific to that Member.

[15] MRX Market Makers have various regulatory requirements as provided for in Options 2, Section 4. Additionally, MRX Market Makers have certain quoting requirements with respect to their assigned options series as provided in Options 2, Section 5. SQF Ports are the only quoting protocol available on MRX and only Market Makers may utilize SQF Ports.

[16] *See* Options 2, Sections 4 and 5.

[17] *See* Options 3, Section 8.

[18] *See* Options 7, Section 5, E.

[19] *See* Options 7, Section 5, F.

[20] *See* Securities Exchange Act Release No. 95412 (June 23, 2022), 87 FR 38786 (June 29, 2022) (SR–NYSEArca–2022–36). NYSE Arca proposed to increase both the monthly fee per Market Maker OTP and the number of issues covered by each additional OTP because, among other reasons, the number of issues traded on the Exchange has increased significantly in recent years.

[21] *Id* at 38788.

[22] *Id* at 38790.

any burden on competition not necessary or appropriate in furtherance of the purposes of the Act.

Intermarket Competition

The proposal does not impose an undue burden on intermarket competition. The Exchange believes its proposal remains competitive with other options markets who also offer order entry protocols. The Exchange notes that it operates in a highly competitive market in which market participants can readily favor competing venues if they deem fee levels at a particular venue to be excessive. In such an environment, the Exchange must continually adjust its fees to remain competitive with other exchanges. Because competitors are free to modify their own fees in response, and because market participants may readily adjust their order routing practices, the Exchange believes that the degree to which fee changes in this market may impose any burden on competition is extremely limited. Other exchanges have been permitted to amend certain costs attributed to Market Makers.[23] Further, in 2022, MRX proposed a monthly cap for SQF Ports and SQF Purge Ports of 17,500.[24] MRX noted in its rule change that, ''Only one SQF quote protocol is required for an MRX Market Maker to submit quotes into MRX and to meet its regulatory requirements.'' [25]

If the Commission were to apply a different standard of review this proposal than it applied to other exchange fee filings, where Market Maker fees were increased and port fee caps were established, it would create a burden on competition such that it would impair MRX's ability to compete among other options markets.

Intramarket Competition

The Exchange's proposed pricing change to increase the SQF Port and SQF Purge Port monthly cap from $17,500 per month to $27,500 per month does not impose an undue burden on competition because the Exchange would uniformly not assess any Market Makers that exceeded the proposed monthly cap any SQF Port and SQF Purge Port fees for that month beyond the cap. Market Makers are the only market participants that are assessed SQF Port and SQF Purge Port fees because they are the only market participants that are permitted to quote on the Exchange. Unlike other market participants, Market Makers are subject to market making and quoting obligations.[26] These liquidity providers are critical market participants in that they are the only market participants that provide liquidity to MRX on a continuous basis. In addition, the Exchange notes that Lead Market Makers are required to submit quotes in the Opening Process to open an options series.[27] Market Makers are subject to a number of fees, unlike other market participants. Market Makers pay separate Membership Fees,[28] and CMM Trading Right Fees,[29] in addition to other fees paid by other market participants. Providing Market Makers a means to cap their cost related to quoting and enabling all Market Makers to acquire SQF Ports and SQF Purge Ports at no cost beyond a certain dollar amount enables these market participants to provide the necessary liquidity to MRX at lower costs. Therefore, because Market Makers fulfill a unique role on the Exchange, are the only market participant required to submit quotes as part of their obligations to operate on the Exchange, and, in light of that role, they are eligible for certain incentives. The proposed SQF Port and SQF Purge Fee cap is designed to continue to incent Market Makers to quote on MRX, thereby promoting liquidity, quote competition, and trading opportunities.

The Exchange's proposal to remove the italicized language in Options 7, Section 6 related to a technology migration that took place in 2022 does not impose an undue burden on competition because the rule text related to the technology migration is no longer necessary because the migration is complete and the fees are no longer applicable. No Member is subject to the pricing described for the 2022 technology migration.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were either solicited or received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to section 19(b)(3)(A)(ii) of the Act.[30] At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is: (i) necessary or appropriate in the public interest; (ii) for the protection of investors; or (iii) otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's internet comment form (*https://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov*. Please include file number SR–MRX–2024–02 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549–1090.

All submissions should refer to file number SR–MRX–2024–02. 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 (*https://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street NE,

[23] *See* Securities Exchange Act Release No. 95412 (June 23, 2022), 87 FR 38786 (June 29, 2022) (SR–NYSEArca–2022–36).

[24] *See* Securities Exchange Act No. 96824 (February 7, 2023), 88 FR 8975 (February 10, 2023) (SR–MRX–2023–05) (Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Amend MRX Options 7, Section 6).

[25] *Id* at 8976.

[26] *See* Options 2, Sections 4 and 5.

[27] *See* Options 3, Section 8.

[28] *See* Options 7, Section 5, E.

[29] *See* Options 7, Section 5, F.

[30] 15 U.S.C. 78s(b)(3)(A)(ii).

Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. Do not include personal identifiable information in submissions; you should submit only information that you wish to make available publicly. We may redact in part or withhold entirely from publication submitted material that is obscene or subject to copyright protection. All submissions should refer to file number SR–MRX–2024–02 and should be submitted on or before February 26, 2024.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[31]

Sherry R. Haywood,

Assistant Secretary.

[FR Doc. 2024–02162 Filed 2–2–24; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–99449; File No. SR–NYSEAMER–2024–06]

Self-Regulatory Organizations; NYSE American LLC; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Modify the NYSE American Options Fee Schedule

January 30, 2024.

Pursuant to section 19(b)(1)[1] of the Securities Exchange Act of 1934 (''Act'')[2] and Rule 19b–4 thereunder,[3] notice is hereby given that, on January 25, 2024, NYSE American LLC (''NYSE American'' or the ''Exchange'') filed with the Securities and Exchange Commission (the ''Commission'') the proposed rule change as described in Items I and II below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to modify the NYSE American Options Fee Schedule (''Fee Schedule''). The Exchange proposes to implement the fee change effective January 25, 2024.[4] The proposed rule change is available on the Exchange's website at *www.nyse.com,* at the principal office of the Exchange, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of those statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

1. Purpose

The purpose of this filing [sic] to amend the Fee Schedule in a number of ways as described herein. The Exchange proposes to implement the rule change on January 25, 2024.

First, the Exchange proposes to modify the Fee Schedule to remove reference to costs that are no longer charged and are therefore inapplicable. Specifically, the Exchange proposes to modify the Fee Schedule to remove ''Login'' costs from Sections III.E.1 and IV and to remove ''Floor Broker Handheld'' costs from Section IV.

Next, the Exchange proposes to modify the Floor Broker Fixed Cost Prepayment Incentive Program (the ''FB Prepay Program'' or ''Program''), a prepayment incentive program that allows Floor Brokers to prepay certain of their annual Eligible Fixed Costs in exchange for the opportunity to qualify for certain volume rebates.[5] Specifically, the Manual Billable Volume Rebate is designed to encourage Floor Brokers to increase their monthly volume in billable manual contract sides to qualify for a rebate; increasing volumes qualify the Floor Broker for a higher level of rebate. Additional rebates may be earned by meeting the qualification levels of the Floor Broker Manual Billable Incentive Program.[6] Participating Floor Brokers receive their rebates payable on a monthly basis.[7] Floor Brokers that wish to participate in the FB Prepay Program for the following calendar year must notify the Exchange no later than the last business day of December in the current year.[8]

The Exchange proposes to eliminate the Floor Broker Manual Billable Incentive Program and accompanying monthly rebates[9] and instead provide Floor Brokers participating in the FB Prepay Program with enhanced opportunities for monthly rebates based on manual billable transaction volume (the ''Manual Billable Rebate Program'') and the QCC Billable Bonus Rebate. The calculation of volume on which rebates earned through the Manual Billable Rebate Program would be paid is based on transactions for which at least one side is subject to manual transaction fees and excludes volume from QCC transactions, unless otherwise specified.[10] The Exchange proposes to

[31] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 15 U.S.C. 78a.

[3] 17 CFR 240.19b–4.

[4] The Exchange originally filed to amend the Fee Schedule on January 2, 2024 (NYSEAmer–2023–69) [sic] and withdrew such filing on January 12, 2024 (SR–NYSEAmer–2024–05) [sic], which latter filing the Exchange withdrew on January 25, 2024.

[5] *See* Fee Schedule, Section III.E.1., Floor Broker Fixed Cost Prepayment Incentive Program (the ''FB Prepay Program''). ''Eligible Fixed Costs'' include monthly ATP Fees, the Floor Access Fee, and certain monthly Floor communication, connectivity, equipment and booth or podia fees, as set forth in the table in Section III.E.1. The Exchange notes that the FB Prepay Program is currently structured similarly to the Floor Broker prepayment program offered by its affiliated exchange, NYSE Arca, Inc. (''NYSE Arca''). *See* NYSE Arca Options Fee Schedule, FLOOR BROKER FIXED COST PREPAYMENT INCENTIVE PROGRAM (the ''FB Prepay Program'').

[6] *See* Fee Schedule, Section III.E.2., Floor Broker Manual Billable Incentive Program.

[7] *See* Fee Schedule, Section III.E. The Exchange proposes to remove the preamble to Section III.E., which relates to the Exchange's already-completed migration to the Pillar trading platform, because the text is no longer applicable and its removal would add clarity to the Fee Schedule. *See* proposed Fee Schedule, Section III.E.

[8] *See* Fee Schedule, Section III.E (providing, in relevant part, that the notification ''email to enroll in the Program must originate from an officer of the Floor Broker organization and, *except as provided for below,* represents a binding commitment through the end of the following calendar year.''). The Exchange proposes to modify Section III.E. of the Fee Schedule to remove the now obsolete phrase ''except as provided for below,'' as there is no exception to the notification requirement, which modification will add clarity, transparency, and internal consistency to the Fee Schedule. *See* proposed Fee Schedule, Section III.E.

[9] To effect the proposed change to eliminate the Floor Broker Manual Billable Incentive Program and related rebates, the Exchange proposes to delete in its entirety Section III.E.2. of the Fee Schedule. In addition, for consistency, the Exchange proposes to delete from the Table of Contents reference to this Section III.E.2., which is currently (and erroneously) listed as ''Reserved''. *See* proposed Fee Schedule, Table of Contents.

[10] *See* proposed Fee Schedule, Section III.E.1 (excluding QCC transactions from volume calculation ''unless otherwise specified''), which would add clarity, transparency, and internal consistency to the Fee Schedule. For certain volume thresholds (*i.e.,* those based solely on ''manual billable sides''), the Exchange proposes to continue to exclude QCC volume from the calculation of eligible volume for rebates paid through the Manual Billable Rebate Program because Floor Brokers would continue to be eligible for separate credits and rebates for QCC transactions through the QCC Billable Bonus Rebate.

continue to exclude any volume calculated to achieve the Strategy Execution Fee Cap, regardless of whether the cap is achieved, from the Manual Billable Rebate Program because fees on such volume are already capped and therefore such volume does not increase billable manual volume. The Exchange will not issue any refunds in the event that a Floor Broker organization's prepaid Eligible Fixed Costs exceeds actual annual costs.[11]

The Exchange proposes to modify the qualification levels and corresponding rebates in the Manual Billable Rebate Program as follows.

• First, the Exchange proposes to add a new qualification level that would provide for a ($0.05) rebate per billable side for Floor Brokers that execute a minimum of 500,000 manual billable sides. This proposed new qualification threshold provides for a lower volume threshold than is currently required to achieve a rebate, with the distinction that it does not include ''combined'' QCC transactions—only manual executions. The Exchange believes that this proposed qualification threshold may make the rebate more achievable for Floor Brokers, especially Floor Brokers that conduct more manual transactions than QCC transactions.

• Second, the Exchange proposes to modify the next-highest qualification level from 1 million ''combined manual and QCC billable contracts'' for a rebate of ($0.05) per billable side to 1.1 million ''manual billable sides,'' which are no longer ''combined'' with QCC transactions and to raise the corresponding rebate to ($0.07) per billable side. This proposed change raises the potential rebate along with the number of required manual executions while at the same time removing QCC executions from eligibility.

• Third, the Exchange proposes to remove the existing qualification level that offers an ($0.08) rebate per billable side for Floor Brokers that execute 3 million combined manual and QCC billable contracts.

• Finally, the Exchange proposes to offer two new ''Additional'' rebates as described below.

○ As proposed, a Floor Broker that executes at least 7 million ''combined manual billable and QCC billable contracts'' is eligible to receive an additional rebate of one cent ($0.01) per billable side. However, a Floor Broker that executes at least 11 million ''combined manual billable and QCC billable contracts'' is eligible to instead receive an additional rebate of two cents ($0.02).

The Exchange notes that it is not modifying the existing qualification level the requires a Floor Broker to execute 5 million ''combined manual billable and QCC billable contracts'' to achieve a ($0.10) rebate per billable side.

The table below illustrates the monthly qualification levels and the related rebates that the Exchange proposes to make available through the Manual Billable Rebate Program, payable on a monthly basis:

Manual billable rebate qualification	Rebate per billable side
Execute 500,000 manual billable sides	($0.05).
Execute 1.1 million manual billable sides	($0.07).
Execute 5 million combined manual billable and QCC billable contracts	($0.10).
Execute 7 million combined manual billable and QCC billable contracts	Additional ($0.01).
Execute 11 million combined manual billable and QCC billable contracts	Additional ($0.02).

Consistent with the current Manual Billable Rebate Program, Floor Brokers who achieve a Rebate Qualification level will earn the associated rebate back to the first contract and, as noted above, Participants that qualify for both ''Additional'' rebates are eligible to receive only one such rebate.[12]

The FB Prepay Program also currently offers participating Floor Brokers to be eligible to qualify for rebates on QCC transactions, payable on a monthly basis, in addition to the credits set forth in Section I.F (QCC Fees & Credits). The Exchange proposes to modify the volume thresholds required to achieve the ''QCC Billable Bonus Rebate. Specifically, the Exchange proposes to reduce the qualification threshold for the ''Prepay Bonus Level'' from 2 million to 500,000 ''QCC billable contracts.'' The Exchange also proposes to modify the ''Additional Bonus Level,'' which is currently only achievable if a Floor Broker that conduct volume that is ''100% above Prepay Bonus Level,'' to instead require ''4 million QCC billable contracts.'' The proposed changes are designed to make the Prepay Bonus Level more achievable and the Additional Bonus Level more difficult to achieve. The Exchange is not proposing to modify the rebates available to Floor Brokers that achieve the new volume thresholds.

The table below illustrates the proposed requirements to achieve the QCC Billable Bonus Rebate—both the Prepay Bonus Level and the Additional Bonus Level.

QCC billable bonus rebate qualification	Additional rebate on single billable side QCC contract	Additional rebate on two billable side QCC contract
Prepay Bonus Level—achieved with 500,000 QCC billable contracts	($0.02)	($0.04)
Additional Bonus Level—achieved with 4 million QCC billable contracts	($0.04)	($0.06)

As with other rebates, the QCC Billable Bonus Rebate would be payable back to the first side and Participants that qualify for more than one ''Additional'' rebate are eligible to receive only one such rebate.[13]

The Exchange further proposes to modify Section III.E.1. and Section I.F. to increase the maximum Floor Broker credits paid for QCC trades and rebates paid through the Manual Billable Rebate Program to $2,500,000 per month per

[11] As discussed *infra,* the Exchange proposes to expand entry to the FB Prepay Program to mid-year and therefore will remove reference to actual ''annual'' costs. *See* proposed Schedule, Section III.E.1.

[12] *See* proposed Fee Schedule, Section III.E.1 (providing that ''[t]he Manual Billable Rebate (including the ''Additional'' rebates) is payable back to the first billable side. Qualifying Participants are eligible to receive only one ''Additional'' rebate'')

[13] *See* proposed Fee Schedule, Section III.E.1 (providing that ''Qualifying Participants are eligible to receive only one ''Additional'' rebate'').

Floor Broker firm, an increase from the current monthly amount of 2,000,000 (the ''Maximum Combined Rebate/Credit'').[14] The proposed increase is designed to encourage Floor Broker firms to continue to direct transactions to the Exchange, despite increasing industry volumes making it less difficult to attain the maximum rebate.

Next, the Exchange proposes to modify the FB Prepay Program to remove reference to a specific year (*i.e.,* November 2022) and to instead reference ''November of the current year'' as the date that the Exchange will use for the calculation of a Floor Broker's Eligible Fixed Costs for the following calendar year. The FB Prepay Program currently specifies that a Floor Broker that commits to the program will be invoiced in January for Eligible Fixed Costs, based on annualizing their Eligible Fixed Costs incurred in November 2022. The Exchange believes that this proposed change would prevent the Exchange from relying on a stale date and would add flexibility to the program (insofar as it would not need to be revised each year).

Finally, the Exchange proposes to allow a Floor Broker to join the Program after the first of the year. To do so, similar to the protocol required of existing Program participants, such Floor Broker organizations would notify the Exchange in writing by emailing *optionsbilling@nyse.com* and indicating their commitment to submit prepayment for the balance of the calendar year; the email notification would have to originate from an officer of the Floor Broker organization and would represent a binding commitment through the balance of the calendar year.[15] As further proposed, the Floor Broker organization would be enrolled in the Program beginning on the first day of the next full month and would be invoiced for that first full month for Eligible Fixed Costs and the balance of the year, based on annualizing for the remainder of the calendar year their Eligible Fixed Costs incurred in its first full month in the Program.[16] The Exchange notes that both the current and proposed methodology rely on recently incurred Eligible Fixed Costs to predict anticipated Eligible Fixed Costs. For current program Participants the Exchange relies on November costs; whereas, for later-joining Program participants, the Exchange would rely on costs incurred in the Floor Broker's first full month in the Program. The Exchange believes that this approach allows the Exchange the flexibility to offer the FB Prepay Program to Floor Brokers that did not enroll before the end of the prior calendar year, including/especially Floor Brokers new to the Exchange, without putting these Floor Brokers at a competitive disadvantage. Finally, consistent with the current Program, the Exchange will not issue refunds if a Floor Broker organization's prepaid Eligible Fixed Costs exceeds its actual costs; however, the Exchange proposes to remove reference to ''annual'' costs in the current Fee Schedule because this phrase would not apply to Floor Brokers that join the Program after the first of the year.[17]

Finally, as noted above, the Exchange proposes to eliminate the Floor Broker Manual Billable Incentive Program. The Exchange determined that this program was duplicative of the FB Prepay Program, which made it difficult for Floor Brokers to ascertain the total rebates earned. The Exchange believes that the proposed adjustments to the Prepay Program (including changes to the QCC Billable Bonus Rebate Qualification) would reduce potential confusion and would add clarity and transparency to the Fee Schedule.

Although the Exchange cannot predict with certainty whether the proposed changes to the FB Prepay Program would encourage Floor Brokers to participate in the program or to increase either their manual billable volume or QCC volume, the Exchange believes that the proposed changes would continue to incent Floor Brokers to participate in the FB Prepay Program by adding flexibility to the structure of the Program, including by allowing Floor Brokers to join the Program after the first of the year and increasing the Maximum Combined Rebate/Credit. All Floor Brokers are eligible to participate in the FB Prepay Program and qualify for the proposed credits and rebates, and the credits and rebates are achievable in any given month without regard to volumes from any other month. The Exchange notes that the proposed restructuring of the FB Prepay Program (including by eliminating the Floor Broker Manual Billable Incentive Program) would more closely align the qualifications for and incentives offered through the Program with order flow executed by Floor Broker firms operating on the Exchange and with other fees and credits set forth in the Fee Schedule.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with section 6(b) of the Act,[18] in general, and furthers the objectives of sections 6(b)(4) and (5) of the Act,[19] in particular, because it provides for the equitable allocation of reasonable dues, fees, and other charges among its members, issuers and other persons using its facilities and does not unfairly discriminate between customers, issuers, brokers or dealers.

The Proposed Rule Change Is Reasonable

The Exchange operates in a highly competitive market. The Commission has repeatedly expressed its preference for competition over regulatory intervention in determining prices, products, and services in the securities markets. In Regulation NMS, the Commission highlighted the importance of market forces in determining prices and SRO revenues and, also, recognized that current regulation of the market system ''has been remarkably successful in promoting market competition in its broader forms that are most important to investors and listed companies.'' [20]

There are currently 17 registered options exchanges competing for order flow. Based on publicly-available information, and excluding index-based options, no single exchange has more than 16% of the market share of executed volume of multiply-listed equity and ETF options trades.[21] Therefore, no exchange possesses significant pricing power in the execution of multiply-listed equity and

[14] *See* proposed Fee Schedule, Sections III.E.1 and I.F. (providing, in relevant, part that Floor Broker credits paid for QCC trades and rebates paid through the Manual Billable Rebate Program shall not combine to exceed $2,500,000 per month per Floor Broker firm).

[15] *See* proposed Fee Schedule, FB Prepay Program (providing, in relevant part, that ''[t]o participate in the FB Prepay Program after the first of the year, Floor Broker organizations must notify the Exchange in writing by emailing *optionsbilling@nyse.com,* indicating a commitment to submit prepayment for the balance of the calendar year'' and that the notification ''email to enroll in the Program must originate from an officer of the Floor Broker organization and represents a binding commitment through the balance of the calendar year.'').

[16] *See* proposed Fee Schedule, FB Prepay Program.

[17] *See* proposed Fee Schedule, Section III.E (providing, in relevant part, that ''[t]he Exchange will not issue any refunds in the event that a Floor Broker organization's prepaid Eligible Fixed Costs exceeds actual costs.''). The Exchange believes this proposed change would add clarity, transparency, and internal consistency to the Fee Schedule.

[18] 15 U.S.C. 78f(b).

[19] 15 U.S.C. 78f(b)(4) and (5).

[20] *See* Securities Exchange Act Release No. 51808 (June 9, 2005), 70 FR 37496, 37499 (June 29, 2005) (S7–10–04) (''Reg NMS Adopting Release'').

[21] The OCC publishes options and futures volume in a variety of formats, including daily and monthly volume by exchange, available here: *https://www.theocc.com/Market-Data/Market-Data-Reports/Volume-and-Open-Interest/Monthly-Weekly-Volume-Statistics.*

ETF options order flow. More specifically, in November 2023, the Exchange had less than 8% market share of executed volume of multiply-listed equity and ETF options trades.[22]

The Exchange believes that the ever-shifting market share among the exchanges from month to month demonstrates that market participants can shift order flow or discontinue or reduce use of certain categories of products, in response to fee changes. Accordingly, competitive forces constrain options exchange transaction fees. Stated otherwise, changes to exchange transaction fees can have a direct effect on the ability of an exchange to compete for order flow.

The Exchange believes that the proposed credits offered to Floor Brokers on QCC transactions and manual billable volume offered through the FB Prepay Program, as proposed, are reasonable because they are designed to continue to incent Floor Brokers to increase the number of QCC transactions and manual billable orders executed on the Exchange. The Exchange also believes that the proposed increase in the maximum monthly amount that a Floor Broker firm could earn from Floor Broker QCC credits or from rebates via the proposed changes to the Manual Billable Rebate Program (*i.e.,* the Maximum Combined Rebate/Credit) is reasonable because it is likewise intended to encourage Floor Brokers to direct QCC transactions and manual billable volume to the Exchange.

With respect to the FB Prepay Program, the Exchange also believes that the proposed changes are reasonable because participation in the program is optional, and Floor Brokers can elect to participate in the program to be eligible to earn the proposed rebates on manual billable transactions and QCC transactions or not. The Exchange also believes that the proposed modification of the FB Prepay Program (including the proposal to eliminate the Floor Broker Manual Billable Incentive Program) is reasonable because it is designed to simplify the incentives offered through the program, to continue to encourage Floor Brokers to participate in the FB Prepay Program, and to provide liquidity on the Exchange. Specifically, the Exchange believes that the proposed qualifying thresholds for the Manual Billable Rebate Program and QCC Bonus Rebate are achievable by Floor Broker firms based on recent Floor Broker activity and in consideration of the proposed changes in this filing, and that the rebate amounts are designed to encourage Floor Brokers to continue to direct manual billable volume and QCC transactions to the Exchange. The Exchange further believes that the amounts of the proposed rebates are reasonable and comparable to rebate amounts offered by another options exchange to Floor Brokers on manual transactions.

To the extent that the proposed changes attract more volume to the Exchange, this increased order flow would continue to make the Exchange a more competitive venue for order execution, which, in turn, promotes just and equitable principles of trade and removes impediments to and perfects the mechanism of a free and open market and a national market system. The Exchange notes that all market participants stand to benefit from any increase in volume by Floor Brokers, which could promote market depth, facilitate tighter spreads and enhance price discovery, to the extent the proposed change encourages Floor Brokers to utilize the Exchange as a primary trading venue, and may lead to a corresponding increase in order flow from other market participants. In addition, any increased liquidity on the Exchange would result in enhanced market quality for all participants.

The Exchange also believes that the proposed change to modify the Program to remove reference to a specific year is reasonable because it would prevent the Exchange from using a benchmark based on a stale date and would add flexibility to the Program (insofar as it would not need to be revised each year). In addition, the proposed change to allow Floor Brokers to join the Program after the first of the year—by prepaying an amount (to cover the balance of the year) based on their Eligible Fixed Costs incurred in their first month in the Program—is reasonable for several reasons. First, the proposed method used to determine the prepayment amount for any later-joining Floor Brokers is analogous to the Exchange's current method of determining the prepayment amount for Program participants (*i.e.,* prepayment amount is based on the Eligible Fixed Costs recently-incurred). Second, the Exchange believes that the proposed method of determining a (later-joining) Floor Broker's prepayment amount would provide the most accurate basis for anticipating that Floor Broker's future Eligible Fixed Costs. Moreover, the Exchange believes that this approach would allow the Exchange the flexibility to offer the FB Prepay Program to later-joining Floor Brokers, including/especially Floor Brokers new to the Exchange, without putting these Floor Brokers at a competitive disadvantage.

Further, the proposal to eliminate the Floor Broker Manual Billable Incentive Program and accompanying monthly rebates is reasonable because it is rendered redundant by the proposed enhanced opportunities for Floor Brokers participating in the FB Prepay Program to achieve rebates through the Manual Billable Rebate Program and the QCC Billable Bonus Rebate. The Exchange believes that this proposed restructuring is reasonable because it may encourage more Floor Brokers to sign up for the Program, which may result in increased liquidity on the Exchange to the benefit of all market participants.

To the extent the proposed changes continue to attract greater volume and liquidity, the Exchange believes the proposed changes would improve the Exchange's overall competitiveness and strengthen its market quality for all market participants. In the backdrop of the competitive environment in which the Exchange operates, the proposed rule change is a reasonable attempt by the Exchange to increase the depth of its market and improve its market share relative to its competitors. The Exchange's fees are constrained by intermarket competition, as Floor Brokers may direct their order flow to any of the 17 options exchanges, including those offering rebates on QCC orders [23] and Floor Broker rebates on manual billable orders. Thus, Floor Brokers have a choice of where they direct their order flow, including their QCC transactions and manual billable orders. The proposed rule changes are designed to continue to incent Floor Brokers to direct liquidity (and, in particular, QCC orders and manual billable orders) to the Exchange; to the extent Floor Brokers are incented to

[22] Based on a compilation of OCC data for monthly volume of equity-based options and monthly volume of ETF-based options, *see id.,* the Exchange's market share in equity-based options was 6.98% for the month of November 2022 and 7.60% for the month of November 2023.

[23] *See, e.g.,* EDGX Options Exchange Fee Schedule, QCC Initiator/Solicitation Rebate Tiers (applying ($0.16) per contract rebate up to 999,999 contracts for QCC transactions when only one side of the transaction is a non-customer or ($0.24) per contract rebate up to 999,999 contracts for QCC transactions with non-customers on both sides); BOX Options Fee Schedule at Section IV.D.1. (QCC Rebate) (providing for ($0.14) per contract rebate up to 999,999 contracts for QCC transactions when only one side of the QCC transaction is a broker-dealer or market maker or ($0.22) per contract rebate up to 1,499,999 contracts for QCC transactions when both parties are a broker-dealer or market maker); Nasdaq ISE, Options 7, Section 6.B. (QCC Rebate) (offering rebates on QCC transactions of ($0.14) per contract when only one side of the QCC transaction is a non-customer or ($0.22) per contract when both sides of the QCC transaction are non-customers).

aggregate their trading activity at the Exchange, that increased liquidity could promote market depth, price discovery and improvement, and enhanced order execution opportunities for market participants.

Finally, the proposed changes to remove reference to inapplicable fees (*i.e.,* costs for Login and Floor Broker Hand Held), to remove now obsolete language related to the migration to Pillar, as well as the to make conforming changes to the Table of Contents (in connection with the deletion of Floor Broker Incentive Program), and to remove superfluous or obsolete text from the FB Prepay Program, are reasonable because they would add clarity, transparency, and internal consistency to the Fee Schedule to the benefit of all market participants.

The Proposed Rule Change Is an Equitable Allocation of Credits and Fees

The Exchange believes the proposed rule change is an equitable allocation of its fees and credits. The proposal is based on the amount and type of business transacted on the Exchange; Floor Brokers are not obligated to participate in the FB Prepay Program and can choose to execute QCC transactions or manual billable transactions to earn the various proposed credits and rebates or not. In addition, the proposed credits and rebates are available to all Floor Brokers equally, and the proposed monthly limit on the amount that Floor Brokers could earn from credits and rebates on QCC transactions and manual billable transactions would apply to all Floor Brokers equally.

The Exchange also notes that the proposed changes are designed to encourage Floor Brokers that have previously enrolled in the FB Prepay Program to reenroll for the upcoming year, as well as to attract Floor Brokers that have not yet participated in the program. Moreover, the Exchange believes that the proposed modifications to the FB Prepay Program are an equitable allocation of fees and credits because they would apply to participating Floor Brokers equally and are intended to encourage the role performed by Floor Brokers in facilitating the execution of orders via open outcry, a function which the Exchange wishes to support for the benefit of all market participants.

The Exchange also believes that the proposed change to modify the Program to remove reference to a specific year is equitable because it would prevent the Exchange from using a benchmark based on a stale date. In addition, the proposed change to allow Floor Brokers to join the Program after the first of the year—by prepaying an amount (to cover the balance of the year) based on their Eligible Fixed Costs incurred in their first month in the Program—is equitable for several reasons. First, the proposed method used to determine the prepayment amount for any later-joining Floor Brokers is analogous to the Exchange's current method of determining the prepayment amount for Program participants (*i.e.,* prepayment amount is based on the Eligible Fixed Costs recently-incurred). Second, the Exchange believes that the proposed method of determining a (later-joining) Floor Broker's prepayment amount would provide the most accurate basis for anticipating that Floor Broker's future Eligible Fixed Costs. Moreover, the Exchange believes that this approach would allow the Exchange the flexibility to offer the FB Prepay Program to later-joining Floor Brokers, including/especially Floor Brokers new to the Exchange, without putting these Floor Brokers at a competitive disadvantage.

Further, the proposal to eliminate the Floor Broker Manual Billable Incentive Program and accompanying monthly rebates is equitable because it is rendered redundant by the proposed enhanced opportunities for Floor Brokers participating in the FB Prepay Program to achieve rebates through the Manual Billable Rebate Program and the QCC Billable Bonus Rebate. The Exchange believes that this proposed restructuring is reasonable because it may encourage more Floor Brokers to sign up for the Program, which may result in increased liquidity on the Exchange to the benefit of all market participants

Moreover, the proposed changes are designed to continue to incent Floor Brokers to encourage ATP Holders to aggregate their executions—including QCC transactions and manual orders—at the Exchange as a primary execution venue. To the extent that the proposed change achieves its purpose in attracting more Floor Broker volume to the Exchange, this increased order flow would continue to make the Exchange a more competitive venue for, among other things, order execution. Thus, the Exchange believes the proposed rule changes would improve market quality for all market participants on the Exchange and, as a consequence, attract more order flow to the Exchange, thereby improving market-wide quality and price discovery.

The Proposed Rule Change Is Not Unfairly Discriminatory

The Exchange believes the proposed fees, credits, and rebates applicable to Floor Brokers on QCC transactions and manual billable transactions are not unfairly discriminatory because they are based on the amount and type of business transacted on the Exchange, and Floor Brokers are not obligated to execute QCC or manual billable volume, or to participate in the FB Prepay Program. Further, the proposal to eliminate the Floor Broker Manual Billable Incentive Program and accompanying monthly rebates is not unfairly discriminatory because it is rendered redundant by the proposed enhanced opportunities for Floor Brokers participating in the FB Prepay Program to achieve rebates through the Manual Billable Rebate Program and the QCC Billable Bonus Rebate. The Exchange believes that this proposed restructuring is reasonable because it may encourage more Floor Brokers to sign up for the Program, which may result in increased liquidity on the Exchange to the benefit of all market participants. In addition, the proposed changes, including the increase of the Maximum Combined Rebate/Credit, would apply to all similarly-situated Floor Brokers on an equal and non-discriminatory basis. The proposed credits and rebates are also not unfairly discriminatory to non-Floor Brokers because Floor Brokers serve an important function in facilitating the execution of orders on the Exchange, which the Exchange wishes to encourage and support to promote price improvement opportunities for all market participants.

The Exchange also believes that the proposed change to modify the Program to remove reference to a specific year is not unfairly discriminatory because it would apply equally to all Program participants and would prevent the Exchange from using a benchmark based on a stale date In addition, the proposed change to allow Floor Brokers to join the Program after the first of the year—by prepaying an amount (to cover the balance of the year) based on their Eligible Fixed Costs incurred in their first month in the Program—is not unfairly discriminatory for several reasons. First, the proposed method used to determine the prepayment amount for any later-joining Floor Brokers is analogous to the Exchange's current method of determining the prepayment amount for Program participants (*i.e.,* prepayment amount is based on the Eligible Fixed Costs recently-incurred). Second, the

Exchange believes that the proposed method of determining a (later-joining) Floor Broker's prepayment amount would provide the most accurate basis for anticipating that Floor Broker's future Eligible Fixed Costs. Moreover, the Exchange believes that this approach would allow the Exchange the flexibility to offer the FB Prepay Program to later-joining Floor Brokers, including/especially Floor Brokers new to the Exchange, without putting these Floor Brokers at a competitive disadvantage.

Further, the proposal to eliminate the Floor Broker Manual Billable Incentive Program and accompanying monthly rebates is not unfairly discriminatory because it is rendered redundant by the proposed enhanced opportunities for Floor Brokers participating in the FB Prepay Program to achieve rebates through the Manual Billable Rebate Program and the QCC Billable Bonus Rebate. The Exchange believes that this proposed restructuring is reasonable because it may encourage more Floor Brokers to sign up for the Program, which may result in increased liquidity on the Exchange to the benefit of all market participants.

To the extent that the proposed changes attract more QCC orders and manual orders to the Exchange, this increased order flow would continue to make the Exchange a more competitive venue for order execution. Thus, the Exchange believes the proposed rule change would improve market quality for all market participants on the Exchange and, as a consequence, attract more order flow to the Exchange, thereby improving market-wide quality and price discovery. The resulting increased volume and liquidity would provide more trading opportunities and tighter spreads to all market participants and thus would promote just and equitable principles of trade, remove impediments to and perfect the mechanism of a free and open market and a national market system and, in general, protect investors and the public interest.

Finally, the Exchange believes that it is subject to significant competitive forces, as described below in the Exchange's statement regarding the burden on competition.

B. Self-Regulatory Organization's Statement on Burden on Competition

In accordance with section 6(b)(8) of the Act, the Exchange does not believe that the proposed rule change would impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. Instead, as discussed above, the Exchange believes that the proposed changes would encourage the submission of additional liquidity to a public exchange, thereby promoting market depth, price discovery and transparency and enhancing order execution opportunities for all market participants. As a result, the Exchange believes that the proposed change furthers the Commission's goal in adopting Regulation NMS of fostering integrated competition among orders, which promotes ''more efficient pricing of individual stocks for all types of orders, large and small.'' [24]

Intramarket Competition. The proposed modification of the FB Prepay Program and the proposed credits and rebates offered to Floor Brokers manual billable orders are designed to incent participation in the FB Prepay Program and to attract additional order flow to the Exchange, which could increase the volumes of contracts traded on the Exchange. Greater liquidity benefits all market participants on the Exchange, and increased QCC and manual billable transactions could increase opportunities for execution of other trading interest. The proposed rebates available through the Manual Billable Rebate Program and QCC Billable Bonus Rebate would be available to all Floor Brokers that choose to participate in the FB Prepay Program and meet the qualifying criteria for such rebates. The proposed increase of the Maximum Combined Rebate/Credit would likewise apply equally to all similarly-situated Floor Brokers. To the extent that there is an additional competitive burden on non-Floor Brokers, the Exchange believes that any such burden would be appropriate because Floor Brokers serve an important function in facilitating the execution of orders and price discovery for all market participants.

Intermarket Competition. The Exchange operates in a highly competitive market in which market participants can readily favor one of the 17 competing option exchanges if they deem fee levels at a particular venue to be excessive. In such an environment, the Exchange must continually adjust its fees to remain competitive with other exchanges and to attract order flow to the Exchange. Based on publicly-available information, and excluding index-based options, no single exchange has more than 16% of the market share of executed volume of multiply-listed equity and ETF options trades.[25] Therefore, no exchange possesses significant pricing power in the execution of multiply-listed equity and ETF options order flow. More specifically, in November 2023, the Exchange had less than 8% market share of executed volume of multiply-listed equity and ETF options trades.[26]

The Exchange believes that the proposed changes reflect this competitive environment because they modify the Exchange's fees and credits in a manner designed to continue to incent Floor Brokers to direct trading interest (particularly QCC transactions and manual orders) to the Exchange, to provide liquidity and to attract order flow. To the extent that Floor Brokers are encouraged to participate in the FB Prepay Program and/or incentivized to utilize the Exchange as a primary trading venue for all transactions, all of the Exchange's market participants should benefit from the improved market quality and increased opportunities for price improvement. The Exchange notes that it operates in a highly competitive market in which market participants can readily favor competing venues. In such an environment, the Exchange must continually review, and consider adjusting, its fees and credits to remain competitive with other exchanges. For the reasons described above, the Exchange believes that the proposed rule change reflects this competitive environment.

The Exchange further believes that the proposed change could promote competition between the Exchange and other execution venues, including those that currently offer rebates on QCC transactions and manual billable volume,[27] by encouraging additional orders to be sent to the Exchange for execution.

Finally, the proposed changes to remove reference to inapplicable fees (*i.e.,* costs for Login and Floor Broker Hand Held) and to make conforming changes to the Table of Contents (to reflect deletion of Floor Broker Incentive Program), and to remove superfluous or obsolete text from the FB Prepay Program are not designed to address any competitive issue but are instead designed to add clarity, transparency, and internal consistency to the Fee Schedule.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were solicited or received with respect to the proposed rule change.

[24] *See* Reg NMS Adopting Release, *supra* note 20, at 37499.

[25] *See* note 21, *supra.*

[26] *See* note 22, *supra.*

[27] *See* note 23, *supra.*

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change is effective upon filing pursuant to section 19(b)(3)(A) [28] of the Act and subparagraph (f)(2) of Rule 19b–4 [29] thereunder, because it establishes a due, fee, or other charge imposed by the Exchange.

At any time within 60 days of the filing of such proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings under section 19(b)(2)(B) [30] of the Act to determine whether the proposed rule change should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's internet comment form (*https://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov*. Please include file number SR–NYSEAMER–2024–06 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549–1090.

All submissions should refer to file number SR–NYSEAMER–2024–06. 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 (*https://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street NE, Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. Do not include personal identifiable information in submissions; you should submit only information that you wish to make available publicly. We may redact in part or withhold entirely from publication submitted material that is obscene or subject to copyright protection. All submissions should refer to file number SR–NYSEAMER–2024–06 and should be submitted on or before February 26, 2024.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[31]

Sherry R. Haywood,

Assistant Secretary.

[FR Doc. 2024–02160 Filed 2–2–24; 8:45 am]

BILLING CODE 8011–01–P

[28] 15 U.S.C. 78s(b)(3)(A).

[29] 17 CFR 240.19b–4(f)(2).

[30] 15 U.S.C. 78s(b)(2)(B).

[31] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Investment Company Act Release No. 35121; 812–15209]

Blue Tractor ETF Trust and Blue Tractor Group, LLC

January 31, 2024.

AGENCY: Securities and Exchange Commission (''Commission'').

ACTION: Notice of an application to amend a prior order for exemptive relief.

SUMMARY OF APPLICATION: Applicants request an order (''Amended Order'') that would amend a prior order to permit a Fund (as defined below) to engage in short sales with respect to the same types of instruments that a Fund is permitted to hold as long positions.

APPLICANTS: Blue Tractor ETF Trust and Blue Tractor Group, LLC (''Applicants'').

FILING DATES: The application was filed on March 19, 2021, and amended on August 12, 2021, February 15, 2022, June 3, 2022, June 7, 2023 and January 30, 2024.

HEARING OR NOTIFICATION OF HEARING: An order granting the requested relief will be issued unless the Commission orders a hearing. Interested persons may request a hearing by emailing the Commission's Secretary at *Secretarys-Office@sec.gov* and serving Applicants with a copy of the request by email, if an email address is listed for the relevant Applicant below, or personally or by mail, if a physical address is listed for the relevant Applicant below. Hearing requests should be received by the Commission by 5:30 p.m. on February 26, 2024 and should be accompanied by proof of service on the Applicants, in the form of an affidavit, or, for lawyers, a certificate of service. Pursuant to rule 0–5 under the Investment Company Act of 1940 (''Act''), hearing requests should state the nature of the writer's interest, any facts bearing upon the desirability of a hearing on the matter, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by emailing to the Commission's Secretary.

ADDRESSES: The Commission: *Secretarys-Office@sec.gov.* Applicants: *MMundt@stradley.com.*

FOR FURTHER INFORMATION CONTACT: Deepak T. Pai, Senior Counsel; Trace W. Rakestraw, Senior Special Counsel, at (202) 551–6825 (Division of Investment Management, Chief Counsel's Office).

SUPPLEMENTARY INFORMATION: For Applicants' representations, legal analysis, and conditions, please refer to Applicants' fifth amended and restated application, dated January 30, 2024, which may be obtained via the Commission's website by searching for the file number at the top of this document, or for an Applicant using the Company name search field, on the SEC's EDGAR system. The SEC's EDGAR system may be searched at, *https://www.sec.gov/edgar/searchedgar/legacy/companysearch.html.* You may also call the SEC's Public Reference Room at (202) 551–8090.

I. Introduction

1. On December 10, 2019, the Commission issued an order [1] (as subsequently amended,[2] the ''Prior Order'') [3] under section 6(c) of the Act

[1] *See* Blue Tractor ETF Trust and Blue Tractor Group, LLC, Investment Company Act Release No. 33682 (Nov. 14, 2019) (notice) and Investment Company Act Release No. 33710 (Dec. 10, 2019) (order).

[2] *See* Blue Tractor ETF Trust and Blue Tractor Group, LLC, Investment Company Act Release No. 34194 (Feb. 10, 2021) (notice) and Investment Company Act Release No. 34221 (Mar. 9, 2021) (order).

[3] Except as specifically noted in the application for the Amended Order, all representations and conditions contained in the application first

for an exemption from sections 2(a)(32), 5(a)(1), 22(d), and 22(e) of the Act and rule 22c–1 under the Act, under sections 6(c) and 17(b) of the Act for an exemption from sections 17(a)(1) and 17(a)(2) of the Act, and under section 12(d)(1)(J) of the Act for an exemption from sections 12(d)(1)(A) and 12(d)(1)(B) of the Act.[4] The Prior Order permits Applicants to operate a novel type of actively-managed exchange-traded fund (''ETF'') that is not required to disclose its full portfolio holdings on a daily basis (each, a ''Fund''). Rather, pursuant to the Prior Order, each Business Day [5] a Fund publishes a basket of securities and cash that, while different from the Fund's portfolio, is designed to closely track its daily performance (the ''Portfolio Reference Basket'').

2. Under the Prior Order, a Fund may not borrow for investment purposes or hold short positions. Applicants now seek to amend the Prior Order to permit a Fund to engage in short selling, but only in the same types of instruments that a Fund is permitted to hold as long positions in its actual portfolio (''Portfolio Instruments'').[6]

II. The Application

A. Applicants' Proposal

3. Upon amending the Prior Order, the Portfolio Reference Basket will be constructed in the same manner as described in the Prior Order, except that it will include a first portion corresponding to the long positions in the Fund's actual portfolio and a second portion corresponding to the short positions in the Fund's actual portfolio. Applicants represent that, in the aggregate, the Portfolio Reference Basket will provide an arbitrage tool to allow market participants to price and hedge their positions in the ETF shares.

4. As described in the application, a Fund will disclose publicly on its website the respective aggregate weightings of the long and short positions in the Fund's actual portfolio. In this manner, Applicants represent that market participants will understand the overall long and short exposures in the Fund's actual portfolio even though the weightings of individual long and short positions in the Portfolio Reference Basket will be different than the weightings of those individual long and short positions within the Fund's actual portfolio. Applicants also represent that although short positions cannot be transferred within the Fund's creation basket, long positions and cash amounts representing the net value of short positions would be included in the Fund's creation basket, just as with ETFs relying on Rule 6c–11.

B. Considerations Relating to the Requested Relief

5. Applicants represent that they do not believe that the use of short positions related to the Portfolio Instruments will give rise to any new policy concerns, stating that the disclosure of short positions will not change the ability of arbitrageurs and market participants to recognize, value, and execute on arbitrage opportunities. Applicants represent that the inclusion of short positions in the actual portfolio and disclosure of those short positions in the Portfolio Reference Basket will not disrupt the correlation between the performance of the Portfolio Reference Basket and the actual portfolio. Applicants also believe that the pricing of short positions in the Portfolio Instruments should be as readily ascertainable as the pricing of long positions in those same Portfolio Instruments because the pricing of the short positions will reflect the liquidity and pricing transparency of the related Portfolio Instruments. As noted above, moreover, Applicants have committed that the Funds would publish daily the aggregate short exposure of the actual portfolio and the aggregate long exposure of the actual portfolio so that market participants will have even more information about the ways in which the positions in the Portfolio Reference Basket relate to the actual portfolio.

III. Requested Exemptive Relief

Applicants believe that the Prior Order, as amended, continues to meet the relevant standards for relief pursuant to section 6(c) of the Act for an exemption from sections 2(a)(32), 5(a)(1), 22(d), and 22(e) of the Act and rule 22c–1 under the Act, and under sections 6(c) and 17(b) of the Act for an exemption from sections 17(a)(1) and 17(a)(2) of the Act.[7]

IV. Applicants' Conditions

Applicants agree that the Amended Order granting the requested relief will be subject to all of the conditions in the Prior Order.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Sherry R. Haywood,

Assistant Secretary.

[FR Doc. 2024–02245 Filed 2–2–24; 8:45 am]

BILLING CODE 8011–01–P

submitted with the Commission (File No. 812–14625), as amended and restated, and filed with the Commission on October 23, 2019 (the ''First Application''), as modified according to the application for an amended order subsequently submitted with the Commission (File No. 812–15162), as amended and restated, and filed with the Commission on January 19, 2021, remain applicable to the operation of the Funds and will apply to any Funds relying on the Amended Order.

[4] The relief granted under section 12(d)(1)(J) of the Act for an exemption from sections 12(d)(1)(A) and 12(d)(1)(B) of the Act (the ''Section 12(d)(1) Relief''), and relief under sections 6(c) and 17(b) of the Act for an exemption from sections 17(a)(1) and 17(a)(2) of the Act relating to the Section 12(d)(1) Relief, expired on January 19, 2022. *See* Fund of Funds Arrangements, Investment Company Act Rel. No. 10871 (Oct. 7, 2020), at III.

[5] *See* First Application at 12.

[6] *See* First Application at 8.

[7] *See supra* note 4.

SECURITIES AND EXCHANGE COMMISSION

[Investment Company Act Release No. 35119; 812–15526]

BondBloxx ETF Trust and BondBloxx Investment Management Corporation

January 30, 2024.

AGENCY: Securities and Exchange Commission (''Commission'' or ''SEC'').

ACTION: Notice.

Notice of an application under section 6(c) of the Investment Company Act of 1940 (''Act'') for an exemption from section 15(a) of the Act, as well as from certain disclosure requirements in rule 20a–1 under the Act, Item 19(a)(3) of Form N–1A, Items 22(c)(1)(ii), 22(c)(1)(iii), 22(c)(8) and 22(c)(9) of Schedule 14A under the Securities Exchange Act of 1934, and sections 6–07(2)(a), (b), and (c) of Regulation S–X (''Disclosure Requirements'').

SUMMARY OF APPLICATION: The requested exemption would permit Applicants to enter into and materially amend subadvisory agreements with subadvisers without shareholder approval and would grant relief from the Disclosure Requirements as they relate to fees paid to the subadvisers.

APPLICANTS: BondBloxx ETF Trust and BondBloxx Investment Management Corporation.

FILING DATES: The application was filed on November 24, 2023, and amended on January 16, 2024 and January 26, 2024.

HEARING OR NOTIFICATION OF HEARING: An order granting the requested relief will be issued unless the Commission orders a hearing. Interested persons may request a hearing on any application by emailing the SEC's Secretary at *Secretarys-Office@sec.gov* and serving the Applicants with a copy of the request by email, if an email address is listed for the relevant Applicant below,

or personally or by mail, if a physical address is listed for the relevant Applicant below. Hearing requests should be received by the Commission by 5:30 p.m. on February 26, 2024, and should be accompanied by proof of service on the Applicants, in the form of an affidavit, or, for lawyers, a certificate of service. Pursuant to rule 0–5 under the Act, hearing requests should state the nature of the writer's interest, any facts bearing upon the desirability of a hearing on the matter, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by emailing the Commission's Secretary.

ADDRESSES: The Commission: *Secretarys-Office@sec.gov.* Applicants: Edward Baer, Ropes & Gray LLP, *Edward.Baer@ropesgray.com;* with a copy to Joanna Gallegos, BondBloxx Investment Management Corporation, *info@BondBloxxETF.com.*

FOR FURTHER INFORMATION CONTACT: Trace W. Rakestraw, Senior Special Counsel, at (202) 551–6825 (Division of Investment Management, Chief Counsel's Office).

SUPPLEMENTARY INFORMATION: For Applicants' representations, legal analysis, and conditions, please refer to Applicants' application, dated January 26, 2024, which may be obtained via the Commission's website by searching for the file number at the top of this document, or for an Applicant using the Company name search field on the SEC's EDGAR system.

The SEC's EDGAR system may be searched at *https://www.sec.gov/edgar/searchedgar/legacy/companysearch.html.* You may also call the SEC's Public Reference Room at (202) 551–8090.

For the Commission, by the Division of Investment Management, under delegated authority.

Sherry R. Haywood,

Assistant Secretary.

[FR Doc. 2024–02150 Filed 2–2–24; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Investment Company Act Release No. 35120; 812–15516]

Roundhill ETF Trust and Roundhill Financial Inc.

January 30, 2024.

AGENCY: Securities and Exchange Commission (''Commission'' or ''SEC'').

ACTION: Notice.

Notice of an application under section 6(c) of the Investment Company Act of 1940 (''Act'') for an exemption from section 15(a) of the Act, as well as from certain disclosure requirements in rule 20a–1 under the Act, Item 19(a)(3) of Form N–1A, Items 22(c)(1)(ii), 22(c)(1)(iii), 22(c)(8) and 22(c)(9) of Schedule 14A under the Securities Exchange Act of 1934, and sections 6–07(2)(a), (b), and (c) of Regulation S–X (''Disclosure Requirements'').

SUMMARY OF APPLICATION: The requested exemption would permit Applicants to enter into and materially amend subadvisory agreements with subadvisers without shareholder approval and would grant relief from the Disclosure Requirements as they relate to fees paid to the subadvisers.

APPLICANTS: Roundhill ETF Trust and Roundhill Financial Inc.

FILING DATES: The application was filed on October 24, 2023, and amended on December 15, 2023, and January 26, 2024.

HEARING OR NOTIFICATION OF HEARING: An order granting the requested relief will be issued unless the Commission orders a hearing. Interested persons may request a hearing on any application by emailing the SEC's Secretary at *Secretarys-Office@sec.gov* and serving the Applicants with a copy of the request by email, if an email address is listed for the relevant Applicant below, or personally or by mail, if a physical address is listed for the relevant Applicant below. Hearing requests should be received by the Commission by 5:30 p.m. on February 26, 2024, and should be accompanied by proof of service on the Applicants, in the form of an affidavit, or, for lawyers, a certificate of service. Pursuant to rule 0–5 under the Act, hearing requests should state the nature of the writer's interest, any facts bearing upon the desirability of a hearing on the matter, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by emailing the Commission's Secretary.

ADDRESSES: The Commission: *Secretarys-Office@sec.gov.* Applicants: Morrison Warren, Esq., Chapman and Cutler LLP, *warren@chapman.com,* Richard Coyle, Esq., Chapman and Cutler LLP, *rcoyle@chapman.com,* Suzanne Russell, Esq., Chapman and Cutler LLP, *russell@chapman.com,* with a copy to Timothy Maloney, Roundhill Financial Inc., *tmaloney@roundhillinvestments.com.*

FOR FURTHER INFORMATION CONTACT: Trace W. Rakestraw, Senior Special Counsel, at (202) 551–6825 (Division of Investment Management, Chief Counsel's Office).

SUPPLEMENTARY INFORMATION: For Applicants' representations, legal analysis, and conditions, please refer to Applicants' application, dated January 26, 2024, which may be obtained via the Commission's website by searching for the file number at the top of this document, or for an Applicant using the Company name search field on the SEC's EDGAR system.

The SEC's EDGAR system may be searched at *https://www.sec.gov/edgar/searchedgar/legacy/companysearch.html.* You may also call the SEC's Public Reference Room at (202) 551–8090.

For the Commission, by the Division of Investment Management, under delegated authority.

Sherry R. Haywood,

Assistant Secretary.

[FR Doc. 2024–02151 Filed 2–2–24; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

Sunshine Act Meetings

TIME AND DATE: 2:00 p.m. on Thursday, February 8, 2024.

PLACE: The meeting will be held via remote means and/or at the Commission's headquarters, 100 F Street NE, Washington, DC 20549.

STATUS: This meeting will be closed to the public.

MATTERS TO BE CONSIDERED: Commissioners, Counsel to the Commissioners, the Secretary to the Commission, and recording secretaries will attend the closed meeting. Certain staff members who have an interest in the matters also may be present.

In the event that the time, date, or location of this meeting changes, an announcement of the change, along with the new time, date, and/or place of the meeting will be posted on the Commission's website at *https://www.sec.gov.*

The General Counsel of the Commission, or her designee, has certified that, in her opinion, one or more of the exemptions set forth in 5 U.S.C. 552b(c)(3), (5), (6), (7), (8), 9(B) and (10) and 17 CFR 200.402(a)(3), (a)(5), (a)(6), (a)(7), (a)(8), (a)(9)(ii) and (a)(10), permit consideration of the scheduled matters at the closed meeting.

The subject matter of the closed meeting will consist of the following topics:

Institution and settlement of injunctive actions;

Institution and settlement of administrative proceedings;

Resolution of litigation claims; and

Other matters relating to examinations and enforcement proceedings.

At times, changes in Commission priorities require alterations in the scheduling of meeting agenda items that may consist of adjudicatory, examination, litigation, or regulatory matters.

CONTACT PERSON FOR MORE INFORMATION: For further information; please contact Vanessa A. Countryman from the Office of the Secretary at (202) 551–5400.

(Authority: 5 U.S.C. 552b.)

Dated: February 1, 2024.

Vanessa A. Countryman,

Secretary.

[FR Doc. 2024–02325 Filed 2–1–24; 4:15 pm]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–99445; File No. SR–CboeBZX–2023–058]

Self-Regulatory Organizations; Cboe BZX Exchange, Inc.; Notice of Withdrawal of a Proposed Rule Change To List and Trade Shares of the Global X Bitcoin Trust Under BZX Rule 14.11(e)(4), Commodity-Based Trust Shares

January 30, 2024.

On August 4, 2023, Cboe BZX Exchange, Inc. (''BZX'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission''), pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'')[1] and Rule 19b–4 thereunder,[2] a proposed rule change to list and trade shares of the Global X Bitcoin Trust under BZX Rule 14.11(e)(4), Commodity-Based Trust Shares. The proposed rule change was published for comment in the **Federal Register** on August 23, 2023.[3] On September 26, 2023, the Commission designated a longer period for Commission action on the proposed rule change.[4] On November 17, 2023, the Commission instituted proceedings under section 19(b)(2)(B) of the Act[5] to determine whether to approve or disapprove the proposed rule change.[6]

On January 26, 2024, the Exchange withdrew the proposed rule change (File No. SR–CboeBZX–2023–058).

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[7]

Sherry R. Haywood,

Assistant Secretary.

[FR Doc. 2024–02157 Filed 2–2–24; 8:45 am]

BILLING CODE 8011–01–P

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 98156 (Aug. 17, 2023), 88 FR 57490. Comments on the proposed rule change are available at: *https://www.sec.gov/comments/sr-cboebzx-2023-058/srcboebzx2023058.htm.*

[4] *See* Securities Exchange Act Release No. 98531, 88 FR 67829 (Oct. 2, 2023).

[5] 15 U.S.C. 78s(b)(2)(B).

[6] *See* Securities Exchange Act Release No. 98981, 88 FR 82439 (Nov. 24, 2023).

[7] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–99450; File No. SR–Phlx–2024–02]

Self-Regulatory Organizations; Nasdaq PHLX LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Amend Options 7, Section 9

January 30, 2024.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on January 16, 2024, Nasdaq PHLX LLC (''Phlx'' or ''Exchange'') filed with the Securities and Exchange Commission (''SEC'' or ''Commission'') the proposed rule change as described in Items I, II, and III, below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend its Rules at Options 7, Section 9, Other Member Fees.[3]

The text of the proposed rule change is available on the Exchange's website at *https://listingcenter.nasdaq.com/rulebook/phlx/rules,* at the principal office of the Exchange, and at the Commission's Public Reference Room.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] The Exchange initially filed the proposed pricing changes on November 28, 2023 (SR–Phlx–2023–52) to be effective on December 1, 2023. On December 5, 2023, the Exchange withdrew SR–Phlx–2023–52 and replaced it with SR–Phlx–2023–56. On January 16, 2023, the Exchange withdrew SR–Phlx–2023–56 and submitted this filing.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to amend Options 7, Section 9, B, Port Fees, to increase the SQF Port[4] Fee cap.

Today, Phlx assesses $1,250 per port, per month up to a maximum of $42,000 per month for an SQF Port that receives inbound quotes at any time within that month.[5] Today, member organizations are not assessed an active SQF Port Fee for additional ports acquired for ten business days for the purpose of transitioning technology.[6] The Exchange proposes to add the words ''active port'' in parenthesis at the end of the description of SQF Port Fee to tie the

[4] ''Specialized Quote Feed'' or ''SQF'' is an interface that allows Lead Market Makers, Streaming Quote Traders (''SQTs'') and Remote Streaming Quote Traders (''RSQTs'') to connect, send, and receive messages related to quotes, Immediate-or-Cancel Orders, and auction responses into and from the Exchange. Features include the following: (1) options symbol directory messages (*e.g.,* underlying and complex instruments); (2) system event messages (*e.g.,* start of trading hours messages and start of opening); (3) trading action messages (*e.g.,* halts and resumes); (4) execution messages; (5) quote messages; (6) Immediate-or-Cancel Order messages; (7) risk protection triggers and purge notifications; (8) opening imbalance messages; (9) auction notifications; and (10) auction responses. The SQF Purge Interface only receives and notifies of purge requests from the Lead Market Maker, SQT or RSQT. Lead Market Makers, SQTs and RSQTs may only enter interest into SQF in their assigned options series. Immediate-or-Cancel Orders entered into SQF are not subject to the Order Price Protection, the Market Order Spread Protection, or Size Limitation in Options 3, Section 15(a)(1), (a)(2) and (b)(2), respectively. *See* Options 3, Section 7(a)(i)(B).

[5] An active port shall mean that the port was utilized to submit a quote to the System during a given month. *See* Options 7, Section 9, B.

[6] The member organization is required to provide the Exchange with written notification of the transition and all additional ports, provided at no cost, will be removed at the end of the ten business days. *See* Options 7, Section 9, B.

definition of an active port to the description for the port.[7]

At this time, the Exchange proposes to increase the maximum SQF Port Fee of $42,000 per month to $50,000 per month.[8] The Exchange is not amending the $1,250 per port, per month fee. As is the case today, the Exchange would not assess a member organization an SQF Port Fee beyond the monthly cap once the member organization has exceeded the monthly cap for the respective month. Despite increasing the maximum SQF Port Fee from $42,000 per month to $50,000 per month, the Exchange will continue to offer member organizations the opportunity to cap their SQF Port Fees so that they would not be assessed these fees beyond the cap. A Phlx Market Maker requires only one SQF Port to submit quotes in its assigned options series into Phlx. A Phlx Market Maker may submit all quotes through one SQF Port. While a Phlx Market Maker may elect to obtain multiple SQF Ports to organize its business,[9] only one SQF Port is necessary for a Phlx Market Maker to fulfill its regulatory quoting obligations.[10]

2. Statutory Basis

The Exchange believes that its proposal is consistent with section 6(b) of the Act,[11] in general, and furthers the objectives of sections 6(b)(4) and 6(b)(5) of the Act,[12] in particular, in that it provides for the equitable allocation of reasonable dues, fees, and other charges among members and issuers and other persons using any facility, and is not designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

The proposed pricing change to increase the maximum SQF Port Fee is reasonable in several respects. As a threshold matter, the Exchange is subject to significant competitive forces in the market for options securities transaction services that constrain its pricing determinations in that market. The fact that this market is competitive has long been recognized by the courts. In *NetCoalition* v. *Securities and Exchange Commission,* the D.C. Circuit stated as follows: ''[n]o one disputes that competition for order flow is 'fierce.' . . . As the SEC explained, '[i]n the U.S. national market system, buyers and sellers of securities, and the broker-dealers that act as their order-routing agents, have a wide range of choices of where to route orders for execution'; [and] 'no exchange can afford to take its market share percentages for granted' because 'no exchange possesses a monopoly, regulatory or otherwise, in the execution of order flow from broker dealers'. . . .'' [13]

The Commission and the courts have repeatedly expressed their preference for competition over regulatory intervention in determining prices, products, and services in the securities markets. In Regulation NMS, while adopting a series of steps to improve the current market model, the Commission highlighted the importance of market forces in determining prices and SRO revenues and, also, recognized that current regulation of the market system ''has been remarkably successful in promoting market competition in its broader forms that are most important to investors and listed companies.'' [14]

Numerous indicia demonstrate the competitive nature of this market. Within this environment, market participants can freely and often do shift their order flow among the Exchange and competing venues in response to changes in their respective pricing schedules.

The proposed pricing change to increase the maximum SQF Port Fee from $42,000 to $50,000 per month is reasonable because despite the increase in the maximum SQF Port Fee, the Exchange will continue to offer member organizations the opportunity to cap their SQF Port Fees so that they would not be assessed SQF Port Fees beyond the cap. Additionally, a Phlx Market Maker requires only one SQF Port to submit quotes in its assigned options series into Phlx. A Phlx Market Maker may submit all quotes through one SQF Port. While a Phlx Market Maker may elect to obtain multiple SQF Ports to organize its business,[15] only one SQF Port is necessary for a Phlx Market Maker to fulfill its regulatory quoting obligations.[16] Additionally, the Exchange believes that the caps are reasonable for two reasons.

First, SQF Ports are a secure method for Market Makers to submit quotes into the Exchange's match engine and for the Exchange to send messages related to those quotes to Market Makers. Phlx must manage the security and message traffic, among other things, for each port. Utilizing the cap to manage a Market Maker's costs while also managing the quantity of SQF Ports issued on Phlx has led the Exchange to select $50,000 as the amended monthly cap for SQF Ports. By capping the ports at a different level, the Exchange is considering the message traffic and message rates associated with the current number of outstanding ports and its ability to process messages. The ability to have a cap and amend that cap permits the Exchange to scale its needs with respect to processing messages in an efficient manner.

Second, the Exchange notes that multiple ports are not necessary, however, to the extent that some Market Makers elect to obtain multiple ports, the Exchange is offering to cap their total port cost at $50,000 per month. Phlx believes the existence of a cap allows for efficiencies and permits Market Makers to increase their number of ports beyond the cap. The cap levels the playing field by allowing those Market Makers that want to obtain a larger number of ports to do so with the certainty of a fee cap. Without the cap, Phlx Market Makers may pay more to obtain multiple ports on Phlx.

The proposed pricing change to increase the maximum SQF Port Fee from $42,000 to $50,000 per month is equitable and not unfairly discriminatory because the Exchange would uniformly not assess any Market Makers that exceeded the maximum SQF Port Fee any SQF Port Fees beyond the maximum amount. Market Makers are the only market participants that are assessed an SQF Port Fee because they are the only market participants that are permitted to quote on the Exchange.

[7] The Exchange also proposes a technical amendment to add a comma between ''per port'' and ''per month'' for the SQF Port Fee in Options 7, Section 9, B.

[8] Currently, 29% of Phlx Market Makers cap their SQF Port Fees. Of those Market Makers, there is a mix of small, medium and large Market Makers.

[9] For example, a Phlx Market Maker may desire to utilize multiple SQF Ports for accounting purposes, to measure performance, for regulatory reasons or other determinations that are specific to that member organization.

[10] Phlx Market Makers have various regulatory requirements as provided for in Options 2, Section 4. Additionally, Phlx Market Makers have certain quoting requirements with respect to their assigned options series as provided in Options 2, Section 5. SQF Ports are the only quoting protocol available on Phlx and only Market Makers may utilize SQF Ports.

[11] 15 U.S.C. 78f(b).

[12] 15 U.S.C. 78f(b)(4) and (5).

[13] *NetCoalition* v. *SEC,* 615 F.3d 525, 539 (D.C. Cir. 2010) (quoting Securities Exchange Act Release No. 59039 (December 2, 2008), 73 FR 74770, 74782–83 (December 9, 2008) (SR–NYSEArca–2006–21)).

[14] Securities Exchange Act Release No. 51808 (June 9, 2005), 70 FR 37496, 37499 (June 29, 2005) (''Regulation NMS Adopting Release'').

[15] For example, a Phlx Market Maker may desire to utilize multiple SQF Ports for accounting purposes, to measure performance, for regulatory reasons or other determinations that are specific to that member organization.

[16] Phlx Market Makers have various regulatory requirements as provided for in Options 2, Section 4. Additionally, Phlx Market Makers have certain quoting requirements with respect to their assigned options series as provided in Options 2, Section 5. SQF Ports are the only quoting protocol available on Phlx and only Market Makers may utilize SQF Ports.

Unlike other market participants, Market Makers are subject to market making and quoting obligations.[17] These liquidity providers are critical market participants in that they are the only market participants that provide liquidity to Phlx on a continuous basis. In addition, the Exchange notes that Lead Market Makers are required to submit quotes in the Opening Process to open an options series.[18] Market Makers are subject to a number of fees, unlike other market participants. Market Makers pay separate permit fees,[19] and Streaming Quote Trader Fees,[20] in addition to other fees paid by other market participants. Providing Market Makers a means to cap their cost related to quoting and enabling all Market Makers to acquire SQF Ports at no cost beyond a certain dollar amount enables these market participants to provide the necessary liquidity to Phlx at lower costs.

In 2022, NYSE Arca, Inc. (''NYSE Arca'') proposed to restructure fees relating to OTPs for Market Makers.[21] In that rule change,[22] NYSE Arca argued that,

> Market Makers serve a unique and important function on the Exchange (and other options exchanges) given the quote-driven nature of options markets. Because options exchanges rely on actively quoting Market Makers to facilitate a robust marketplace that attracts order flow, options exchanges must attract and retain Market Makers, including by setting competitive Market Maker permit fees. Stated otherwise, changes to Market Maker permit fees can have a direct effect on the ability of an exchange to compete for order flow. The Exchange also believes that the number of options exchanges on which Market Makers can effect option transactions also ensures competition in the marketplace and constrains the ability of exchanges to charge supracompetitive fees for access to its market by Market Makers.

Further, NYSE ARCA noted that,[23]

> The Exchange further believes that its ability to set Market Maker permit fees is constrained by competitive forces based on the fact that Market Makers can, and have, chosen to terminate their status as a Market Maker if they deem Market Maker permit fees to be unreasonable or excessive. Specifically, the Exchange notes that a BOX participant modified its access to BOX in connection with the implementation of a proposed change to BOX's Market Maker permit fees. The Exchange has also observed that another options exchange group experienced decreases in market share following its proposed modifications of its access fees (including Market Maker trading permit fees), suggesting that market participants (including Market Makers) are sensitive to changes in exchanges' access fees and may respond by shifting their order flow elsewhere if they deem the fees to be unreasonable or excessive.
>
> There is no requirement, regulatory or otherwise, that any Market Maker connect to and access any (or all of) the available options exchanges. The Exchange also is not aware of any reason why a Market Maker could not cease being a permit holder in response to unreasonable price increases. The Exchange does not assess any termination fee for a Market Maker to drop its OTP, nor is the Exchange aware of any other costs that would be incurred by a Market Maker to do so.

The Exchange likewise believes that its ability to cap SQF Ports fees is constrained by competitive forces and that its proposed modifications to the SQF Port Fee cap is reasonably designed in consideration of the competitive environment in which the Exchange operates, by balancing the value of the enhanced benefits available to Market Makers due to the current level of activity on the Exchange with a fee structure that will continue to incent Market Makers to support increased liquidity, quote competition, and trading opportunities on the Exchange, for the benefit of all market participants.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act.

Intermarket Competition

The proposal does not impose an undue burden on intermarket competition. The Exchange believes its proposal remains competitive with other options markets who also offer order entry protocols. The Exchange notes that it operates in a highly competitive market in which market participants can readily favor competing venues if they deem fee levels at a particular venue to be excessive. In such an environment, the Exchange must continually adjust its fees to remain competitive with other exchanges. Because competitors are free to modify their own fees in response, and because market participants may readily adjust their order routing practices, the Exchange believes that the degree to which fee changes in this market may impose any burden on competition is extremely limited. Other exchanges have been permitted to amend certain costs attributed to Market Makers.[24] Further, in 2022, MRX proposed a monthly cap for SQF Ports and SQF Purge Ports of 17,500.[25] MRX noted in its rule change that, ''Only one SQF quote protocol is required for an MRX Market Maker to submit quotes into MRX and to meet its regulatory requirements.'' [26]

If the Commission were to apply a different standard of review this proposal than it applied to other exchange fee filings, where Market Maker fees were increased and port fee caps were established, it would create a burden on competition such that it would impair Phlx's ability to compete among other options markets.

Intramarket Competition

The proposed pricing change to increase the maximum SQF Port Fee from $42,000 to $50,000 per month does not impose an undue burden on competition because the Exchange would uniformly not assess any Market Makers that exceeded the maximum SQF Port Fee any SQF Port Fees beyond the maximum amount. Market Makers are the only market participants that are assessed an SQF Port Fee because they are the only market participants that are permitted to quote on the Exchange. Unlike other market participants, Market Makers are subject to market making and quoting obligations.[27] These liquidity providers are critical market participants in that they are the only market participants that provide liquidity to Phlx on a continuous basis. In addition, the Exchange notes that Lead Market Makers are required to submit quotes in the Opening Process to open an options series.[28] Market Makers are subject to a number of fees, unlike other market participants. Market Makers pay separate permit fees,[29] and Streaming Quote Trader Fees,[30] in

[17] *See* Options 2, Sections 4 and 5.

[18] *See* Options 3, Section 8.

[19] *See* Options 7, Section 8, A.

[20] *See* Options 7, Section 8, B.

[21] *See* Securities Exchange Act Release No. 95412 (June 23, 2022), 87 FR 38786 (June 29, 2022) (SR–NYSEArca–2022–36). NYSE Arca proposed to increase both the monthly fee per Market Maker OTP and the number of issues covered by each additional OTP because, among other reasons, the number of issues traded on the Exchange has increased significantly in recent years.

[22] *Id* at 38788.

[23] *Id* at 38790.

[24] *See* Securities Exchange Act Release No. 95412 (June 23, 2022), 87 FR 38786 (June 29, 2022) (SR–NYSEArca–2022–36).

[25] *See* Securities Exchange Act No. 96824 (February 7, 2023), 88 FR 8975 (February 10, 2023) (SR–MRX–2023–05) (Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Amend MRX Options 7, Section 6).

[26] *Id* at 8976.

[27] *See* Options 2, Sections 4 and 5.

[28] *See* Options 3, Section 8.

[29] *See* Options 7, Section 8, A.

[30] *See* Options 7, Section 8, B.

addition to other fees paid by other market participants. Providing Market Makers a means to cap their cost related to quoting and enabling all Market Makers to acquire SQF Ports at no cost beyond a certain dollar amount enables these market participants to provide the necessary liquidity to Phlx at lower costs. Therefore, because Market Makers fulfill a unique role on the Exchange, are the only market participant required to submit quotes as part of their obligations to operate on the Exchange, and, in light of that role, they are eligible for certain incentives. The proposed SQF Fee cap is designed to continue to incent Market Makers to quote on Phlx, thereby promoting liquidity, quote competition, and trading opportunities.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were either solicited or received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to section 19(b)(3)(A)(ii) of the Act.[31]

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is: (i) necessary or appropriate in the public interest; (ii) for the protection of investors; or (iii) otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's internet comment form (*https://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include file number SR–Phlx–2024–02 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549–1090.

All submissions should refer to file number SR–Phlx–2024–02. 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 (*https://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street NE, Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. Do not include personal identifiable information in submissions; you should submit only information that you wish to make available publicly. We may redact in part or withhold entirely from publication submitted material that is obscene or subject to copyright protection. All submissions should refer to file number SR–Phlx–2024–02 and should be submitted on or before February 26, 2024.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[32]

Sherry R. Haywood,

Assistant Secretary.

[FR Doc. 2024–02161 Filed 2–2–24; 8:45 am]

BILLING CODE 8011–01–P

[31] 15 U.S.C. 78s(b)(3)(A)(ii).

[32] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–99446; File No. SR–GEMX–2024–03]

Self-Regulatory Organizations; Nasdaq GEMX, LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Amend Options 7, Section 6

January 30, 2024.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on January 16, 2024, Nasdaq GEMX, LLC (''GEMX'' or ''Exchange'') filed with the Securities and Exchange Commission (''SEC'' or ''Commission'') the proposed rule change as described in Items I, II, and III, below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend its Rules at Options 7, Section 6, C, Ports and Other Services.[3]

The text of the proposed rule change is available on the Exchange's website at *https://listingcenter.nasdaq.com/rulebook/gemx/rules,* at the principal office of the Exchange, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to amend Options 7, Section 6, C, Ports and Other Services. Specifically, the Exchange

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] The Exchange initially filed the proposed pricing changes on November 28, 2023 (SR–GEMX–2023–16) to be effective on December 1, 2023. On December 5, 2023, the Exchange withdrew SR–GEMX–2023–16 and replaced it with SR–GEMX–2023–19. On January 16, 2023, the Exchange withdrew SR–GEMX–2023–19 and submitted this filing.

proposes to amend the monthly caps for SQF Ports [4] and SQF Purge Ports.[5]

Today, GEMX assesses $1,250 per port, per month for an SQF Port as well as an SQF Purge Port.[6] Also, today, SQF Ports and SQF Purge Ports are subject to a monthly cap of $17,500, which cap is applicable to Market Makers.

At this time, the Exchange proposes to increase the SQF Port and SQF Purge Port monthly cap fee of $17,500 per month to $27,500 per month.[7] The Exchange is not amending the $1,250 per port, per month SQF Port and SQF Purge Port. As is the case today, the Exchange would not assess a Member an SQF Port or SQF Purge Port fee beyond the monthly cap once the Member has exceeded the monthly cap for the respective month. Despite increasing the monthly cap for SQF Ports and SQF Purge Ports from $17,500 per month to $27,500 per month, the Exchange will continue to offer Members the opportunity to cap their SQF Port and SQF Purge Port fees so that they would not be assessed these fees beyond the cap. Further, a GEMX Market Maker requires only one SQF Port to submit quotes in its assigned options series into GEMX. A GEMX Market Maker may submit all quotes through one SQF Port and utilize one SQF Purge Port to view its purge requests. While a Market Maker may elect to obtain multiple SQF Ports and SQF Purge Ports to organize its business,[8] only one SQF Port and SQF Purge Port is necessary for a Market Maker to fulfill its regulatory quoting obligations.[9]

2. Statutory Basis

The Exchange believes that its proposal is consistent with section 6(b) of the Act,[10] in general, and furthers the objectives of sections 6(b)(4) and 6(b)(5) of the Act,[11] in particular, in that it provides for the equitable allocation of reasonable dues, fees, and other charges among members and issuers and other persons using any facility, and is not designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

The proposed pricing change to increase the monthly cap applicable to SQF Ports and SQF Purge Ports is reasonable in several respects. As a threshold matter, the Exchange is subject to significant competitive forces in the market for options securities transaction services that constrain its pricing determinations in that market. The fact that this market is competitive has long been recognized by the courts. In *NetCoalition* v. *Securities and Exchange Commission,* the D.C. Circuit stated as follows: ''[n]o one disputes that competition for order flow is 'fierce.' . . . As the SEC explained, '[i]n the U.S. national market system, buyers and sellers of securities, and the broker-dealers that act as their order-routing agents, have a wide range of choices of where to route orders for execution'; [and] 'no exchange can afford to take its market share percentages for granted' because 'no exchange possesses a monopoly, regulatory or otherwise, in the execution of order flow from broker dealers'. . . .'' [12]

The Commission and the courts have repeatedly expressed their preference for competition over regulatory intervention in determining prices, products, and services in the securities markets. In Regulation NMS, while adopting a series of steps to improve the current market model, the Commission highlighted the importance of market forces in determining prices and SRO revenues and, also, recognized that current regulation of the market system ''has been remarkably successful in promoting market competition in its broader forms that are most important to investors and listed companies.'' [13]

Numerous indicia demonstrate the competitive nature of this market. Within this environment, market participants can freely and often do shift their order flow among the Exchange and competing venues in response to changes in their respective pricing schedules.

The proposed pricing change to increase the SQF Port and SQF Purge Port monthly cap from $17,500 per month to $27,500 per month is reasonable because despite the increase in the monthly cap, the Exchange will continue to offer Members the opportunity to cap their SQF Port and SQF Purge Port fees so that they would not be assessed these fees beyond the cap. Additionally, a GEMX Market Maker requires only one SQF Port to submit quotes in its assigned options series into GEMX. A GEMX Market Maker may submit all quotes through one SQF Port and utilize one SQF Purge Port to view its purge requests. While a Market Maker may elect to obtain multiple SQF Ports and SQF Purge Ports to organize its business,[14] only one SQF Port and SQF Purge Port is necessary for a Market Maker to fulfill its regulatory quoting obligations.[15] Additionally, the

[4] ''Specialized Quote Feed'' or ''SQF'' is an interface that allows Market Makers to connect, send, and receive messages related to quotes, Immediate-or-Cancel Orders, and auction responses to the Exchange. Features include the following: (1) options symbol directory messages (*e.g.,* underlying instruments); (2) System event messages (*e.g.,* start of trading hours messages and start of opening); (3) trading action messages (*e.g.,* halts and resumes); (4) execution messages; (5) quote messages; (6) Immediate-or-Cancel Order messages; (7) risk protection triggers and purge notifications; (8) opening imbalance messages; (9) auction notifications; and (10) auction responses. The SQF Purge Interface only receives and notifies of purge requests from the Market Maker. Market Makers may only enter interest into SQF in their assigned options series. Immediate-or-Cancel Orders entered into SQF are not subject to the Order Price Protection, Market Order Spread Protection, and Size Limitation Protection in Options 3, Section 15(a)(1)(A), (1)(B), and (2)(B) respectively. *See* Supplementary Material .03(c) to Options 3, Section 7.

[5] SQF Purge is a specific port for the SQF interface that only receives and notifies of purge requests from the Market Maker. Dedicated SQF Purge Ports enable Market Makers to seamlessly manage their ability to remove their quotes in a swift manner. The SQF Purge Port is designed to assist Market Makers in the management of, and risk control over, their quotes. Market Makers may utilize a purge port to reduce uncertainty and to manage risk by purging all quotes in their assigned options series. Of note, Market Makers may only enter interest into SQF in their assigned options series. Additionally, the SQF Purge Port may be utilized by a Market Maker in the event that the Member has a system issue and determines to purge its quotes from the order book.

[6] The Exchange proposes to add a comma between ''per port'' and ''per month'' in the Options 7, Section 6, C, SQF Port and SQF Purge Port Fee rule text. The Exchange also proposes to remove an extraneous period in Options 7, Section 6, C, in the second paragraph.

[7] Today, 62% of GEMX Market Makers have capped their SQF Ports and SQF Purge Ports on GEMX. The Exchange notes that of the Market Makers currently registered on GEMX, there is a mix of size of Market Makers that cap.

[8] For example, a Market Maker may desire to utilize multiple SQF Ports for accounting purposes, to measure performance, for regulatory reasons or other determinations that are specific to that Member.

[9] GEMX Market Makers have various regulatory requirements as provided for in Options 2, Section 4. Additionally, GEMX Market Makers have certain quoting requirements with respect to their assigned options series as provided in Options 2, Section 5. SQF Ports are the only quoting protocol available on GEMX and only Market Makers may utilize SQF Ports. The same is true for SQF Purge Ports.

[10] 15 U.S.C. 78f(b).

[11] 15 U.S.C. 78f(b)(4) and (5).

[12] *NetCoalition* v. *SEC,* 615 F.3d 525, 539 (D.C. Cir. 2010) (quoting Securities Exchange Act Release No. 59039 (December 2, 2008), 73 FR 74770, 74782–83 (December 9, 2008) (SR–NYSEArca–2006–21)).

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[14] For example, a Market Maker or may desire to utilize multiple SQF Ports for accounting purposes, to measure performance, for regulatory reasons or other determinations that are specific to that Member.

[15] GEMX Market Makers have various regulatory requirements as provided for in Options 2, Section 4. Additionally, GEMX Market Makers have certain quoting requirements with respect to their assigned options series as provided in Options 2, Section 5. SQF Ports are the only quoting protocol available on GEMX and only Market Makers may utilize SQF Ports.

Exchange believes that the caps are reasonable for two reasons.

First, SQF Ports are a secure method for Market Makers to submit quotes into the Exchange's match engine and for the Exchange to send messages related to those quotes to Market Makers. GEMX must manage the security and message traffic, among other things, for each port. Utilizing the cap to manage a Market Maker's costs while also managing the quantity of SQF Ports issued on GEMX has led the Exchange to select $27,500 as the amended monthly cap for SQF Ports and SQF Purge Ports. By capping the ports at a different level, the Exchange is considering the message traffic and message rates associated with the current number of outstanding ports and its ability to process messages. The ability to have a cap and amend that cap permits the Exchange to scale its needs with respect to processing messages in an efficient manner.

Second, the Exchange notes that multiple ports are not necessary, however, to the extent that some Market Makers elect to obtain multiple ports, the Exchange is offering to cap their total port cost at $27,500 per month. GEMX believes the existence of a cap allows for efficiencies and permits Market Makers to increase their number of ports beyond the cap. The cap levels the playing field by allowing those Market Makers that want to obtain a larger number of ports to do so with the certainty of a fee cap. Without the cap, GEMX Market Makers may pay more to obtain multiple ports on GEMX.

The Exchange's proposed pricing change to increase the SQF Port and SQF Purge Port monthly cap from $17,500 per month to $27,500 per month is equitable and not unfairly discriminatory because the Exchange would uniformly not assess any Market Makers that exceeded the proposed monthly cap any SQF Port and SQF Purge Port fees for that month beyond the cap. Market Makers are the only market participants that are assessed SQF Port and SQF Purge Port fees because they are the only market participants that are permitted to quote on the Exchange. Unlike other market participants, Market Makers are subject to market making and quoting obligations.[16] These liquidity providers are critical market participants in that they are the only market participants that provide liquidity to GEMX on a continuous basis. In addition, the Exchange notes that Lead Market Makers are required to submit quotes in the Opening Process to open an options series.[17] Market Makers are subject to a number of fees, unlike other market participants. Market Makers pay separate Membership Fees,[18] and CMM Trading Right Fees,[19] in addition to other fees paid by other market participants. Providing Market Makers a means to cap their cost related to quoting and enabling all Market Makers to acquire SQF Ports and SQF Purge Ports at no cost beyond a certain dollar amount enables these market participants to provide the necessary liquidity to GEMX at lower costs.

In 2022, NYSE Arca, Inc. (''NYSE Arca'') proposed to restructure fees relating to OTPs for Market Makers.[20] In that rule change,[21] NYSE Arca argued that,

> Market Makers serve a unique and important function on the Exchange (and other options exchanges) given the quote-driven nature of options markets. Because options exchanges rely on actively quoting Market Makers to facilitate a robust marketplace that attracts order flow, options exchanges must attract and retain Market Makers, including by setting competitive Market Maker permit fees. Stated otherwise, changes to Market Maker permit fees can have a direct effect on the ability of an exchange to compete for order flow. The Exchange also believes that the number of options exchanges on which Market Makers can effect option transactions also ensures competition in the marketplace and constrains the ability of exchanges to charge supracompetitive fees for access to its market by Market Makers.

Further, NYSE ARCA noted that,[22]

> The Exchange further believes that its ability to set Market Maker permit fees is constrained by competitive forces based on the fact that Market Makers can, and have, chosen to terminate their status as a Market Maker if they deem Market Maker permit fees to be unreasonable or excessive. Specifically, the Exchange notes that a BOX participant modified its access to BOX in connection with the implementation of a proposed change to BOX's Market Maker permit fees. The Exchange has also observed that another options exchange group experienced decreases in market share following its proposed modifications of its access fees (including Market Maker trading permit fees), suggesting that market participants (including Market Makers) are sensitive to changes in exchanges' access fees and may respond by shifting their order flow elsewhere if they deem the fees to be unreasonable or excessive.
>
> There is no requirement, regulatory or otherwise, that any Market Maker connect to and access any (or all of) the available options exchanges. The Exchange also is not aware of any reason why a Market Maker could not cease being a permit holder in response to unreasonable price increases. The Exchange does not assess any termination fee for a Market Maker to drop its OTP, nor is the Exchange aware of any other costs that would be incurred by a Market Maker to do so.

The Exchange likewise believes that its ability to cap SQF Port and SQF Purge fees is constrained by competitive forces and that its proposed modifications to the SQF Port and SQF Purge Fee cap is reasonably designed in consideration of the competitive environment in which the Exchange operates, by balancing the value of the enhanced benefits available to Market Makers due to the current level of activity on the Exchange with a fee structure that will continue to incent Market Makers to support increased liquidity, quote competition, and trading opportunities on the Exchange, for the benefit of all market participants.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act.

Intermarket Competition

The proposal does not impose an undue burden on intermarket competition. The Exchange believes its proposal remains competitive with other options markets who also offer order entry protocols. The Exchange notes that it operates in a highly competitive market in which market participants can readily favor competing venues if they deem fee levels at a particular venue to be excessive. In such an environment, the Exchange must continually adjust its fees to remain competitive with other exchanges. Because competitors are free to modify their own fees in response, and because market participants may readily adjust their order routing practices, the Exchange believes that the degree to which fee changes in this market may impose any burden on competition is extremely limited. Other exchanges have been permitted to amend certain costs attributed to Market Makers.[23] Further, in 2022, MRX proposed a

[16] *See* Options 2, Sections 4 and 5.

[17] *See* Options 3, Section 8.

[18] *See* Options 7, Section 6, A.

[19] *See* Options 7, Section 6, B.

[20] *See* Securities Exchange Act Release No. 95412 (June 23, 2022), 87 FR 38786 (June 29, 2022) (SR–NYSEArca–2022–36). NYSE Arca proposed to increase both the monthly fee per Market Maker OTP and the number of issues covered by each additional OTP because, among other reasons, the number of issues traded on the Exchange has increased significantly in recent years.

[21] *Id* at 38788.

[22] *Id* at 38790.

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monthly cap for SQF Ports and SQF Purge Ports of 17,500.[24] MRX noted in its rule change that, ''Only one SQF quote protocol is required for an MRX Market Maker to submit quotes into MRX and to meet its regulatory requirements.'' [25]

If the Commission were to apply a different standard of review this proposal than it applied to other exchange fee filings, where Market Maker fees were increased and port fee caps were established, it would create a burden on competition such that it would impair GEMX's ability to compete among other options markets.

Intramarket Competition

The Exchange's proposed pricing change to increase the SQF Port and SQF Purge Port monthly cap from $17,500 per month to $27,500 per month does not impose an undue burden on competition because the Exchange would uniformly not assess any Market Makers that exceeded the proposed monthly cap any SQF Port and SQF Purge Port fees for that month beyond the cap. Market Makers are the only market participants that are assessed SQF Port and SQF Purge Port fees because they are the only market participants that are permitted to quote on the Exchange. Unlike other market participants, Market Makers are subject to market making and quoting obligations.[26] These liquidity providers are critical market participants in that they are the only market participants that provide liquidity to GEMX on a continuous basis. In addition, the Exchange notes that Lead Market Makers are required to submit quotes in the Opening Process to open an options series.[27] Market Makers are subject to a number of fees, unlike other market participants. Market Makers pay separate permit fees,[28] and Streaming Quote Trader Fees,[29] in addition to other fees paid by other market participants. Providing Market Makers a means to cap their cost related to quoting and enabling all Market Makers to acquire SQF Ports and SQF Purge Ports at no cost beyond a certain dollar amount enables these market participants to provide the necessary liquidity to GEMX at lower costs. Therefore, because Market Makers fulfill a unique role on the Exchange, are the only market participant required to submit quotes as part of their obligations to operate on the Exchange, and, in light of that role, they are eligible for certain incentives. The proposed SQF Port and SQF Purge Fee cap is designed to continue to incent Market Makers to quote on GEMX, thereby promoting liquidity, quote competition, and trading opportunities.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were either solicited or received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to section 19(b)(3)(A)(ii) of the Act.[30] At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is: (i) necessary or appropriate in the public interest; (ii) for the protection of investors; or (iii) otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's internet comment form (*https://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include file number SR–GEMX–2024–03 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549–1090.

All submissions should refer to file number SR–GEMX–2024–03. 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 (*https://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street NE, Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. Do not include personal identifiable information in submissions; you should submit only information that you wish to make available publicly. We may redact in part or withhold entirely from publication submitted material that is obscene or subject to copyright protection. All submissions should refer to file number SR–GEMX–2024–03 and should be submitted on or before February 26, 2024.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[31]

Sherry R. Haywood,

Assistant Secretary.

[FR Doc. 2024–02158 Filed 2–2–24; 8:45 am]

BILLING CODE 8011–01–P

[24] *See* Securities Exchange Act No. 96824(February 7, 2023), 88 FR 8975 (February 10, 2023) (SR–MRX–2023–05) (Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Amend MRX Options 7, Section 6).

[25] *Id* at 8976.

[26] *See* Options 2, Sections 4 and 5.

[27] *See* Options 3, Section 8.

[28] *See* Options 7, Section 8, A.

[29] *See* Options 7, Section 8, B.

[30] 15 U.S.C. 78s(b)(3)(A)(ii).

[31] 17 CFR 200.30–3(a)(12).

SMALL BUSINESS ADMINISTRATION

Reporting and Recordkeeping Requirements Under OMB Review

AGENCY: Small Business Administration.

ACTION: 30-Day notice.

SUMMARY: The Small Business Administration (SBA) is seeking approval from the Office of Management and Budget (OMB) for the information collection described below. In accordance with the Paperwork Reduction Act and OMB procedures, SBA is publishing this notice to allow all interested member of the public an additional 30 days to provide comments on the proposed collection of information.

DATES: Submit comments on or before March 6, 2024.

ADDRESSES: Written comments and recommendations for this information collection request should be sent within 30 days of publication of this notice to *www.reginfo.gov/public/do/PRAMain.* Find this particular information collection request by selecting ''Small Business Administration''; ''Currently Under Review,'' then select the ''Only Show ICR for Public Comment'' checkbox. This information collection can be identified by title and/or OMB Control Number.

FOR FURTHER INFORMATION CONTACT: You may obtain a copy of the information collection and supporting documents from the Agency Clearance Office at *Curtis.Rich@sba.gov;* (202) 205–7030, or from *www.reginfo.gov/public/do/PRAMain.*

SUPPLEMENTARY INFORMATION: ''Secondary Market for Section 504 First Mortgage Loan Pool Program''.

Abstract: These forms captures the terms and conditions of the Small Business Administration's (SBA) Secondary Market for section 504 First Mortgage Loan Pool Program. SBA needs this information collection is order to identify program participants, terms of financial transactions involving federal government guaranties, and reporting on program efficiency, including the proper use of Recovery Act funds.

Solicitation of Public Comments

Comments may be submitted on (a) whether the collection of information is necessary for the agency to properly perform its functions; (b) whether the burden estimates are accurate; (c) whether there are ways to minimize the burden, including through the use of automated techniques or other forms of information technology; and (d) whether there are ways to enhance the quality, utility, and clarity of the information.

OMB Control Number: 3245–0367.

Title: Secondary Market for Section 504 First Mortgage Loan Pool Program.

Description of Respondents: Secondary Market Loan Programs.

SBA Form Number: 2402.

Estimated Number of Respondents: 20.

Estimated Annual Responses: 10.

Estimated Annual Hour Burden: 15.

Curtis Rich,

Agency Clearance Officer.

[FR Doc. 2024–02233 Filed 2–2–24; 8:45 am]

BILLING CODE 8026–09–P

DEPARTMENT OF STATE

[Public Notice: 12317]

30-Day Notice of Proposed Information Collection: Shrimp Exporter's/Importer's Declaration

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 March 6, 2024.

ADDRESSES: Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to *www.reginfo.gov/public/do/PRAMain.* Find this particular information collection by selecting ''Currently under 30-day Review—Open for Public Comments'' or by using the search function.

SUPPLEMENTARY INFORMATION:

- *Title of Information Collection:* Shrimp Exporter's/Importer's Declaration.
- *OMB Control Number:* 1405–0095.
- *Type of Request:* Revision of a Currently Approved Collection.
- *Originating Office:* Bureau of Oceans and International Environmental and Scientific Affairs, Office of Marine Conservation (OES/OMC).
- *Form Number:* DS–2031.
- *Respondents:* Business or other for-profit organizations.
- *Estimated Number of Respondents:* 3,000.
- *Estimated Number of Responses:* 10,000.
- *Average Time per Response:* 10 minutes.
- *Total Estimated Burden Time:* 1,666 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 DS–2031 form is necessary to document imports of shrimp and products from shrimp pursuant to the State Department's implementation of Section 609 of Public Law 101–162, which prohibits the entry into the United States of shrimp harvested in ways which are harmful to sea turtles. Respondents are exporters of shrimp and products from shrimp and government officials in countries that export shrimp and products from shrimp to the United States. The importer is required to present the DS–2031 form at the port of entry into the United States, to retain the DS–2031 form for a period of three years subsequent to entry, and during that time to make the DS–2031 form available to U.S. Customs and Border Protection or the Department of State upon request.

Methodology

The DS–2031 form is completed by the exporter, the importer, and under certain conditions a government official of the harvesting country. The DS–2031 form accompanies shipments of shrimp and shrimp product to the United States and is to be made available to U.S. Customs and Border Protection at the time of entry and for three years after entry.

David F. Hogan,

Acting Deputy Assistant Secretary for Oceans, Fisheries, and Polar Affairs, Department of State.

[FR Doc. 2024–02155 Filed 2–2–24; 8:45 am]

BILLING CODE 4710–09–P

DEPARTMENT OF STATE

[Public Notice: 12318]

Notice of Determinations; Culturally Significant Objects Being Imported for Exhibition—Determinations: ''Kingdom of David and Solomon Discovered'' Exhibition

SUMMARY: Notice is hereby given of the following determinations: I hereby determine that certain objects being imported from abroad pursuant to an agreement with their foreign owner or custodian for temporary display in the exhibition ''Kingdom of David and Solomon Discovered'' by the Armstrong International Cultural Foundation, Edmond, Oklahoma, at the Armstrong Auditorium, Edmond, Oklahoma, and at possible additional exhibitions or venues yet to be determined, are of cultural significance, and, further, that their temporary exhibition or display within the United States as aforementioned is in the national interest. I have ordered that Public Notice of these determinations be published in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: Reed Liriano, Program Coordinator, Office of the Legal Adviser, U.S. Department of State (telephone: 202–632–6471; email: *section2459@state.gov*). The mailing address is U.S. Department of State, L/PD, 2200 C Street NW (SA–5), Suite 5H03, Washington, DC 20522–0505.

SUPPLEMENTARY INFORMATION: The foregoing determinations were made pursuant to the authority vested in me by the Act of October 19, 1965 (79 Stat. 985; 22 U.S.C. 2459), Executive Order 12047 of March 27, 1978, the Foreign Affairs Reform and Restructuring Act of 1998 (112 Stat. 2681, *et seq.;* 22 U.S.C. 6501 note, *et seq.*), Delegation of Authority No. 234 of October 1, 1999, Delegation of Authority No. 236–3 of August 28, 2000, and Delegation of Authority No. 523 of December 22, 2021.

Nicole L. Elkon,

Deputy Assistant Secretary for Professional and Cultural Exchanges, Bureau of Educational and Cultural Affairs, Department of State.

[FR Doc. 2024–02237 Filed 2–2–24; 8:45 am]

BILLING CODE 4710–05–P

DEPARTMENT OF THE TREASURY

Financial Crimes Enforcement Network

Agency Information Collection Activities; Proposed Renewal; Comment Request; Renewal Without Change of Reports of Transactions in Currency Regulations and FinCEN Form 112—Currency Transaction Report

AGENCY: Financial Crimes Enforcement Network (FinCEN), Treasury.

ACTION: Notice and request for comments.

SUMMARY: As part of its continuing effort to reduce paperwork and respondent burden, FinCEN invites comment on a renewal, without change, of existing information collection requirements relating to reports of transactions in currency. Under Bank Secrecy Act regulations, financial institutions are required to report transactions in currency of more than $10,000 using FinCEN Form 112 (the currency transaction report, or CTR). This request for comments is made pursuant to the Paperwork Reduction Act of 1995 (PRA).

DATES: Written comments are welcome and must be received on or before April 5, 2024.

ADDRESSES: Comments may be submitted by any of the following methods:

- *Federal E-rulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments. Refer to Docket Number FINCEN–2024–0003 and the specific Office of Management and Budget (OMB) control numbers 1506–0004, 1506–0005, and 1506–0064.
- *Mail:* Policy Division, Financial Crimes Enforcement Network, P.O. Box 39, Vienna, VA 22183. Refer to Docket Number FINCEN–2024–0003 and OMB control numbers 1506–0004, 1506–0005, and 1506–0064.

Please submit comments by one method only. Comments will be reviewed consistent with the PRA [1] and applicable OMB regulations and guidance. All comments submitted in response to this notice will become a matter of public record. Therefore, you should submit only information that you wish to make publicly available.

FOR FURTHER INFORMATION CONTACT: FinCEN's Regulatory Support Section at 1–800–767–2825 or electronically at *frc@fincen.gov.*

SUPPLEMENTARY INFORMATION:

[1] Public Law 104–13, 44 U.S.C. 3506(c)(2)(A).

I. Statutory and Regulatory Provisions

The legislative framework generally referred to as the Bank Secrecy Act (BSA) consists of the Currency and Foreign Transactions Reporting Act of 1970, as amended by the Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism Act of 2001 (USA PATRIOT Act), Public Law 107–56 (October 26, 2001), and other legislation, including the Anti-Money Laundering Act of 2020 (AML Act).[2] The BSA is codified at 12 U.S.C. 1829b, 12 U.S.C. 1951–1960, and 31 U.S.C. 5311–5314 and 5316–5336, and notes thereto, with implementing regulations at 31 CFR chapter X.

The BSA authorizes the Secretary of the Treasury (the ''Secretary''), *inter alia,* to require financial institutions to keep records and file reports that are determined to have a high degree of usefulness in criminal, tax, or regulatory matters, risk assessments or proceedings, or in the conduct of intelligence or counter-intelligence activities to protect against international terrorism, and to implement AML programs and compliance procedures.[3] Regulations implementing the BSA appear at 31 CFR chapter X. The authority of the Secretary to administer the BSA has been delegated to the Director of FinCEN.[4]

Under 31 U.S.C. 5313, the Secretary is authorized to require financial institutions to report currency transactions exceeding $10,000. Regulations implementing 31 U.S.C. 5313 are found at 31 CFR 1010.310 through 1010.314, 31 CFR 1021.311, and 31 CFR 1021.313.

II. Paperwork Reduction Act of 1995

Title: Reports of Transactions in Currency by Financial Institutions (31 CFR 1010.310 through 1010.314, 31 CFR 1021.311, and 31 CFR 1021.313).

OMB Control Number: 1506–0004, 1506–0005, and 1506–0064.[5]

[2] The AML Act was enacted as Division F, sections 6001–6511, of the William M. (Mac) Thornberry National Defense Authorization Act for Fiscal Year 2021, Public Law 116–283, 134 Stat. 3388 (2021).

[3] Section 358 of the USA PATRIOT Act expanded the purpose of the BSA by including a reference to reports and records ''that have a high degree of usefulness in intelligence or counterintelligence activities to protect against international terrorism.'' Section 6101 of the AML Act further expanded the purpose of the BSA to cover such matters as preventing money laundering, tracking illicit funds, assessing risk, and establishing appropriate frameworks for information sharing.

[4] Treasury Order 180–01 (Jan. 14, 2020).

[5] The reports of transactions in currency regulatory requirements are currently covered under the following OMB control numbers: 1506–

Continued

Form Number: FinCEN Form 112—Currency Transaction Report (CTR).

Abstract: FinCEN is issuing this notice to renew the OMB control numbers for the CTR regulations and form.

Affected Public: Businesses or other for-profit institutions, and non-profit institutions.

Type of Review: Renewal without change of a currently approved information collection.

Frequency: As required.

Estimated Number of Respondents: 15,468 financial institutions.[6]

Estimated Total Annual Responses: 20,564,724 CTRs.[7]

Estimated Reporting and Recordkeeping Burden per Response: The average estimated PRA burden, measured in minutes per CTR, is approximately eight minutes.[8] On May 14, 2020, FinCEN issued a 60-day notice to renew the CTR OMB controls numbers (''2020 Notice''). In the 2020 Notice, FinCEN proposed to expand the scope of factors to consider as part of the PRA burden of complying with CTR requirements. To better estimate the burden associated with complying with CTR requirements, FinCEN conducted an in-depth analysis of the population of 2019 CTR filing statistics, as described in the 2020 Notice. FinCEN analyzed the 2019 CTR filings grouped by a number of different factors, including the following: (i) how many CTRs the filer filed in a year; (ii) the filer's financial institution type; (iii) the type of CTR submission (batch filing versus discrete filing); and (iv) the type of person(s) identified in the CTR (*e.g.,* a person that conducts a transaction on its own behalf or a person that conducts a transaction on behalf of another). The analysis and calculations detailed in the 2020 Notice ultimately resulted in an estimate of approximately eight minutes of filer burden per CTR filed.

FinCEN received 18 public comments in response to the 2020 Notice. Commenters were generally supportive of FinCEN's efforts to more accurately estimate the PRA burden associated with the CTR filing requirements. Some commenter had specific recommendations regarding factors for FinCEN to consider in future in-depth analysis of the CTR filing population. However, none of those commenters provided specific sources of data to contradict the burden estimate of eight minutes of burden per CTR filed. In the absence of public comments to suggest otherwise, FinCEN considers it reasonable to continue to use the estimate of eight minutes per CTR filed for the population of 2022 CTR filing statistics as outlined in this notice. Furthermore, in connection with a variety of initiatives FinCEN is undertaking to implement the AML Act, FinCEN intends to conduct, in the future, additional assessments of the PRA burden associated with BSA requirements, including CTR requirements.

Estimated Total Annual Reporting and Recordkeeping Burden: 2,741,963 hours.[9]

Estimated Total Annual Reporting and Recordkeeping Cost: $76,007,214. This estimate applies the weighted average hourly cost of $27.72 (derived in Tables 1 and 2 below) the estimated total annual reporting and recordkeeping burden above (2,741,963 hours).[10]

TABLE 1—TOTAL HOURLY (FULLY-LOADED HOURLY WAGE) PER ROLE AND BUREAU OF LABOR AND STATISTICS (BLS) JOB POSITION

Role	BLS—code [11]	BLS—name	Median hourly wage	Benefit factor	Fully-loaded hourly wage
Remote Supervision	11–3031	Financial Manager	$67.21	[12] 1.42	$95.44
Direct Supervision	13–1041	Compliance Officer	34.47	1.42	48.95
Operations	43–3071	Teller	17.49	1.42	24.84

TABLE 2—WEIGHTED AVERAGE HOURLY COST

Component	Remote supervision			Direct supervision			Operations			Weighted average hourly cost
	% Time	Fully-loaded hourly wage	Hourly cost	% Time	Fully-loaded hourly wage	Hourly cost	% Time	Fully-loaded hourly wage	Hourly cost	
Record-keeping and Reporting	1	$95.44	$0.95	9	$48.95	$4.41	90	$24.84	$22.36	$27.72

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Records required to be retained under the BSA must be retained for five years.

0004 (General provisions—31 CFR 1010.310—Reports of transactions in currency, 31 CFR 1010.311—Filing obligations for reports of transactions in currency, 31 CFR 1010.312—Identification required, 31 CFR 1010.313—Aggregation, and 31 CFR 1010.314—Structured transactions), and 1506–0005 (Rules for casinos and card clubs—31 CFR 1021.311—Reports of transaction in currency, and 31 CFR 1021.313—Aggregation). OMB control number 1506–0064 applies to FinCEN Form 112—CTR.

[6] This estimate is based on the observed number of unique filers associated with at least one CTR fling received in calendar year 2022, as reported by the BSA E-Filing System as of 12/31/2022.

[7] This estimate is based on the observed number of CTR filings received in calendar year 2022, as reported by the BSA E-Filing System as of 12/31/2022.

[8] *See* FinCEN, *Agency Information Collection Activities; Proposed Renewal; Comment Request; Renewal Without Change of the Bank Secrecy Act Reports of Transactions in Currency Regulations at 31 CFR 1010.310 Through 1010.314, 31 CFR 1021.311, and 31 CFR 1021.313, and FinCEN Report 112-Currency Transaction Report,* 85 FR 29022 (May 14, 2020). Refer to 85 FR 29029 for the specific reference to the estimated recordkeeping and reporting burden estimate of eight minutes per CTR.

[9] This estimate is derived from the calculation 20,564,724 CTRs multiplied by eight minutes per CTR and converted to hours.

[10] Tables 1 and 2 use the same methodology to estimate the weighted average hourly cost as was used in the 2020 Notice. The tables, however, include the most recent statistics available as described in further detail in footnotes 11 and 12. Refer to 85 FR 29022, at 29026 (Tables 5 and 6) setting out the methodology used to calculate the PRA burden in the 2020 Notice.

[11] The average hourly wage rate is calculated from the May 2022 U.S. Bureau of Labor Statistics (BLS) median hourly wage for the BLS codes listed in Table 1. *See* BLS, *Occupational Employment and Wages Statistics* (May 2022), available at *https://www.bls.gov/oes/tables.htm.*

[12] The ratio between benefits and wages for private industry workers is $12.19 (hourly benefits)/$29.34 (hourly wages) = 0.42, as of September 2023. The benefit factor is 1 plus the benefit/wages ratio, or 1.42. *See* BLS, *Employee Costs for Employee Compensation* (September 2023), available at ECEC Home: U.S. Bureau of Labor Statistics (*bls.gov*).

Request for Comments

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (i) whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (ii) the accuracy of the agency's estimate of the burden of the collection of information; (iii) ways to enhance the quality, utility, and clarity of the information to be collected; (iv) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (v) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Jimmy L. Kirby Jr.,

Deputy Director, Financial Crimes Enforcement Network.

[FR Doc. 2024–02186 Filed 2–2–24; 8:45 am]

BILLING CODE 4810–02–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for Election Out of Generation-Skipping Transfer (GST) Deemed Allocations

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Internal Revenue Service, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on continuing information collections, as required by the Paperwork Reduction Act of 1995 (PRA 95). The IRS is soliciting comments concerning the reporting burden associated with making the Election Out of Generation-Skipping Transfer(GST) Deemed Allocations.

DATES: Written comments should be received on or before April 5, 2024 to be assured of consideration.

ADDRESSES: Direct all written comments to Andres Garcia, Internal Revenue Service, Room 6526, 1111 Constitution Avenue NW, Washington, DC 20224 or by email to *pra.comments@irs.gov*. Please include the OMB Control Number 1545–1892 or TD 9208 in the Subject line.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form should be directed to Sara Covington, at (202) 317–5744 or Internal Revenue Service, Room 6526, 1111 Constitution Avenue NW, Washington, DC 20224, or through the internet, at *sara.l.covington@irs.gov*.

SUPPLEMENTARY INFORMATION:

Title: Election Out of GST Deemed Allocations.

OMB Number: 1545–1892.

Regulation Project Number: TD 9208.

Abstract: This information is required by the IRS for taxpayers who elect to have the automatic allocation rules not apply to the current transfer and/or to future transfers to the trust or to terminate such election. This information is also required by the IRS for taxpayers who elect to treat trusts described in section 2632(c)(3)(B)(i) through (vi)as GST trusts or to terminate such election. This information will be used to identify the trusts to which the election or termination of election will apply.

Current Actions: There are no changes being made to the regulations at this time.

Type of Review: Extension of a currently approved collection.

Affected Public: Individuals or households.

Estimated Number of Respondents: 25,000.

Estimated Time per Respondent: 30 minutes.

Estimated Total Annual Burden Hours: 12,500.

The following paragraph applies to all the collections of information covered by this notice.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained if their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: January 31, 2024.

Sara L. Covington,

IRS Tax Analyst.

[FR Doc. 2024–02185 Filed 2–2–24; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF VETERANS AFFAIRS

Advisory Committee on Homeless Veterans, Notice of Meeting

The Department of Veterans Affairs (VA) gives notice under the Federal Advisory Committee Act, 5 U.S.C. ch. 10, that the Advisory Committee on Homeless Veterans will meet on April 16–18, 2024. The April 2024 meeting sessions will begin and end as follows:

Date	Time	Open session
April 16, 2024	9 a.m.–4:30 p.m. eastern standard time (EST)	Yes.
April 17, 2024	9 a.m.–4:30 p.m. EST	No.
April 18, 2024	9 a.m.–4:30 p.m. EST	No.

The meeting sessions are open to the public, except during the time the Committee is conducting tours of VA facilities. Tours of VA facilities are closed, to protect Veterans' privacy and personal information, in accordance with 5 U.S.C. 552b(c)(6).

The purpose of the Committee is to provide the Secretary of Veterans Affairs on the provision of benefits and services to Veterans experiencing homelessness. In providing this advice, the Committee shall assemble and review information relating to the needs of homeless Veterans; provide an ongoing assessment of the effectiveness of the policies, organizational structures, and services of VA in assisting Veterans experiencing homelessness; and provide ongoing advice on the most appropriate means of providing assistance to Veterans experiencing homelessness.

On April 16, 2024, the meeting will be a hybrid, held in-person at the Asheville Buncombe Community Christian Ministry Transformation Village at 45 Rocky Ridge Road, Asheville, NC 28806; and virtually via Zoom conferencing. The agenda will include briefings from VA and other Federal, state and local agencies regarding services for homeless Veterans.

On April 17–18, 2024, Committee members will tour the Asheville VA Medical Center, Asheville Buncombe Community Christian Ministry Transformation Village and Veterans service facilities that support homeless Veterans.

Time will be allocated at the April 16, 2024, meeting for receiving oral or written presentations from the public. By March 18, 2024, interested parties that would like to provide oral or written presentations on issues affecting homeless Veterans should send such presentations to Anthony Love, Designated Federal Official, Veterans Health Administration Homeless Programs Office (11HPO), U.S. Department of Veterans Affairs, 810 Vermont Avenue NW (11HPO), Washington, DC 20420, at *achv@va.gov,* for distribution to the Committee.

Additionally, members of the public who wish to attend the April 16, 2024, meeting virtually, please use the Zoom link below to sign in. For those attending in person, a photo I.D. may be required at the Guard's Desk as a part of the entrance screening process. Due to an increase in security protocols, you should arrive 30 minutes before the meeting begins. An escort for meeting attendees will be provided until 8:45 a.m. EST. Attendees who require reasonable accommodations should notify Anthony Love at *achv@va.gov.* The meeting link and call-in numbers are noted below:

April 16, 2024 Meeting (9 a.m.–4:30 p.m. EST)

Zoom: https://us06web.zoom.us/j/84993578711?pwd=U5QWaZlPCL2FSqa89RuJygmwxrMi9P.1
Meeting ID: 849 9357 8711
Passcode: 466465

Mobile:

Meeting ID: 849 9357 8711
Passcode: 466465
+1 305 224 1968 US
+1 309 205 3325 US
+1 312 626 6799 US (Chicago)
+1 646 558 8656 US (New York)
+1 646 931 3860 US
+1 301 715 8592 US (Washington DC)
+1 360 209 5623 US
+1 386 347 5053 US
+1 507 473 4847 US
+1 564 217 2000 US
+1 669 444 9171 US
+1 689 278 1000 US
+1 719 359 4580 US
+1 720 707 2699 US (Denver)
+1 253 205 0468 US
+1 253 215 8782 US (Tacoma)
+1 346 248 7799 US (Houston)

Dated: January 31, 2024.

Jelessa M. Burney,

Federal Advisory Committee Management Officer.

[FR Doc. 2024–02214 Filed 2–2–24; 8:45 am]

BILLING CODE P

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–0132]

Agency Information Collection Activity: Application in Acquiring Specially Adapted Housing or Special Home Adaptation Grant

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 April 5, 2024.

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. 2900–0132'' 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), 1717 H Street NW, Washington, DC 20006, (202) 266–4688 or email *maribel.aponte@va.gov.* Please refer to ''OMB Control No. 2900–0132 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: Public Law 104–13; 44 U.S.C. 3501–3521. Title 38 U.S.C. chapter 21.

Title: Application in Acquiring Specially Adapted Housing or Special Home Adaptation Grant (VA Form 26–4555).

OMB Control Number: 2900–0132.

Type of Review: Revision of a currently approved collection.

Abstract: VA Form 26–4555 is used to gather the necessary information to determine Veteran eligibility for the SAH or SHA grant.

Affected Public: Individuals.

Estimated Annual Burden: 1,167 hours.

Estimated Average Burden per Respondent: 10 minutes.

Frequency of Response: One time.

Estimated Number of Respondents: 7,000.

By direction of the Secretary.

Maribel Aponte,

VA PRA Clearance Officer, Office of Enterprise and Integration/Data Governance Analytics, Department of Veterans Affairs.

[FR Doc. 2024–02209 Filed 2–2–24; 8:45 am]

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Part II

Department of Labor

Occupational Safety and Health Administration

29 CFR Part 1910
Emergency Response Standard; Proposed Rule

DEPARTMENT OF LABOR

Occupational Safety and Health Administration

29 CFR Part 1910

[Docket No. OSHA–2007–0073]

RIN 1218–AC91

Emergency Response Standard

AGENCY: Occupational Safety and Health Administration (OSHA), Labor.

ACTION: Proposed rule; request for comments.

SUMMARY: OSHA is proposing through this notice of proposed rulemaking (NPRM) to issue a new safety and health standard, titled *Emergency Response,* to replace the existing Fire Brigades Standard. The new standard would address a broader scope of emergency responders and would include programmatic elements to protect emergency responders from a variety of occupational hazards. The agency requests comments on all aspects of the proposed rule.

DATES: Comments on this NPRM (including requests for a hearing) and other information must be submitted by May 6, 2024.

Informal public hearing: OSHA will schedule an informal public hearing on the proposed rule if requested during the comment period. If a hearing is requested, the location and date of the hearing, procedures for interested parties to notify the agency of their intention to participate, and procedures for participants to submit their testimony and documentary evidence will be announced in the **Federal Register**.

ADDRESSES:

Written comments: You may submit comments and attachments, identified by Docket No. OSHA–2007–0073, electronically at *https://www.regulations.gov,* which is the Federal e-Rulemaking Portal. Follow the instructions online for making electronic submissions. After accessing ''all documents and comments'' in the docket (Docket No. OSHA–2007–0073), check the ''proposed rule'' box in the column headed ''Document Type,'' find the document posted on the date of publication of this document, and click the ''Comment Now'' link. When uploading multiple attachments to *regulations.gov*, please number all of your attachments because *regulations.gov* will not automatically number the attachments. This will be very useful in identifying all attachments in the preamble. For example, Attachment 1—title of your document, Attachment 2—title of your document, Attachment 3—title of your document. For assistance with commenting and uploading documents, please see the Frequently Asked Questions on *regulations.gov.*

Instructions: All submissions must include the agency's name and the docket number for this rulemaking (Docket No. OSHA–2007–0073). All comments, including any personal information you provide, are placed in the public docket without change and may be made available online at *http://www.regulations.gov.* Therefore, OSHA cautions commenters about submitting information they do not want made available to the public, or submitting materials that contain personal information (either about themselves or others), such as Social Security Numbers and birthdates.

Docket citations: This **Federal Register** document references materials in Docket ID OSHA–2007–0073, which is the docket for this rulemaking. OSHA also references documents in the following dockets which the agency adopts by reference into this rulemaking:

- 2016, National Advisory Committee on Occupational Safety and Health (NACOSH)—Docket ID OSHA–2016–0001; and
- 2015, NACOSH Emergency Responder Preparedness Subcommittee—Docket ID OSHA–2015–0019.

All of these dockets are available for viewing at *https://www.regulations.gov,* the Federal eRulemaking Portal.

Citations to documents: The docket referenced most frequently in this document is the docket for this rulemaking, docket number OSHA–2007–0073, cited as Docket ID OSHA–2007–0073. Documents in the docket get an individual document identification number, for example ''OSHA–2007–0073–0044.'' Because this is the most frequently cited docket, the citation is shortened to indicate only the document number. The example is cited in the NPRM as ''Document ID 0044.''

Citations to documents in other dockets include the full document identification number, cited as, for example ''Document ID OSHA–2015–0019–0014.'' The citation may also include page numbers. The NACOSH subcommittee meetings were transcribed. Citations to the transcripts, and the referenced page(s), are cited as, for example, ''Document ID OSHA–2015–0019–0015, Tr. 53.''

Documents cited in this NPRM are available in the rulemaking docket (Docket ID OSHA–2015–0073) or in the dockets OSHA is adopting in this rulemaking. They are available to read and download by searching the docket number or document ID number at *https://www.regulations.gov.* Each docket index lists all documents in that docket, including public comments, supporting materials, meeting transcripts, and other documents. However, some documents (*e.g.,* copyrighted material) in the dockets are not available to read or download from that website. All documents in the dockets are available for inspection at the OSHA Docket Office. This information can be used to search for a supporting document in the docket at *www.regulations.gov*. Contact the OSHA Docket Office at (202) 693–2350 (TTY number: 877–889–5627) for assistance in locating docket submissions.

Consensus standards: Throughout this NPRM, OSHA makes numerous references to the consensus standards published by the National Fire Protection Association (NFPA). The NFPA standards are available to be viewed without cost at *https://www.nfpa.org/for-professionals/codes-and-standards/list-of-codes-and-standards/free-access.*

FOR FURTHER INFORMATION CONTACT:

For press inquiries: Contact Frank Meilinger, Director, Office of Communications, Occupational Safety and Health Administration, U.S. Department of Labor; telephone: (202) 693–1999; email: *meilinger.francis2@dol.gov*.

For general information and technical inquiries: Contact Mark Hagemann, Director, Office of Safety Systems, Directorate of Standards and Guidance, Occupational Safety and Health Administration, U.S. Department of Labor; telephone (202) 693–2222 or fax (202) 693–1678; email: *hagemann.mark@dol.gov.*

SUPPLEMENTARY INFORMATION:

Table of Contents

I. Executive Summary

A ''100-word summary'' is available on *https://www.regulations.gov.* Elements of emergency responder (firefighters, emergency medical service providers, and technical search and rescuers) health and safety are currently regulated by OSHA primarily under a patchwork of hazard-specific standards, and by state regulations in states with OSHA-approved State plan programs. (While OSHA standards do not apply to volunteers, some volunteers are covered in states with OSHA-approved State plan programs.) All of the OSHA standards referred to above were promulgated decades ago, and none was designed as a comprehensive emergency response standard. Consequently, they do not address the full range of hazards currently facing emergency responders, nor do they reflect major changes in performance specifications for protective clothing and equipment or major improvements in safety and health practices that have already been accepted by the emergency response community and incorporated into industry consensus standards. Notably, the OSHA standards do not align with the Department of Homeland Security's National Incident Management System (NIMS), which guides all levels of government, nongovernmental organizations, and the private sector to work together to prevent, protect against, mitigate, respond to, and recover from emergency incidents.

In the aftermath of the terrorist attacks on September 11, 2001, all government agencies, including OSHA, were directed to strengthen their preparedness to respond to terrorist attacks, major disasters, and other emergencies. In response to this direction, the agency reviewed its standards applicable to the safe conduct of emergency response and disaster recovery activities and identified gaps in the protections for emergency responders and disaster recovery workers. The agency subsequently published a Request for Information (RFI), using the Fire Brigades standard (29 CFR 1910.156) as a baseline for emergency response activities, to determine if it should proceed with updating and expanding the standard.

Responses to the RFI generally supported the need for continued rulemaking; therefore, the agency worked with the National Advisory Committee for Occupational Safety and Health (NACOSH) to assemble a subcommittee of emergency response community representatives to develop draft regulatory language through a process akin to negotiated rulemaking. To ensure a draft standard would incorporate best practices and the latest advances in technology, OSHA invited emergency response stakeholder organizations to provide subject matter experts to consult with and participate on the Subcommittee. The Subcommittee comprised a balanced group of subject matter experts representing labor and management, career and volunteer emergency service management associations, other Federal agencies and State plans, a national consensus standard organization, and general industry skilled support workers. NACOSH unanimously recommended that OSHA proceed with the rulemaking to update its emergency response standard and endorsed the draft regulatory language developed by the Subcommittee.

In accordance with the requirements of the Small Business Regulatory Enforcement Fairness Act (SBREFA), OSHA convened a Small Business Advocacy Review (SBAR) panel in the fall of 2021. The panel, comprising members from the Small Business Administration's (SBA) Office of Advocacy, OSHA, and OMB's Office of Information and Regulatory Affairs, listened to and reported on what Small Entity Representatives (SERs) from entities that would potentially be affected by the proposed rule had to say. OSHA provided SERs with the draft regulatory language developed by the NACOSH subcommittee for their review and comment. The Panel received advice and recommendations from the SERs and reported its findings and recommendations to OSHA. OSHA has taken the SERs' comments and the Panel's findings and recommendations into consideration in the development of the proposed rule.

The proposed rule updates by replacing the existing Fire Brigades standard and would expand the scope of OSHA's standard to include a broad range of hazards emergency responders encounter during emergency response activities and would bring the standard in line with the Federal Emergency Management Agency's (FEMA) National Response Framework and modernize the standard to align with the current industry consensus standards issued by the National Fire Protection Association (NFPA) on the safe conduct of emergency response activities.

As noted in the first paragraph above, and discussed in detail below, OSHA standards do not apply to volunteer emergency responders. However, in States with OSHA-approved State Plans, volunteers may be treated as employees under state law. OSHA has no authority over how individual states regulate volunteers. See section III.B, Pertinent Legal Authority, and section VIII.G, Requirements for States with OSHA-Approved State Plans, for further discussion. Throughout this document, the agency seeks input on alternatives and potential exclusions for economically at-risk small and volunteer organizations that will be shared with State Plans as they determine how to proceed with their subsequent individual state-level rulemaking efforts.

Organizations that provide emergency services vary significantly in size and the type(s) of service(s) they provide. They are often not well suited for ''one-size-fits-all'' prescriptive standards. Accordingly, the proposed rule is a ''performance-based'' standard, which provides flexibility for affected employers to establish the specific criteria that best suits their organization. The proposed rule focuses on the achievement of desired results—improving emergency responder health and safety and reducing injuries and fatalities—while providing flexibility as to the precise methods used to achieve those results. The performance-based nature of the proposed rule is particularly beneficial to small and

volunteer organizations with limited resources.

Additionally, in accordance with Executive Orders 12866 and 13563, the Regulatory Flexibility Act (RFA), and the Unfunded Mandates Reform Act (2 U.S.C. 1501 *et seq.*), OSHA has prepared a Preliminary Economic Analysis (PEA), including an Initial Regulatory Flexibility Analysis, for the replacement of the existing Fire Brigades standard. Supporting materials prepared by OSHA are available in the public docket for this rulemaking, Docket ID OSHA–2007–0073, through *www.regulations.gov.*

II. Background

A. Need for the Standard

I. Fatality and Injury Analysis

On April 17, 2013, while engaged in fire suppression activities at a fertilizer plant in West, Texas, ten firefighters died after approximately 40 to 60 tons of ammonium nitrate unexpectedly detonated. Five civilians, two of whom were providing support for firefighting activities, were also killed, and five firefighters were injured. Victims of the blast included both volunteer and career firefighters, ranging in age from 26 to 52 years, each with 1 to 31 years of firefighting experience. A subsequent investigation into the incident performed by the National Institute for Occupational Safety and Health (NIOSH) revealed numerous contributing factors in the incidents that led to the fatalities, including limited responder knowledge and recognition of the hazards created by ammonium nitrate, inadequate pre-incident emergency response planning for the fertilizer plant, and the fact that response personnel performed fire suppression activities from a location that was within the blast radius of the explosion (NIOSH 2014, Document ID 0331). As part of its investigation report, NIOSH made several recommendations for how fire departments could prevent fatalities and injuries, including the development of a written risk management plan, the conducting of pre-incident planning inspections for the buildings located within a fire department's jurisdiction, the development and implementation of a written incident management system for all emergency incident operations, the mandated use of turnout clothing and other personal protective equipment (PPE) that has been determined to be appropriate for each task, and a minimum standard of training for every firefighter.

Every day, the duties of an emergency responder may require making life and death decisions. The typical workday of an emergency responder could include tasks that range from responding to a minor medical emergency to addressing a more severe incident such as a multi-building fire or assisting in the rescue and helicopter medical evacuation of an injured rock climber trapped on the side of a cliff. In performing their assigned tasks associated with the protection of the public, personal and real property, and the environment, emergency responders face numerous safety and health hazards which may lead to injury, illness, and death. After conducting a review of the fatalities and injuries sustained during regular work activities by emergency response personnel operating within the current regulatory framework, OSHA has determined that existing safety and health standards do not adequately protect the emergency response workforce from these hazards.

As explained in the *Preliminary Economic Analysis,* OSHA estimates that approximately 1,054,611 individuals are exposed on an annual basis to the workplace hazards associated with the emergency response activities falling within the scope of the proposed rule, including public-sector employees in States with OSHA-approved State Plans.[1] Workers performing emergency response activities can be assigned to a wide variety of tasks, including firefighting, medical assistance, and search and rescue. The hazards associated with emergency response activities are not limited to emergency situations; OSHA has also identified safety and health risks present during training exercises and other routine tasks. While some individuals are employed full-time as emergency response workers, a substantial number of personnel are categorized as volunteers. OSHA estimates that, of the 1,054,611 emergency responders anticipated to fall within the scope of the proposed rule, 331,472 will be self-identified as volunteers.

A. Fatalities

To determine the frequency and nature of workplace fatalities for emergency responders, OSHA reviewed the datasets of published summary reports available from a variety of sources, including reports published by the United States Fire Administration (USFA), FEMA, the NFPA, NIOSH, the National Wildfire Coordinating Group (NWCG), the OSHA Information System (OIS), and the Bureau of Labor Statistics (BLS).

Review of the overall rate of reported workplace-related deaths for emergency response personnel contained within these reports revealed substantial variation among reporting agencies (Table VII–A–1). Some organizations reported higher rates of fatal injuries as compared to other, non-emergency response professions, while other organizations reported lower rates of fatal injuries. OSHA also determined that each reporting agency varied significantly in the number of deaths reported annually, the number and date of the years examined, the inclusion or exclusion of certain victims (volunteer, non-firefighter job categories), and their definition of an 'on-duty' fatality. Additionally, although each study provided summary numbers for the causes of death, the extent of the investigations performed to identify the root cause of each fatality varied among reports. Table VII–A–1, below, shows a summary of the reports reviewed by OSHA in consideration of the annual fatality rates for emergency response personnel.

[1] The proposed rule defines two types of emergency response workers: *responders* and *team members.* For purposes of the discussion in this section and the Health Effects of Emergency Response Activities section that follows, both types of workers are referred to as ''emergency responders'' or ''emergency response personnel.''

Table VII-A-1. Annual number of firefighter deaths by reporting agency.

Investigating Entity:	USFA	FEMA	NFPA	NIOSH	NWCG	OSHA (OIS)	BLS
Data Range	1990-2012 (excluding 2001)	2020	2007-2021	2007-2021	2007-2016	2007-2021	2007-2021
Average Number of Fatalities, Annually	105.2	102 (Includes 36 Covid-19 related deaths)	72.4 (Excludes Covid-19 related deaths)	99.3	17 (Wildland firefighter deaths only)	18.2 (Excludes Covid-19 related deaths)	11.3 (Includes only non-firefighter personnel, excludes Covid-19 related deaths)

Source: USFA Annual Fatality Summary Reports, 2007-2021; NFPA Annual Fatality Summary Reports, 2007 – 2021; NIOSH, Fire Fighter Fatality Investigation and Prevention Program - Fire Fighter Fatality Map (2007-2021); U.S. Department of Labor, Bureau of Labor Statistics; OSHA's Occupational Safety and Health Information System (OIS).

From the information in Table VII–A–1, OSHA concluded that a conservative estimate of workplace deaths for emergency response personnel falling within the scope of the proposed rule would include those firefighter deaths reported by NFPA (an average of 72.4 deaths annually, including career and volunteer firefighters), combined with BLS information on the number of non-firefighter emergency responder deaths (an average of 11.3 deaths, annually), which produces an estimate of 83.7 emergency responder deaths annually, on average. The agency believes that the majority of technical search and rescue job activities are performed by firefighters, EMS providers, and law enforcement officers (such as park rangers, conservation officers, and natural resource police), who are cross trained to perform technical search and rescue. As such, OSHA believes that most injuries and fatalities that occur during technical search and rescue activities are attributed to firefighters, EMS personnel, and law enforcement officers in data sources. This assumption is supported by the information available in the OSHA Information System (OIS) database; of the 273 emergency response-related fatalities in the OIS database, 19 occurred while the victim was engaged in non-fire-related technical search and rescue activities. Among these victims, each was identified by the OSHA investigator as employed within one of the job categories of firefighter, EMS provider, or law enforcement, and not as a technical search and rescuer.

Listed below are examples of fatalities from the OIS database that occurred while the rescuer (victim) was engaged in activities that were determined to be technical search and rescue related.

Inspection #343188371—At 8:15 p.m. on May 28, 2018, an employee was working as a firefighter and diver for a big city fire department. A man fell into the South Branch of the Chicago River. The firefighter and a coworker, his diving partner, had been deployed from a helicopter into the river to conduct dive rescue operations. During the attempt, the firefighter surfaced with his partner. Then he subsequently sank to the bottom of the river. At that time, he lost communication with the fire department. Divers from the department's marine unit searched for firefighter. After several minutes, they located the firefighter and pulled him out of the water with his diving equipment intact. Despite resuscitation attempts by paramedics on the scene and at the hospital, he was pronounced dead at 10:02 p.m. that same day.

Inspection #334815610—At approximately 5:00 p.m. on June 21, 2012, during a mountain rescue, an employee was preparing to place rescue victim in a stokes litter to be hoisted on to a helicopter at approximately 13,800 foot level of Emmons Glacier on Mt. Rainier. The helicopter was lowering a litter to the employee. The employee reached up and unhooked the litter when he apparently lost his footing and slid approximately 3,7000 feet down the face of the glacier. The employee was killed.

Inspection #315597187—At approximately 9:45 p.m. on May 23, 2011, Employee #1 and a firefighter crew were standing in the driveway of the fire hall. They had completed a rope rescue-training course using a rope and pulley system, which was hooked to the bucket of a ladder truck. The bucket was 20 ft above the pavement. Employee #1 placed his foot in the loop of the rope and pulled himself up by pulling down on the other end of the rope. When his feet were approximately 4.5 ft above the ground, the two ends of the rope spread apart, so his feet went in one direction and his hands went in the other. This caused his body to be positioned horizontally. He fell backwards to the ground and struck his back and head on the pavement below. Employee #1 sustained head trauma that killed him.

The information in the OIS dataset, while limited, supports OSHA's inclusion of technical search and rescue-related job activities within the scope of the proposed rule. However, as fully discussed in section VII.D. Benefits, the number of fatalities in the OIS dataset is likely a significant underestimation of the total emergency responder fatalities occurring annually in the United States. Moreover, in contrast to firefighters, publicly available injury and fatality data specific to technical search and rescue is difficult to obtain, in part because it may be included with non-technical rescue data, as in this article titled ''Injuries to Search and Rescue Volunteers; A 30-year Study,'' in which there is no differentiation between technical and non-technical rescuers. *https://www.researchgate.net/publication/20566794_Injuries_to_search_and_rescue_volunteers_A_30-year_experience*. Similarly, as noted above, OSHA believes that many

injuries arising from technical search and rescue activities are categorized generally as firefighting or EMS injuries, making them difficult to disaggregate from other firefighter and EMS data.

In addition to the lack of peer-reviewed publications focusing exclusively on technical search and rescue, a review of publicly available information from the professional associations devoted to providing support for technical search and rescue employees on a national level identified no readily available summary reports of technical search and rescue-related accidents, injuries, or fatalities for victims falling within the scope of OSHA's proposed rule. Further examination of available BLS data is infeasible because BLS does not have an occupational code for Technical Search/Rescue.

Despite the limited availability of data specific to technical search and rescue, the hazards posed by these activities are recognized in the industry. The NACOSH subcommittee, comprised of subject matter experts representing labor and management, career and volunteer emergency service management associations, other Federal agencies and State plans, a national consensus standard organization, and general industry skilled support workers, recommended coverage for technical search and rescue activities by including it in its proposed draft standard (Docket ID OSHA–2015–0019–0002, Ex. 5). Similarly, NFPA has standards specific to technical search and rescue; NFPA 1670, Operations and Training for Technical Search and Rescue Activities; and NFPA 1006, Rescue Technician Professional Qualifications.

Based on the available data and industry recognition, OSHA preliminarily concludes that technical search and rescue emergency response activities involve risks to employee safety and health comparable to those in other types of emergency response such as firefighting and EMS. OSHA requests comment on this conclusion and specifically invites additional data and information on the risks posed by technical search and rescue activities.

OSHA believes that the fatalities present in the OSHA OIS dataset are likely a significant underestimation of the fatalities occurring annually within the emergency response community. This is likely because the OIS database contains information about fatality investigations performed by OSHA field investigators, but does not contain information about deaths not reported to OSHA, which includes many volunteer firefighter deaths. The total number of fatalities may also be underestimated as there is no blanket mandatory reporting requirement for emergency responder deaths. This is also likely due in part to varying methodology among reporting organizations for categorizing a heart attack as work-related. The differences observed between the OIS dataset and the NFPA dataset in these two categories of fatalities are summarized in Table VII–A–2. Although the NFPA dataset contained more victims in each of these fatality characteristics, when OSHA compared the manner and cause of deaths in the OIS dataset with those in the NFPA summary reports, observable similarities were present (Table VII–A–2).

Table VII-A-2. Summary comparison of the characteristics of the NFPA and OIS fatality datasets.

Fatality Descriptive Information	Average Number of Annual Fatalities (2007-2021) NFPA Dataset	Average Number of Annual Fatalities (2007-2021) OIS Dataset
Average Annual Fatality Rate (AAFR)-Overall Rate	72.4	18.2
AAFR-Paid Employee	35.1 (48%)	16.3 (90%)
AAFR-Volunteer	37.3 (52%)	1.9 (10%)
Task at Time of Death		
Fire or Emergency Response	42.1 (58%)	11.3 (62%)
Other Emergencies	7.9 (11%)	0.4 (2%)
Training Exercise	8.5 (12%)	2.5 (14%)
On Duty, Other	13.8 (19%)	3.7 (21%)
Cause of Death		
Explosion	2.4 (3%)	0.6 (3%)
Fall	4.5 (6%)	1.9 (10%)
Heat Exhaustion	1 (1%)	0.5 (3%)
Struck By	13.5 (19%)	4.8 (26%)
Workplace Violence	1.7 (2%)	0.1 (1%)
Nature of Death		
Asphyxia	7 (10%)	1.9 (10%)
Burn or Scald	4.8 (7%)	2.6 (14%)
Drowning	1.4 (2%)	0.8 (4%)
Heart Attack	30.9 (43%)	3.8 (20%)
Striking/Crushing/Collision	23.2 (32%)	4.8 (26%)

Source: NFPA Annual Fatality Summary Reports, 2007 – 2021.
NOTE: Because of rounding and data exclusion of nonclassifiable responses, data may not sum to the totals
Source: OSHA's Occupational Safety and Health Information System (OIS).

For example, both datasets show that a majority of emergency responder deaths occurred while the responder was responding to emergencies or fighting fires (58% for NFPA, 62% for OIS). A substantial number of fatalities also occurred while engaged in training activities (12% and 14% for the NFPA and OIS datasets, respectively). The leading cause of death for both the NFPA (19%) and the OIS (26%) datasets was being struck by an object, and a similar percentage of deaths fell into the striking/crushing/collision category (32% in the NFPA dataset, 26% in the OIS dataset). Important distinctions between the NFPA and OIS datasets include both scope and level of detail. Specifically, NFPA reports are limited to deaths occurring among firefighters. The OIS dataset includes deaths of all emergency response personnel determined to fall within the scope of the proposed rule, including other, non-firefighter individuals. Additionally, the NFPA dataset contains little to no information regarding identified workplace hazards associated with the reported deaths, while the OIS dataset includes summary information for contributory hazards, as identified by the standards cited by the OSHA investigator and the information contained in each accident's summary abstract. For these reasons, while OSHA determined that the overall number of firefighter deaths annually is more accurately reflected by the NFPA annual summary reports, OSHA determined that the descriptive information available in the OIS dataset regarding task at time of death, cause of death, and workplace hazards identified by the OSHA inspector while investigating an individual's death is a representative sample of the characteristics of emergency response fatalities across the larger dataset. OSHA reviewed all 273 fatalities in the OIS dataset to identify the causes of death and any contributory safety or health hazards. Table VII–A–3 shows a summary of the reported cause of death and the assigned task at the time of death for each of the fatalities in the OIS dataset.

A review of the available literature identifying common causes of death for emergency responders supports OSHA's analysis of the fatalities available in the OIS dataset. From this review, OSHA determined that some of the most common safety and health hazards encountered by emergency responders include vehicle collisions; falls from heights to lower levels due to structural or building collapses; being struck by, caught in between, or crushed by vehicles; falling objects or debris; burns; and entrapments (FEMA, 2022, Document ID 0341; NWCG, 2017,

Document ID 0265; NFPA, 2022, Document ID 0122).

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Table VII-A-3. Summary of nature and cause of deaths in OIS fatality analysis.

Assigned Task ---------- Cause of Death	Emergency Response-Not Fire	Emergency Response-Fire	Rescue	Training Exercise	On Duty-Other	Off Duty	Total Deaths
Asphyxia	-	28	-	-	-	-	**28**
Burn/ Scald	-	38	-	1	-	-	**39**
Cancer	-	-	-	-	1	-	**1**
Chemical Exposure	-	-	-	-	1	-	**1**
Cut/ Laceration	-	-	-	-	1	-	**1**
Drowning	-	-	5	5	2	-	**12**
Explosion	1	6	-	-	2	-	**9**
Fall	2	11	2	6	7	-	**28**
Heart Attack	3	15	-	15	14	8	**55**
Heat Exhaustion	-	3	-	4	-	-	**7**
Natural Causes	-	-	-	1	1	-	**2**
Stroke	-	1	-	-	-	-	**1**
Smoke Exposure	-	1	-	-	-	-	**1**
Striking/ Crushing/ Collision	6	17	-	2	9	-	**34**
Struck By	6	23	-	1	8	-	**38**
Suicide	-	-	-	-	1	-	**1**
Unknown	-	6	-	3	4	-	**13**
Violence	1	1	-	-	-	-	**2**
Total	**19**	**150**	**7**	**38**	**51**	**8**	**273**

Source: OSHA's Occupational Safety and Health Information System (OIS).

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Among these 273 fatalities, hazards identified by OSHA investigators as present on-site at the time of death included hazards involving the incorrect use of PPE and other equipment, inadequate vehicle preparedness and operation, lack of effective implementation of standard operating procedures in various emergency scenarios, failure to adhere to practices for Immediately Dangerous to Life and Health (IDLH) situations, failure to meet medical evaluation requirements, failure to meet minimum training requirements, lack of or ineffective implementation of an Emergency Response Plan (ERP), and the lack of an effective Risk Management Plan (RMP). These hazards were identified by reviews of the citations issued at the time of the inspection and of the summary abstracts for each investigation. A summary of the number of hazards found at each of the OIS fatalities can be found in Table VII–A–4, below.

Table VII-A-4. A summary of hazards identified by OSHA during fatality investigations.

Identified Safety Deficiencies Leading to Workplace Hazards	Number of Fatalities
Correct Use of PPE and Other Equipment	59 (21.6%)
Vehicle Preparedness and Operation	29 (10.6%)
Standard Operating Procedures-Creation and Adherence	47 (17.2%)
IDLH Practices-Creation and Adherence	18 (6.6%)
Medical Evaluation	18 (6.6%)
Minimum Training Requirements	41 (15.0%)
ERP- Creation and Adherence	56 (20.5%)
RMP- Creation and Adherence	43 (15.8%)

Source: OSHA's Occupational Safety and Health Information System (OIS).

From these 273 fatalities, OSHA identified 212 (77.7%) in which at least one of the safety hazards addressed by the proposed rule was determined to be present at the time of the emergency responder's death.

Heart attacks were identified in both the NFPA (43%) and OIS (20%) datasets as one of the most commonly occurring means by which an emergency responder will die while at work. Among the 212 fatalities in the OIS dataset determined to have at least one of the safety hazards addressed by the proposed rule present in the workplace at the time of death, eight were classified as heart attack fatalities, approximately 15% of the total number of heart attacks observed in the dataset. Cardiovascular health and the reduction of heart attacks is further discussed in the *Health Effects of Emergency Response Activities* section, below.

B. Nonfatal Injuries

OSHA reviewed the available literature to examine the extent and nature of workplace injuries occurring among emergency response personnel. From this review, OSHA determined that, overall, emergency responders are at higher risk of injury than the general population. Workplace hazards identified in the literature as leading to injury among emergency response personnel include exposure to toxic chemicals, falls, environmental hypoxia, exposure to excessive noise, over-exertion due to lifting heavy objects, wearing heavy protective equipment, repetitive motion, and other similar activities (Gentzler, 2010, Document ID 0337; Neitzel et. al, 2013, Document ID 0333; Neitzel et. al, 2016, Document ID 0338; Campbell, 2017, Document ID 0342). Estimations of the increased risk as compared to all private industries varied by the type of emergency service provided, ranging from 1.7 times for private ambulance service workers to 4 times for EMS responders (Reichard, 2017, Document ID 0339; Reichard et al, 2018, Document ID 0335). For the purposes of this analysis, OSHA focused on lost-time injuries; expected lost-time injuries for the hazards identified above include fractures, sprains, internal bodily trauma, dislocations, chemical burns, and chemical pneumonia.

OSHA determined that the most common cause of injury among emergency medical services providers was overexertion or strain. Multiple studies identified overexertion or strain as the leading causes of injury, with reported proportions of injury ranging from 23% to 60% and body motion injuries (*e.g.,* lifting, carrying, or transferring a patient and/or equipment) commonly serving as the leading event (Campbell, 2017, Document ID 0342; Campbell and Hall, 2022, Document ID 0336; Campbell and Molis, 2020, Document ID 0343; Butry et al., 2019, Document ID 0334; Reichard et al., 2018, Document ID 0335; Dworsky et al., 2021, Document ID 0332). In addition to reviewing the available literature, OSHA conducted an analysis of the injury statistics available from the BLS for the EMT and Paramedic categories of emergency response professions, from the years 2007 through 2020. In total, 107,720 non-fatal incidents requiring days away from work were reported, an average of 7,694 injuries annually. In addition to the common sources of injury as identified by the literature review, the BLS injury statistics revealed further causes of frequent injury among emergency response professionals, summarized in Table VII–A–5, below.

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Table VII-A-5. Non-Fatal Injuries to EMTs and Paramedics, All Ownerships, 2007-2020.

Event or Exposure	Number of Injuries	Percent of Total Injuries	Average Annual Injuries
Contact with objects	10,570	9.8	755
Falls, slips, trips	14,700	13.6	1,050
Overexertion and bodily reaction	57,790	53.6	4,128
Exposure to harmful substance or environment	7,010	6.5	501
Transportation incidents	7,540	7.0	539
Fires and explosions	260	0.2	19
Violence and other injuries by persons or animals	4,720	4.4	337
Other	4,640	4.3	331
Total Injuries	**107,720**	**100.0**	**7,694**

Source: Bureau of Labor Statistics, U.S. Department of Labor, Survey of Occupational Injuries and Illnesses in cooperation with participating State agencies. *https://data.bls.gov/gqt/ProfileData*.
Number of nonfatal occupational injuries and illnesses involving days away from work (1) by selected worker and case characteristics and occupation, All U.S., private industry, 2007 – 2020.
NOTE: Because of rounding and data exclusion of nonclassifiable responses, data may not sum to the totals.

To determine the number of injuries occurring annually among firefighters, OSHA reviewed the annual NFPA injury summary reports from 2007 to 2020 (Docket Nos. 0362–0376). These reports show that, on average, 67,964 injuries occurred among firefighters annually, with an average of 14,172 of those classified as a lost time injury, 21% of total injuries (see Table VII–A–6).

Table VII-A-6. A Summary of Non-Fatal Injuries to Firefighters, 2007-2020.

Year of Record	Total Number of Injuries	Total Number of Lost Time Injuries	Lost Time Injuries as a Percent of Total Injuries
2007	80,100	16,350	20.4%
2008	79,700	15,250	19.1%
2009	78,150	15,150	19.4%
2010	71,875	15,000	20.9%
2011	70,090	13,650	19.5%
2012	69,400	14,350	20.7%
2013	65,880	10,000	15.2%
2014	63,350	10,700	16.9%
2015	68,085	11,500	16.9%
2016	62,085	19,050	30.7%
2017	58,835	10,155	17.3%
2018	58,250	15,500	26.6%
2019	60,825	17,575	28.9%
2020*	64,875	13,590	28.9%
Annual Average	**67,964**	**14,172**	**21.0%**

Source: NFPA Annual Fatality Summary Reports, 2007 – 2021.
NOTE: Because of rounding and data exclusion of nonclassifiable responses, data may not sum to the totals.
*2020 lost-time number is derived from the 15-year average.

Review of the reported tasks that injured firefighters were engaged in at the time of injury revealed persistent trends, both among the injury task categories, and when compared to the task categories of the fatality victims (Table VII–A–7). Specifically, each year, the work associated with firefighting activities results in an average of 42.4% of all injuries, while non-fire emergency tasks result in 20.4% of all injuries. The activities associated with responding to or returning from an emergency result in an average of 6.6% of annual injuries. Training activities result in 11.6% of all firefighter injuries, and duties not associated with emergencies, emergency response, or training result in, on average, 19% of injuries. Examples of injuries in this last category could include things like a responder slipping on an icy walkway at the fire station, dropping an old tire on their foot while doing a changeout at the fire station, having their foot run over while directing a fire truck back into the station after a fire, and sliding down the fire pole and landing poorly, spraining an ankle. The proportion of total injuries for each assigned job category was similar to the proportions observed in each of the fatality categories (see Table VII–A–2).

Table VII-A-7. Assigned Task of Firefighter at the Time of Their Injury.

Year of Record	Fireground Operations	Non-Fire Emergencies	Responding to or Returning from an Emergency	Training	Other Duties
2007	47.9%	19.3%	6.2%	9.7%	17.1%
2008	45.9%	19.8%	6.2%	10.2%	17.9%
2009	41.2%	19.8%	6.4%	10.2%	22.5%
2010	45.5%	18.6%	6.1%	10.1%	19.7%
2011	43.5%	21.3%	5.5%	10.7%	19.0%
2012	45.4%	18.4%	6.0%	10.3%	19.9%
2013	45.2%	19.0%	6.1%	11.8%	17.9%
2014	42.6%	23.0%	6.6%	10.9%	16.9%
2015	42.8%	21.0%	5.6%	11.1%	19.5%
2016	39.2%	20.6%	8.4%	13.7%	18.2%
2017	41.6%	20.8%	7.7%	14.2%	15.6%
2018	39.4%	20.0%	7.1%	14.0%	19.4%
2019	39.2%	23.3%	6.7%	13.4%	17.4%
2020	34.6%	21.0%	7.7%	11.6%	25.1%
Annual Average	**42.4%**	**20.4%**	**6.6%**	**11.6%**	**19.0%**

Source: NFPA Annual Fatality Summary Reports, 2007 – 2021.
NOTE: Because of rounding and data exclusion of nonclassifiable responses, data may not sum to the totals.

The most common source of injury among firefighters was overexertion or strain (27.0% of injuries, on average). While overexertion was also the leading source of injury among emergency response personnel not classified as firefighters, the proportion of these injuries varied significantly among the professional categories, 27.0% of firefighter injuries compared to 53.6% of injuries for non-firefighter personnel. Other significant causes of injury among firefighters included fall, jump, slip injuries (22.8% of injuries, on average) exposure to fire products (11.5% of injuries, on average), contact with objects (10.8%), and being struck by a moving object (6.0%). (see Table VII–A–8).

Table VII-A-8. Nature of Firefighter Injury.

Year of Record	Fall, Jump, Slip	Overexertion, Strain	Contact with object	Struck by an object	Extreme weather	Exposure to fire products	Exposure to chemicals or radiation	Other
2007	27.3%	24.4%	11.9%	8.8%	2.4%	8.8%	1.0%	15.4%
2008	23.5%	23.1%	13.0%	4.9%	2.9%	12.7%	2.8%	16.9%
2009	22.7%	25.2%	11.4%	5.8%	2.4%	12.9%	5.0%	14.6%
2010	22.5%	25.7%	12.4%	6.9%	4.7%	9.0%	0.9%	18.0%
2011	21.0%	28.4%	11.7%	5.7%	3.7%	8.0%	2.3%	19.1%
2012	23.2%	27.5%	10.9%	5.5%	3.4%	9.7%	1.8%	17.9%
2013	22.7%	26.5%	12.0%	4.7%	3.8%	10.4%	2.2%	17.8%
2014	29.0%	25.0%	11.0%	6.0%	3.0%	9.0%	3.0%	14.0%
2015	27.2%	27.2%	7.4%	9.0%	1.8%	8.2%	2.6%	16.4%
2016	21.0%	27.1%	9.7%	5.9%	3.1%	13.6%	3.7%	16.4%
2017	20.0%	29.0%	11.0%	6.0%	3.0%	11.0%	4.0%	16.0%
2018	18.0%	29.0%	10.0%	5.0%	3.0%	17.0%	2.0%	16.0%
2019	20.0%	29.0%	9.0%	5.0%	3.0%	15.0%	5.0%	14.0%
2020	21.0%	31.0%	10.0%	5.0%	3.0%	15.0%	3.0%	16.0%
Annual Average	**22.8%**	**27.0%**	**10.8%**	**6.0%**	**3.1%**	**11.5%**	**2.8%**	**16.3%**

Source: NFPA Annual Fatality Summary Reports, 2007 – 2021.

NOTE: Because of rounding and data exclusion of nonclassifiable responses, data may not sum to the totals.

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II. Health Effects of Emergency Response Activities

In addition to the traumatic injuries discussed above, emergency response activities are associated with exposure to hazards that can cause both chronic physical health and adverse psychological health effects for responders, including but not limited to adverse cardiovascular and respiratory effects, cancers, post-traumatic stress disorder (PTSD), and suicide. Exposure to combustion products is a major factor behind physical illnesses associated with emergency response activities; however, factors such as exposure to infectious diseases, heat, physical exertion, physical stress reactions to alarms and sirens, shift work, and other exposures also play a role. Psychological health effects have been attributed to exposure to trauma, stressful situations, and threats to life and health, including due to workplace violence.

This section presents a summary of OSHA's review of the health effects literature for emergency response activities, including the workplace exposures that contribute to these health effects, and the agency's preliminary conclusions based on that review. OSHA's full analysis is contained in the background document entitled ''Emergency Response Health Effects Literature Review,'' which has been placed in the rulemaking docket (Document ID 0361).

OSHA conducted a literature search to collect relevant information, studies, reports, and materials related to the occupational safety and health of emergency responders such as firefighters, search and rescue personnel, and emergency medical service providers. OSHA sought literature that evaluated workplace exposures and health effects for emergency responders including:

- Exposures to combustion products, other contaminants and substances, and infectious diseases
- Acute and chronic health conditions (*e.g.,* cancer, cardiovascular disease, respiratory disease)
- Behavioral health issues (*e.g.,* mental health, substance use disorders, suicide)
- Workplace violence

OSHA searched the National Library of Medicine (NLM) (*https://pubmed.ncbi.nlm.nih.gov/*) and (*https://www2a.cdc.gov/nioshtic-2/advsearch2.asp*) in 2020 and again in 2022. The search was date limited to 2010 and included several occupational and risk key words to target relevant search results. OSHA obtained and reviewed the full text of relevant articles. OSHA also searched several key organizations' websites for relevant reports and information. This section summarizes the results of this search.

A. Exposures

Emergency responders are exposed to a variety of health hazards in the workplace. OSHA focused its literature review on three areas: combustion products, other contaminants and substances, and infectious diseases. The combustion products review covers substances released during fires. The other contaminants and substances review examines specific situations where emergency responders were exposed to harmful chemicals (*e.g.,* vinyl chloride, phosphine, opioids) while responding to emergency situations in the field or when participating in training exercises that involved simulated smoke. It also includes studies that assessed contaminants inside firehouses and substances off-gassing from emergency

response gear. The infectious diseases review summarizes research on a variety of diseases, including hepatitis B, *Clostridiodes difficile,* Methicillin-resistant *Staphylococcus aureus* (MRSA), and COVID–19.

Many of the studies identified under these three topics focused solely on examining the likelihood or the extent of exposures among emergency responder populations. In some cases, the studies also provided information about the health effects observed among exposed groups. More detailed information about health effects is presented in section 2, Acute and Chronic Health Conditions and section 3, Behavioral Health.

(i) Combustion Products

Combustion products, many of which are considered respiratory hazards, are released when materials burn. The combustion product studies identified during OSHA's literature review addressed firefighters, including both structural and wildland firefighters. Firefighters may be exposed to a wide variety of combustion products, even when wearing protective gear, and exposures can occur during a broad range of activities. Emergency responders can be exposed to combustion products during live training exercises as well as when responding to actual events; while performing exterior operations and during interior fire attack operations; during the early phase of operations as they delay donning self-contained breathing apparatus to conserve vital air supply, through leaks while wearing respiratory protection, or during post-fire clean-up activities. Emergency responders can also be exposed to combustion products through off-gassing from contaminated protective clothing and equipment or while cleaning such items after fire operations. (Geer Wallace et al., 2019a, Document ID 0204; Poutasse et al., 2020, Document ID 0259; Fent et al., 2010, Document ID 0213; Fent et al., 2022, Document ID 0207; Levasseur et al., 2022, Document ID 0253).

The literature provides evidence of firefighters being exposed to a variety of different combustion products, including carbon monoxide (McCleery et al., 2011, Document ID 0281; Semmens et al., 2021, Document ID 0291; Navarro et al., 2021a, Document ID 0252; Reinhardt and Broyles, 2019, Document ID 0278); particulate matter (Baxter et al., 2010, Document ID 0179; Horn et al., 2017, Document ID 0243); dioxins (Shaw et al., 2013, Document ID 0218); radionuclides (Carvalho et al., 2014, Document ID 0180); and a variety of volatile organic compounds (VOCs) and semi-volatile organic compounds (SVOCs), including polycyclic aromatic hydrocarbons (PAHs) (Hwang et al., 2021, Document ID 0155; Hwang et al., 2022, Document ID 0156; Pleil et al., 2014, Document ID 0158; Rossbach et al., 2020, Document ID 0289; Fent et al. 2013, Document ID 0206; Fent et al., 2022, Document ID 0207; Alharbi et al., 2021, Document ID 0171; Kirk et al., 2021, Document ID 0240; Cherry et al., 2019, Document ID 0188; Poutasse et al., 2020, Document ID 0259; Adetona et al., 2015, Document ID 0167). A 2022 report by the National Academies, ''The Chemistry of Fires at the Wildland-Urban Interface'', provides additional detailed information on fire emissions from a variety of household components, vehicles, and biomass (NASEM 2022, Document ID 0395). These studies show that firefighters can be exposed to combustion products through inhalation and dermal routes during both live fires and training exercises. It is difficult to provide estimates of how many firefighters are exposed and at what level because of the variables involved in firefighting. For example, the number of firefighters exposed varies depending on the size of the fire, with fewer firefighters exposed in response to a car fire than at a large industrial fire. The quantity and type of combustion products that firefighters are exposed to also varies depending on what is burning. Since fires are generally not planned events, the instrumentation that would be required to quantify firefighter exposures is not present at most fires. The frequency of firefighter exposures can also vary greatly, from very few exposures annually in rural areas to many exposures annually in metropolitan areas. Nonetheless, the literature is clear that firefighters are exposed to combustion products at harmful levels.

The specific types and concentration of combustion products released during a fire vary depending on which types of materials are burning and whether the fire is a wildfire, residential fire, industrial fire, or vehicle fire. It is not uncommon for residential fires to involve hazardous materials stored in paint cabinets, workshops, or garages; or buildings that still contain lead paint or asbestos. As a result, emergency responders' exposures to combustion products vary broadly (Alharbi et al., 2021, Document ID 0171; Kirk et al., 2021, Document ID 0240; Fent et al., 2010, Document ID 0213). For example, one study reported that residential fires release more VOCs than industrial fires but lower levels of inorganic gases (Alharbi et al., 2021, Document ID 0171). Another study, which involved controlled fires in a simulated house structure, showed that hydrogen cyanide was detected at concentrations exceeding occupational exposure limits, and at times, at levels regarded as immediately dangerous to life and health (Horn et al., 2017, Document ID 0243). A training exercise focused on vehicle fires suggested that firefighters might encounter acute overexposures to formaldehyde, carbon monoxide, and isocyanates (Fent et al., 2010, Document ID 0213).

Multiple studies found that firefighters are exposed to VOCs, especially PAH compounds, through the dermal and inhalation routes; the studies conducted personal air sampling on the exterior of firefighter gear and compared urinary metabolites from before and after firefighter trainings. For firefighters wearing self-contained breathing apparatus (SCBA), the dermal route appears to be the main route of exposure (Hwang et al., 2021, Document ID 0155; Hwang et al. 2022, Document ID 0156; Pleil et al., 2014, Document ID 0158; Rossbach et al., 2020, Document ID 0289; Fent et al., 2022, Document ID 0207). Firefighter PAH levels were correlated with estimated exposures (based on combustion products identified in environmental samples), length of exposure, and number of fire suppressions (Cherry et al., 2019, Document ID 0188; Cherry et al., 2021, Document ID 0192; Poutasse et al., 2020, Document ID 0259). Also, elevated VOC and PAH levels were associated with certain job positions, including overhaul, attack, search, and outside ventilation positions (Baxter et al., 2014, Document ID 0157; Geer Wallace et al., 2019b, Document ID 0202). Some studies examined ways to reduce VOC and PAH exposures, including enhanced skin hygiene. One study found that the transitional attack method (which involves applying water to the fire from outside of a structure through windows or openings) could lower firefighters' exposures to PAHs compared to the interior attack method (which involves entering the structure for water application) (Fent et al., 2020, Document ID 0205).

Many of the articles identified in the combustion product literature review focused on wildland firefighters, who have much longer fire suppression shifts (8 to 13 hours) compared to structural firefighters (typically 30 minutes) and are more likely to be exposed to combustion products through inhalation since they often wear no respiratory protection or sometimes only a bandana or an N95 respirator rather than an

SCBA like structural firefighters do (Hwang et al., 2022, Document ID 0156; Navarro, 2021, Document ID 0257). It is important to note that an N95 respirator or bandana can only filter out particulate matter and cannot reduce or prevent exposure to toxic gasses and vapors from combustion products. Among wildland firefighters, certain job tasks were associated with higher exposures to different combustion products: for particulate matter, mop-up, direct suppression, and holding tasks had the highest exposures; for carbon monoxide, direct suppression, fireline construction, and holding job tasks had the highest exposures (Navarro, 2021, Document ID 0257; Reinhardt and Broyles, 2019, Document ID 0278). Prescribed burns were found to produce higher exposures of particulate matter and carbon monoxide than wildfires. Time spent on the fireline increased carbon monoxide exposure, and VOC levels were highest for Type 1 crews, which typically have the most experienced firefighters performing the most complex tasks (Navarro et al., 2021a, Document ID 0252). Simultaneous carbon monoxide and noise exposure from chain saws and woodchippers have been found to result in greater hearing loss than if carbon monoxide was not a co-exposure in wildland fire fighters (Ramsey et al. 2019, Document ID 0256). Additionally, wildland firefighters are at risk of radionuclide exposure due to incineration of vegetation that contains naturally occurring radionuclides (Carvalho et al., 2014, Document ID 0180). Studies about wildland firefighters identified multiple negative health effects due to exposures to combustion products, including decline in lung function, oxidative and inflammatory stress response, and increased cardiovascular health effects and mortality (Navarro, 2021, Document ID 0257; Ferguson et al., 2016, Document ID 0197; Main et al., 2019, Document ID 0258; Adetona et al., 2013, Document ID 0165; Wu et al., 2019, Document ID 0318; Navarro et al., 2019, Document ID 0247).

Based on the evidence described above, OSHA has preliminarily determined that emergency responders, specifically both structural and wildland firefighters performing firefighting activities, are exposed to combustion products. These combustion products contain components that are known to cause cardiovascular and pulmonary illness and to be carcinogenic to humans. OSHA therefore preliminarily finds justification to promulgate a standard which requires protective equipment and practices to limit exposure to combustion products. In addition, since exposure cannot be completely eliminated due to the nature of firefighting activities, OSHA has preliminarily determined that medical surveillance is necessary for these responders to detect and respond to health conditions as soon as possible in order to mitigate the long-term health impact of such exposures on emergency responders.

(ii) Other Contaminants and Substances

In addition to the combustion products reviewed in section A.(i), emergency responders may be exposed to varied, unpredictable, and often unknown contaminants and substances while performing their duties. (Hall et al., 2018, Document ID 0220; Melnikova et al., 2018, Document ID 0246). Overall, OSHA's literature review found evidence of adverse health effects among emergency responders who encountered contaminants and other potentially harmful substances on the job, with the most injuries seen among firefighters. As an example of the sources of these contaminants, in 2022 the U.S. Department of Transportation's Pipeline and Hazardous Materials Safety Administration recorded 23,178 highway incidents involving hazardous materials (hazmat) and 355 railway spill hazmat incidents. Additionally, the U.S. Chemical Safety Board reported 102 reportable chemical release events in 2022. Studies also show that emergency responders can be exposed to hazardous substances through equipment contamination and inside their workplaces even when they are not responding to emergencies.

Studies show that emergency responders are exposed to a variety of chemicals in the field, including vinyl chloride, phosphine, ammonia, and hydrochloric acid (Hall et al., 2018, Document ID 0220; Melnikova et al., 2018, Document ID 0246; Brinker et al., 2013, Document ID 0177; Brinker et al., 2015, Document ID 0175). Examples of emergency response activities that can involve such exposures include attending to drug overdose victims (Chiu et al., 2018a, Document ID 0191; Chiu et al., 2018b, Document ID 0182; Chiu et al., 2018c, Document ID 0186), putting out a fire at a chemical manufacturing facility (Eisenberg et al., 2019, Document ID 0203), working with chainsaws that released carbon monoxide and generate wood dust (Ramsey et al., 2019, Document ID 0256), and participating in training that exposed them to a variety of chemicals and potential irritants in simulated smoke such as mineral oil, diethylene glycol, aldehydes, PAHs, VOCs, and carbonaceous particles (Fent et al., 2013, Document ID 0206). The literature review also captured studies that examined diesel exhaust particulate matter and PAH concentrations inside firehouses (Sparer et al., 2018, Document ID 0292; Baxter et al., 2014, Document ID 0157), as well as contaminants associated with firefighting gear, including residual combustion products that adhere to the gear, and substances used to make the gear, such as organophosphorus flame retardants, per-and polyfluoroalkyl substances (PFAS) chemicals, and plasticizers (Alexander and Baxter, 2014, Document ID 0164; Banks et al., 2021b, Document ID 0168; Fent et al., 2018, Document ID 0210; Kirk and Logan, 2015, Document ID 0232; and Muensterman et al., 2022, Document ID 0282).

Respiratory effects (*e.g.,* cough, asthma-like symptoms) were the most frequently reported symptoms among the emergency responders who were assessed (Melnikova et al., 2018, Document ID 0246; Chiu et al., 2018a, Document ID 0191, Chiu et al., 2018c, Document ID 0186; Fent et al., 2013, Document ID 0206; Eisenberg et al., 2019, Document ID 0203; Brinker et al., 2013, Document ID 0177; Brinker et al., 2015, Document ID 0175). Melnikova et al. (2018, Document ID 0246) examined 566 acute chemical exposures among 1,460 emergency responders and found that respiratory system problems were the most common adverse health effect, constituting 56.3 percent of all adverse effects. Other adverse health effects included trauma (11.3 percent), eye irritation (10.5 percent), headache (9.9 percent), and dizziness/other non-head-related central nervous system symptoms (9.9 percent). The chemicals most likely to cause adverse health effects were respiratory irritants, including ammonia (12.4 percent); unspecified, illegal methamphetamine-related chemicals (7.4 percent); carbon monoxide (6.2 percent); propane (6.0 percent); and hydrochloric acid (4.8 percent). Given the prominence of respiratory symptoms in responders exposed to these chemicals, several articles emphasized the importance of wearing respiratory PPE to protect emergency responders from negative health effects (Hall et al., 2018, Document ID 0220; Chiu et al., 2018a, Document ID 0191; Chiu et al., 2018c, Document ID 0186).

A few NIOSH Health Hazard Evaluations (HHEs) investigated health impacts among emergency responders who assisted drug overdose victims. In

a 2018 opioid-related exposure, eight of nine emergency responders reported adverse health effects that were consistent with drug exposure: weakness, confusion, palpitations, lightheadedness, headache, nausea, numbness, double vision, chest discomfort, and stomach discomfort (Chiu et al., 2018a, Document ID 0191; Chiu et al., 2018c, Document ID 0186). Overall, wearing appropriate PPE during responses to drug overdoses was deemed important, especially for preventing eye and mouth exposure.

Multiple studies identified contaminants inside fire stations and on firefighting gear and equipment that firefighters may be exposed to. In studies that examined separate rooms within fire stations, truck bays had the highest contaminant concentrations (Sparer et al., 2018, Document ID 0292; Baxter et al., 2014, Document ID 0157). Banks et al. (2021b, Document ID 0168) found that off-gassing of SVOCs from uniforms stored in private vehicles could be a source of dermal or inhalation exposure for firefighters. Therefore, laundering of firefighters' protective gear (Kirk and Logan, 2015, Document ID 0232), field decontamination, and dermal wipes (Fent et al., 2018, Document ID 0210) were recommended methods to prevent exposures. PFAS (Muensterman et al., 2022, Document ID 0282) and di(2-ethylhexyl)phthalate (Alexander and Baxter, 2014, Document ID 0164) were highlighted as contaminants that need further research due to their presence in and/or persistence on firefighter gear.

Based on the evidence described above, OSHA has preliminarily determined that in the course of their duties, firefighters, emergency medical service providers and technical rescuers are exposed to hazardous substances in the workplace. OSHA therefore preliminarily finds justification to promulgate a standard which requires protective equipment and practices to limit exposure to hazardous substances. In addition, since exposure cannot be completely eliminated due to the nature of emergency response activities, OSHA has preliminarily determined that medical surveillance is also necessary for these responders to detect and respond to health conditions as soon as possible in order to mitigate long-term health impacts.

(iii) Infectious Diseases

When responding to community needs, emergency responders come in direct contact with people who have infectious diseases. OSHA's literature review identified multiple infectious diseases that firefighters, technical rescue responders, and emergency medical service providers are exposed to, including hepatitis B, *Clostridiodes difficile,* Methicillin-resistant *Staphylococcus aureus* (MRSA), and COVID–19. The studies covered a range of topics, such as the incidence rate or prevalence of infectious disease among emergency responders, the likelihood of emergency equipment being contaminated, and the impact of other variables (*e.g.,* wildfire smoke, social vulnerability index) on emergency responders' occupational risks.

Generally, bloodborne diseases (*e.g.,* hepatitis B, hepatitis C, and human immunodeficiency virus) pose low risk to emergency responders, whereas infectious diseases spread through airborne pathways (*e.g.,* meningococcal meningitis, severe acute respiratory syndrome (SARS), influenza, and tuberculosis) and direct contact transmission (*e.g.,* MRSA) pose higher risk (Thomas et al., 2017, Document ID 0307). However, EMS providers' exposure to infectious diseases declined between 1993 and 2011 and remains generally low except during pandemics (Thomas et al., 2017, Document ID 0307).

MRSA and *Staphylococcus aureus* prevalence was generally high among emergency responders. Miramonti et al. (2012, Document ID 0274) found that EMTs and paramedics have a significantly higher nasal colonization rate of MRSA compared to the general population (4.5% vs. 0.084%). Elie-Turenne et al., (2010, Document ID 0195) found that paramedics had the highest rate of *Staphylococcus aureus* nasal colonization (57.7%), but the lowest rate of MRSA compared to other health care professionals (*i.e.,* nurses, clerical workers, and physicians). The authors suggested that the lower relative rate of MRSA may be due to paramedics spending more time in the field compared to other health care professionals. However, two studies examining the contamination of environmental surfaces that emergency responders contact found MRSA in fire stations (Sexton and Reynolds, 2010, Document ID 0284) and *Clostridiodes difficile* on EMS monitoring equipment (Gibson et al., 2021, Document ID 0199).

COVID–19 can serve as a proxy for both epidemic and pandemic exposures for emergency responders. Inconsistent results were found for COVID–19 prevalence among emergency responders. Two studies that examined seroprevalence rates found that first responders had a higher risk of contracting COVID–19 than other health care professionals (Sami et al., 2021, Document ID 0290; Zhang et al., 2022, Document ID 0319). In contrast, other studies found that the prevalence of COVID–19 was not elevated in first responders compared to the general public (Shukla et al., 2020, Document ID 0285; Vieira et al., 2021, Document ID 0302) or to other medical professionals (Akinbami et al., 2020, Document ID 0170; MacDonald et al., 2021, Document ID 0251). Some of these studies suggested that increased PPE usage and the strict infection control measures that emergency responders instituted during the COVID–19 pandemic helped prevent elevated rates among this population (Akinbami et al., 2020, Document ID 0170; Zhang et al., 2022, Document ID 0319; Newberry et al., 2021, Document ID 0261; Vieira et al., 2021, Document ID 0302). Additionally, two studies showed that vaccination may mitigate occupational risks (Grunau et al., 2022, Document ID 0211; Caban-Martinez et al., 2022, Document ID 0178). Other variables also affected first responders' occupational risk of contracting COVID–19 or developing severe COVID–19. Sami et al. (2021, Document ID 0290) and Akinbami et al. (2020, Document ID 0170) both found that community levels of COVID–19 correlated with seroprevalence rates of SARS-CoV–2 in first responders. Moreover, emergency responders who resided in more socially vulnerable response areas (gauged using the CDC's Social Vulnerability Index) were found to have increased exposure to COVID–19 (Haas et al., 2021, Document ID 0230). Additionally, increased levels of wildfire smoke inhalation may increase occupational risk for developing severe COVID–19 among wildland firefighters (Navarro et al., 2021b, Document ID 0279).

Based on the above, OSHA has preliminarily determined that emergency responders are exposed to infectious diseases in the course of their work. Exposures occur due to contact with victims of emergencies (*e.g.,* traumatic injuries) and the treatment and transport of emergency medical patients suffering from either traumatic injuries or illness (*e.g.,* viral meningitis). Infectious agents can contaminate emergency response vehicles and response equipment; protective clothing and equipment; or station uniforms and be brought back to communal quarters such as a fire stations or wildfire basecamps. OSHA therefore preliminarily finds justification to promulgate a standard which requires protective equipment and practices to address exposures to infectious disease.

B. Acute and Chronic Health Conditions

OSHA has identified evidence suggesting that the hazardous exposures

that emergency responders encounter, as described above, put them at elevated risk for certain acute and chronic health conditions. OSHA's literature review on acute and chronic health conditions among emergency responders covered cancer, cardiovascular disease, and respiratory disease.

(i) Cancer

Emergency responders, particularly firefighters, are exposed to known and suspected carcinogens when performing their work (see Sections A.(i) and A.(ii) above), which places them at a 12–19% greater risk of dying from cancer (Muegge et al., 2018, Document ID 0269; Daniels et al., 2014, Document ID 0187; Pinkerton et al., 2020, Document ID 0245) and a 9% greater risk of developing cancer (Daniels et al., 2014, Document ID 0187) than the general population. Studies show that firefighters are at higher risk for multiple cancers compared to the general U.S. population. In fact, the International Association for Research on Cancer (IARC) has concluded that occupational exposure as a firefighter is itself carcinogenic to humans (Group 1) (Demers et al. 2022, Document ID 0194; IARC 2023, Document ID 0236; NASEM 2022, Document ID 0395).

Researchers found that, compared to the general population, male firefighters are at increased risk for melanoma and prostate cancer (Lee et al., 2020, Document ID 0250; Tsai et al., 2015, Document ID 0311); testicular cancer, thyroid cancer, late-stage colon cancer (Lee et al., 2020, Document ID 0250); multiple myeloma, acute myeloid leukemia, esophageal cancer, kidney cancer, and brain cancer (Tsai et al., 2015, Document ID 0311). Researchers found that female firefighters are at increased risk compared to the general population for brain cancer and thyroid cancer (Lee et al., 2020, Document ID 0250) and increased risk of death from bladder cancer (Daniels et al., 2014, Document ID 0187; Pinkerton et al., 2020, Document ID 0245).

For males and females combined, researchers found that firefighters are at increased risk compared to the general population for all-cancer mortality (Muegge et al., 2018, Document ID 0269; Daniels et al., 2014, Document ID 0187; Pinkerton et al., 2020, Document ID 0245); all-cancer incidence (Daniels et al., 2014, Document ID 0187); buccal cavity and pharynx cancer mortality (Muegge et al., 2018, Document ID 0269; Pinkerton et al., 2020, Document ID 0245); other parts of the buccal cavity cancer mortality, pancreatic cancer mortality, kidney cancer mortality, connective tissues cancer mortality, brain and other parts of the nervous system cancer mortality (Muegge et al., 2018, Document ID 0269); digestive cancer incidence and mortality (Daniels et al., 2014, Document ID 0187); respiratory cancer incidence and mortality (Daniels et al., 2014, Document ID 0187); malignant mesothelioma incidence and mortality (Daniels et al., 2014, Document ID 0187; Pinkerton et al., 2020, Document ID 0245); non-Hodgkins lymphoma mortality; esophageal cancer mortality; intestine cancer mortality; rectal cancer mortality; lung cancer mortality; biliary, liver, and gall bladder cancer; and other digestive cancer mortality (Pinkerton et al., 2020, Document ID 0245). Systematic reviews and meta-analyses corroborate many of these results (IARC, 2023, Document ID 0236; Jalilian et al., 2019, Document ID 0233; Sritharan et al., 2017, Document ID 0299; LeMasters et al., 2006, Document ID 0268; Demers et al., 2022, Document ID 0194). Additionally, researchers have studied whether dose-response relationships exist between firefighting exposures and developing cancer. In these dose-response studies, researchers found associations between increased firefighting exposures and increased lung cancer incidence and mortality (Daniels et al., 2015, Document ID 0184; Pinkerton et al., 2020, Document ID 0245) and leukemia mortality (Daniels et al., 2015, Document ID 0184). In a risk assessment, Navarro et al. (2019, Document ID 0247) found that wildland firefighters were at an 8 to 43 percent increased risk of lung cancer mortality.

All 50 states have adopted some form of firefighter cancer legislation that provides benefits to firefighters who develop or die from cancer. In 80% of those, the cancers are presumed to have been the result of firefighting duties. It is also noteworthy that Congress recently passed the Fiscal Year 2023 National Defense Authorization Act *(https://www.dol.gov/agencies/owcp/FECA/NDAA2023*). Section 5305 of this Act, titled ''Fairness for Federal Firefighters,'' determined that certain conditions, including various cancers, will be presumed to be work-related for Federal employees who perform fire protection activities and modified the Federal Employees' Compensation Act (FECA) accordingly.

OSHA has preliminarily determined that the exposures discussed in sections A.(i) and A.(ii) lead emergency responders who perform firefighting duties to have an increased risk of developing cancer. OSHA therefore preliminarily finds justification to promulgate a standard which requires protective equipment and practices to limit exposure to known and suspected carcinogens. In addition, since exposure cannot be completely eliminated due to the nature of emergency response activities, OSHA has preliminarily determined that medical surveillance is necessary for these responders to detect and respond to health conditions as soon as possible in order to mitigate long-term health impacts.

(ii) Cardiovascular Disease

Emergency responders, especially firefighters, may be called on to engage in physically strenuous activities while wearing heavy, insulated, and restrictive PPE ensembles that pose physiological burden, exacerbate heat stress hazards, and raise core temperatures to dangerous levels (Horn et al., 2013, Document ID 0219; West et al., 2020, Document ID 0314). In combination, these factors strain the body's cardiovascular system and increase the risk of sudden cardiac events (Soteriades et al., 2011, Document ID 0121).

Many studies assessed cardiovascular disease prevalence among firefighters. They revealed that cardiac events are the leading cause of on-duty death among U.S. structural and wildland firefighters, with cardiovascular disease causing 45 to 50 percent of on-duty firefighter deaths each year (Smith et al., 2016, Document ID 0120; Soteriades et al., 2011, Document ID 0121; NWCG, 2017, Document ID 0265; NASEM 2022, Document ID 0396). Navarro et al. (2019, Document ID 0247) estimated that wildland firefighters had an increased cardiovascular disease mortality of 16 to 30 percent compared to the general population. Soteriades et al. (2011, Document ID 0121) reported that firefighting causes considerable cardiovascular strain, which may trigger a sudden cardiac event. However, Muegge et al. (2018, Document ID 0269), in a study that reviewed death certificates in Indiana, found that the odds of dying from cardiovascular disease overall were no different between current and retired firefighters and non-firefighters, possibly due to the healthy worker effect. OSHA does not view this study as determinative of the cardiovascular risks facing firefighters; rather it must be viewed in the larger context of the weight of evidence discussed here on the association between emergency response work and cardiovascular events. Several studies identified factors and activities in firefighter populations that are associated with increased risks for cardiovascular disease and mortality. Factors that resulted in increased risks of cardiac fatalities included volunteer

status and stress or overexertion (Sen et al., 2016, Document ID 0300); participation in fire suppression activities (Smith et al., 2019, Document ID 0303); and hypertension, a history of cardiovascular disease, and smoking (Yang et al., 2013, Document ID 0309). Martin et al. (2019, Document ID 0271) found that 68 percent of the firefighters in one study population had two or more cardiovascular risk factors. Obesity (Smith et al., 2022, Document ID 0294; Khaya et al., 2021, Document ID 0242), reduced cardiorespiratory fitness (Smith et al., 2022, Document ID 0294), metabolic syndrome or abnormal metabolic syndrome components (Li et al., 2017, Document ID 0260), and elevated blood pressures and/or hypertension (Lan et al., 2021, Document ID 0226; Bond et al., 2022, Document ID 0176; Khaja et al., 2021, Document ID 0242) were highly prevalent among firefighters and could serve as markers for cardiac dysfunction. Observed elevated blood pressures and/or hypertension among firefighters was attributed to increased psychological stress (Lan et al., 2021, Document ID 0226; Bond et al., 2022, Document ID 0176; Khaja et al., 2021, Document ID 0242) and increased frequency of work shifts (Choi et al., 2016, Document ID 0181).

A few studies examined methods that improved cardiovascular health. Horn et al. (2013, Document ID 0219) and Mani et al. (2013, Document ID 0270) measured cardiovascular responses during specific workplace tasks and activities and found that systolic blood pressures were significantly lower during rest periods. Cash et al. (2021, Document ID 0190) found that firefighters who slept for recommended durations (seven to nine hours) nearly doubled their likelihood of having ideal cardiovascular health. OSHA has preliminarily determined that emergency response activities can produce physiological and psychological strain that is sufficient to trigger a cardiovascular event up to and including sudden cardiac death. In addition, elevated core body temperature, disrupted sleep patterns, noise from alarms and sirens, circadian rhythm disruptions, overexertion, and stress associated with emergency response occupations can contribute to the development of cardiovascular disease. OSHA therefore preliminarily finds justification to promulgate a standard which requires medical screening and prevention programming for these responders. OSHA seeks additional information and data on how emergency response activities contribute to cardiovascular disease.

(iii) Respiratory Diseases and Other Respiratory Effects

Emergency responders, especially firefighters, can encounter a wide variety of airborne respiratory hazards on the job, including gases, fumes, and particulates. In addition, many emergency responders are regularly exposed to diesel exhaust particulates in the course of their jobs, both responding to emergency incidents and while in ESO facilities where vehicle engines are started and run, such as in fire stations (Sparer et al., 2018, Document ID 0292; Couch et al. 2016, Document ID 0324). Emergency response equipment is commonly powered by diesel fuel, a known respiratory irritant and carcinogen. Unless adequate protective measures are taken, these exposures can impair pulmonary function and may cause respiratory diseases such as chronic obstructive pulmonary disease (COPD), bronchitis, and asthma (Barbosa et al., 2022, Document ID 0173). OSHA reviewed several studies on pulmonary function in firefighter populations. The studies identified respiratory protection as crucial for preventing lung function decline in responders.

First, as explained above, several evaluations, reports, and studies that looked at emergency responder exposures to a variety of hazardous chemicals indicated that respiratory effects (*e.g.,* cough, asthma-like symptoms) were the most frequently reported symptoms among the emergency responders who were assessed (Melnikova et al., 2018, Document ID 0246; Chiu et al., 2018a, Document ID 0191; Chiu et al., 2018c, Document ID 0186; Fent et al., 2013, Document ID 0206; Eisenberg et al., 2019, Document ID 0203; Brinker et al., 2013, Document ID 0177; Brinker et al., 2015, Document ID 0175). Melnikova et al. (2018, Document ID 0246) examined 566 acute chemical exposures among 1,460 emergency responders and found that respiratory system problems were the most common adverse health effect, constituting 56.3 percent of all adverse effects.

Studies also show that firefighters experience declines in lung function after acute exposure events such as the World Trade Center disaster response and wildland firefighting activities. Two studies, both of which were reviews, reported accelerated pulmonary function declines after the World Trade Center disaster (Slattery et al., 2018, Document ID 0301; Rajnoveanu et al., 2022, Document ID 0273). A meta-analysis of 32 articles identified small but statistically significant short-term declines in lung function in response to occupational exposure to wildland fires (Groot et al., 2019, Document ID 0212). Rajnoveanu et al. (2022, Document ID 0273) included studies reporting cross-season declines in wildland firefighter lung function. Similarly, biomarker levels for oxidative stress were marginally higher following exposure to wildland fire smoke in Wu et al. (2019, Document ID 0318), suggesting that wildland fire smoke exposure can cause mild pulmonary responses. Another study found that forced expiratory volume in one second (FEV_1) levels decreased (but non-significantly) after wildland firefighting shifts and that cross-shift FEV_1 declines were more pronounced in firefighters who were exposed to higher levels of wood smoke (Gaughan et al., 2014, Document ID 0198). The more general relationship between emergency responder exposure to smoke and other harmful substances and lung function decline is less clear. For example, COPD diagnosis among firefighters was not significantly increased as compared to the general population in the majority of the 43 studies assessed in the Rajnoveanu et al. (2022, Document ID 0273) meta-analysis. Similarly, lung function was not significantly different among firefighters in a meta-analysis of 24 studies (Barbosa et al., 2022, Document ID 0173). Researchers have suggested that this could be explained by a number of factors, including the ''healthy worker effect'' and the fact that many emergency responders wear respiratory protection on the job (Rajnoveanu et al., 2022, Document ID 0273; McCluskey et al., 2014, Document ID 0262). OSHA welcomes comments and evidence about emergency responders' relative risk for COPD and other respiratory diseases.

OSHA has preliminarily determined that emergency responders are exposed to combustion products and diesel exhaust that have been shown to acutely affect lung function and may lead to chronic lung conditions. OSHA therefore preliminarily finds justification to promulgate a standard which requires protective equipment and practices to limit exposure to these substances. In addition, since exposure cannot be completely eliminated due to the nature of emergency response activities, OSHA has preliminarily determined that a baseline spirometry measurement and repeated measurement as deemed medically appropriate is necessary for these responders to detect and respond to

lung-related health conditions as soon as possible in order to mitigate long-term health impacts.

C. Behavioral Health

The intense and stressful (both physically and mentally) situations that emergency responders encounter on the job place them at risk for a range of behavioral health impacts. OSHA's review of the literature on behavioral health among emergency responders covered general mental health issues, substance use disorders, and suicide.

(i) General Mental Health

Emergency responders are exposed to traumatic, emotionally charged events, and they may work long shifts, hold multiple jobs, and get inadequate rest (Alexander and Klein, 2001, Document ID 0166; Patterson et al., 2012, Document ID 0266; Weaver et al., 2015, Document ID 0298). Lack of sleep, long working hours, working in isolated locations, and repeated exposure to stressful scenarios are all risk factors for developing mental health problems (Carey et al., 2011, Document ID 0183; Kshtriya et al., 2020, Document ID 0231; Donnelly, 2012, Document ID 0201; Cash et al., 2020, Document ID 0193). OSHA's literature review on mental health focused on depression, anxiety, stress, post-traumatic stress symptoms, PTSD, and burnout.

Compared with the general population, emergency responders have elevated rates of depression (Petrie et al., 2018, Document ID 0275; SAMHSA, 2018, Document ID 0286; Jahnke et al., 2012, Document ID 0235), stress (SAMHSA, 2018, Document ID 0286), PTSD (Jones et al., 2018, Document ID 0229; Petrie et al., 2018, Document ID 0275; SAMHSA, 2018, Document ID 0286), anxiety (Petrie et al., 2018, Document ID 0275), and poor sleep (Cash et al., 2020, Document ID 0193). Some articles found significant relationships between emergency response activities and PTSD, emotion regulation difficulties, and thwarted belongingness (Leonard and Vujanovic, 2021, Document ID 0255); alcohol use disorder, PTSD, trauma load, depression, and anxiety (Lebeaut et al., 2021, Document ID 0244; Lebeaut et al., 2020, Document ID 0276; Zegel et al., 2021, Document ID 0320); tinnitus and occupational stress (Odes et al., 2023, Document ID 0267); and stress and burnout on diminished safety behaviors (Smith et al., 2020, Document ID 0306).

Multiple articles described healthy coping strategies and techniques that improve mental health outcomes. These included: exercise, having a strong interpersonal network, leadership support (DeMoulin et al., 2022, Document ID 0196), and finding mental fulfillment and enjoyment from the day's challenges and recovery activities (Hruska and Barduhn, 2021, Document ID 0223). Obstacles to improving mental health included: lack of resources (DeMoulin et al., 2022, Document ID 0196), an absence of medical professionals who understand situations unique to emergency responder occupations (DeMoulin et al., 2022, Document ID 0196), occupational stressors (Hruska and Barduhn, 2021, Document ID 0223), social conflict (Hruska and Barduhn, 2021, Document ID 0223), and stigmatization (DeMoulin et al., 2022, Document ID 0196).

Based on this review, OSHA has preliminarily determined that emergency responders are exposed to traumatic events and psychological stress that place them at increased risk of mental health issues such as PTSD, depression, anxiety, and burnout. OSHA therefore preliminarily finds justification to promulgate a standard which requires behavioral health screening and prevention programming for these responders.

(ii) Suicide

According to the Firefighter Behavioral Health Alliance (FBHA), at least 1,399 suicides occurred between 2011 and 2022 among firefighters, emergency responders, and communication specialists (*i.e.,* emergency response dispatchers). The actual number may well be higher, as many suicides are not reported or appropriately identified as work-related (FBHA, 2023). OSHA found evidence that emergency responders are at higher risk for suicidal ideation, plans, and attempts. One literature review (Stanley et al., 2016, Document ID 0310) and several studies (Abbott et al., 2015, Document ID 0169; Stanley et al., 2015, Document ID 0312; Tiesman et al., 2015, Document ID 0295; Vigil et al., 2019, Document ID 0296; Vigil et al., 2021, Document ID 0297) reported approximately three and a half times higher rates of suicide ideation and suicide attempts and approximately five times higher rates of suicide plans among emergency responders when compared to the general public. Stanley et al. (2017b, Document ID 0305) found that volunteer firefighters reported elevated levels of suicide plans and attempts compared to career firefighters. Hom et al. (2018, Document ID 0323) concluded that women firefighters exposed to suicide during their careers (either in professional or personal settings) are themselves at increased suicide risk. Stanley et al. (2017a, Document ID 0304) reported higher rates of suicidal ideation, suicide plans, and non-suicidal self-injury among women firefighters compared to the general U.S. population. Problematic alcohol use (Gallyer et al., 2018, Document ID 0209), occupational stress (Stanley et al., 2018, Document ID 0316), PTSD (Bing-Canar et al., 2019, Document ID 0174; Boffa et al., 2017, Document ID 0189; Martin et al., 2017, Document ID 0254; Stanley et al., 2019, Document ID 0308; Pennington et al., 2021, Document ID 0263), depression (Martin et al., 2017, Document ID 0254), and past physical and sexual abuse (Hom et al., 2017, Document ID 0217) were contributors to suicide risk over the course of the responder's career.

The issue of suicide in the emergency response community has become so prevalent that in 2022, Congress passed and President Biden signed into law, House Resolution 6943, the Public Safety Officer Support Act, which added death by suicide to the causes of death that are eligible for benefits under the U.S. Department of Justice, Bureau of Justice Assistance's Public Safety Officers Benefits Program (PSOB).

OSHA has preliminarily determined that the traumatic events and psychological stress that emergency responders are exposed to places them at increased risk for death by suicide. OSHA therefore preliminarily finds justification to promulgate a standard which requires behavioral health resources for these responders.

(iii) Substance Use Disorders

Studies suggest that repeated exposure to traumatic situations can lead to mental health strain and post-traumatic stress (Murphy et al., 1999, Document ID 0280) coupled with substance use disorders (Hruska et al., 2011, Document ID 0227) and resorting to substance use as a coping mechanism (Vujanovic et al., 2011, Document ID 0317). During its literature review, OSHA sought articles that examined whether emergency responders have elevated rates of substance use. OSHA identified multiple articles that focused on alcohol consumption among emergency responders, two that addressed tobacco use, and one that spoke about substance use disorders more broadly during the COVID–19 pandemic.

Overall, there is evidence that emergency responders are at increased risk for problematic alcohol consumption. Several studies observed a high prevalence of increased alcohol use and at-risk drinking episodes for both male and female firefighters (Carey et al., 2011, Document ID 0183; Gallyer

et al., 2018, Document ID 0209; Haddock et al., 2012, Document ID 0214, Haddock et al., 2015, Document ID 0215, Haddock et al., 2017, Document ID 0218; Meyer et al., 2012, Document ID 0272). A few studies indicated higher rates of alcohol consumption during the first few years of fire fighter/EMS service (Haddock et al., 2015, Document ID 0215; Piazza-Gardner et al., 2014, Document ID 0248; Gulliver et al., 2019, Document ID 0216) compared with fire fighters/EMS personnel with more years of service. There is also some evidence that firefighters use alcohol as a coping mechanism (Haddock et al., 2017, Document ID 0218; Rogers et al., 2020, Document ID 0287; Tomaka et al., 2017, Document ID 0293).

Literature on tobacco use among emergency responders was limited. Poston et al. (2012, Document ID 0277) indicated that smoking rates among firefighters have generally declined, whereas smokeless tobacco use has increased. Smoking regulations were cited as the primary reason for declining smoking rates, but other common reasons included fire service culture changes, impacts of smoking on job performance, and smoking costs. Jitnarin et al. (2019, Document ID 0224) found that age-adjusted smoking prevalence was lower among female firefighters (1.9 percent) than the prevalence observed for male firefighters (13.2 percent) and for adult women in the U.S. (13.5 percent). As for smokeless tobacco, age-adjusted use in female firefighters (0.5 percent) was comparable with U.S. adult women (0.3 percent), but well below rates observed for male firefighters (10.5 percent).

OSHA did not identify any published research that addresses the prevalence of opioid use among emergency responders. An online article (Jahnke, 2020, Document ID 0237) confirmed the absence of published research, stating ''there is no available published research on the rates of opioid use among first responder groups, so quantifying the risk is not possible.'' That author did note, however, that ''it is important to recognize that first responders are at a high risk for opioid use disorder for several reasons,'' which were identified as high risk of injury, risky health behavior, exposure to stressors, behavioral health concerns, and sleep issues.

OSHA has preliminarily determined that the traumatic events and psychological stress that emergency responders are exposed to places them at increased risk of substance abuse. OSHA therefore preliminarily finds justification to promulgate a standard which requires behavioral health resources for these responders.

D. Exposure to Violence

At times, emergency responders encounter belligerent behaviors because the people they are trying to help, their family members, or nearby bystanders are not receptive to assistance. This can lead to conflict and may result in emergency responders being subjected to verbal aggression and/or physical violence, which can be a contributing factor to mental health problems or cause injuries. Additionally, emergency responders are sometimes called to respond to situations that have a law enforcement aspect that has not been fully resolved or contained by police (*e.g.,* active shooter situations). Exposure to violence incidents can result in both observable traumatic injuries as well as significant mental health impacts. OSHA found multiple studies that document workplace violence against emergency responders. Only one study addressed emergency responders who were injured from violent interactions. Taylor et al. found that male and female paramedics were at increased likelihood of patient-initiated violent injury compared to male and female firefighters (Taylor et al., 2016, Document ID 0313). In the Murray et al. 2020 review (Document ID 0249), the authors found violence to be the leading cause of stress and that stress was the most frequent injury reported by EMS survey respondents. Violence exposure was found to be associated with increased levels of stress, fear, and anxiety in EMS responders. The review found that exposures to workplace violence, especially cumulative exposures, in concert with other job stressors, were associated with adverse mental health outcomes such as anxiety, depression, and PTSD. Most other studies did not indicate whether the violence actually led to adverse health effects, such as mental health issues or physical injuries. The studies provide insight on the types of violence occurring among emergency response populations and the prevalence between different groups (*e.g.,* men versus women).

Estimates of the proportion of emergency responders who reported experiencing at least one type of violence on the job ranged from 57 to 93 percent (Gormley et al., 2016, Document ID 0208; Murray et al., 2020, Document ID 0249). Survey-based results in Gormley et al. (2016, Document ID 0208) found that verbal aggression was the most common form experienced (67.0 percent), but physical violence was reported by 43.6 percent of respondents. These findings fell in line with the review-based results (from 104 studies) provided in Murray et al. (2020, Document ID 0249), which indicated that 21 to 88 percent of emergency responders reported experiencing verbal aggression and 23 to 90 percent reported experiencing physical violence. Additionally, multiple studies assessed risks for occupational violence among different types of emergency responders. Paramedics were found to be at significantly higher risk for occupational violence compared to both firefighters (Taylor et al., 2016, Document ID 0313; Murray et al., 2020, Document ID 0249) and emergency medical technicians (Gormley et al., 2016, Document ID 0208; NAEMT, 2019, Document ID 0264). In general, responders who provided more direct patient care were at a higher risk for violence (Murray et al., 2020, Document ID 0249).

Three studies investigated differences in workplace violence risks between male and female emergency responders, with mixed results. NAEMT (2019, Document ID 0264) found that percentages of reported physical and verbal assaults among National Association of Emergency Medical Technicians members were higher for males than females. In contrast, Taylor et al. (2016, Document ID 0313) found that female responders had increased odds (though not statistically significant) of suffering patient-initiated violent injuries compared to male responders, and Gormley et al. (2016) reported increased odds of experiencing physical violence among female personnel compared to male personnel. The studies do not break down violence exposure by race or ethnicity.

OSHA has preliminarily determined that emergency responders are exposed to verbal aggression and physical violence at their workplaces that may lead both to physical injury and to adverse behavioral health outcomes.

B. Events Leading to the Proposed Rule

The existing 29 CFR 1910.156, Fire Brigades standard was promulgated in 1980 (45 FR 60656 (Sept. 12, 1980)). In the time since, there have been significant improvements in PPE and the guidance provided by national consensus standards. In the aftermath of the terrorist attacks on September 11, 2001, all government agencies, including OSHA, were directed to strengthen their preparedness to respond to terrorist attacks, major disasters, and other emergencies. In response to this direction, the agency reviewed its standards applicable to the safe conduct of emergency response and

identified gaps in the protections for emergency responders. The agency determined that it should proceed in the process for potentially updating its standard for Fire Brigades and consider including other emergency responders.

In 2007, OSHA published a 41-question Request for Information (RFI) for the public to evaluate what action, if any, the agency should take to further address emergency response and preparedness (72 FR 51735 (Sept. 11, 2007)). The RFI encouraged commenters to provide input covering the scope of emergency response operations, personal protective clothing and equipment, training and qualifications, medical evaluation and health monitoring, safety, and economic impacts related to potential regulatory action. The agency received 85 responses largely in support of updating the existing rule.

On July 30 and 31, 2014, OSHA hosted stakeholder meetings that attracted 49 participants and approximately the same number of observers (Document ID 0087). Participants represented a broad range of emergency responders as well as allied stakeholders such as State plan representatives, skilled support workers, and law enforcement. Broad support for a comprehensive standard was evident in both days of stakeholder meetings. Participants favored OSHA proceeding with comprehensive rulemaking that covered a broad scope of emergency preparedness and response workers rather than the agency's historical perspective covering industrial fire brigades.

In September 2015, OSHA convened a NACOSH subcommittee to develop recommendations, including regulatory text for a proposed rule, for NACOSH to consider (Docket ID OSHA–2015–0019–0001). To assist the Subcommittee, OSHA provided draft regulatory language for the purpose of initiating and facilitating discussion (Docket ID OSHA–2015–0019–0002, Ex. 5). The Subcommittee participants were subject matter experts from major stakeholder entities that represented a broad range of emergency response experts, who provided balance and a diversity of views. The Subcommittee was co-chaired by two NACOSH members, a labor representative, and a management representative.

The Subcommittee met for 12 days in six in-person meetings and held numerous sub-group teleconferences from September 9, 2015, to September 9, 2016 (Docket ID OSHA–2015–0019). The members heard and discussed reports from the subgroups, and deliberated on various issues, as they developed their recommendations and proposed regulatory text. The Subcommittee completed its recommendations for a proposed rule and transmitted the documents to the full NACOSH in October 2016 (Docket ID OSHA–2015–0019–0035).

NACOSH met on December 14, 2016, and after hearing some public support for the project and deliberating over the draft document developed by the Subcommittee, voted unanimously to recommend to the Secretary of Labor that OSHA proceed with rulemaking using the draft language as the basis for developing a proposed rule.

On October 4, 2021, OSHA convened a SBAR Panel for a potential Emergency Response draft proposed standard (Document ID 0094). OSHA convened this panel under section 609(b) of the RFA, 5 U.S.C. 601 *et seq.,* as amended by SBREFA. 5 U.S.C. 609(b).

The panel included representatives from OSHA, the Office of Advocacy within the SBA, and the Office of Information and Regulatory Affairs of the Office of Management and Budget. SERs made oral and written comments on the draft regulatory framework and submitted them to the panel. The Panel received advice and recommendations from the SERs and reported its findings and recommendations to OSHA. OSHA has taken SERs' comments and the Panel's findings and recommendations into consideration in the development of the proposed rule.

The SBREFA Panel issued a report on December 2, 2021, which included the SERs' comments. SERs expressed concerns about the impact of the proposed rule on small and volunteer fire departments. Their comments addressed potential costs associated with compliance with the proposed rule's medical screening, physical fitness, and training requirements. In addition, many SERs were concerned with OSHA's extensive use of NFPA consensus standards in the development of the draft regulation. They were concerned about the costs associated with compliance with the proposed rule if OSHA incorporated by reference certain NFPA standards (Document ID 0115).

I. Preliminary Determination of Significant Risk and Material Impairment

As explained in section III, *Pertinent Legal Authority,* the OSH Act and Supreme Court precedent require OSHA to determine, prior to issuing a safety or health standard, that employees are being subjected to a significant risk of serious injury or material impairment of health or functional capacity by the hazards being targeted. OSHA has reviewed the evidence currently in the record, including the data and scientific studies discussed above; the comments received in response to the 2007 Emergency Response RFI, from SERs during the SBREFA process, and from NACOSH; and industry consensus as evidenced in the various NFPA consensus standards, and preliminarily determined that emergency response activities place team members and responders at significant risk of personal injury, several acute and chronic health conditions, and death.

As identified above, the documented serious injuries suffered by emergency responders are numerous, including fractures, sprains, internal bodily trauma, dislocations, chemical burns, and chemical pneumonia. There can also be little doubt that the morbidity and mortality risks posed by cancer, cardiovascular disease, and lung disease represent material impairments of health and functional capacity. In addition, the adverse mental health outcomes resulting from emergency response activities, including substance use disorder, PTSD, depression, anxiety, burnout, and suicidality, can significantly impair responders' quality of life and limit their ability to function in daily life, can cause or exacerbate other physical conditions, and, in the worst cases, can lead to death. Accordingly, OSHA preliminarily finds these behavioral health effects represent a serious impairment of health.

C. National Consensus Standards

In development of the proposed rule, OSHA extensively examined numerous relevant consensus standards. The NFPA standards are available to be viewed without cost at *https://www.nfpa.org/for-professionals/codes-and-standards/list-of-codes-and-standards/free-access.* ANSI/ISEA standards are available for purchase at *https://webstore.ansi.org.* Many of the provisions in the proposed rule are based on or consistent with provisions in these standards. Additionally, OSHA is proposing to incorporate by reference (IBR) several consensus standards.[2]

In certain provisions of the proposed rule, OSHA would require compliance with the relevant portions of the NFPA and ANSI/ISEA standards incorporated by reference. In certain other provisions, OSHA is proposing to require

[2] In addition to revising 29 CFR 1910.6, Incorporation by Reference, to include the consensus standards incorporated in this proposal, OSHA is also taking this opportunity to make a number of non-substantive revisions to align § 1910.6 with updated **Federal Register** requirements.

Workplace Emergency Response Employers (WEREs) and Emergency Service Organizations (ESOs) to provide protections at least equivalent to various aspects of some of the NFPA standards listed below, such as training job performance requirements being equivalent to those in the consensus standard. In the latter case, compliance with the NFPA standard would satisfy the requirement, but the ESOs and WEREs retain flexibility to utilize alternative measures, so long as those measures provide equivalent protection. Below is a list and description of the national consensus standards that OSHA is proposing to IBR in whole or in part.

NFPA 1001, Standard for Structural Fire Fighter Professional Qualifications, 2019 ed. (Document ID 0138)—This standard contains the minimum job performance requirements including the requisite knowledge and skills to perform structural firefighting duties for career and volunteer fire fighters through two progressive levels of qualification.

NFPA 1002, Standard for Fire Apparatus Driver/Operator Professional Qualifications, 2017 ed. (Document ID 0140)—This standard contains the minimum job performance requirements including the requisite knowledge and skills to drive and operate fire apparatus for career and volunteer fire fighters and fire brigade personnel. The standard differentiates requirements based on the type of apparatus driven such as pumper, aerial, aerial with tiller, water tender, and others.

NFPA 1005, Standard for Professional Qualifications for Marine Fire Fighting for Land-Based Fire Fighters, 2019 ed. (Document ID 0136)—This standard contains the minimum job performance requirements including the requisite knowledge and skills to perform marine fire fighting for land-based fire fighters.

NFPA 1006, Standard for Technical Rescue Personnel Professional Qualifications, 2021 ed. (Document ID 0149)—This standard contains the minimum job performance requirements including the requisite knowledge and skills to perform technical rescue operations for twenty different rescue scenarios for fire service and other emergency responders who perform these operations.

NFPA 1021, Standard for Fire Officer Professional Qualifications, 2020 ed. (Document ID 0144)—This standard contains the minimum job performance requirements including the requisite knowledge and skills to perform fire officer duties through four progressive levels of qualification.

NFPA 1081, Standard for Facility Fire Brigade Member Professional Qualifications, 2018 ed. (Document ID 0134)—This standard contains the minimum job performance requirements including the requisite knowledge and skills to perform fire brigade operations from incipient facility fire brigade member through fire brigade leader, and also fire brigade training coordinator, and support member.

NFPA 1140, Standard for Wildland Fire Protection, 2022 ed. (Document ID 0153)—This standard contains requirements for wildland fire management as well as the job performance requirements including the requisite knowledge and skills to perform wildland fire positions. Included in the standard are requirements for fighting wildland/urban interface fires.

NFPA 1407, Standard for Training Fire Service Rapid Intervention Crews, 2020 ed. (Document ID 0143)—This standard contains requirements for training fire service personnel to safely perform rapid intervention operations to rescue firefighters who become lost, injured, trapped, incapacitated, or disoriented at an emergency scene or during training operations.

NFPA 1582, Standard on Comprehensive Occupational Medical Program for Fire Departments, 2022 ed. (Document ID 0118)—This standard contains provisions for an occupational medical program that is designed to reduce risks and provide for the health, safety, and effectiveness of fire fighters while performing emergency operations.

NFPA 1910, Standard for the Inspection, Maintenance, Refurbishment, Testing, and Retirement of In-Service Emergency Vehicles and Marine Firefighting Vessels, 2024 ed. (Document ID 0151)—This standard contains requirements for establishing an inspection, maintenance, refurbishment, retirement, and testing program for emergency service vehicles and marine firefighting vessels and provides the minimum job performance requirements including the requisite knowledge and skills for emergency vehicle technicians.

NFPA 1951, Standard on Protective Ensembles for Technical Rescue Incidents, 2020 ed. (Document ID 0347)—This standard specifies the minimum design, performance, testing, and certification requirements for utility technical rescue, rescue and recovery technical rescue, and chemical, biological, radiological, and nuclear (CBRN) technical rescue protective ensembles including garments, helmets, gloves, footwear, interface, and eye and face protection.

NFPA 1952, Standard on Surface Water Operations Protective Clothing and Equipment, 2021 ed. (Document ID 0348)—This standard specifies the minimum design, performance, testing, and certification requirements for protective clothing and equipment items, including full body suits, helmets, gloves, footwear, and personal flotation devices designed to provide limited protection from physical, environmental, thermal, and certain common chemical and biological hazards for emergency services personnel during surface water, swift water, tidal water, surf, and ice operations.

NFPA 1953, Standard on Protective Ensembles for Contaminated Water Diving, 2021 ed. (Document ID 0349)—This standard specifies the minimum design, performance, testing, and certification requirements for protective clothing and protective equipment used during operations in contaminated water dive operations.

NFPA 1971, Standard on Protective Ensembles for Structural Fire Fighting and Proximity Fire Fighting, 2018 ed. (Document ID 0350)—This standard specifies the minimum design, performance, testing, and certification requirements for structural and proximity firefighting protective ensembles and ensemble elements.

NFPA 1977, Standard on Protective Clothing and Equipment for Wildland Fire Fighting and Urban Interface Fire Fighting, 2022 ed. (Document ID 0351)—This standard specifies the minimum design, performance, testing, and certification requirements for items of wildland fire fighting and wildland-urban interface firefighting protective clothing and equipment including protective garments, helmets, gloves, footwear, goggles, chain saw protectors, and load-carrying equipment.

NFPA 1981, Standard on Open-Circuit Self-Contained Breathing Apparatus (SCBA) for Emergency Services, 2019 ed. (Document ID 0139)—This standard contains requirements for the design, performance, testing, and certification of new SCBA used by emergency service personnel.

NFPA 1982, Standard on Personal Alert Safety Systems (PASS), 2018 ed. (Document ID 0352)—This standard specifies the minimum requirements for the design, performance, testing, and certification for all personal alert safety systems (PASS) for emergency services personnel.

NFPA 1984, Standards on Respirators for Wildland Fire-Fighting Operations and Wildland Urban Interface Operations, 2022 ed. (Document ID

0353)—This standard specifies the minimum design, performance, testing, and certification requirements for respirators to provide protection from inhalation hazards for personnel conducting wildland firefighting operations for use in non-immediately dangerous to life or health (IDLH) wildland environments during wildland firefighting operations and/or wildland urban interface operations.

NFPA 1986, Standard on Respiratory Protection Equipment for Tactical and Technical Operations, 2023 ed. (Document ID 0354)—This standard specifies the minimum requirements for the design, performance, testing, and certification of new compressed breathing air open-circuit SCBA and compressed breathing air combination open-circuit SCBA and supplied air respirators and replacement parts, components, and accessories for the respirators for use by emergency services personnel in non-firefighting operations where the atmosphere is categorized as IDLH.

NFPA 1987, Standard on Combination Unit Respirator Systems for Tactical and Technical Operations, 2023 ed. (Document ID 0355)—This standard specifies the minimum requirements for the design, performance, testing, and certification of new combination unit respirator systems and for the replacement parts, components, and accessories for such respirators for emergency services personnel in non-firefighting operations and in atmospheres that are categorized as entry into and escape from IDLH atmospheres in open-circuit SCBA mode and entry into non-IDLH and escape from IDLH and non-IDLH atmospheres when in air-purifying respirator (APR) mode or powered air-purifying respirator (PAPR) mode.

NFPA 1990, Standard for Protective Ensembles for Hazardous Materials and CBRN Operations, 2022 ed. (Document ID 0356)—This standard specifies the minimum design, performance, testing, documentation, and certification requirements for new ensembles and new ensemble elements that are used by emergency responders during hazardous materials emergencies and CBRN (chemical, biological, radiological and nuclear) terrorism incidents.

NFPA 1999, Standard on Protective Clothing and Ensembles for Emergency Medical Operations, 2018 ed. (Document ID 0357)—This standard specifies the minimum design, performance, testing, documentation, and certification requirements for new single-use and new multiple-use emergency medical operations protective clothing including garments, helmets, gloves, footwear, and face protection devices used by emergency medical responders prior to arrival at medical care facilities and used by medical first receivers at medical care facilities during emergency medical operations. The standard also applies to health care workers providing medical and supportive care; however these workers are not covered by the proposed rule.

ANSI/ISEA 207, American National Standard for High-Visibility Public Safety Vests, 2011 ed. (Document ID 0358)—This standard specifies performance requirements for high-visibility vests for use by public safety workers which are intended to provide conspicuity of the user in hazardous situations under any light conditions by day and under illumination by vehicle headlights in the dark. Performance requirements are included for color, retroreflection, and minimum areas, as well as the suggested configuration of highly visible materials used in the construction of high-visibility public safety vests. Test methods are provided in the standard to ensure that a minimum level of visibility is maintained when items are subjected to ongoing care procedures.

The following NFPA standards, although not being formally incorporated into the proposed standard, were extensively examined and many of the provisions in the proposed rule are based on or are consistent with provisions in them:

NFPA 10, Standard for Portable Fire Extinguishers, 2022 ed. (Document ID 0345)—This standard contains requirements for the selection, installation, inspection, maintenance, recharging, and testing of portable fire extinguishers and Class D extinguishing agents.

NFPA 600, Standard on Facility Fire Brigades, 2020 ed. (Document ID 0133)—This standard contains requirements for organizing, operating, training, and equipping facility fire brigades for response to fires in industrial, commercial, institutional, and similar properties; and for the occupational safety and health of brigade members while performing their duties.

NFPA 1201, Standard for Providing Fire and Emergency Services to the Public, 2020 ed. (Document ID 0141)—This standard contains requirements on the structure and operations of fire emergency service organizations that provide a wide range of services to the community. The standard serves as guidance for organizations that provide services to protect lives, property, infrastructure, and the environment from the effects of hazards.

NFPA 1451, Standard for a Fire and Emergency Service Vehicle Operations Training Program, 2018 ed. (Document ID 0137)—This standard contains the requirements for a fire and emergency service vehicle operations training program including the knowledge and skills required of safety, training, maintenance, and administrative officers assigned to develop and implement the program.

NFPA 1500, Standard on Fire Department Occupational Safety, Health, and Wellness Program, 2021 ed. (Document ID 0135)—This standard contains requirements for occupational safety, health, and wellness programs for fire departments.

NFPA 1521, Standard for Fire Department Safety Officer Professional Qualifications, 2020 ed. (Document ID 0147)—This standard contains job performance requirements for the assignment of a health and safety officer and an incident safety officer for a fire department to ensure responders holding these positions are qualified for the jobs.

NFPA 1561, Standard on Emergency Services Incident Management System and Command Safety, 2020 ed. (Document ID 0145)—This standard contains requirements for the development and implementation of an incident management system that is intended to be used by emergency services and apply to operations conducted at the scene of all types of emergency incidents. The standard is intended to integrate with systems that apply to multiple agencies and large-scale incidents.

NFPA 1581, Standard on Fire Department Infection Control Program, 2022 ed. (Document ID 0148)—This standard contains requirements for a fire department infection control program that includes infection control in the fire station, in fire apparatus, at incident scenes, and any other routine or emergency operations.

NFPA 1660, Standard for Emergency, Continuity, and Crisis Management: Preparedness, Response, and Recovery, 2024 ed. (Document ID 0359)—This standard establishes a common set of criteria for emergency management and business continuity programs; mass evacuations, sheltering, and re-entry programs; and development of pre-incident plans for personnel responding to emergencies.

NFPA 1700, Guide for Structural Fire Fighting, 2021 ed. (Document ID 0150)—This guide addresses research in fire dynamics that have led to alterations in fire behavior models that

have been taught in the fire service for decades and that support changes needed in structural fire-fighting strategy, tactics, and tasks.

NFPA 1710, Standard for the Organization and Deployment of Fire Suppression Operations, Emergency Medical Operations, and Special Operations to the Public by Career Fire Departments, 2020 ed. (Document ID 0146)—This standard contains requirements for the organization and deployment of fire suppression operations, emergency medical operations, and special operations to the served community by career fire departments. The standard also contains system requirements for health and safety, incident management, training, communications, and pre-incident planning.

NFPA 1720, Standard for the Organization and Deployment of Fire Suppression Operations, Emergency Medical Operations, and Special Operations to the Public by Volunteer Fire Departments, 2020 ed. (Document ID 0142)—This standard contains requirements for the organization and deployment of fire suppression operations, emergency medical operations, and special operations to the served community by volunteer and combination fire departments. The standard also contains system requirements for health and safety, incident management, training, communications, and pre-incident planning.

NFPA 1851, Standard on Selection, Care, and Maintenance of Protective Ensembles for Structural Fire Fighting and Proximity Fire Fighting, 2020 ed. (Document ID 0346)—This standard contains requirements for the selection, care, and maintenance structural and proximity fire fighter protective ensembles and the individual ensemble elements that include garments, helmets, gloves, footwear, and interface components.

NFPA 2500, Standard for Operations and Training for Technical Search and Rescue Incidents and Life Safety Rope and Equipment for Emergency Services, 2022 ed. (Document ID 0152)—This standard contains requirements for conducting operations at a wide range of technical search and rescue incidents; for the design, performance, testing, and certification of life safety rope and other search and rescue equipment; and for the selection, care, and maintenance of rope and search and rescue equipment for emergency services.

As noted in the SBAR Panel Report, during the teleconferences and in written public comments several SERs expressed concern with the potential expense of time and money in having to comply with the provisions in NFPA standards (Document ID 0115, pp. 16–17/370; 18/370; 21/370; 33/370; 57–58/370). In Question II. C, OSHA is seeking input on the potential impacts of incorporating by reference of various NFPA standards, and how equivalency or consistency could be achieved if the NFPA standards were not incorporated by reference. NFPA makes their standards available to be viewed without cost at *https://www.nfpa.org/Codes-and-Standards/All-Codes-and-Standards/Free-access* or for purchase at *https://catalog.nfpa.org/Codes-and-Standards-C3322.aspx.*

The agency is aware that the NFPA is currently in the process of combining many of their standards into larger consolidated standards (see *https://www.nfpa.org/Codes-and-Standards/Resources/Standards-in-action/Emergency-Response-and-Responder-Safety-Project*). OSHA will review the consolidated standards during development of a potential final rule. The referenced standards that will be affected by the consolidation project are the following:

NFPA 1001, NFPA 1002, NFPA 1003, and NFPA 1005 will become NFPA 1010, Standard for Firefighter, Fire Apparatus Driver/Operator, Airport Firefighter, and Marine Firefighting for Land-Based Firefighters Professional Qualifications, scheduled for 2024.

NFPA 1021 and other standards will become NFPA 1020, Standard for Fire Officer and Emergency Services Instructor Professional Qualifications, scheduled for 2025.

NFPA 1407, NFPA 1451 and other standards will become NFPA 1400, Standard on Fire Service Training, scheduled for 2026.

NFPA 1581, NFPA 1582 and other standards will become NFPA 1580, Standard for Emergency Responder Occupational Health and Wellness, scheduled for 2025.

NFPA 1201, NFPA 1710, NFPA 1720, and other standards will become NFPA 1750, Standard for the Organization and Deployment of Fire Suppression Operations, Emergency Medical Operations, and Providing Fire and Emergency Services to the Public, scheduled for 2026.

NFPA 1981, NFPA 1982 and other standards will become NFPA 1970, Standard on Protective Ensembles for Structural and Proximity Firefighting, Work Apparel and Open-Circuit Self-Contained Breathing Apparatus (SCBA) for Emergency Services, and Personal Alert Safety Systems (PASS), scheduled for 2024.

NFPA 1951, NFPA 1977, and NFPA 1999 will become NFPA 1950, Standard on Protective Clothing, Ensembles, and Equipment for Technical Rescue Incidents, Emergency Medical Operations, and Wildland Firefighting, and Urban Interface Firefighting, scheduled for 2025.

NFPA 1952 and NFPA 1953 will become NFPA 1955, Standard on Surface Water Operations Protective Clothing and Equipment and Protective Ensembles for Contaminated Water Diving, scheduled for 2025.

NFPA 1984 and NFPA 1989 will become NFPA 1985, Standard on Breathing Air Quality for Emergency Services Respiratory Protection and Respirators for Wildland Firefighting and Wildland Urban Interface Operations, scheduled for 2026.

III. Pertinent Legal Authority

A. Introduction

The purpose of the Occupational Safety and Health Act, 29 U.S.C. 651 *et seq.* (''the Act'' or ''the OSH Act''), is ''to assure so far as possible every working man and woman in the Nation safe and healthful working conditions and to preserve our human resources'' (29 U.S.C. 651(b)). To achieve this goal, Congress authorized the Secretary of Labor (''the Secretary'') ''to set mandatory occupational safety and health standards applicable to businesses affecting interstate commerce'' (29 U.S.C. 651(b)(3); see also 29 U.S.C. 654(a) (requiring employers to comply with OSHA standards)). Section 6(b) of the Act authorizes the promulgation, modification or revocation of occupational safety or health standards pursuant to detailed notice and comment procedures (29 U.S.C. 655(b)).

B. Coverage

I. Volunteers

The OSH Act requires ''[e]ach employer'' to ''comply with occupational safety and health standards promulgated under this Act'' (29 U.S.C. 654(a)(2)). The term ''employer'' is defined as ''a person engaged in a business affecting commerce who has *employees,* but does not include the United States (not including the United States Postal Service) or any State or political subdivision of a State'' (29 U.S.C. 652(5) (emphasis added)). This proposed standard would cover some emergency service organizations (ESOs) whose responders may be referred to as volunteers rather than employees. However, whether an emergency response worker is an employee, and

therefore whether the standard would apply to that worker's ESO, does not depend on the label assigned by the ESO. The following discussion lays out the relevant legal principles governing employment status under the OSH Act. For a more detailed discussion of how OSHA expects these principles to apply in the context of this proposed standard, see the Summary and Explanation for paragraph (a), Scope, under the heading *Coverage for Volunteers.*

The Act defines an ''employee'' as ''an employee of an employer who is employed in a business of his employer which affects commerce'' (29 U.S.C. 652(6)). Because this definition is circular, courts apply the test for employee status enunciated in *Nationwide Mut. Ins. Co.* v. *Darden,* 503 U.S. 318, 322–23 (1992) (see *Quinlan* v. *Secretary, U.S. Dep't of Labor,* 812 F.3d 832, 836 (11th Cir. 2016); *Slingluff* v. *Occupational Safety and Health Review Comm'n,* 425 F.3d 861, 867–68 (10th Cir. 2005)). In *Darden* the Supreme Court set forth the following test for employee status: ''In determining whether a hired party is an employee under the general common law of agency, we consider the hiring party's right to control the manner and means by which the product is accomplished'' (Id. at 323) (internal quotation marks omitted). The Court went on to list a number of factors which relate to the right to control (Id.).

The *Darden* Court's use of the phrase ''hired party'' indicates that an essential prerequisite for employee status is that the worker receive some form of compensation for services performed (see also *N.L.R.B.* v. *Town & Country Elec., Inc.,* 516 U.S. 85, 90 (1995) (''The ordinary dictionary definition of 'employee' includes any 'person who works for another *in return for financial or other compensation.'* American Heritage Dictionary 604 (3d ed. 1992).'') (emphasis added). Accordingly, seven Federal courts of appeals have adopted the so-called threshold remuneration test (*Acosta* v. *Cathedral Buffet, Inc.,* 887 F.3d 761, 766–67 (6th Cir. 2018); *Juino* v. *Livingston Parish Fire Dist. No. 5,* 717 F.3d 431, 435–40 (5th Cir. 2013); *Pietras* v. *Bd. of Fire Comm'rs of Farmingville Fire Dist.,* 180 F.3d 468 (2d Cir. 1999) (firefighter regarded as employee despite being called a volunteer because of benefits received); *McGuinness* v. *Univ. of N.M. Sch. of Med.,* 170 F.3d 974, 979 (10th Cir. 1998); *Llampallas* v. *Mini–Circuits Lab, Inc.,* 163 F.3d 1236, 1243–44 (11th Cir. 1998); *Haavistola* v. *Cmty. Fire Co. of Rising Sun, Inc.,* 6 F.3d 211, 220–21 (4th Cir. 1993); *Graves* v. *Women's Prof'l Rodeo Ass'n, Inc.,* 907 F.2d 71, 73 (8th Cir. 1990)). Only one Federal court of appeals does not require a showing of compensation to find employee status (*Fichman* v. *Media Center,* 512 F.3d 1157, 110 (9th Cir. 2008)).

Remuneration may be direct remuneration, *i.e.,* salary or wages, or significant indirect benefits that are not incidental to the service performed, *i.e.,* job-related benefits (*Juino,* 717 F.3d at 437; *Pietras,* 180 F.3d at 473; *Haavistola,* 6 F.3d at 221–22). For example, significant indirect benefits may consist of a retirement pension, life insurance, death benefits, disability insurance, and some medical benefits (*Pietras,* 180 F.3d at 471). Similarly, the provision of food, clothing, shelter, and other in-kind benefits may be significant remuneration (see *Tony and Susan Alamo Foundation* v. *Secretary of Labor,* 471 U.S. 290, 292, 299–303 (interpreting ''employee'' under the Fair Labor Standards Act); but see *Fichman,* 512 F.3d at 1160 (travel reimbursements and food at board meetings insufficient to render board member of nonprofit organization an employee under related test for determining employee status of directors)). Minor incidental benefits do not suffice to meet the threshold remuneration test (see *Juino,* 717 F.3d at 339–440 (receipt of $78 for 39 service calls, life insurance, uniform, badge, and emergency/first responders training do not suffice)).

In addition to these principles, volunteer emergency responders may be deemed employees under State law in States with occupational safety and health plans approved by OSHA under section 18 of the Act (29 U.S.C. 667). See the Summary and Explanation of paragraph (a), Scope, for further discussion on this issue.

II. Private-Sector Coverage

With the exception of the United States Postal Service, occupational safety and health standards issued under section 6 of the OSH Act apply only to private-sector employers.[3] They do not apply to any ''State or a political subdivision of a State'' [4] (29 U.S.C. 652(5)). Accordingly, this proposed standard would not apply to any State or local government entities determined to be a political subdivision of a State. Note, however, that States with OSHA-approved State Plans pursuant to section 18 of the OSH Act, 29 U.S.C. 667, would be required to treat public-sector employees the same as they do private-sector employees when adopting and enforcing a standard at least as effective as any final standard which may result from this rulemaking. This issue is discussed separately in section VIII.G, *Requirements for States with OSHA Approved State Plans.*

Under OSHA's regulations, an entity is a ''State or political subdivision of a State'' if (1) it has been ''created directly by the State, so as to constitute a department or administrative arm of the government,'' or (2) it is ''administered by individuals who are controlled by public officials and responsible to such officials or to the general electorate'' (29 CFR 1975.5(b); *cf. N.L.R.B.* v. *Natural Gas Util. Dist. of Hawkins County, Tenn.,* 402 U.S. 600 (1971)). Any such entity shall be deemed outside the Act's definition of employer, and, consequently, not subject to the Act as an employer (29 CFR 1975.5(b)).

Paragraph (c) of 29 CFR 1975.5 lists a number of factors used to determine whether one or both of these tests has been met. One important factor under the second test is whether the individuals who administer the entity are appointed by a public official or elected by the general electorate. Other issues relate to the terms and conditions of the appointment, to the identity of the person who may dismiss such individuals, and to the procedures for dismissal. For example, in *StarTran, Inc.* v. *Occupational Safety and Health Review Comm'n,* 608 F.3d 312 (5th Cir. 2010), the court held that a nonprofit corporation established by a transit district to supply bus drivers and mechanics was a political subdivision under the second test because all the members of StarTran's board were appointed and subject to removal by the transit district. In contrast, in *Brock* v. *Chicago Zoological Society,* 820 F.2d 909 (7th Cir. 1987), only one member of the Society's thirty-five member board of trustees was a public official; the other board members were chosen by 240 governing members, only four of whom were public officials. Thus, the

[3] Pursuant to section 19 of the OSH Act (29 U.S.C. 668) and Executive Order 12196, Federal agency occupational safety and health programs are established by each agency head and must be consistent with the standards promulgated under section 6 of the Act. Accordingly, Federal agencies must comply with all applicable section 6 standards unless an alternative standard is approved by the Secretary (see 29 CFR 1960.16 and 1960.17).

[4] Under the Act the term ''State'' includes a State of the United States, the District of Columbia, Puerto Rico, the Virgin Islands, American Samoa, and Guam (29 U.S.C. 652(7)). The Commonwealth of the Northern Mariana Islands is also a State because the covenant establishing the Commonwealth provides that generally applicable Federal laws which apply to Guam also apply to the Commonwealth as they do to Guam. Article V, section 502(a), *Covenant to Establish a Commonwealth of the Northern Mariana Islands in Political Union with the United States of America.* Public Law 94–24, 90 Stat. 263 (Mar. 24, 1976). Thus, because Guam is a State under the OSH Act so is the Commonwealth.

court found that the Society was not a political subdivision within the meaning of the OSH Act, despite its contract with a local forest preserve district, a governmental entity. Similarly, in *Tricil Resources* v. *Brock,* 842 F.2d 141 (6th Cir. 1988), a private for-profit corporation which had a contract with a city and none of whose board members were appointed or subject to removal by the city was not a political subdivision within the meaning of the Act. Thus, as a general rule, if a majority of the board of directors of an entity are not subject to selection or removal by public officials or the general electorate, the entity for that reason fails the second test for being a political subdivision (see *StarTran,* 608 F.3d at 323). OSHA will consider these factors in determining whether the proposed standard applies to a particular entity.

C. General Requirements for Occupational Safety and Health Standards

A safety or health standard is a standard which requires conditions, or the adoption or use of one or more practices, means, methods, operations, or processes ''reasonably necessary or appropriate'' to provide safe or healthful employment and places of employment (29 U.S.C. 652(8)). A standard is reasonably necessary or appropriate within the meaning of section 652(8) when a significant risk of material harm exists in the workplace and the standard would substantially reduce or eliminate that workplace risk (see *Indus. Union Dep't, AFL–CIO* v. *Am. Petroleum Inst.,* 448 U.S. 607 (1980) (''*Benzene*'')).

The Supreme Court in *Benzene* clarified that ''[i]t is the agency's responsibility to determine, in the first instance, what it considers to be a 'significant' risk'' (*Benzene,* 448 U.S. at 655). The Court declined to ''express any opinion on the . . . difficult question of what factual determinations would warrant a conclusion that significant risks are present which make promulgation of a new standard reasonably necessary or appropriate'' (Id. at 659). The Court stated, however, that the substantial evidence standard applicable to OSHA's significant risk determination (see 29 U.S.C. 655(b)(f)) does not require the agency ''to support its finding that a significant risk exists with anything approaching scientific certainty'' (*Benzene,* 448 U.S. at 656). Rather, OSHA may rely on ''a body of reputable scientific thought'' to which ''conservative assumptions in interpreting the data'' may be applied, ''risking error on the side of overprotection'' (Id.). The D.C. Circuit has further explained that OSHA may thus act with a pronounced bias towards worker safety in making its risk determinations (*Bldg & Constr. Trades Dep't* v. *Brock,* 838 F.2d 1258, 1266 (D.C. Cir. 1988) (''*Asbestos II*'')).

The Supreme Court further recognized that the determination of what constitutes ''significant risk'' is ''not a mathematical straitjacket'' and will be ''based largely on policy considerations'' (*Benzene,* 448 U.S. at 655 & n.62). The Court gave the following example: ''If . . . the odds are one in a billion that a person will die from cancer by taking a drink of chlorinated water, the risk clearly could not be considered significant. On the other hand, if the odds are one in a thousand that regular inhalation of gasoline vapors that are 2% benzene will be fatal, a reasonable person might well consider the risk significant[.]'' (Id. at 655).

In addition to the requirement that each standard address a significant risk, standards must also be technologically feasible (see *UAW* v. *OSHA,* 37 F.3d 665, 668 (D.C. Cir. 1994)). A standard is technologically feasible when the protective measures it requires already exist, when available technology can bring the protective measures into existence, or when that technology is reasonably likely to develop (see *Am. Iron and Steel Inst.* v. *OSHA,* 939 F.2d 975, 980 (D.C. Cir. 1991)).

Finally, a standard must be economically feasible (see *Forging Indus. Ass'n* v. *Secretary of Labor,* 773 F.2d 1436, 1453 (4th Cir. 1985)). A standard is economically feasible if industry can absorb or pass on the costs of compliance without threatening its long-term profitability or competitive structure (see *American Textile Mfrs. Inst., Inc.,* 452 U.S. 490, 530 n. 55 (''*Cotton Dust*'')). Each of these requirements is discussed further below.

D. Special Considerations for Health Standards

The proposed standard deals in part with the exposure of firefighters, emergency medical service providers, and technical rescuers to toxic substances. Section 6(b)(5) of the Act provides that in promulgating standards dealing with ''toxic materials or harmful physical agents,'' the Secretary ''shall set the standard which most adequately assures, to the extent feasible, on the basis of the best available evidence, that no employee will suffer material impairment of health or functional capacity even if such employee has regular exposure to the hazard dealt with by such standard for the period of his working life'' (29 U.S.C. 655(b)(5)). Thus, ''[w]hen Congress passed the [OSH] Act in 1970, it chose to place pre-eminent value on assuring employees a safe and healthful working environment, limited only by the feasibility of achieving such an environment'' (*Cotton Dust,* 452 U.S. at 541). ''OSHA is not required to state with scientific certainty or precision the exact point at which each type of [harm] becomes a material impairment'' (*AFL–CIO* v. *OSHA,* 965 F.2d 962, 975 (11th Cir. 1992)). Courts have also noted that OSHA should consider all forms and degrees of material impairment—not just death or serious physical harm (*AFL–CIO,* 965 F.2d at 975).

In acting to protect workers from health hazards the Secretary is authorized to require employers to offer medical examinations. Section 6(b)(7) of the Act provides that ''where appropriate, any such standard shall prescribe the type and frequency of medical examinations or other tests which shall be made available, by the employer or at his cost, to employees exposed to such hazards in order to most effectively determine whether the health of such employees is adversely affected by such exposure'' (29 U.S.C. 655(b)(7)).

E. Significant Risk

As explained above, OSHA's workplace safety and health standards must address a significant risk of material harm that exists in the workplace (see *Indus. Union Dep't, AFL–CIO* v. *Am. Petroleum Inst.,* 448 U.S. 607 (1980) (''*Benzene*'')). The agency's risk assessments are based on the best available evidence, and its final conclusions are made only after considering all information in the rulemaking record. Reviewing courts have upheld the Secretary's significant risk determinations where supported by substantial evidence and ''a reasoned explanation for his policy assumptions and conclusions'' (*Asbestos II,* 838 F.2d at 1266).

Once OSHA makes its significant risk finding, the standard it promulgates must be ''reasonably necessary or appropriate'' to reduce or eliminate that risk. In choosing among regulatory alternatives, however, ''[t]he determination that [one standard] is appropriate, as opposed to a marginally [more or less protective] standard, is a technical decision entrusted to the expertise of the agency'' (*Nat'l Mining Ass'n* v. *Mine Safety and Health Admin.,* 116 F.3d 520, 528 (D.C. Cir. 1997) (analyzing a Mine Safety and Health Administration standard under the *Benzene* significant risk standard)). In making its choice, OSHA may

incorporate a margin of safety even if it theoretically regulates below the lower limit of significant risk (*Nat'l Mining Ass'n,* 116 F.3d at 528 (citing *American Petroleum Inst.* v. *Costle,* 665 F.2d 1176, 1186 (D.C. Cir. 1982))).

F. Best Available Evidence

Section 6(b)(5) of the Act requires OSHA to set standards ''on the basis of the best available evidence'' and to consider the ''latest available scientific data in the field'' (29 U.S.C. 655(b)(5)). As noted above, the Supreme Court has explained that OSHA must look to ''a body of reputable scientific thought'' in making its material harm and significant risk determinations, while noting that a reviewing court must ''give OSHA some leeway where its findings must be made on the frontiers of scientific knowledge'' (*Benzene,* 448 U.S. at 656). In upholding the vinyl chloride standard, the Second Circuit stated: ''[T]he ultimate facts here in dispute are 'on the frontiers of scientific knowledge,' and, though the factual finger points, it does not conclude. Under the command of OSHA, it remains the duty of the Secretary to act to protect the workingman, and to act even in circumstances where existing methodology or research is deficient'' (*Society of the Plastics Industry, Inc.* v. *OSHA,* 509 F.2d 1301, 1308 (2d Cir. 1975) (quoting *Indus. Union Dep't, AFL–CIO* v. *Hodgson,* 499 F.2d 467, 474 (D.C. Cir. 1974) (''*Asbestos I*''))). Similarly, the D.C. Circuit has stated that when there is disputed scientific evidence in the record, OSHA must review the evidence on both sides and ''reasonably resolve'' the dispute (*Pub. Citizen Health Research Grp.* v. *Tyson,* 796 F.2d 1479, 1500 (D.C. Cir. 1986)).

G. Feasibility

The statutory mandate to consider the feasibility of the standard encompasses both technological and economic feasibility; these analyses have been done primarily on an industry-by-industry basis (*Lead I,* 647 F.2d at 1264, 1301). The agency has also used application groups, defined by common tasks, as the structure for its feasibility analyses (*Pub. Citizen Health Research Grp.* v. *OSHA,* 557 F.3d 165, 177–79 (3d Cir. 2009)). The Supreme Court has broadly defined feasible as ''capable of being done'' (*Cotton Dust,* 452 U.S. at 509–10).

I. Technological Feasibility

A standard is technologically feasible if the protective measures it requires already exist, can be brought into existence with available technology, or can be created with technology that can reasonably be expected to be developed (*Lead I,* 647 F.2d at 1272; *Amer. Iron & Steel Inst.* v. *OSHA,* 939 F.2d 975, 980 (D.C. Cir. 1991) (''*Lead II*'')). Courts have also interpreted technological feasibility to mean that a typical firm in each affected industry or application group will reasonably be able to implement the requirements of the standard in most operations most of the time (see *Public Citizen* v. *OSHA,* 557 F.3d 165, 170–71 (3d Cir. 2009); *Lead I,* 647 F.2d at 1272; *Lead II,* 939 F.2d at 990)). OSHA's standards may be ''technology forcing,'' *i.e.,* where the agency gives an industry a reasonable amount of time to develop new technologies, OSHA is not bound by the ''technological status quo'' (*Lead I,* 647 F.2d at 1264).

II. Economic Feasibility

In addition to technological feasibility, OSHA is required to demonstrate that its standards are economically feasible. A reviewing court will examine the cost of compliance with an OSHA standard ''in relation to the financial health and profitability of the industry and the likely effect of such costs on unit consumer prices'' (*Lead I,* 647 F.2d at 1265 (omitting citation)). As articulated by the D.C. Circuit in *Lead I,* ''OSHA must construct a reasonable estimate of compliance costs and demonstrate a reasonable likelihood that these costs will not threaten the existence or competitive structure of an industry, even if it does portend disaster for some marginal firms'' (647 F.2d at 1272). A reasonable estimate entails assessing ''the likely range of costs and the likely effects of those costs on the industry'' (*Lead I,* 647 F.2d at 1266). OSHA standards satisfy the economic feasibility criterion even if they impose significant costs on regulated industries so long as they do not cause massive economic dislocations within a particular industry or imperil the very existence of the industry (*Lead II,* 939 F.2d at 980; see also *Lead I,* 647 F.2d at 1272; *Asbestos I,* 499 F.2d. at 478).

IV. Issues and Questions

OSHA is providing this issues and questions section to solicit stakeholder input on various issues associated with the proposed rule. While OSHA invites stakeholders to comment on all aspects of this proposal, this section identifies specific areas of interest to the agency. OSHA is including certain issues and questions in this section to assist stakeholders as they review the proposal and consider the comments they plan to submit. However, to fully understand the questions, and to provide substantive input and feedback in response to them, the agency suggests commenters review the other sections of the preamble that address these issues in detail. Some issues and options that have cost implications are discussed more thoroughly in the *Preliminary Economic Analysis and Initial Regulatory Flexibility Analysis* (Section VII.).

It should be noted that the proposed regulatory text provided at the end of this document would completely replace the existing regulatory text for 29 CFR 1910.156, Fire Brigades. Comments addressing more than one section or paragraph should include all relevant references. Submitting comments in an organized manner with clear reference to the issue(s) raised will enable the agency and all participants to better understand the issues the commenter addressed and how they addressed them. Some commenters may confine their interest (and comments) to the issues that specifically affect them; correspondingly they will benefit from being able to quickly identify comments on these issues in others' submissions. While the agency welcomes relevant comments on any aspect of this proposal, OSHA is interested in responses, supported by evidence and explanations, to the following issues and questions, and to other issues and questions raised in this document.

A. Scope

OSHA recognizes that many emergency responders, particularly firefighters, emergency medical service providers, and technical search and rescuers, are referred to as ''volunteers.'' The OSH Act applies to employers, as defined in 29 U.S.C. 652(5), who have employees, 29 U.S.C. 652(6), and does not cover true volunteers. However, some workers labeled as volunteers may actually be considered employees under Federal law because they receive a certain level of compensation, which may include the direct payment of money or other types of remuneration (see *Pertinent Legal Authority,* section III of this preamble). Therefore, any emergency responders who are referred to as volunteers but receive ''significant remuneration'' within the meaning of Federal law would be included within the scope of this proposed rule as employees. OSHA believes that volunteer emergency responders rarely receive compensation substantial enough to render them employees under this ''significant remuneration'' legal test and thus OSHA does not expect that many emergency responders will fall into this category. Additionally, OSHA notes that this rulemaking will not in any way alter the existing legal

requirements under Federal law on this issue. Accordingly, all volunteer emergency responders who are currently excluded from coverage under the OSH Act should expect that they will continue to be excluded from the scope of this rulemaking.

B. State Plans

OSHA also recognizes that among the States with OSHA-approved State Plans there is variability as to whether volunteer emergency responders are classified as employees under state law. Regardless of state law, should there be any ''volunteers'' who receive ''significant remuneration'' such that they would be considered employees under Federal law (see Section III. *Pertinent Legal Authority,* B. Coverage), State Plans would be required to cover those employees as part of their obligation to promulgate a standard that is ''at least as effective'' as the Federal standard. 29 U.S.C. 667(c)(2). As noted above, OSHA believes this would be rare.

In addition, some States with OSHA-approved State Plans regard volunteer firefighters and other volunteers as employees under State law. See, *e.g.,* A.R.S. 23–901(6)(d) (2021) (in Arizona, firefighters, police, and other emergency management personnel who are volunteers are deemed to be employees). Regardless of whether these volunteers are considered employees under Federal law, such States must treat them as it does other emergency response workers under its analogue to any final standard resulting from this rulemaking. Cf. Letter from John A. Pendergrass, Assistant Secretary of Labor for Occupational Safety and Health, to Rep. Hamilton Fish, May 4, 1988 (if a State with an OSHA-approved State Plan regards volunteer firefighters as employees, it must apply its fire brigade standard to them) available at *https://www.osha.gov/laws-regs/standardinterpretations/1988-05-04.*

In States with OSHA-approved State Plans, each state determines what types of volunteer emergency responders it covers, and to what extent they are covered, based upon state definitions of who constitutes an employee and whether or not volunteer organizations are covered by state legislation. While the proposed rule does not directly apply to volunteers because OSHA does not have regulatory authority over volunteers, the agency is concerned with the potential ''downstream'' economic impact the proposed rule may have on organizations with volunteer responders. OSHA encourages stakeholders to engage with local and state officials about reducing potential impacts of the proposed rule.

Additionally, the agency seeks input on what it could do in the final rule to reduce undesirable impacts on volunteer organizations. OSHA understands that negative financial impacts on volunteer emergency response entities could have undesirable public safety implications. When drafting this NPRM, OSHA considered the possibility of excluding certain categories of emergency response organizations from certain provisions of the proposed rule based on organization size, funding source, and/or the number of emergencies responded to each year, but was unable to determine any appropriate exclusions in light of the agency's obligation to ameliorate significant risks to employees where economically feasible. OSHA welcomes public comment on these issues.

C. Questions in the Summary and Explanation

Throughout the summary and explanation of this proposed rule, OSHA has requested information or asked questions similar to those in this section. For more information on these topics, refer to the Summary and Explanation discussion for each respective topic.

(a)–1. OSHA is seeking information about how many private-sector emergency response organizations in States without State Plans (Federal OSHA States) have workers who are called volunteers but who receive substantial benefits, such as a retirement pension, life and/or disability insurance, death benefits, or medical benefits. How many such workers do these organizations have and of what type(s) (fire, EMS, technical rescue)?

(a)–2. OSHA is seeking information about which States with OSHA-approved State Plans expressly cover volunteer emergency responders. In those States, how many emergency response organizations have volunteers? How many volunteers do they have and of what type(s) (fire, EMS, technical rescue)?

(a)–3. OSHA is seeking information from States with OSHA-approved State Plans that do not expressly cover volunteer emergency responders. In those States, how many emergency response organizations have workers who are called volunteers but receive substantial benefits, such as a retirement pension, life and/or disability insurance, death benefits, or medical benefits; and as such may be considered employees within the meaning of Federal law? How many such workers do these organizations have and of what type(s) (fire, EMS, technical rescue)? Additionally, OSHA seeks similar input regarding inmate/incarcerated workers.

(a)–4. OSHA is seeking input regarding what types and levels of search and rescue services and technical search and rescue services should be included or excluded from the rule, and the extent to which those inclusions or exclusions should be specifically listed.

(a)–5. OSHA is seeking input whether the agency should consider developing a separate rule for protecting workers involved in the clean-up of disaster sites, and associated recovery efforts? Why or why not?

(a)–6. OSHA is seeking input on whether the agency should consider excluding other activities besides those in 29 CFR 1910.120 (Hazardous Waste Operations and Emergency Response (HAZWOPER)), 29 CFR 1910.146 (Permit-Required Confined Spaces in General Industry.

(b)–1. OSHA is seeking information and data from commenters on whether WEREs have living areas for team members, and if so, whether WEREs should be included in the definition for *Living area.*

(e)–1. OSHA is considering adding to both paragraphs (e)(1) and (2) a requirement to permit employee representatives to be involved in the development and implementation of an ERP, and to paragraph (e)(4) a requirement to allow employee representatives to participate in walkaround inspections, along with team members and responders, and is seeking input from stakeholders on whether employee representative involvement should be added to paragraph (e).

(f)–1. OSHA is seeking input on whether other activities or subjects should be specifically included in the list of minimum requirements for the risk management plan.

(f)–2. OSHA is proposing to have a performance-based infection control program provision in the risk management plan. OSHA is seeking comment on this approach including whether a final standard should incorporate a particular consensus standard or other guidance, or otherwise include specific requirements regarding infection control.

(g)–1. OSHA is seeking input and data on whether the proposed rule's requirements for medical evaluations are an appropriate minimum screening. Should the minimum screening include more or fewer elements, and if so, what elements? Provide supporting documentation and data that might establish the appropriate minimum

screening. OSHA is also seeking additional data and information on the feasibility of the proposed medical evaluation and surveillance requirements for WEREs and ESOs.

(g)–2. OSHA is seeking input on whether an action level of 15 exposures to combustion products within a year is too high, too low, or an appropriate threshold. OSHA is also considering action levels of 5, 10, or 30 exposures a year as alternatives and is seeking public input on what action level would be appropriate. Provide supporting documentation and data that would help with identifying an appropriate action level.

(g)–3. OSHA is seeking input on whether the additional medical surveillance proposed in paragraph (g)(3) should be extended to include WEREs and team members.

(g)–4. OSHA is seeking input and data on whether stakeholders support the proposed fitness for duty requirements or whether the requirements pose a burden on or raise concerns for team members, responders, WEREs or ESOs. Commenters should provide explanation and supporting information for their position.

(g)–5. OSHA is seeking input on whether the health and fitness program in proposed paragraph (g)(6) should be extended to include WEREs and team members.

(g)–6. OSHA is seeking input on whether every three years is an appropriate length of time for fitness re-evaluation, and if not, what period of time would be appropriate. The agency is seeking any available data to support an alternative length of time between evaluations.

(h)–1. OSHA is seeking stakeholder input and data regarding the appropriate methods and interval(s) for skills checks, as it relates to proposed paragraph (h)(3).

(i)–1. OSHA is seeking input regarding what WEREs are currently doing for decontamination, disinfection, cleaning, and storage of PPE and equipment, and whether OSHA should include any additional requirements for these processes in a final standard.

(j)–1. OSHA is seeking input on whether the agency should consider prohibiting the installation of fire poles in new ESO facilities.

(j)–2. OSHA is seeking input on whether ESO facilities with sleeping facilities should be protected by automatic sprinkler systems, as proposed in paragraph (j)(2)(ii).

(k)–1. OSHA is seeking input on whether the agency should specify retirement age(s) for PPE.

(k)–2. OSHA is seeking input regarding whether and how WEREs and ESOs currently provide separation and distinction of PPE and non-PPE equipment that have not undergone gross decontamination.

(k)–3. OSHA is seeking information on whether there is evidence of per- and polyfluoroalkyl substances (PFAS) in PPE causing health issues for team members and responders.

(k)–4. OSHA is seeking input on whether the scheduled updates to NFPA 1971 will address or alleviate stakeholder's concerns about PFAS in PPE.

(l)–1. OSHA is seeking information on whether there are any other situations or vehicles where OSHA should require, or exclude, the use of seat belts and vehicle harnesses. If so, please explain.

(l)–2. OSHA is seeking input on how compliance with (l)(2)(iii) would be achieved in situations where PPE must be donned enroute to an incident. Would the team members or responders stop enroute or wait until arrival at the scene?

(l)–3. OSHA is seeking input on whether it should also require that patients be restrained during transport to prevent an unrestrained patient from being thrown into a team member or responder in the event of a vehicle collision or an evasive driving maneuver.

(o)–1. OSHA is seeking input about WERE and ESO current use of an IMS, whether the NIMS and NRF were used as guidance for the IMS, and if there are any concerns with being compatible with NIMS.

(o)–2. OSHA is seeking input on which aspects of an IMS are the most effective and the least effective in protecting the safety and health of team members and responders. Commenters should explain how and why certain IMS components are or are not effective.

(p)–1. OSHA is seeking stakeholder input on current practices for identifying and communicating the various control zone boundaries. What marking methods are used? How are they communicated to team members and responders? Do the marking methods help or hinder on-scene operations?

(q)–1. OSHA seeks input on whether the agency should include requirements for Standard Operating Procedures (SOPs) regarding protections against workplace violence for team members and responders, and for any data or documentation to support or refute potential requirements. OSHA notes that its regulatory agenda includes a separate rulemaking addressing workplace violence against health care workers. While OSHA has not published a proposed rule in that rulemaking, OSHA welcomes comments on whether violence against emergency responders should be addressed in a potential Emergency Response final rule in addition to that Workplace Violence rulemaking, instead of in that rulemaking, or primarily in that other rulemaking.

(r)–1. OSHA is considering adding a requirement to permit team members, responders, and their representative to be involved in the review and evaluation of the relevant plans as part of the Post-Incident Analysis and would like stakeholder input on whether to add this requirement.

D. Additional Issues

I. Aligned Organizations

The scope of the proposed rule focuses on employers whose employees respond to emergency incidents to mitigate the incidents. OSHA believes that some employees of aligned employers face similar hazards to those who mitigate incidents. For instance, while some jurisdictions have their own fire investigators as part of the fire department, many more depend on State Fire Marshal's office employees to respond to incident scenes to conduct fire investigations. However, these agencies may not provide a firefighting service. Similarly, many jurisdictions have instructors and training facilities directly within the emergency service organization. However, many more depend on other organizations for training such private entities or State-run training centers that do not perform incident mitigation. Nonetheless, these employees face similar hazards while providing training such as exposure to combustion products, and technical rescue scenarios such as confined spaces, trenches, high angle rope rescue, and swift water. OSHA seeks input and supporting arguments on whether these types of aligned employers should be included within the scope of this rulemaking.

II. Portable Fire Extinguishers

OSHA's current standard, 29 CFR 1910.157, Portable Fire Extinguishers, is based on the 1978 edition of NFPA 10, Standard for Portable Fire Extinguisher, and was last updated more than 20 years ago. OSHA's current standard does not include Class K extinguishers or wet chemical agents. Because Class K extinguishers are provided by employers, and the proposed rule would require employers to provide training for team members and responders on all portable fire extinguishers in the

workplace, OSHA is proposing to update the standard to include Class K portable extinguishers and wet chemical agents. OSHA is seeking stakeholder input and data regarding whether the agency should consider updating the standard to improve consistency with a version of the national consensus standard, NFPA 10, Standard for Portable Fire Extinguishers, that is current when the final rule is being developed.

III. Heat

OSHA is in the preliminary stages of developing a proposed rule for *Heat Illness Prevention in Outdoor and Indoor Work Settings* (for additional information, see *https://www.osha.gov/heat-exposure/rulemaking*). OSHA recognizes that emergency response workers must perform their duties regardless of the outdoor environmental conditions. However, some activities, such as exercising for physical fitness and vocational training could be modified based on external temperatures. OSHA is seeking stakeholder input and supporting documentation on whether it should include requirements for operating in external environments with elevated temperature in situations that are not emergency incidents.

IV. Consensus Standards

OSHA is seeking input on the potential impacts of incorporating by reference of various NFPA standards, and how equivalency or consistency could be achieved if the NFPA standards were not incorporated by reference.

OSHA recognizes that organizations such as the National Wildfire Coordinating Group (NCWG) develop standards applicable to their member organizations, and other organizations who perform wildland firefighting services. OSHA seeks input on whether standards such as those developed by NWCG should be considered equivalent to various provisions in the proposed rule; particularly those related to policies and procedures, personal protective equipment, and medical evaluation and surveillance requirements. Are there standards for other ''specialty or non-structural'' types of firefighting that OSHA should consider? Commenters should provide supporting data, documents, and side-by-side comparison.

V. Timeline for Compliance

OSHA expects that some stakeholders may have concerns about the timeline for compliance when the final rule is published. Unless the agency delays compliance, compliance obligations begin on the effective date of a final rule: 60 days after publication of the final rule. However, OSHA often allows regulated parties additional time to come into compliance with certain provisions of a standard that would require additional resources. Many of the provisions in the proposed rule are based on or consistent with current NFPA standards, which are considered to be the industry best practices for emergency services. As such, OSHA believes that most WEREs and ESOs that already meet the NFPA standards are likely to be close to complying with, or already compliant with, many provisions of the proposed rule.

OSHA recognizes that some provisions can be implemented quickly, while others might take more time to phase in. So, the agency is proposing the following timelines for compliance with the specified paragraphs (the time period indicates the number of months past the rule's effective date when compliance would be required):

—(c) and (d)—6 months
—(e)—2 months
—(f)—6 months
—(g)(1), (4)—6 months
—(g)(2), (3), (5), (6)—12 months
—(h)(1)—12 months
—(h)(2) (3)—24 months
—(i) and (j)—24 months
—(k)(1)—12 months
—(k)(2)(i), (vii) through (x), (k)(3)—6 months
—(k)(2)(ii) through (vi)—24 months
—(l) through (q), and (s)—12 months
—(r)—6 months

OSHA is open to considering alternative compliance dates for the proposed standard and seeks input on what reasonable implementation periods would be for specific provisions and why. The agency is also interested if extended compliance timelines would be particularly helpful to small and/or volunteer organizations as a way of mitigating the impact of the rulemaking.

V. Summary and Explanation of the Proposed Rule

The following discussion, which tracks the proposed rule paragraph by paragraph, summarizes the proposed rule's requirements and explains how and why OSHA determined what those requirements would be. This section covers the comments received in response to the 2007 RFI, public input from the stakeholder meetings held in 2014, comments from the NACOSH subcommittee members, small entity representative comments as part of the 2021 SBREFA process, and research conducted by OSHA. References in parentheses are to exhibits in the rulemaking record, as noted in the *Docket* paragraph above in **ADDRESSES**. These references are not meant to be exhaustive but are examples of sources that are relevant to the statements made in the preamble discussion.

As noted in section II., *Background,* earlier in this preamble, section 6(b)(8) of the OSH Act requires OSHA to adopt existing consensus standards or explain why a rule which deviates substantially from a pertinent national consensus standard better effectuates the purposes of the Act. In most cases the proposed standard is aligned with the language of a national consensus standard, and the *Summary and Explanation* so indicates. While OSHA intends to incorporate by reference some portions of several different consensus standards, it has preliminarily determined that in some cases deviating from pertinent consensus standards will better effectuate the purposes of the Act.

In the RFI, OSHA solicited input regarding the types of emergency response activities, emergency responders (called team members and responders in the proposed rule), and organizations that should be covered by a potential rule. Firefighting, pre-hospital emergency medical service, and technical rescue were offered in the RFI as examples of activities for discussion.

Team members and responders deal with a wide range of emergency events. To them, some events are routine or commonly encountered, while others are rarely seen. OSHA recognizes that team members and responders encounter ''routine'' emergencies to the extent that they become commonplace occurrences. Many fewer team members and responders encounter rare events. The broad range of emergency events is overwhelming, and it would be a daunting, if not impossible, task to list them all. Several respondents to the RFI offered examples of common events, while others questioned what constitutes a rare event. Given the vast differences in emergency response organizations across the country, a rare event for a small community or small plant or facility might be a common occurrence in a larger one.

There were 39 respondents to the RFI who offered an opinion on the range of emergency events that should be regulated by OSHA. For example, the Texas Industrial Emergency Services Board (Document ID 0044) wrote that ''all types of emergency incidents (an 'all hazards' approach) should be considered by OSHA for appropriate agency action.'' The International Association of Fire Fighters (Document ID 0060) stated that ''no incident types

or responding activities should be excluded. Emergency response agencies must not only be prepared for mitigating emergency incidents in their jurisdictions, but must be prepared, before and during the event to ensure the health and safety of their employees is protected.'' Overall, many of the respondents were in favor of an ''all-hazards'' approach (Document ID 0011; 0018; 0024; 0027; 0028; 0037; 0039; 0040; 0041; 0044; 0046; 0047; 0048; 0049; 0050; 0052; 0053; 0059; 0060; 0063; 0065; 0069; 0071; 0072; 0073; 0074; 0078; 0080; 0082; 0083; 0085). The agency agrees with these commenters and has preliminarily determined that the safety and health of emergency responders needs to be protected in all types of emergency events. Accordingly, the proposed rule takes an all-hazards approach.

A. Section 1910.120 Hazardous Waste Operations and Emergency Response

OSHA is proposing to update 29 CFR 1910.120(q)(3)(iii) to reflect the revised paragraph for PPE requirements in the proposed rule. The proposed rule would also revise appendix B to § 1910.120 to replace the existing reference to three outdated consensus standards in the Note to Part B, section IV, with the current national consensus standard, NFPA 1990—Standard for Protective Ensembles for Hazardous Materials and CBRN Operations, 2022 ed.

B. Section 1910.134 Respiratory Protection

The proposed rulemaking essentially moves the Respiratory Protection for Structural Firefighting requirements from 29 CFR 1910.134(g)(4) to proposed § 1910.156. This move will help stakeholders by incorporating these requirements related to firefighting into one standard; the proposed rule. The proposed revision would delete the requirement and replace it with a referral to the proposed rule.

C. Section 1910.155 Scope, Application and Definitions Applicable to This Subpart

Definitions for terms in subpart L-Fire Protection are provided in 29 CFR 1910.155. Terms used in the proposed rule are defined therein. The new terms proposed coincide with the updates to other subpart L standards proposed herein and are consistent with those recognized within the industry. OSHA is proposing to add the following definitions:

Class K fire means a fire in a cooking appliance involving animal oils, vegetable oils, or fats.

Clean agent means an extinguishing agent that is odorless, colorless, electrically non-conducive, and leaves no residue.

Halogenated agent means a liquified gas extinguishing agent that chemically interrupts the combustion reaction between the fuel and oxygen to extinguish fires.

Wet chemical means an aqueous solution of organic or inorganic salts, or a combination thereof, that forms an extinguishing agent.

Wetting agent means a concentrate mixed with water that reduces the surface tension of the water which increases its ability to spread and penetrate, thus extending the efficiency of the watering extinguishing fires.

OSHA is also proposing to delete from 29 CFR 1910.155 definitions needed for terms used in the current Fire Brigades standard but not used in the proposed rule. The definitions proposed to be removed are those for *Afterflame, Buddy-breathing device, Enclosed structure, Fire brigade, Flame resistance, Helmet, Lining, Outer shell, Positive-pressure breathing apparatus, Quick disconnect valve,* and *Vapor barrier.* These terms are not used in any other subpart L standards.

D. Section 1910.156 Emergency Response

Paragraph (a) Scope

Proposed paragraph (a) establishes the scope of general industry employers that would be covered by the proposed rule. The proposed rule would not include employers engaged in activities and operations regulated by OSHA's construction, maritime, and agriculture standards. The existing Fire Brigades standard, 29 CFR 1910.156, applies to employers in general industry that have or establish ''fire brigades, industrial fire departments, and private or contractual type fire departments'' (29 CFR 1910.156 (a)(2)). The scope of the proposed rule is larger, expanding beyond employers who provide only firefighting services to include employers that provide other emergency services, such as pre-hospital EMS and technical search and rescue services. In addition, the proposed rule would impact public and municipal fire departments and other emergency response employers in States with OSHA-approved State Plans, as explained in section VIII.G., *Requirements for States with OSHA Approved State Plans.*

Proposed paragraph (a)(1)(i) provides that the proposed rule would apply to employers that have a workplace emergency response team as defined in paragraph (b) of this section. The employees on the team, as a collateral duty to their regular daily work assignments, respond to emergency incidents to provide services such as firefighting, emergency medical service, and technical search and rescue. For the purposes of this section, this type of employer is called a *Workplace Emergency Response Employer* (WERE), the team is called a *Workplace Emergency Response Team* (WERT), and the employees assigned to the team are called *team members.*

Proposed paragraph (a)(1)(ii) provides that the proposed rule would also apply to employers that are emergency service organizations as defined in paragraph (b) of this section, namely those that provide one or more of the following emergency services as a primary function: firefighting, EMS, and technical search and rescue; or the employees perform emergency service(s) as a primary duty for the employer. For the purposes of this section, this type of employer is called an *Emergency Service Organization* (ESO), and the employees and members are called *responders.* The term ESO encompasses entities who pay their employees, entities with volunteers, and entities whose members are a combination of paid and volunteer. Similarly, OSHA uses the term responders to encompass both those who are paid employees of an ESO and those who are volunteer members of an ESO.

I. Coverage of Volunteers

OSHA recognizes that many emergency responders, particularly firefighters and EMTs, are referred to as ''volunteers.'' The OSH Act applies to employers who have employees, 29 U.S.C. 652(5), and does not cover true volunteers. However, workers who are labeled as volunteers actually are occasionally considered employees under Federal law because they receive a certain amount of compensation, which may be money or other types of remuneration (see Section III. *Pertinent Legal Authority*). Therefore, any emergency responders who are referred to as volunteers but receive ''significant remuneration'' within the meaning of Federal law would be included within the scope of this proposed rule as employees. OSHA believes that volunteer emergency responders rarely receive compensation substantial enough to render them employees under this ''significant remuneration'' test and thus OSHA does not expect that many emergency responders will fall into this category. Additionally, OSHA notes that nothing in this rulemaking will in any way alter the existing requirements of

Federal law on this issue. Accordingly, all volunteer emergency responders who are currently excluded from coverage under the OSH Act should expect that they will continue to be excluded from the scope of this rulemaking.

OSHA also recognizes that among the States with OSHA-approved State Plans there is variability as to whether volunteer emergency responders are classified as employees under state law. Regardless of state law, should there be any ''volunteers'' who receive ''significant remuneration'' such that they would be considered employees under Federal law (see Section III. *Pertinent Legal Authority,* B. Coverage), State Plans would be required to cover those employees as part of their obligation to promulgate a standard ''at least as effective'' as the Federal standard. 29 U.S.C. 667(c)(2).

In addition, some States with OSHA-approved State Plans regard volunteer firefighters and other volunteers as employees under state law. See, *e.g.,* A.R.S. 23–901(6)(d)(2021) (in Arizona, firefighters, police, and other emergency management personnel who are volunteers are regarded as employees). Regardless of whether these volunteers are considered employees under Federal law, such States must treat them as it does other emergency response workers under its analogue to any final standard resulting from this rulemaking. *Cf.* Letter from John A. Pendergrass, Assistant Secretary of Labor for Occupational Safety and Health, to Rep. Hamilton Fish, May 4, 1988 (if a State with an OSHA-approved State Plan regards volunteer firefighters as employees, it must apply its fire brigade standard to them).

In Question (a)–1, OSHA seeks information about how many private-sector emergency response organizations in States without State Plans (Federal OSHA States) have workers who are called volunteers but who receive substantial benefits, such as a retirement pension, life and/or disability insurance, death benefits, or medical benefits. How many such workers do these organizations have and of what type(s) (fire, EMS, technical rescue)?

In Question (a)–2, OSHA seeks information about which States with OSHA-approved State Plans expressly cover volunteer emergency responders. In those States, how many emergency response organizations have volunteers? How many volunteers do they have and of what type(s) (fire, EMS, technical rescue)?

In Question (a)–3, OSHA seeks information from States with OSHA-approved State Plans that do not expressly cover volunteer emergency responders. In those States, how many emergency response organizations have workers who are called volunteers but who receive substantial benefits, such as a retirement pension, life and/or disability insurance, death benefits, or medical benefits; and as such may be considered employees within the meaning of Federal law? How many such workers do these organizations have and of what type(s) (fire, EMS, technical rescue)? Additionally, OSHA seeks similar input regarding inmate/incarcerated workers.

II. Coverage of Employees Who Perform Emergency Services as a Collateral Duty

The existing Fire Brigades standard, 29 CFR 1910.156, does not differentiate between employers whose workers perform emergency services as their primary duty and employers whose primary business operation is not an emergency service but who have workers who perform emergency service as a collateral duty, and not as their primary duty. Likewise, the existing standard does not differentiate between primary duty emergency service employees and collateral duty emergency service employees.

While they are an important component in the overall community of emergency and first responders, the proposed rule would not apply to employees while engaged in law enforcement/crime prevention activities. The proposed rule would, however, apply to employers whose employees, in addition to performing law enforcement duties, also provide services such as firefighting, emergency medical service, or technical search and rescue. Employees engaged in these dual roles are sometimes known as Public Safety Officers, and the proposed rule would apply only with respect to when those employees provide services that do not qualify as law enforcement. For example, OSHA understands that many law enforcement employers have employees who are trained in some aspects of emergency medical care to attend to the public and fellow employees. They are excluded from the proposed rule when they arrive at an emergency scene to provide law enforcement duties such as traffic control or securing an area, but they would be covered by the rule if they then transport an injured person to a medical facility via a dedicated medical transport vehicle such as an ambulance or helicopter. Additionally, some employers have employees who are trained in the use of ropes for law enforcement, such as a tactical response team using rope for tactical access to above- or below-grade locations as part of a hostage rescue operation. These employees would not be covered by the proposed rule during the hostage rescue. They would, however, be covered when they are designated to provide rope rescue during non-law enforcement activities, such as helping to secure a person who is trapped on a scaffold.

III. WEREs and ESOs

During the SBREFA teleconferences, SERs commented that the employees of employers whose primary business is emergency response are exposed to more hazards more frequently than the employees of employers that are not in the business of providing emergency services but require their workers to perform emergency response activities as a collateral duty to their primary work assignments. There was consensus from the SERs that OSHA should have fewer and/or less stringent requirements for the latter employers because of the less frequent exposure of their employees to emergency response-related hazards and should clearly differentiate between the requirements for the two types of employers (Document ID 0115, p. 27). OSHA agrees and, to the extent appropriate, has provided separate requirements in the proposed rule.

To clearly distinguish between the two types of employers and employees, OSHA proposes to use different terms to refer to each type. The first term is ''Workplace Emergency Response Employer (WERE).'' This term applies to employers engaged in industries such as manufacturing, processing, and warehousing that have, or establish, a workplace emergency response team. As noted earlier, the employees on the team, as a collateral duty to their regular daily work assignments, respond to emergency incidents to provide service(s) such as firefighting, EMS, and technical search and rescue at the employer's facility. The team is called a ''Workplace Emergency Response Team (WERT),'' and the employees assigned to the team are called ''team members.''

The second term is ''Emergency Service Organization (ESO).'' This term applies to employers that provide emergency service(s) as a primary function of the organization, or the employees perform emergency service(s) as a primary duty for the employer. Examples include providers of emergency services such as firefighting, emergency medical service, and technical search and rescue. In the proposed rule, the employees and members of an ESO are called ''responders.''

IV. Search and Rescue: Technical v. Non-Technical

The proposed rule defines technical search and rescue as a type of service that utilizes special knowledge and skills and specialized equipment to resolve unique or complex search and rescue situations, such as rope rescue, vehicle/machinery rescue, structural collapse, trenches, and technical water rescue. OSHA anticipates the proposed rule would apply to WEREs and ESOs that provide such service, utilizing team members and responders who have the technical knowledge, skills, and abilities and are trained to perform and direct the designated technical rescue.

OSHA believes that *technical* level search and rescue means the WERT or ESO has specialized equipment and team members and responders who are trained to use the equipment and perform specialized tasks. OSHA consulted NFPA 2500, 2022 ed., Standard on Operations and Training for Technical Search and Rescue Incidents and Life Safety Rope and Equipment for Emergency Services, for guidance in using the technical level as the determining point for what types of search and rescue activities should be covered by the proposed rule. The scope of this proposed rule does not extend to employers that perform search and rescue at a lower-than-technical level. There is little evidence that the provisions of the proposed rule would reduce injuries and fatalities in organizations that only provide rescue services below the technical level.

OSHA is seeking input from the regulated community about how and where to draw the line between technical and non-technical search and rescue activities. As drafted, for example, the proposed rule encompasses rescue services such as swift water and underwater rescue as *technical.* On the other hand, while the agency is in no way demeaning the valuable services provided by emergency service providers such as pool lifeguards, OSHA preliminarily deems this type of service to be non-technical rescue and therefore is not intending to cover it under this proposed rule. This same distinction can be drawn with regard to other types of search and rescue which may be technical or non-technical, such as, for example, mountain and wilderness search and rescue, which could include ski patrols at recreational snow skiing and snowboarding facilities. Some mountain and wilderness search and rescue organizations may provide services that qualify as being technical, so are within the scope of the proposed rule, while those who do not provide a technical service are not within the scope. In Question (a)–4, OSHA is seeking input regarding what types and levels of search and rescue services and technical search and rescue services should be included or excluded from the rule, and the extent to which those inclusions or exclusions should be specifically listed.

V. Skilled Support Workers

As noted above, proposed paragraphs (a)(1)(i) and (ii) indicate that this section applies to WEREs and ESOs. There are no proposed provisions for other employers. There are, however, some provisions related to skilled support workers who work for other employers. Proposed paragraph (b) defines *skilled support worker* as an employee of an employer whose primary function is not as an emergency service provider and who is skilled in certain tasks or disciplines that can support a WERT or ESO. The proposed rule would require WEREs and ESOs to provide protection for skilled support workers who work for other employers but are performing duties in support of the WERE and ESO activities on the emergency incident scene. These skilled support workers would operate under the direction of the Incident Commander (IC) or the Unified Command (UC) as provided in proposed paragraph (p)(10) of this section.

For example, a WERT or ESO needs a backhoe and operator to dig through the rubble of a collapsed structure to complete extinguishment of fire but does not have a backhoe or operator. The WERT or ESO could arrange to use a backhoe and operator belonging to another employer. The backhoe operator would be considered a skilled support worker under the direction of the WERT's or ESO's IC, and thus within the scope of the proposed rule. But once the IC or the UC terminates the incident or the WERT or ESO leaves the location of the incident, the operator's activities would no longer fall under the scope of the proposed rule. Note that other standards might apply to the operator's work during this period; for example, if the operator were operating a crane, the crane standard would apply.

On a larger scale such as a disaster site, skilled support workers who operated under the direction and control of the WERE's or ESO's IC or the UC might remain at the location to participate in disaster site clean-up and recovery efforts. Once the emergency nature of the incident has ended, however, skilled support workers would no longer be working under the direction of the WERE or ESO and the proposed rule would no longer apply to them.

VI. Exclusions

Proposed paragraph (a)(2) ensures that employers are aware of activities that are not covered by the proposed rule. Paragraph (a)(2)(i) of the proposed rule explains that employers performing disaster site clean-up or recovery duties following natural disasters such as earthquakes, hurricanes, tornados, and floods and human-made disasters such as explosions and transportation incidents would be excluded from the requirements of this section after emergency response activities have terminated. OSHA intends it to be clear that the proposed rule would not apply to clean-up and recovery operations once the emergency nature of an incident has ended. OSHA is seeking input in Question (a)–5 whether or not the agency should consider developing a separate rule for protecting workers involved in the clean-up of disaster sites, and associated recovery efforts? Why or why not?

Proposed paragraph (a)(2)(ii) would specifically exclude activities covered by 29 CFR 1910.120 (Hazardous Waste Operations and Emergency Response (HAZWOPER)) and 29 CFR 1910.146 (Permit-Required Confined Spaces in General Industry). In addition, OSHA notes that there are a number of other general industry OSHA standards that impose requirements on employers concerning emergency-type or related services. These include 29 CFR 1910.38, Emergency action plans; 29 CFR 1910.157, Portable fire extinguishers; 29 CFR 1910.151, Medical services and first aid; 29 CFR 1910.119, Process safety management of highly hazardous chemicals; and 29 CFR 1910.272, Grain handling facilities. While employees are engaged solely in activities subject to one or more of these other OSHA standards, OSHA intends that the protections of those standards apply instead of the protections of the proposed rule. So, if an emergency response employer limits its activities exclusively to activities covered by those other standards, it may not be subject to any provisions of this proposed rule. OSHA notes, however, that most employers engaged in activities covered by those other standards are likely to also engage in other emergency response activities and would therefore need to comply with the proposed standard in order to prepare for and respond to covered emergency incidents.

OSHA's intent is to avoid additional burden or inflicting overlapping or conflicting requirements on an

employer who only performs the activities identified in this proposed provision. In Question (a)–6, OSHA is seeking input on whether the agency should consider excluding other activities besides those listed in paragraph (a)(2)(ii).

Paragraph (b) Definitions

Proposed paragraph (b) defines terms that are applicable to proposed 29 CFR 1910.156. OSHA drew from or based these definitions on other OSHA standards (*e.g.,* 29 CFR 1910.120 and 1910.134), FEMA's guidance ''National Incident Management System'' (NIMS), and NFPA national consensus standards. To facilitate compliance, OSHA is using terms that are familiar to the emergency response community, and thus relies heavily on definitions already in use in the community. However, some terms currently in use have multiple interpretations. OSHA is providing definitions in its proposed rule to clearly provide the agency's intended meaning of these terms. Additionally, OSHA is proposing to delete some definitions from existing 29 CFR 1910.155 because the terms are only used in existing 29 CFR 1910.156, which would be replaced by the proposed rule. Specific changes to 29 CFR 1910.155 are listed in the *Proposed Amendments.*

OSHA based several definitions in this paragraph on the following NFPA standards:

- NFPA 600, Standard on Facility Fire Brigades. 2020 Ed. (NFPA 600)
- NFPA 1500, Standard on Fire Department Occupational Safety, Health, and Wellness Program. 2021 Ed. (NFPA 1500)
- NFPA 1561, Standard on Emergency Service Incident Management System and Command Safety. 2020 Ed. (NFPA 1561)
- NFPA 1660, Standard for Emergency, Continuity, and Crisis Management: Preparedness, Response, and Recovery. 2024 Ed. (NFPA 1660)
- NFPA 2500, Standard on Operations and Training for Technical Search and Rescue Incidents and Life Safety Rope and Equipment for Emergency Services. 2022 Ed. (NFPA 2500)
- NFPA 1700, Guide for Structural Fire Fighting. 2021 Ed. (NFPA 1700)
- NFPA 1710, Standard for the Organization and Deployment of Fire Suppression Operations, Emergency Medical Operations, and Special Operations to the Public by Career Fire Departments. 2020 Ed. (NFPA 1710).

The following definitions apply to 29 CFR 1910.156:

Combustion product. The proposed rule defines this term as the heat, volatized liquids and solids, particulate matter (microscopic and small unburned particles), ash, and toxic gases released as a result of combustion (fire). OSHA based the definition on the term in NFPA 1700. Smoke is a visible indicator of the presence of combustion products; however, combustion products may be present without visible smoke. OSHA believes exposure to combustion products is a leading cause for many illnesses among team members and responders. Exposure to combustion products is a significant factor for Workplace Emergency Response Employers (WEREs) and Emergency Service Organizations (ESOs) in developing their Risk Management Plan and when determining what medical evaluation and surveillance is needed for team members and responders.

Community. The proposed rule defines this term as a state, region, municipality or portion thereof, such as a village, town, township, borough, city, county, or parish. This term and definition are used in conjunction with the term *community vulnerability assessment.* Community is a general term that is meant to encompass the geographic area where the ESO has a primary responsibility to provide emergency service(s); sometimes referred to as the *first due* area. OSHA recognizes that many ESOs are not limited by specific political boundaries to define their service community and that the community boundary between ESO facilities is often determined as the geographic midpoint between the ESO facilities, based on response times.

Community vulnerability assessment. The proposed rule defines this term as the process of identifying, quantifying, and prioritizing the potential and known vulnerabilities of the overall community that may require emergency service from the ESO, including the community's structures, inhabitants, infrastructure, organizations, and hazardous conditions or processes. The definition also indicates that the assessment is intended to include both human-created vulnerabilities and natural disasters. OSHA intends the assessment to be a systematic evaluation of the community to determine the impact that could be caused by potential emergency incidents, the severity of the impact, and the available or needed resources for mitigation. It would include risks and vulnerabilities associated with the prevailing residential structures and principal structures such as schools, colleges, and universities; hospitals and medical centers; large residential structures and hotels; transportation, manufacturing, processing, and warehousing facilities; and retail. It would also include an assessment of the community's critical infrastructure such as available water supply, electric power generation and transmission, routine and emergency communication, and highways and railways.

Control zone. The proposed rule defines this term as an area at an incident that is designated based upon safety and the degree of hazard to team members and responders. The definition also states that a control zone may be designated as cold, warm, hot, or no-entry. OSHA based the definitions on the terms in NFPA 1500. Control zones are used to establish what activities take place, what resources are available, and what PPE is required based on the zone. OSHA notes that control zones are not permanent areas for the duration of an incident. Zone boundaries are expected to change as the incident and environmental conditions dictate.

Cold zone. The proposed rule defines this term as the area immediately outside the boundary of the established warm zone where team members and responders are not exposed to dangerous areas or contaminants from fire, toxic chemicals, and carcinogens. The definition indicates that the cold zone typically contains the command post and such other support functions as are deemed necessary to control the incident and that it may also be known as the support zone.

Warm zone. The proposed rule defines this term as the area immediately outside the boundary of the hot zone that serves to transition to the cold zone. The definition indicates that the warm zone typically is where team member and responder and equipment decontamination and hot zone support take place and that it may also be known as the contamination reduction zone.

Hot zone. The proposed rule defines this term as the area including and immediately surrounding the physical location of a fire or other hazardous area, having a boundary that extends far enough away to protect team members and responders outside the hot zone from being directly exposed to the hazards present in the hot zone.

No-entry zone. The proposed rule defines this term as an area designated to keep out team members and responders, due to the presence of dangers such as imminent hazard(s), potential collapse, or the need to preserve the scene. This zone may contain hazards where PPE cannot provide protection; for example, the

presence of a downed energized electrical line or the potential collapse of a wall or roof. An area could be designated as a no-entry zone for team members and responders for other reasons, such as the need to preserve evidence for determining the cause and origin of a fire, to preserve evidence of a possible crime, or for accident/incident investigation.

Emergency Medical Service (EMS). The proposed rule defines this term as the provision of patient treatment, such as basic life support, advanced life support, and other pre-hospital procedures, and may include transportation to a medical facility. The definition also indicates that the term does not include the provision of first aid within the scope of 29 CFR 1910.151, Medical services and first aid. The definition is based on NFPA 1500. EMS covers a broad range of pre-hospital care that WEREs and ESOs may provide. Examples of EMS include Basic Life Support, First Responder, Emergency Medical Technician (EMT)–Basic, EMT-Intermediate, EMT-Advanced, Paramedic, and Flight/Transport Nurse. As part of the Emergency Response Program (ERP), WEREs and ESOs would identify the type(s) and level(s) of service they intend to provide. By excluding from the definition first aid within the scope of 29 CFR 1910.151, Medical services and first aid, the proposed rule would not apply to situations in which an employer utilizes employees or medical personnel to treat sick or injured workers strictly for compliance with § 1910.151.

Emergency Response Program (ERP). The proposed rule defines this term as a written program, developed by the WERE or ESO, to ensure that the WERE or ESO is prepared to safely respond to and operate at emergency incidents and non-emergency situations, and to provide for the occupational safety and health of team members and responders. The definition further states that the ERP shall be composed of at least the information and documents proposed to be required by this section. Additional specific requirements for the ERP are identified in paragraphs (c) and (d) of the proposed standard. The WERE and ESO would determine and include in the ERP what specifically would be best for their organization and for the health and safety of their team members and responders.

Emergency Service Organization (ESO). The proposed rule defines this term as an organization that provides one or more of the following emergency response services as a primary function: firefighting, emergency medical service, and technical search and rescue; or the employees perform emergency service(s) as a primary duty for the employer. Personnel (called responders in the proposed rule), as part of their regularly assigned duties, respond to emergency incidents to provide service such as firefighting, emergency medical service, and technical search and rescue. Additionally, the term ESO encompasses employers whose primary function is not as an emergency service provider but have employees whose primary duty for the employer is to perform emergency service(s); for example, refineries and manufacturing facilities with full-time fire departments and hospital-based emergency medical service and transport.

OSHA recognizes that ESOs may also be called upon to perform non-emergency services, defined below. The proposed definition goes on to clarify that the term would not include organizations solely engaged in law enforcement, crime prevention, facility security, or similar activities. As such, those organizations are excluded from the scope of the rule. However, organizations whose employees are cross-trained to provide fire, EMS, or technical search and rescue services covered by the scope of this proposed rule are included in the scope, but only for those activities covered by this proposed rule. In states with OSHA-approved State Plans, public sector employers, and volunteer organizations whose members the State deems to be employees, would be covered as ESOs under this proposed rule.

Facility. The proposed rule defines this term as a structure, including industrial, commercial, mercantile, warehouse, power plant (utility), assembly occupancy, institutional or similar occupancy, public, and private as well as for-profit, not-for-profit, and governmental location, structure, campus, compound, base, or similar establishment. This definition is consistent with the same term as defined in NFPA 600. For the proposed rule, OSHA is focused on those facilities that have a Workplace Emergency Response Team (WERT) or a dedicated ESO for the facility. This term and definition are used in conjunction with the term facility vulnerability assessment, discussed below. As defined, the term *Facility* may cover an individual structure or location and its associated property or a location with multiple related structures such as a campus, base, or multi-building manufacturing plant.

Facility vulnerability assessment. The proposed rule defines this term as the process of identifying, quantifying, and prioritizing the potential and known vulnerabilities of the entire facility, including the facility's structures and surrounding locations, inhabitants, infrastructure, and hazardous conditions or processes. A facility's vulnerable areas are those areas which are most susceptible to emergencies or disasters; the loss of which could severely impact the facility's operation, adversely affect the health and safety of employees, or cause potential damage to the environment. OSHA intends for the assessment to be a systematic evaluation of the facility to determine the impact that could be caused by potential emergency incidents, the severity of the impact, and the available or needed resources for mitigation. It would include risks and vulnerabilities associated with the principal structures; processing facilities; significant storage; hazardous materials and processes; critical infrastructure such as available water supply, electric power generation and transmission, and routine and emergency communication; and potential for damage to the environment.

Gross decontamination. The proposed rule defines this term as the initial phase of the decontamination process during which the surface contaminants and foreign materials on team member's or responder's skin, clothing, personal protective equipment (PPE), tools, and equipment are removed or significantly reduced, such as by brushing, rinsing, wiping, use of detergents, or use of personal hygiene wipes. The term is consistent with NFPA 1500. Gross decontamination is a preliminary exposure reduction method and is the first step in the decontamination process.

Immediately Dangerous to Life or Health (IDLH). The proposed rule defines this term as an atmosphere that poses an immediate threat to life, would cause irreversible adverse health effects, or would impair an individual's ability to escape from a dangerous atmosphere. OSHA drew the term and definition from 29 CFR 1910.134, Respiratory Protection.

Incident. The proposed rule defines this term as any situation to which a WERE or an ESO responds to perform services, such as firefighting; emergency medical service; technical search and rescue; other situations such as responses to downed electrical power lines, and outside propane or natural gas leaks. The term is based on NFPA 1561 and NIMS. Incidents may be the result of a natural or human-caused occurrence.

Incident action plan (IAP). The proposed rule defines this term as the

incident objectives, strategy, and tactics necessary to manage an incident. The definition further states that the IAP is developed at the incident site and provides essential information for actionable incident organization, work assignments, management of resources, risk management, and team member or responder safety when operating at an incident. This definition is consistent with NFPA 1500 and NIMS. The IAP is developed by the Incident Commander (IC) and updated as needed throughout the incident. Because the IAP includes the information ''necessary to manage the incident,'' the form and level of detail of the IAP is dependent on the needs of the situation. In the initial stage of an incident, the IAP may be a simple plan, based on incomplete situational information, and communicated orally to team members and responders. Small-scale incidents may not need a written IAP or may only need to use something such as a fillable form, a white/wipe-off board, or a magnetic incident board. For a larger, complex, or long-duration incident, a more comprehensive IAP would likely need to be developed.

Incident Commander (IC). The proposed rule defines this term as the team member or responder who fulfills the incident command function of the Incident Management System (IMS); who is responsible for the overall management of an incident and the safety of all team members or responders involved in the response; and who is responsible for all incident activities, including the development of strategies and tactics, the direction and control of all team members and responders at the incident, and the ordering and release of resources. This definition is consistent with NFPA 1710 and NIMS. Proposed paragraph (o)(3) provides further clarification of the responsibilities of the IC, including front line management of the incident, overall incident safety, and planning and execution of intended tactics, and proposed paragraph (p)(2) contains additional specific requirements related to emergency incident operations. Depending on the WERE's or ESO's IMS, the team member or responder who serves in the role of the IC may vary. For instance, in a single unit response, the senior or ranking team member or responder would typically fulfill the role of IC. In a multiple unit response, often the senior or ranking team member or responder on the first arriving unit might serve at the initial IC until a higher-ranking team member or responder assumes the role.

Incident Management System (IMS). The proposed rule defines this term as a system used for managing and directing incident scene operations and activities. The definition further states that the IMS includes establishing functions for managing incidents, describes the roles and responsibilities to be assumed by team members and responders, and standard operating procedures to be utilized. Incident command is a function of the IMS. The IMS would provide core concepts, principles, and terminology used by WEREs or ESOs, and provides for structure and coordination with other WEREs and ESOs for safely managing incidents.

Incident Safety Officer (ISO). The proposed rule defines this term as the team member or responder at an incident scene who is responsible for monitoring and assessing safety hazards and unsafe situations and for developing measures for ensuring team member and responder safety. This term is based on NFPA 1521 and is consistent with the definition of *safety officer* in NIMS and other NFPA standards. The ISO is typically a member of the command staff responsible for advising the IC or Unified Command (UC) on matters related to operational safety, and the health and safety of team members and responders. The ISO monitors incident operations and modifies or stops the action(s) being performed to prevent unsafe acts.

Incident scene. The proposed rule defines this term as the physical location where activities related to a specific incident are conducted. The definition goes on to state it includes nearby areas that are subject to incident-related hazards or used by the WERE or ESO for team members, responders, and equipment. The definition is consistent with NFPA 1561. Incident scenes can be divided into control zones, as defined in the proposed rule and discussed above, depending on the location and nature of the incident.

Living area. The proposed rule defines this term as the room(s) or area(s) of the ESO's facility where responders may cook, eat, relax, read, study, watch television, complete paperwork or data entry, and similar daily living activities. The definition includes the following examples: day rooms, kitchen/dining areas, classrooms, offices, and TV rooms. Sleeping areas are not included in this definition because they are defined separately. However, if any areas provided as examples of living spaces have a bed(s), such as a wall bed or ''Murphy'' bed, then it is considered a sleeping area. The definition also clarifies that areas such as maintenance shops, utility and storage areas, and interior vehicle parking bays are not considered living areas. OSHA is aware that some ESOs have areas that are available for use by the community, such as large reception and meeting halls used for private or community events which may include commercial/catering kitchens. Areas such as these would need to meet the same protective requirements as living areas. WEREs are not included in this proposed definition because OSHA believes that these types of areas are typically not provided in WERE facilities. In Question (b)–1, OSHA is seeking information and data from commenters on whether WEREs have similar areas for team members, and if so, whether WEREs should be included in this definition.

Mayday. The proposed rule defines this term as an emergency procedure term used to signal that a team member or responder is in distress, needs assistance and is unable to self-rescue; it is typically used when safety or life is in jeopardy. The term mayday comes from the French phrase ''venez m'aider'' meaning ''come help me.'' It is an internationally recognized radio term to signal distress, most frequently recognized as being used by the maritime and aviation industries. Use of the term by emergency services has become more prevalent with the expansive availability and use of portable radios. Examples of situations where the term *mayday* would apply include a lost or missing team member or responder, a Self-Contained Breathing Apparatus (SCBA) malfunction or loss of air, a team member or responder seriously injured or incapacitated, a team member or responder trapped or entangled, or any life-threatening situation that cannot be immediately resolved.

Mutual aid agreement. The proposed rule defines this term as a written agreement or contract between WEREs and ESOs, or between ESOs, that they will assist one another upon request by furnishing personnel, equipment, materials, expertise, or other associated services as specified. The definition is consistent with NFPA 1710 and NIMS. The purpose of establishing a mutual aid agreement(s) is to facilitate the rapid deployment of needed resources, typically viewed as an automatic reciprocal response. WEREs and ESOs may have previously referred to such agreements by other terms such as automatic aid or fire protection agreement. Mutual aid agreements ensure availability of sufficient resources to mitigate incidents that may not be possible by the WERE or ESO alone, or for when an incident occurs that the ESO or WERE does not have the

personnel, training, or equipment to mitigate.

Non-emergency service. The proposed rule defines this term as a situation where a WERT or ESO is called upon to provide a service that does not involve an immediate threat to health, life, or property, such as assisting law enforcement with tools, equipment, and scene lighting; removing people from a stuck elevator; resetting an accidentally activated fire alarm system; or assisting a mobility-challenged person downstairs during an elevator outage. OSHA recognizes that WERTs and ESOs are called upon to perform non-emergency services because of their knowledge, skills, abilities, and possession of the tools needed to perform the service. They may also be called upon to go to homes to check on the health or welfare of persons whom family members are unable to contact because they have forcible entry tools and can provide emergency medical treatment, if needed.

Personal protective equipment (PPE). The proposed rule defines this term as the clothing and equipment worn and utilized to prevent or minimize exposure to serious workplace injuries and illnesses. The proposed provision also lists examples including gloves, safety glasses and goggles, safety shoes and boots, earplugs and muffs, hard hats and helmets, respirators and SCBA, protective coats and pants, hoods, coveralls, vests, and full body suits. This definition is consistent with the definition and use of the term in 29 CFR part 1910, subpart I—Personal Protective Equipment. Additional examples of PPE that team members and responders might be required to use include wet suits, dry suits, personal floatation devices, and self-contained underwater breathing apparatus (SCUBA) used in technical water rescue. PPE is particularly important for team members and responders because other protective measures such as administrative and engineering controls are often not practical for emergency response activities.

Physician or other licensed health care professional (PLHCP). The proposed rule defines this term as an individual whose legally permitted scope of practice (*i.e.,* license, registration, or certification) allows the individual to independently provide, or be delegated the responsibility to provide, some or all of the health care services required by paragraph (g) of this section. OSHA drew the term and definition from 29 CFR 1910.134, Respiratory Protection. The provisions in the proposed rule that require a PLHCP have varying degrees of medical complexity. OSHA expects that PLHCPs would only perform services within their area of expertise, as well as their license or certification, and would make referrals to a higher level or different area of expertise, as appropriate.

Pre-incident plan (PIP). The proposed rule defines this term as a written document developed by gathering general and detailed data about a particular facility or location that is used by team members or responders in effectively and safely managing an emergency incident there. Specific requirements for WERE and ESO PIPs are set forth in paragraphs (m) and (n), respectively. A PIP is developed before an incident occurs and is intended to be used in the development of an IAP during an incident to aid in the safe mitigation of the incident. The term is consistent with NFPA 1660. The PIP provides crucial information to prepare WEREs and ESOs for emergency incidents and assists the IC with making informed decisions at the time of an emergency.

Rapid intervention crew (RIC). The proposed rule defines this term as a group of at least two (2) team members or responders dedicated solely to serve as a stand-by rescue team available for the immediate search and rescue of any missing, trapped, injured or unaccounted-for team member(s) or responder(s). This crew must be fully equipped with the appropriate PPE and rescue equipment needed based on the specifics of the operation that is underway as required by paragraph (q)(2)(viii) of the proposed rule. OSHA based the definition on NFPA 1500.

Responder. The proposed rule defines this term as an employee or member of an ESO who is, or will be, assigned to perform duties at emergency incidents. Some ESOs, especially those with volunteers, use the term *member* when referring to the people in their organizations. OSHA intends that the term *responder* in the proposed standard to be inclusive of both terms. Also, the term *responder,* as defined, excludes employees or volunteers who do not have emergency response duties, such as administrative staff who do not perform duties at emergency incident scenes. The proposed rule would not cover activities of these employees. Employees and members of public sector emergency response employers in states with OSHA-approved State Plans, who are regulated as employees by the State, are considered responders under this rulemaking.

Size-up. The proposed rule defines this term as the observation and evaluation of the influencing factors at an incident used to determine the scope of the incident and to develop strategic goals and tactical objectives. The definition is consistent with NFPA 1700. Many factors are involved in a size-up, beginning with the emergency dispatch center's receipt of information and the need for emergency service, the dispatch of the appropriate service(s) to an incident, to the relay of information received. Factors involved in a size-up vary depending on the type of incident (fire, EMS, technical rescue), but as discussed in the *Summary and Explanation* of paragraph (p), all size-ups need to include evaluation of the level of safety hazards to the person/people involved in the incident, bystanders, and team members and responders. Size-up is an ongoing process that includes a continuing evaluation of information received and observations made at the incident scene. Based on the size-up, strategy and tactics may change depending on whether the changing conditions of the incident are improving or deteriorating.

Skilled support worker (SSW). The proposed rule defines this term as an employee of an employer whose primary function is not as an emergency service provider and who is skilled in certain tasks or disciplines that can support a WERT or ESO. This definition is based on the description of skilled support personnel in 29 CFR 1910.120, HAZWOPER. SSWs are not limited to general industry employers. Examples of SSWs include operators of equipment such as heavy-duty wrecker/rotator tow vehicles, mechanized earth moving or digging equipment, crane and hoisting equipment, and others such as utility service workers (gas, water, electricity), public works workers, and technical experts. SSWs perform immediate support work that cannot reasonably be performed in a timely fashion by responders or team members, and who will be or may be exposed to the hazards at an emergency incident. The proposed rule does not include requirements for employers of SSWs. However, proposed paragraph (p) establishes requirements for WEREs and ESOs who utilize SSWs to provide for the safety of those SSWs.

Sleeping area. The proposed rule defines this term as designated room(s) or area(s) of the ESO's facility where responders sleep in beds. OSHA intends for this term to cover ESO's permanent facilities with room(s) or area(s) such as a dormitory, sleeping quarters, bunk room, or sack room. It includes rooms or areas with wall beds or ''Murphy'' beds. The term is not intended to apply to areas used temporarily for sleeping, such as tents or a community center used as a base camp in a wildfire

situation, training room with cots set up during inclement weather events, or a TV room with couches.

Standard operating procedure (SOP). The proposed rule defines this term as a written directive that establishes a course of action or administrative method to be followed routinely and explains what is expected of team members or responders in performing the prescribed action, duty, or task. OSHA based the definition on NFPA 1710. The definition is similar in concept with NIMS. Proposed paragraph (q) addresses requirements regarding SOPs.

Team member. The proposed rule defines this term as an employee of the WERE whose primary job duties are typically associated with the business of the WERE (*e.g.,* production, manufacturing, processing, warehousing, administration) and who is assigned to the WERT to perform certain designated duties at emergency incidents at the WERE facility. The definition further clarifies that emergency response is a collateral duty for team members. The term *team member* encompasses all employees who serve roles as part of the WERT in emergency operations, from the firefighter holding a hose to the facility engineer who, for example, closes a sprinkler valve at the direction of the IC, ensures the fire pump is operating properly, or adjusts the control switches for the heating/ventilating/air conditioning system to provide full exhaust of smoke.

Technical search and rescue/ Technical rescue. The proposed rule defines this term as a type of service that utilizes special knowledge and skills and specialized equipment to resolve complex search and rescue situations, such as rope, confined space, vehicle/machinery, structural collapse, trench, or technical water rescue. The definition is based on NFPA 2500. With respect to water rescue, OSHA specifically uses the term *technical* to specify that non-technical water rescue would be excluded from the proposed rule. Examples of non-technical water rescue include services such as pool and water-amusement park lifeguard services, lake and beach lifeguard services that only use non-mechanized equipment such as rescue boards, rescue buoys, rescue tubes and cans, and snorkeling equipment. Proposed paragraph (h)(2)(vii) addresses the required qualifications for technical search and rescue team members and responders.

Unified Command (UC). The proposed rule defines this term as a structure for managing an incident that allows for all agencies with jurisdictional responsibility for an incident, either geographical or functional, to manage an incident by establishing a common set of incident objectives and strategies. The definition is consistent with NFPA 1561 and NIMS. A UC is typically utilized when an incident is large and complex and involves multiple ESOs and agencies, such as a large-scale wildland fire or flash flood; a derailed passenger train or aircraft crash; or the collapse of a large, occupied structure. Other agencies involved may vary depending on the type, size, and location of the incident and could include agencies such as law enforcement, public works, utilities, Federal agencies such as FEMA and OSHA, non-governmental organizations, and others.

Workplace Emergency Response Employer (WERE). The proposed rule defines this term as an employer who has a workplace emergency response team; and whose employees on the team, as a collateral duty to their regular daily work assignments, respond to emergency incidents to provide service such as firefighting, emergency medical service, or technical search and rescue. WEREs are typically for-profit entities engaged in industries such as manufacturing, processing, and warehousing. They have a workplace emergency response team to respond to emergency incidents at the facility. Workers on the employer's emergency response team meet the definition of team member under this proposed rule. However, if an employer has workers who meet the definition of responder (providing emergency service(s) is their primary duty for the employer), then the employer is an ESO, not a WERE.

Workplace Emergency Response Team (WERT). The proposed rule defines this term as a group of employees (known as team members) who, as a collateral duty, prepare for and respond to emergency incidents in the WERE's workplace. This term, and variations of it, are currently in use in multiple industries, with varying degrees of application. OSHA is providing this proposed definition to clearly identify what it means by the term *WERT.* In the proposed rule, team members are workers who would typically be engaged in an activity related to the employer's primary business function and leave that position when alerted to an emergency requiring the worker's service as a WERT team member. OSHA believes that various terms previously used, such as industrial or facility fire brigade or fire department; emergency response team; fire team; and plant emergency organization are confusing to many employers. The terms have often been used interchangeably by various entities. In the proposed rule, OSHA clearly differentiates the types of emergency response entities by using and defining the terms WERE, WERT, and ESO. OSHA recognizes that WEREs may also be called upon to perform non-emergency services, defined above.

Paragraph (c) Organization of the WERT, and Establishment of the ERP and Emergency Service(s) Capability

As noted in the *Summary and Explanation* for proposed paragraph (a) Scope, the proposed rule would not apply to any employer that is not an Emergency Service Organization (ESO) and does not have a Workplace Emergency Response Team (WERT). Nothing in this proposed rule would require an employer to establish a WERT. Each employer makes the decision for itself, based on a risk assessment of its facility, about how emergency response services will be provided for its workers at its facility. Employers may choose to rely on emergency services available in the community where the facility is located. Community fire and EMS ESOs are available in varying capacities throughout the country. When an employer is considering how emergency response services will be provided at its facility, response time and community ESO availability may be a concern and should be a factor in the employer's decision. Additionally, employers should not assume that the local ESO is able to provide all types of services that may be needed at their facility. In particular, ESOs with technical rescue capabilities are not as widely available as fire and EMS ESOs.

Another option would be for the employer to establish a team of facility workers into a WERT to provide some, or all of the emergency services potentially needed at the facility. The establishment of the WERT could be a component of the employer's 29 CFR 1910.38 compliant emergency action plan, when required. For example, if the employer's facility risk assessment identified the need for technical rescue, but the community ESO provides only fire and EMS services, the employer could establish a WERT for technical rescue only. Or perhaps the risk assessment indicates a need for firefighting services because the facility is located a long distance from the community ESO. To ensure an adequate response time, the employer could establish a WERT to provide the appropriate level of firefighting services at its facility. Under the proposed rule,

an employer who establishes a WERT is considered a Workplace Emergency Response Employer (WERE). If an employer chooses to establish a WERT, the requirements of the proposed standard would apply.

Paragraph (c) of the proposed rule sets forth the core responsibilities of WEREs. The purpose of the proposed rule is to reduce team member injuries and fatalities, and a primary means to achieve this intended purpose is to require WEREs to develop and implement an Emergency Response Program (ERP) that encompasses the rule's requirements. As discussed in the *Summary and Explanation* of paragraph (b), the proposed rule defines an ERP as a written program, developed by the WERE or ESO, to ensure that the WERE or ESO is prepared to safely respond to and operate at emergency incidents and non-emergency service situations, and to provide for the occupational safety and health of team members and responders. The ERP will assist WEREs in ensuring emergency preparedness and compliance with the rule. In developing an ERP, WEREs will be better prepared for emergency incidents by establishing emergency procedures that are maintained in a central plan that can be readily shared with and accessed by supervisors and employees. This will promote clear understanding and knowledge of the WERE's emergency procedures and better prepare the workplace for emergency incidents.

Paragraphs (c)(1) and (2) of the proposed rule would require the WERE to develop and implement a written ERP that provides protection for each of its employees designated to operate at an emergency incident. In the proposed rule, these designated workers are referred to as *team members.* The ERP would establish the existence of the WERT; the basic organizational structure of the WERT, such as management and leadership structure/chain-of-command, and the purpose of the WERT and duties and responsibilities of team members; and include how the WERE is addressing the provisions in the following paragraphs of the Proposed rule: (c), (e), (f), (g), (h), (i), (k), (l), (m), (o), (p), (q), (r), and (s). The ERP must include an up-to-date copy of all written plans and procedures, except for pre-incident plans (PIPs), required by this section. Hence, the ERP is a compilation of all documents required by the proposed rule, except for PIPs. The organizational structure would include how the WERT is managed and how it fits into the operation of the facility. Most written plans and procedures might only be updated annually, unless deficiencies are discovered. The ERP would be revised as these plans and procedures are updated. PIPs, on the other hand, have the potential to be developed or updated on a much more frequent basis, new versions must be provided to the WERT when updates are made, and the most recent versions must be available and accessible to team members and responders on incident scenes. As such, OSHA has preliminarily determined it is not necessary for PIPs to also be redundantly included in the ERP.

Proposed paragraph (c)(3) would require the WERE to conduct a vulnerability assessment of their facility for the purpose of establishing its emergency response capabilities and determining its ability to match the facility's vulnerabilities with available resources. The employer's facility risk assessment would have already determined whether there is a need or desire to establish a WERT to provide emergency services. Building on that risk assessment, this proposed paragraph would require a more in-depth assessment of the facility to determine specific vulnerabilities, such as workers who work at elevated locations or the use or storage of large quantities of flammable liquids; what resources are needed for mitigation, such as the tools or equipment needed to rescue a worker who is suspended after falling from an elevated location or specialized extinguishing agents for flammable liquids; and whether the resources are available at the facility and are sufficient for mitigating the identified vulnerabilities.

Paragraph (c)(4) of the proposed rule would require the WERE, as part of the facility vulnerability assessment, to identify each structure, process area, and other location where a PIP is needed. Proposed paragraph (m) provides additional information and proposed provisions for developing PIPs, which would be used by team members at emergency incidents as discussed further in proposed paragraph (p).

Under proposed paragraphs (c)(4)(i) and (ii), the facility vulnerability assessment would identify each vacant structure and location at the facility that is unsafe for team members to enter due to conditions such as previous fire damage, damage from natural disasters, and deterioration due to age and lack of upkeep; and would require the WERE to provide a means for notifying team members of the vacant structures and unsafe locations. Such vacant structures and locations are typically unsafe to enter under normal circumstances, and are even more dangerous during an emergency incident, particularly when on fire. Possible means of notification include installing a sign or painting a warning symbol on the wall adjacent to the entrance(s) that is visible to team members before they would enter the structure and blocking off an unsafe location. Also, the office responsible for alerting and communicating with team members (emergency dispatch center, safety office, security office) could maintain information on file for the vacant structure or unsafe location and could inform team members when an emergency incident occurs. The term vacant indicates that no person would be expected to be inside the structure. OSHA believes that team members should only enter the unsafe structure or location during an emergency incident in an attempt to perform a feasible rescue of a person or persons known to be inside.

Paragraph (c)(5) of the proposed rule would require the WERE to specify the resources needed, including personnel and equipment, for mitigation of emergency incidents identified in the facility vulnerability assessment. This is an important step in the process of determining what is needed to address an emergency incident at the facility in order to ensure that team members have the resources necessary to perform their duties safely and effectively.

In paragraphs (c)(6) and (7), the proposed rule would require the WERE to establish and document in the ERP, the type(s) and level(s) of emergency service it intends to perform, and establish tiers of team member responsibilities, qualifications, and capabilities for each of the type(s) and level(s). The concept of *type(s), level(s),* and *tiers* is used throughout the proposed rule. The WERE would use these terms consistently to determine how and to what extent various provisions of the proposed rule apply. For example, requirements for medical evaluations, training, and PPE may differ depending on the type(s), level(s), and tier(s) of service the WERT performs. The WERE would identify whatever tiers are appropriate to their organization.

The type(s) of service(s) might include firefighting, technical rescue, or EMS for example. For firefighting operations, examples of levels of service could be incipient stage, advanced exterior, interior structural, and both advanced exterior and interior firefighting. Tiers of team members could be trainee, incipient stage, advanced exterior, interior structural, and both advanced exterior and interior firefighter, team leader/officer, team manager/chief, or support.

For technical rescue type of operations, examples of levels of service could be rope rescue, vehicle/machinery rescue, structural collapse, trench rescue, and technical water rescue. Tiers of team members could be trainee, awareness, operation, technician, team leader/officer, team manager/chief, or support.

For EMS, level(s) of service could be, for example, Basic Life Support or Advanced Life Support, or another level of pre-hospital care such as aeronautical medical evacuation. As noted above, the proposed rule would not apply to employers who only provide first aid and first aid kits in accordance with 29 CFR 1910.151, Medical services and first aid. For tiers, positions such as trainee, Emergency Medical Responder (EMR), Emergency Medical Technician (EMT), Advanced EMT, Paramedic, Nurse, Physician, or support.

For the example support tier identified in proposed paragraph (c)(7), OSHA envisions that a team member in this tier would not perform any mitigation duties. Instead, this could be a building engineer who checks to make sure the fire pump is functioning properly while sprinklers are flowing, ensures that the smoke exhaust system is effectively exhausting smoke, or ensures sources of energy are locked out and tagged out during a technical rescue of an employee trapped in a machine. It could also be a cafeteria worker-team member designated to deliver and provide water and other refreshments at the incident scene, or an employee-team member designated to meet mutual aid WERTs or ESOs at the entrance gate and direct them to the location of the incident.

Proposed paragraph (c)(8) would require the WERE to identify, and document in the ERP, what emergency service(s) the WERE itself is unable to provide, and develop mutual aid agreements with other WEREs and ESOs, as necessary, or contract with an ESO(s), to ensure adequate resources are available to mitigate foreseeable incidents. For example, if a WERE identifies that its facility has tall structures that need an aerial ladder or elevated platform vehicle for firefighting or rescue, but its WERT does not have such a vehicle, the WERE would need to establish a mutual aid agreement with a neighboring WERE or ESO with an aerial ladder or elevated platform vehicle to provide it when needed. Another example is where a WERE has a permit-required confined space, but its WERT only performs firefighting. The WERE would need to establish a mutual aid agreement with a neighboring WERE or ESO, or contract an ESO, that provides confined space rescue services.

Proposed paragraph (c)(9) and (10) would require the WERE to keep for a minimum of five (5) years previous editions of ERP documents required by the proposed rule; notify team members of any changes to the ERP; and make the current ERP and previous editions available for inspection by team members, their representatives, and OSHA personnel. Ensuring that team members have knowledge of and access to the most up-to-date ERP documents is essential to ensuring those documents serve their purpose. The proposed retention and access requirements will also aid OSHA's enforcement and compliance activities. Availability of OSHA required documents is a long-standing requirement imposed by the agency in its standards and is carried forward from existing 29 CFR 1910.156(b)(1).

Paragraph (d) ESO Establishment of ERP and Emergency Service(s) Capability

Paragraph (d) of the proposed rule sets forth the ESO's responsibility to establish and implement an Emergency Response Program (ERP). As explained above in the *Summary and Explanation* for paragraph (c), the purpose of this rulemaking is to reduce responder injuries and fatalities, and a primary means to achieve this intended purpose is to require WEREs and ESOs to develop and implement an ERP that encompasses the rule's requirements. An ERP serves the same purpose for ESOs as it does for WEREs; that is, it promotes clear understanding and knowledge among responders of the ESO emergency procedures by maintaining those procedures in a central plan that can be readily shared with and accessed by supervisors and employees. This understanding and knowledge will aid compliance and ensure the protections of the rule will be realized.

Paragraphs (d)(1) and (2) of the proposed rule would require the ESO to develop and implement a written ERP that provides protection for each of its responders designated to operate at an emergency incident. The ERP would include the ESO's plans for how it will comply with each of the following paragraphs of the proposed rule: (d) through (h), (j) through (l), and (n) through (s). The ERP must include an up-to-date copy of all written plans and procedures, except for PIPs, required by this section. Hence, the ERP is a compilation of all documents required by the proposed rule, except for PIPs. Most written plans and procedures might only be updated annually, unless deficiencies are discovered. The ERP would be revised as these plans and procedures are updated. PIPs, on the other hand, have the potential to be developed or updated on a much more frequent basis, are specific to a particular location, and are required to be available and accessible to team members and responders on incident scenes. As such, OSHA has preliminarily determined it is not necessary for PIPs to also be redundantly included in the ERP.

Proposed paragraph (d)(3) would require that the ESO conduct a community or facility vulnerability assessment of hazards within the primary response area where the emergency service(s) it provides is/are expected to be performed. An in-depth assessment of the community or facility would determine specific vulnerabilities. The ESO would be able to determine what resources are available for mitigation, both within the ESO and from mutual aid WERTs and ESOs, and whether the available resources are sufficient for mitigating the identified vulnerabilities. OSHA believes that most stakeholders are familiar with the concept of primary response area, which may also be known by other terms such as the first-due area. It is the area in which the ESO would be the first in line to be the only emergency service dispatched for an incident requiring a single response vehicle, such as for a dumpster fire that is outside with no exposures, or a person with a minor injury in need of emergency medical attention. In other words, it is the area where the ESO is principally responsible for responding to emergency incidents.

In considering its primary response area, the ESO's assessment would include a systematic evaluation of the community it services to determine the impact that could be caused by potential emergency incidents, the severity of the impact, and the available or needed resources for mitigation. Such assessment would include risks and vulnerabilities associated with the prevailing residential structures; and principal structures such as schools, colleges, and universities; hospitals and medical centers; large residential structures and hotels; transportation, manufacturing, processing, and warehousing facilities; and retail. It would also include an assessment of the community's critical infrastructure such as available water supply, electric power generation and transmission, routine and emergency communication, and highways and railways. Natural features such as bodies of water, caves,

gorges, mountains, and cliffs would also need to be assessed.

As the note to proposed paragraph (d)(3) explains, an ESO whose primary response area is a community would assess the community it serves. An ESO whose primary response area is, for example: a manufacturing facility, a military facility, a research and development facility, or similar occupational facility or workplace, would assess that facility.

Paragraph (d)(4) of the proposed rule would require the ESO, as part of the community or facility vulnerability assessment, to identify each structure and other location where a PIP is needed. Proposed paragraph (m) provides additional information and proposed provisions for developing PIPs, which would be used by responders at emergency incidents as discussed further in proposed paragraph (p).

Proposed paragraphs (d)(4)(i) and (ii) would further require that the community or facility vulnerability assessment identify each vacant structure and location that is unsafe for responders to enter due to conditions such as previous fire damage, damage from natural disasters, and deterioration due to age and lack of upkeep; and would require the ESO to provide a means for notifying responders of the vacant structures and unsafe locations. Such vacant structures and locations are typically unsafe to enter under normal circumstances, and are even more dangerous during an emergency incident, particularly when on fire. Possible means of notification include installing a sign or painting a warning symbol on the wall adjacent to the entrance(s) that is visible to responders before they would enter the structure and blocking off an unsafe location. Also, the emergency dispatch center could maintain information on file for the vacant structure or unsafe location and could inform responders when an emergency incident occurs. The term vacant indicates that no person would be expected to be inside the structure. OSHA believes that responders should only enter an unsafe structure or location during an emergency incident in an attempt to perform a feasible rescue of a person or persons known to be inside.

Proposed paragraph (d)(5) would require that the ESO's community vulnerability assessment include all facilities within the ESO's service area that are subject to reporting requirements under 40 CFR part 355 pursuant to the Emergency Planning and Community Right-to-Know Act (EPCRA) (also referred to as the Superfund Amendments and Reauthorization Act of 1986 (SARA), 42 U.S.C. 11001 *et seq.*). The fact that these types of facilities are subject to reporting to the Local Emergency Planning Committee indicates that they are hazardous, either because the facility handles an ''extremely hazardous substance'' or because it has been designated for emergency planning purposes by the relevant state or tribal entity (see 40 CFR 355.10). Some of these facilities may have WERTs, in which case, the ESO could communicate with the WERT to discuss the likelihood of the need for mutual aid, and to obtain a copy of the PIP from the WERT. In the absence of a WERT-provided PIP, the ESO would need to develop its own PIP to ensure the ESO is sufficiently prepared to respond to incidents at the facilities as required by paragraph (n)(3) of this section.

Proposed paragraph (d)(6) would require the ESO to evaluate the resources needed, including personnel and equipment, for mitigation of emergency incidents identified in the community or facility vulnerability assessment. The provision would also require the ESO to establish in the ERP the type(s) and level(s) of service(s) it intends to perform. This is an important step in the process of determining what is needed to address an emergency incident in the community or at the facility and would help ensure that responders know what services they are expected to provide when an incident occurs and have the resources needed to perform those services.

In paragraph (d)(7), the proposed rule would require the ESO to establish tiers of responder responsibilities, qualifications, and capabilities for each of the type(s) and level(s). The concept of *type(s), level(s),* and *tiers* is used throughout the proposed rule. The ESO would use these terms consistently to determine how and to what extent various provisions of the proposed rule apply. For example, requirements for medical evaluations, training, and PPE may differ depending on the type(s), level(s), and tier(s) of service the ESO performs. The ESO would identify whatever tiers are appropriate to their organization. Typically, the ESO will already know what type(s) and level(s) of service it provides and may already have tiers of responders based on responder duties, training, qualifications, certifications, and responsibilities.

The type(s) of service(s) might include firefighting, technical rescue, or EMS for example. For firefighting type of operations, examples of levels of service could be structural, wildland, proximity, marine, and aerial. Tiers of responders could be trainee, basic firefighter, advanced firefighter, officer/crew leader, command officer, chief, pilot, fire police/traffic control, or support.

For technical rescue type of operations, examples of levels of service could be rope rescue, vehicle/machinery rescue, structural collapse, trench rescue, and technical water rescue. Tiers of responders could be awareness, operation, technician, crew leader/officer, or support.

For EMS, level(s) of service could be Basic Life Support or Advanced Life Support, or another level of pre-hospital care such as aeronautical medical evacuation. As noted above, the proposed rule would not apply to employers who only provide first aid and first aid kits in accordance with 29 CFR 1910.151, Medical services and first aid. For tiers, positions could be trainee, Emergency Medical Responder (EMR), Emergency Medical Technician (EMT), Advanced EMT, Paramedic, Nurse, Physician, EMS officer, chief, pilot, or support.

For the example support tier identified in proposed paragraph (d)(7), OSHA envisions that a responder in this tier would not perform any mitigation duties. Instead, this could be, for example, an auxiliary/associate responder responsible for providing canteen/refreshment services at incident scenes, a SCBA maintenance technician responsible for performing services at incident scenes, or vehicle maintenance technician responsible for servicing or refueling vehicles at incident scenes.

Under paragraph (d)(8) of the proposed rule, the ESO would be required to define the service(s) needed, based on paragraph (d)(4) of this section, that the ESO is unable to provide, and develop mutual aid agreements with WEREs or other ESOs as necessary to ensure adequate resources are available to safely mitigate foreseeable incidents. For example, if an ESO identifies that its community or facility has tall structures that need an aerial ladder or elevated platform vehicle for firefighting or rescue, but does not have such a vehicle, the ESO would need to establish a mutual aid agreement with a neighboring ESO with an aerial ladder or elevated platform vehicle to provide it when needed. Another example is an ESO that only provides EMS at the Basic Life Support level. The ESO would need to establish a mutual aid agreement with a neighboring ESO to provide EMS at the Advanced Life Support level to its primary response area.

Proposed paragraph (d)(9) and (10) would require the ESO to keep for a minimum of five (5) years previous editions of ERP documents required by the proposed rule; notify responders of any changes to the ERP; and make the current ERP, as well as previous editions, available for inspection by responders, their representatives, and OSHA personnel. Ensuring that responders have knowledge of and access to the most up-to-date ERP documents is essential to ensuring those documents serve their purpose. The proposed retention and access requirements will also aid OSHA's enforcement and compliance activities. Availability of OSHA required documents is a long-standing requirement imposed by the agency in its standards and is carried forward from existing 29 CFR 1910.156(b)(1).

Paragraph (e) Team Member and Responder Participation

To be effective, any safety and health program needs the meaningful participation of workers and their representatives. Similarly, for the Emergency Response Program (ERP) to be effective, team members and responders need to be involved in establishing, operating, evaluating, and improving the ERP.

Proposed paragraphs (e)(1) and (2) would require that the WERE and ESO establish and implement a process to involve team members and responders in developing and updating the ERP, in implementing and evaluating the ERP, and in the review and change process. Team members and responders have much to gain from a successful program and the most to lose if the program fails. They are often the most knowledgeable about potential hazards associated with their jobs. Participation by team members and responders allows them to identify steps to protect themselves. In addition, participation both enhances understanding and awareness of the ERP and increases the likelihood that team members and responders will consistently adhere to its requirements by creating a sense of ownership. In Question (e)–1, OSHA is considering adding to both paragraphs (e)(1) and (2) a requirement to permit employee representatives to be involved in the development and implementation of an ERP, and to paragraph (e)(4) a requirement to allow employee representatives to participate in walkaround inspections conducted by the WERT or ESO, along with team members and responders, and is seeking input from stakeholders on whether employee representative involvement should be added to this paragraph.

Under proposed paragraph (e)(3), the WERE and ESO would need to request input from team members and responders regarding modifications proposed by the WERE or ESO to their own facility(ies). Just as in the case of paragraphs (e)(1) and (2), team members and responders who routinely work in the facility are typically most familiar with the location where potential modifications are proposed and potentially in a good position to recognize how modifications could affect their health and safety in responding to emergencies. It could be that the modification is being proposed as a result of a complaint or a suggestion from those familiar with the area, so including them could help determine if the modification will improve protections during an incident.

Paragraph (e)(4) of the proposed rule would require the WERE and ESO to establish and implement a process to involve team members and responders in walkaround inspections conducted by the WERE or ESO, inspections conducted in response to health and safety concern(s) raised, and incident investigations at the WERE and ESO's own facility(ies). The inspections to which this paragraph refers include the safety and health inspections conducted to protect the workforce in general, and those conducted when a health or safety concern is identified, or in response to a complaint. The agency believes that inspections and incident investigations are most effective when they include managers and employees working together, since each bring different knowledge, understanding and perspectives to the inspection or investigation.

Proposed paragraphs (e)(5) and (6) would require the WERE and ESO to establish and implement a process to encourage team members and responders to report safety and health concerns, such as hazards, injuries, illnesses, near misses, and deficiencies in the ERP, and to respond to such reports in a reasonable period. Team members and responders are often best positioned to identify safety and health concerns and program shortcomings, such as emerging workplace hazards, close calls/near misses, and actual incidents. By encouraging reporting and following up promptly on all reports, WEREs and ESOs can address issues before an illness, injury, or fatality occurs. Examples of how the WERE and ESO can encourage team members and responders to report safety issues include making the reporting process as easy as possible, giving the option of reporting anonymously, assuring team members and responders that they will not face retaliation for reporting concerns and ensuring that no retaliation occurs, addressing concerns quickly, and seeking input from all team members and responders.

Proposed paragraph (e)(7) would require the WERE and ESO to establish and implement a process to post procedures for reporting safety and health concerns under paragraph (e)(5) of this section in a conspicuous place or places where notices to team members and responders are customarily posted. Examples of such places are bulletin boards and internal web pages. This requirement ensures that team members and responders know how to raise safety and health concerns and further serves to encourage involvement in the safety and health of the workplace.

Paragraph (f) WERE and ESO Risk Management Plan

Paragraph (f)(1) of this proposed rule would require WEREs and ESOs to develop and implement a written comprehensive risk management plan based on the type and level of service(s) that would be established in proposed paragraphs (c) and (d) of the proposed rule. The purpose of the proposed risk management plan is to ensure that risks to the team members' and responders' health and safety have been identified and evaluated, and a control plan has been developed and implemented by the WERE and ESO in a manner that mitigates or reduces the risk to a level that is as low as reasonably practicable. The minimum proposed provisions of the risk management plan are based on NFPA 1500, as recommended by several commenters in response to the RFI (Document ID 0072; 0074; 0078), and by SERs (Document ID 0115).

Proposed paragraphs (f)(1)(i)(A) through (F) provides further detail and would require the comprehensive risk management plan to cover, at a minimum, risks to team members and responders associated with activities at WERE and ESO facilities; training; vehicle operations (both emergency and non-emergency); operations at emergency incidents; non-emergency services and activities (*e.g.,* community outreach activities); and activities that lead to exposure to combustion products, carcinogens, and other incident-related health hazards. While these are the minimum areas to be covered, WEREs and ESOs would need to ensure all reasonably anticipated hazards are addressed in the risk management plan, regardless of whether it falls under a covered area identified in (f)(1)(i). In Question (f)-1, OSHA seeks input on whether other activities or subjects should be specifically

included in this list of minimum requirements for the risk management plan.

To provide a framework for the proposed requirements of the risk management plan for each of the covered areas identified in proposed paragraph (f)(1)(i), proposed paragraphs (f)(1)(ii)(A) through (E) would require the WERE and ESO to include, at a minimum, the following components: identification of actual and reasonably anticipated hazards; evaluation of the likelihood of occurrence of a given hazard and the severity of its potential consequences; establishment of priorities for action based upon a particular hazard's severity and likelihood of occurrence; risk control techniques for elimination or mitigation of potential hazards, and a plan for implementation of the most effective solutions; and a plan for post-incident evaluation of effectiveness of risk control techniques. If during a post-incident analysis conducted in accordance with paragraph (r) of the proposed rule, or during the ERP program evaluation conducted in accordance with paragraph (s) of the proposed rule, it is determined that the risk control techniques were not sufficient, the WERE and ESO would need to develop and implement improved risk control techniques. These new risk control techniques would then need to be documented in the risk management plan and, as required under paragraphs (c)(10) and (d)(10) of the proposed rule, communicated to all affected team members and responders.

In addition to the risks that would be identified and addressed in proposed paragraphs (f)(1)(i) and (ii), respectively, there are several other written components that would be needed as part of the overall risk management plan. Proposed paragraphs (f)(1)(iii)(A) through (D) would require the WERE and ESO to include, at a minimum, a PPE hazard assessment that meets the requirements of 29 CFR 1910.132(d); a respiratory protection program that meets the requirements of 29 CFR 1910.134; an infection control program that identifies, limits or prevents exposure of team members and responders to infectious and contagious diseases to the extent feasible; and a plan to protect team members and responders from bloodborne pathogens that meets the requirements of 29 CFR 1910.1030. OSHA does not currently have a standard on airborne infectious and contagious diseases. Rather than incorporating a consensus standard by reference, OSHA believes that allowing the infection control provision in (f)(1)(iii)(C) to be performance-based will give WEREs and ESOs the flexibility to design an infection control program that is tailored to their operations and facilities. WEREs and ESOs can reference consensus standards, such as NFPA 1581, 2022 ed., and OSHA, CDC, or other state and local guidance documents when creating and implementing the infection control program. In Question (f)–2, OSHA seeks comment on this approach including whether a final standard should incorporate a particular consensus standard or other guidance, or otherwise include specific requirements regarding infection control.

OSHA recognizes that there are extraordinary instances where a team member or responder would need to deviate from the ordinary procedures set out in the risk management plan to rescue a person in imminent peril. To accommodate these situations, proposed paragraph (f)(2) would require the WERE and ESO to include in the risk management plan a policy for extraordinary situations when a team member or responder, after making a risk assessment determination based on the team member or responder's training and experience, is permitted to attempt to rescue a person in imminent peril, potentially without benefit of, for example, PPE, tools, or equipment. A team member's or responder's decision to not use a risk control technique that has been identified in the risk management plan is to be made on a case-by-case basis and must have been prompted by legitimate and truly extenuating circumstances. These circumstances typically have a time constraint that would make it infeasible to implement the risk control technique and rescue a person in imminent peril. This proposed provision could allow, for example, an ambulance crew, without benefit of firefighting PPE, to perform a rescue of a person endangered by fire who would potentially sustain significant injury or death if they did not take immediate action.

Proposed paragraph (f)(3) would require the WERE and ESO to review the risk management plan when required by paragraph (r) or (s) of this section, but no less than annually, and update it as needed. Risks are dynamic and uncertain. Previously known risks may change, and new risks may develop that need to be addressed in the risk management plan. An annual review and update would ensure the risk management plan reflects the current situation for managing risks effectively, while proposed paragraphs (r) and (s) ensure that this review and update takes place upon occurrence of significant events or the discovery of deficiencies.

Paragraph (g) Medical and Physical Requirements

Emergency response is a physically demanding occupation. As discussed in section II.A., *Need for the Standard,* approximately half of all firefighter on-duty and line of duty deaths are due to cardiovascular events. Emergency response activities can place a tremendous strain on the cardiovascular system which can trigger a catastrophic cardiovascular event. This is especially true for team members and responders with pre-existing heart conditions which they may or may not be aware of. Emergency response activities often involve activities that increase the risk of team member and responder musculoskeletal injuries, *e.g.,* lifting and carrying heavy loads (equipment, PPE, victims, etc) in awkward positions, sustained use of equipment that may result in injuries related to repetitive motion, ergonomically unsafe cutting angles when safer approaches are unavailable, or vibration. Emergency response activities often occur in extreme environmental conditions that increase risks for heat or cold injury. Noise from sirens, alarms, and equipment motors can induce hearing loss especially if the noise exposure is occurring in situations where it may be concurrent with exposure to carbon monoxide or other substances known to have synergistic effects with noise on hearing loss especially as many responders may not use hearing protection devices out of concern for effective communication with others on scene.

Emergency response activities may also involve exposure to numerous toxic substances. Team members and responders may be exposed to combustion products produced by the fire they are responding to as well as from operation of their own equipment/apparatus, hazardous materials when material releases occur, and infectious diseases during emergency medical responses that may result in adverse health effects to team members and responders. Additionally, exposure to combustion products increases team members' and responders' risk of developing several different kinds of cancer. Finally, emergency response activities expose team members and responders to traumatic, emotionally charged events, and the impact of these events on responders' mental health is compounded by inadequate duration and quality of sleep due to unpredictable nature of calls which is exacerbated by frequently working back-to-back long shifts and excessive overtime especially in understaffed fire

departments. Mental health issues may be worsened by perceived stigma regarding use of mental health services.

Proposed paragraph (g) includes medical and physical requirements to address these hazards. The physical fitness and physical and mental medical requirements in paragraph (g) serve two purposes: (1) ensuring that responders are physically and mentally capable of performing their duties without injury to themselves or their fellow responders, and (2) identifying and addressing physical and mental health effects resulting from emergency response activities.

Most major emergency response organizations support medical evaluation of emergency responders. The International Association of Fire Fighters (IAFF) and International Association of Fire Chiefs (IAFC) include medical evaluation consistent with NFPA 1582 in their Joint Labor-Management Wellness-Fitness Initiative (Document ID 0127). The National Volunteer Fire Council (NVFC) recommends getting an annual physical in their Lavender Ribbon Report—Best Practices for Preventing Firefighter Cancer (Document ID 0129). The National Fallen Firefighter Foundation (NFFF) recommends medical physicals in their 16 Firefighter Life Safety Initiatives (Document ID 0127). Comprehensive medical evaluations are also recommended by NFPA in NFPA 600 and NFPA 1582 (Document ID 0133, 0118).

OSHA agrees with the industry consensus that medical evaluation and surveillance is necessary for team members and responders who perform emergency response duties. The agency has preliminarily determined that the medical and physical requirements in proposed paragraph (g) are essential elements of a standard for emergency responders because they ensure team member and responder fitness for duty and also serve as a means to monitor and address team member and responder exposures that cannot otherwise be eliminated due to the nature of emergency response activities. Fitness and medical surveillance requirements are a highly effective means of reducing work-related injuries, illnesses, and fatalities and improving the health of team members and responders.

NFPA 1582, Standard on Comprehensive Occupational Medical Program for Fire Departments, 2022 ed., contains provisions for an occupational medical program that is designed to reduce risks and provide for the health, safety, and effectiveness of fire fighters while performing emergency operations (Document ID 0118). It requires a comprehensive medical examination annually for fire fighters engaged in the full range of emergency response activities including firefighting, emergency medical response, HAZMAT response, and technical rescue. In response to the 2007 Emergency Response RFI, several commenters strongly supported consideration of the provisions in NFPA 1582 for the medical evaluation program (Document ID 0007, Att. 3; 0022, p. 10; 0024, p. 4; 0041, pp. 26–27; 0046, p. 11; 0047, p. 13; 0050, p. 14; 0060, pp. 17–18; 0078, p. 9; 0080, p. 4; 0083, p. 12; 0084, p. 1). During a NACOSH subcommittee meeting, Pat Morrison, a subcommittee member representing the IAFF, stated that requiring medical evaluations, ''is the single most important thing we can do'' with the proposed rule (Docket ID OSHA–2015–0019–0006, Tr. 22). The subcommittee members agreed that while a full NFPA 1582 compliant physical would provide optimal screening, such physicals are costly and should only be required for team members and responders expected to enter an IDLH environment. They also agreed that less extensive medical screening should be required for other team members and responders based on their duties. However, they were not able to agree on a recommendation of what those less extensive requirements should be (Docket ID OSHA–2015–0019–0006, Tr. 11–14).

During the 2021 SBREFA panel, many of the SERs expressed concern about the high cost of the medical exams and evaluations identified in the NFPA 1582 standard (Document ID 0115, p. 16). For example, Clarence E. ''Chip'' Jewell III, representing the Libertytown Volunteer Fire Department, submitted in post-panel comments that, ''Unfortunately, every fire department does not have the manpower or financial resources to fully implement NFPA 1582 and most likely would never be able to comply with mandatory regulations'' (Document ID 0109, p. 1). Many SERs were supportive of team members and responders receiving at least some medical screening and evaluation; however, SERs did not offer any clear indication of which medical screening tests should be retained and which were less crucial for maintaining a healthy workforce (Document ID 0115, p. 16).

OSHA recognizes that the medical surveillance required by NFPA 1582, Chapter 7, was intended specifically for fire fighters exposed to combustion products and not for all emergency responders. The provisions for medical screening and surveillance described below account for these concerns. The proposed baseline medical examination focuses on health hazards that are common to all team members and responders, with potential additional requirements based on the particular type and level of service(s) performed, while the proposed medical surveillance requiring a full NFPA 1582-compliant physical is reserved for those team members and responders exposed to combustion products above a specific action level. As explained in section VII.C., *Costs of Compliance,* OSHA expects that only structural and wildland firefighters will meet the threshold for the full NFPA 1582 requirements.

Proposed paragraph (g)(1)(i) would require that each WERE and ESO establish minimum medical requirements based on the type and level of service(s) established in paragraphs (c) and (d) of this section. The medical requirements in proposed paragraph (g) would differ based on the tiers of team members and responders established by each WERE or ESO in accordance with paragraphs (c)(7) and (d)(7), except for those in a support tier (see examples in the *Summary and Explanation* for paragraphs (c) and (d)) who are excluded from the requirements in paragraph (g) of this section. By tying the medical requirements to the type and level of service(s), proposed paragraph (g)(1)(i) requires the WERE or ESO to establish those requirements, and only those requirements, necessary to ensure the health and safety of team members or responders based on the duties they are expected to perform. This proposed provision allows the WERE and ESO flexibility so that team members and responders with less physically demanding duties or who are exposed to fewer hazards may be subject to less stringent medical requirements than team members and responders expected to perform more physically demanding duties or who are exposed to more or more frequent hazards during emergency response incidents.

Paragraph (g)(1)(ii) of the proposed rule would require that each WERE and ESO maintain confidential records for each team member and responder that includes duty restrictions based on medical evaluations; occupational illnesses and injuries; and exposures to combustion products, known or suspected toxic substances, infectious diseases, and other dangerous substances. OSHA is sensitive to concerns that the medical evaluation may divulge confidential information regarding a responder's medical condition or may otherwise divulge information that may adversely affect the responder. The proposed

requirements are intended to balance team member and responder privacy with the WERE's and ESO's need for personal medical information to identify and address occupational hazards by limiting the medical information obtained, as identified in proposed paragraph (g)(2), to the type of information necessary to assess a team member's or responder's ability to perform specific tasks based on their health and fitness ability. The use of such medical information is limited to identifying potential health effects or risks related to a team member's or responder's ability to perform emergency response activities. The WERE or ESO would be required to maintain the confidentiality of these medical records by storing them in a secure location with restricted access.

Proposed paragraph (g)(1)(iii) would require that each WERE and ESO ensure that medical records maintained under this paragraph are maintained and made available in accordance with 29 CFR 1910.1020, Access to employee exposure and medical records. These recordkeeping requirements are in accordance with section 8(c) of the OSH Act which authorizes the promulgation of regulations requiring an employer to make, keep and preserve, and make available, such records as the Secretary deems necessary or appropriate for the enforcement of this Act or for developing information regarding the causes and prevention of occupational accidents and illnesses. As explained in 29 CFR 1910.1020(a), access to personal medical records by employees, their representatives, and the Assistant Secretary is necessary to yield both direct and indirect improvements in the detection, treatment, and prevention of occupational disease. OSHA has preliminarily determined that maintenance of and access to the medical records required by this section will help ensure proper evaluation of the team member's or responder's health status, facilitate compliance, and assist the agency in enforcing the proposed standard.

Proposed paragraph (g)(2)(i) would require that each WERE and ESO establish a medical evaluation program for team members and responders, based on the type and level of service(s), and tiers of team members and responders established in paragraphs (c) and (d). The purpose of medical evaluations for team members and responders is to determine, where reasonably possible, if the individual can perform emergency response duties without experiencing adverse health effects and to determine the team member's and responder's fitness to use PPE appropriate to their designated duties. As one commenter to the 2007 Emergency Response RFI stated, ''[r]equirements should vary based upon the level of physical and mental activity required that must be performed'' (Document ID 0024, p. 4). Furthermore, another commenter stated that ''NFPA 1582 is not the appropriate standard for use by general industry'' since it was ''designed for municipal fire fighters'' (Document ID 0039, p. 15). Hence, as stated above, this proposed provision would allow the WERE and ESO flexibility to tailor its medical evaluation program so that team members and responders with less physically demanding duties or who are exposed to fewer hazards during emergency responses may have less stringent medical requirements than team members and responders expected to perform more physically demanding duties who are exposed to more or more frequent hazards. Additionally, each responder routinely exposed to combustion products at or above the threshold set forth in proposed paragraph (g)(3) would be afforded additional medical surveillance as described in that paragraph.

Paragraph (g)(2)(ii) of the proposed rule would require WEREs and ESOs to ensure that, prior to performing emergency response duties, each team member and responder is medically evaluated to determine fitness for duty by a physician or other licensed health care professional (PLHCP) at no cost to the team member or responder, in accordance with proposed paragraphs (g)(2)(iii) through (vi) of this section. Each responder who is exposed to combustion products above the action level would also need to be evaluated in accordance with proposed paragraph (g)(3) of this section. The proposed rule would require that medical examinations be made available by the WERE and ESO without cost to team members and responders (as required by section 6(b)(7) of the OSH Act), and at a reasonable time and place.

Paragraph (g)(2)(ii) and the related fitness for duty requirements in proposed paragraph (g)(5), discussed below, ensure each team member and responder is capable of performing their assigned job duties without injury to themselves or their fellow team members or responders. These requirements are consistent with OSHA's existing Fire Brigades standard, which requires employers to ensure that employees expected to perform interior structural firefighting ''are physically capable of performing duties which may be assigned to them during emergencies'' (29 CFR 1910.156(b)(2)). Current § 1910.156(b)(2) also specifies that the employer ''shall not permit employees with known heart disease, epilepsy, or emphysema, to participate in fire brigade emergency activities unless a physician's certificate of the employees' fitness to participate in such activities is provided.'' Other OSHA standards contain similar requirements. For example, the HAZWOPER standard requires employers to provide certain emergency responders with medical exams that include an evaluation of ''fitness for duty including the ability to wear any required PPE under conditions . . . that may be expected at the work site'' and ''the physician's recommended limitations upon the employee's assigned work'' (29 CFR 1910.120(f)(2) and (7)). Further, in all cases where respiratory protection is required, either by a substance-specific standard (see, *e.g.,* § 1910.1024(g)(1); 1910.1053(g)(1)) or by OSHA's general Respiratory Protection standard (id. § 1910.134), employees must be medically evaluated to determine their ability to wear a respirator (id. § 1910.134(e)(6)) and must pass a fit test (id. § 1910.134(f)(1)).

The term physician or other licensed health care professional (PLHCP), as defined in proposed paragraph (b), refers to individuals whose legal scope of practice allows them to provide, or be delegated responsibility to provide, some or all of the health care services required by the medical surveillance provisions. The determination of who qualifies as a PLHCP is based on state certification, which can vary from state-to-state. OSHA considers it appropriate to allow any professional to perform medical surveillance required by the standard when they are licensed by state law to do so. This proposed provision provides flexibility to the WERE and ESO while limiting cost and compliance burdens.

Proposed paragraphs (g)(2)(iii)(A) through (D) specifies elements that must be included in all medical evaluations, regardless of the type and level service(s) provided or tiers of team members and responders, to detect any physical or medical condition(s) that could adversely affect the team member's or responder's ability to safely perform the essential job functions. Each evaluation would include medical and work history with emphasis on symptoms of cardiac and respiratory disease; physical examination with emphasis on the cardiac, respiratory, and musculoskeletal systems; spirometry; an assessment of heart disease risk including blood pressure, cholesterol levels, and other relevant heart disease risk factors; and any other

tests deemed appropriate by the PLHCP. These medical evaluations are all included in NFPA 1582. Medical and work histories are an efficient and inexpensive means for collecting information that can aid in identifying individuals who are at risk because of hazardous exposures (WHO, 1996, Document ID 0119, p. 26). Information on present and past work exposures, medical illnesses, and symptoms can lead to the detection of diseases at early stages when preventive measures can be taken. Recording of symptoms would in some cases help to identify the onset of disease in the absence of abnormal tests.

OSHA is including spirometry as a baseline measurement so that decline in lung function can be assessed in subsequent evaluations if needed. In a study of emergency responders involved in the 2001 World Trade Center collapse response, a comparison of pre- and post-incident spirometry was able to demonstrate lung function decline, indicating the need for medical evaluation and ongoing surveillance (Aldrich et al., 2010, Document ID 0161, p. 791).

Special emphasis is placed on heart disease risk assessment due to the nature of emergency response duties and the associated physiological stress. Cardiac risks include but are not limited to physical exertion, exposure to asphyxiants and other products of combustion, noise, psychological stress, and heat (Soteriades et al., 2011, Document ID 0121, p. 202; Smith et al., 2016, Document ID 0120, p. 90). Roughly half of all firefighter on-duty and line of duty deaths (LODD) are the result of heart attacks (Fahey et al., 2022, Document ID 0122, p. 5; Kahn et al., 2015, Document ID 0162, p. 218; Soteriades et al., Docket ID 0121, p. 202).

Guidance from the American College of Cardiology (ACC)/American Heart Association (AHA) for heart disease risk assessment and prevention in the general population utilizes risk calculators to guide preventive recommendations (Arnett et al., 2019, Document ID 0124, p. e603). Well-known risk factors, such as blood pressure, elevated cholesterol levels, smoking or vaping, and diabetic status are used to calculate lifetime and/or 10-year atherosclerotic cardiovascular disease risk. Risk enhancers, such as metabolic syndrome and chronic kidney disease, and coronary artery calcium (CAC) measurement, are additional considerations for those whose risk remains uncertain. Risk-enhancing factors are reasonable to use to guide PLHCP screening decisions and preventive interventions.

As discussed in section II.A., *Need for the Standard,* emergency responders are routinely exposed to a wide variety of airborne respiratory hazards including gases, fumes, particulates, and infectious diseases. In addition, many emergency responders are routinely exposed to diesel exhaust both responding to emergency incidents and while in WERE and ESO facilities where vehicles are located.

The risks for musculoskeletal issues are further discussed in section II.A., *Need for the Standard,* which notes that the increased risk for musculoskeletal injury rates for emergency responders compared to all private industries varied by the type of emergency service provided, ranging from 1.7 times the reportable injury rates for private ambulance drivers to 4 times the reportable injury rates for EMS workers, with comparable rates among firefighters. Increased musculoskeletal injury rates for emergency responders is attributed to overexertion and strain associated with emergency response activities.

Due to the risk of sudden cardiovascular death from strenuous emergency response activities, paragraph (g)(2)(iv) of the proposed rule would require that each WERE and ESO provide additional screening of team members and responders as deemed appropriate by the PLHCP and at no cost to the team member or responder. The PLHCP has the option of ordering additional testing they deem appropriate based on individual signs or symptoms and clinical judgment. OSHA recognizes that this may result in increased cardiovascular screening of team members and responders beyond those recommended for the general population. This is consistent with NFPA 1582, sections 7.7.7.3.1 through 7.7.7.3.2, which recommends additional cardiovascular assessment at certain risk levels beyond authoritative guidance for general population screening recommended by the ACC/AHA and the United States Preventative Services Task Force (USPSTF) (USPSTF 2018, Document ID 0163, p. 2311; Arnett et al., 2019, Document ID 0124, p. e602). The cardiovascular risk assessment of team members and responders allows the medical provider the ability to focus further screening on only those team members and responders at highest risk of suffering a cardiac event while performing emergency response duties. OSHA has preliminarily determined that compliance with the proposed provision would reduce the risk of sudden death in team members and responders brought on by the stress of their emergency response duties.

These additional screenings may include a symptom-limiting exercise stress test with imaging of at least 12 Metabolic Equivalents (METs) as recommended in NFPA 1582, section 7.7.7.3.1.1, for the evaluation of those at intermediate risk of atherosclerotic cardiovascular disease (10 to < 20% calculated risk over the next 10 years), and those with metabolic syndrome, diabetes, or history of coronary artery disease. This is noted as a consideration for intermediate risk asymptomatic adults (class IIb) [5] by AHA/ACC as well (Greenland et al., 2010, Document ID 0125, p. e66). ACC/AHA also specifically addressed occupational screening in their 2002 Guideline Update for Exercise Testing in which exercise testing is a class IIb recommendation in asymptomatic individuals who work in occupations in which impairment might impact public safety (Gibbons et al., 2002, Document ID 0126, p. 1538).

NFPA 1582, section 7.7.6, also recommends a resting electrocardiogram at baseline and annually in those over age 40 or as clinically indicated. ACC/AHA considers resting to be reasonable for asymptomatic patient screening in those with diabetes or hypertension (class IIa) [6] and a consideration in those without diabetes or hypertension (class IIb) (Greenland et al., 2010, Document ID 0125, p. e66). This test may detect abnormalities such as left ventricular hypertrophy and arrythmias indicative of increased risk.

NFPA 1582, in the explanatory appendix section A.7.7.7.3.1.1, and ACC/AHA (Arnett et al., 2019, Document ID 0124, p. e613) both consistently mention CAC as a consideration for medical evaluation of emergency response personnel, although NFPA 1582 does not specify indications. Similarly, both organizations emphasize metabolic syndrome as a risk factor.

Additional medical screening might also be required for other medical conditions that are detected in the baseline examination, which may affect a responder's or team member's ability to perform their emergency response duties. If the PLHCP suspects a musculoskeletal injury or condition, they may require an x-ray or MRI to determine medical fitness for duty. For respiratory diseases, the PLHCP may require a complete pulmonary function test, exercise stress testing, or

[5] For ACC/AHA Class IIb medical conditions, the recommended procedure or treatment may be considered.

[6] For ACC/AHA Class IIa medical conditions, ACC/AHA considers it reasonable to perform the procedure or administer treatment.

methacholine challenge testing to determine medical fitness for duty.

As noted above, the proposed rule would require that all medical evaluations, regardless of type and level of service(s) provided or tiers of team members and responders, include a medical history, physical examination, spirometry, laboratory tests, and a cardiovascular disease risk assessment with additional screening as necessary. In Question (g)-1, OSHA is seeking input and data on whether the proposed rule's requirements are an appropriate minimum screening. Should the minimum screening include more or fewer elements, and if so, what elements? Provide supporting documentation and data that might establish the appropriate minimum screening. OSHA is also seeking additional data and information on the feasibility of the proposed medical evaluation and surveillance requirements for WEREs and ESOs.

The proposed rule also specifies how frequently medical examinations would be required for team members and responders. In proposed paragraph (g)(2)(v), WEREs and ESOs would be required to provide medical evaluations to team members and responders with an initial (baseline) examination after assignment and repeated every two years thereafter unless the PLHCP deems more frequent evaluations necessary, except for spirometry which would be repeated when deemed appropriate by the PLHCP. The proposed requirement that a medical examination be required at the time of initial assignment is intended to determine if a team member or responder would be able to perform the assigned emergency response duties without adverse health effects. The expectation is that the baseline physical would be performed prior to any entrance into an emergency response training academy or beginning a training program. It also serves to establish a health baseline for future reference. OSHA has set the medical re-evaluation at every two years due to the focus on cardiovascular disease and the speed with which cardiovascular disease develops. The medical re-evaluations are intended to determine if a medical condition has developed that would inhibit safe emergency incident response by team members and responders. Allowing the PLHCP to order more frequent evaluations based on their medical judgment ensures that team members and responders at higher risk of adverse health effects, such as a cardiovascular event, are appropriately monitored to ensure their continued safety and ability to perform emergency response activities.

Paragraph (g)(2)(vi) of the proposal would require that each WERE and ESO establish protocols regarding the length of time that absence from duty due to injury or illness would require a team member or responder to have a return-to-duty medical evaluation by a PLHCP prior to returning to work. Lengthy absences or certain medical conditions can alter a team member's or responder's ability to perform essential job tasks.

Proposed paragraph (g)(3) applies to ESOs only and includes additional surveillance for responders who are exposed to combustion products. Paragraph (g)(3)(i) of the proposed rule would require that the ESO provide medical surveillance that includes a component based on the frequency and intensity of expected exposure to combustion products established in the risk management plan in proposed paragraph (f). Requirements would differ based on exposures. The proposal is consistent with section 6(b)(7) of the OSH Act (29 U.S.C. 655(b)(7)) which requires that, where appropriate, medical surveillance programs be included in OSHA standards to determine whether the health of workers is adversely affected by exposure to the hazard addressed by the standard.

Under proposed paragraph (g)(3)(i)(A), the ESO would need to ensure that responders who are, or based on experience may be, exposed to combustion products 15 times or more per year, without regard to the use of respiratory protection, receive medical surveillance at least as effective as the criteria specified in the national consensus standard, NFPA 1582, Chapter 7. As noted above, OSHA recognizes that the recommendations in NFPA 1582 were aimed at and specifically designed for firefighters who are exposed to combustion products. Thus, although only some of the requirements in NFPA 1582 may be relevant to other team members and responders depending on the types and level of service(s) they provide, OSHA has preliminarily determined that it is appropriate to require the full NFPA 1582 physical for those responders exposed to combustion products above a particular action level.

With respect to what level of exposure is appropriate to trigger these requirements, Matt Tobia, a subcommittee member representing the IAFC, reported at a subcommittee meeting that a subgroup that discussed medical requirements considered those emergency responders whose job duties required them to enter an IDLH environment to be the responders subject to the full medical requirements (Document ID OSHA–2015–0019–0006, Tr. 108–111). OSHA received no other suggestions for a threshold to require additional medical requirements.

Although the NACOSH subcommittee focused on emergency responders who must enter IDLH environments, some exposures to combustion products may occur outside of such environments. Because the health risks posed by combustion products are not limited to exposures in IDLH environments, the proposed standard would require ESO's to consider all exposures to combustion products, not just those that occur in an IDLH environment. At the same time, given the apparent dose-response relationship between exposures and health effects (see *Need for the Standard*), OSHA does not believe that a single exposure to combustion products would necessitate increased medical requirements beyond what would be required by proposed paragraph (g)(2).

In considering what level of exposure (*i.e.,* action level) should trigger additional medical surveillance, OSHA reviewed its existing standards that require medical surveillance triggered by a specified action level. Most OSHA standards that have an action level that triggers medical surveillance use 30 days of exposure at or above a specified action level: Arsenic (29 CFR 1910.1018); Benzene (29 CFR 1910.1028); 1,3 Butadiene (29 CFR 1910.1051); Cadmium (29 CFR 1910.1027); Hexavalent Chromium (29 CFR 1910.1026); Ethylene Oxide (29 CFR 1910.1047); HAZWOPER (29 CFR 1910.120); Lead (29 CFR 1910.1025); Methylene Chloride (29 CFR 1910.1052); and Methylenedianiline (29 CFR 1910.1050).

Several OSHA standards use exposure above the established permissible exposure level (PEL) or short-term exposure limit (STEL) for 10 days to trigger medical surveillance: Benzene (29 CFR 1910.1028); 1,3 Butadiene (29 CFR 1910.1051); and Methylene Chloride (29 CFR 1910.1052). Other OSHA standards use any exposure or exposure at or above an action level, PEL, or while working in a regulated area to trigger medical surveillance: Acrylonitrile (29 CFR 1910.1045); Asbestos (29 CFR 1910.1001); Compressed Air Environments (29 CFR 1926.803); Cotton Dust (29 CFR 1910.1043); Formaldehyde (29 CFR 1910.1048); Suspected Carcinogens (29 CFR 1910.1003); Vinyl Chloride (29 CFR 1910.1017); and 1,2-dibromo-3-chloropropane (29 CFR 1910.1044).

The proposed rule's action level for medical surveillance of 15 or more exposures per year is modeled after 29 CFR 1910.1050, Methylenedianiline (MDA), which requires that employees who are subject to dermal exposure to MDA for 15 or more days per year receive medical surveillance. 29 CFR 1910.1050(m)(1)(i)(B). Similar to MDA, dermal exposure is a particular concern for responders exposed to combustion products. Research by NIOSH and other scientific experts supports that dermal exposure is a significant exposure pathway for responders. Exposures occur as the combustion products enter the PPE through the interface areas (coat to gloves, coat to pants, pants to boots, neck to hood), as well as permeating directly through PPE (Hwang et al., 2022, Document ID 0156, p. 10; Baxter et al., 2014, Document ID 0157, p. D89; Hwang et al., 2021, Document ID 0155, p. 12; Pleil et al., 2014, Document ID 0158, p. 16).

For purposes of proposed paragraph (g)(3)(i)(A), an exposure incident to combustion products is any exposure to materials that are on fire or smoldering regardless of the use of PPE or respiratory protection. PPE, such as respiratory protection, is considered the lowest level of protection in the hierarchy of exposure controls and cannot be 100% effective as the exposure has not been eliminated. Moreover, elimination of exposure is not an option for emergency response activities. Examples of exposure incidents include fires in residential homes, cars, dumpsters, kitchens, and training scenarios, among other similar incidents. In the event of a large fire or a training fire that requires multiple entries into the IDLH environment for extinguishment or training purposes, the multiple entries would be considered one exposure incident. Exposure incidents occur only for those responders who enter the hot zone of the incident, as defined in proposed paragraph (b) of this rule. If a responder is exposed to multiple incidents during one shift, the incidents would each be considered one individual exposure incident. For example, if a responder on a 24-hour shift responds to a house fire in the morning, then a car fire in the afternoon, and then a kitchen fire in the evening and entered the hot zone at each incident, that responder was exposed to combustion products on three separate incidents during that shift. For wildland firefighting, an exposure incident to toxic combustion products is the number of days the responder was exposed to combustion products while working on the fire line.

OSHA is aware that not all exposure incidents are equal and that some of the exposure incidents described above involve a low level of exposure while others involve a higher level of exposure. While some of the individual components in combustion products have PELs, there are no PELs for combined combustion products. The nature of combustion products, being a combination of any number of potentially hazardous substances, often unknown and changing with each emergency incident, as well as the difficulty in measuring such exposures in the emergency response context, would make establishing any such PEL very difficult. Nonetheless, OSHA has determined that despite the varying levels of exposure, both low and high exposure incidents contribute in the aggregate to a responder's overall exposure to toxic combustion products. Thus, on balance, OSHA has determined that any incident resulting in exposure to toxic combustion products while in the incident hot zone, regardless of the level of exposure, should be counted towards the total number of exposure incidents triggering the action level in this proposed paragraph.

To determine if their responders exceed the action level requiring medical surveillance for exposure, ESOs should review their incident response history. If the average number of exposure incidents is 15 or more a year for an individual responder or a particular tier of responders, then those responders would need the additional medical surveillance.

OSHA has preliminarily determined that an action level of 15 or more exposures per year is an appropriate threshold for triggering medical surveillance to detect and prevent adverse health effects from combustion products. In Question (g)–2, OSHA is seeking input on whether this number of exposures is too high, too low, or an appropriate threshold. OSHA is also considering action levels of 5, 10, or 30 exposures a year as alternatives and is seeking public input on what action level would be appropriate. Provide supporting documentation and data that would help with identifying an appropriate action level.

Proposed paragraph (g)(3)(i)(B) would require ESOs to provide medical consultation and ongoing surveillance to responders who, either immediately or subsequently, exhibit signs and symptoms which may have resulted from exposure to combustion products. Examples include shortness of breath, coughing, or wheezing after an exposure incident. Demonstration of exposure signs and symptoms may indicate a significant exposure event, failure of PPE, a catastrophic event, or some combination thereof and warrants exposure monitoring and medical surveillance. The extension of medical surveillance to responders who demonstrate signs and symptoms of exposure would be required regardless of whether the responder was exposed above the action level. The PLHCP would determine the necessary medical surveillance following the significant exposure event.

Proposed paragraph (g)(3)(ii) would require the ESO to document each exposure to combustion products for each responder, for the purpose of determining the need for the medical surveillance as specified in (g)(3)(i)(A), and for inclusion in the responder's confidential record, as required in (g)(1)(ii). ESOs would review previous incident reports to determine a responder's exposures for the preceding 12 months or from the date when ESOs began keeping such records up to the preceding 12 months. This proposed requirement would ensure the ESO documents exposures in order to comply with the requirements of the proposed rule. OSHA notes, however, that the ESO would not need 12 months of records for a particular responder to determine whether that responder may be exposed above the action level. If the ESO knows, based on experience, that responders in the same tier may be exposed 15 or more times per year, medical surveillance pursuant to paragraph (g)(3) would be required for that responder. As stated previously, proposed paragraph (g)(3) applies only to ESOs. OSHA is seeking input in Question (g)–3 on whether the additional medical surveillance proposed in paragraph (g)(3) should be extended to include WEREs and team members.

In paragraph (g)(4)(i) of the proposed rule, the WERE and ESO would be required to provide behavioral health and wellness resources at no cost to the team member or responder or identify where resources are available at no cost in their community. As discussed in section II.A., *Need for the Standard,* emergency response activities expose team members and responders to traumatic, emotionally charged events, and they frequently work long shifts, get inadequate rest and are repeatedly exposed to stressful scenarios that contribute to mental health issues. The physical and psychological stressors associated with emergency response activities puts team members and responders at increased risk of PTSD, depression, anxiety, burnout, suicide,

and substance use disorders. During the 2021 SBREFA panel, SERs reported that they believed that ongoing behavioral health support is an important component of team member and responder wellness (Document ID 0115, p. 18). For those WEREs and ESOs who do not provide behavioral health resources at their place of employment, they would need to identify local, state, or Federal governmental, non-governmental, and non-profit behavioral health resources that can be accessed by team members and responders. Behavioral health resources provided by a WERE's or ESO's health care plan would meet the requirements of the proposed rule. Although community-based resources are preferred, for those communities that do not have the resources available, telehealth resources would also meet the requirements of the proposed rule.

Proposed paragraphs (g)(4)(ii)(A) through (D) identify the behavioral health and wellness resources that would need to be included, at a minimum. They are diagnostic assessment, short-term counseling, crisis intervention, and referral for behavioral health conditions arising from the team member's or responder's performance of emergency response duties. The conditions that could require referral include substance use disorder, anxiety, depression, suicidality, acute stress reactions, or grief resulting from or exacerbated by the team member's or responder's emergency response duties, such as potentially traumatic events or the cumulative emotional strain of emergency response work. These behavioral health conditions may require more intensive interventions than short-term counseling or crisis intervention would provide. Behavioral health resources should be accessible to the team member or responder both on and off-duty.

Proposed paragraph (g)(4)(iii) would require that each WERE and ESO inform team members and responders, on a regular and recurring basis, and following each potentially traumatic event, of the behavioral health resources that are available to them and how to access those resources. Although resources familiar with the behavioral health aspects of emergency response activities are preferred, it is most important to have resources available for team members and responders to access. ESOs and WEREs should manage team member and responder expectations concerning available behavioral health resources and provide periodic reminders concerning their availability.

In proposed paragraph (g)(4)(iv), the WERE and ESO would be required to ensure that if the WERE or ESO possesses records of a team member or responders use of behavioral health services, those records are kept confidential. Similar to the privacy and confidentiality concerns about medical evaluations and medical records, OSHA is aware that behavioral health evaluations present similar concerns due to the potential to divulge confidential information regarding a team member's or responder's psychological condition that may adversely affect the team member or responder. Proposed paragraph (g)(4)(iv) protects the team member or responder from such unwanted disclosure. Thus, behavioral health record management would be consistent with the requirements for medical record management established in paragraph (g)(1)(iii).

Proposed paragraph (g)(5) focuses on fitness for duty and would require the WERE and ESO to establish and implement a process to evaluate and re-evaluate annually the ability of each team member and responder to perform the essential job functions, based on the type, level, and tier of service(s) established in paragraphs (c) and (d). The fitness for duty evaluation confirms for the WERE and ESO that the team member or responder can physically perform the job functions required of them at emergency scenes. This requirement differs from being medically cleared to perform emergency response duties as determined by paragraph (g)(2). This requirement requires the WERE or ESO to determine if the team member or responder is physically capable to perform the duties required of them during an emergency response. It is possible for a team member or responder to have no medical limitations to performing emergency response activities and still not be physically able to perform the duties. If the team member or responder does not have the physical capability to perform their assigned duties it not only places them at increased risk of injury or death but also increases the risk for other team members and responders on the emergency scene.

During the 2021 SBREFA panel, many SERs expressed concern that the physical fitness for duty requirements would be difficult for team members and responders, especially volunteer responders, to meet (Document ID 0115, p. 17). OSHA understands these concerns. However, the safety of all team members and responders is dependent upon each team member and responder being physically able to perform their assigned duties at an emergency incident. OSHA expects that assessment of the ability to perform essential job functions would be determined during training scenarios in which emergency response activities are practiced under controlled conditions, or during the skills checks required under proposed paragraph (h)(3) of this section. OSHA does not expect a formal testing program to be initiated. In Question (g)–4, OSHA seeks input and data on whether stakeholders support the proposed fitness for duty requirements or whether the requirements pose a burden on or raise concerns for team members, responders, WEREs or ESOs. Commenters should provide explanation and supporting information for their position.

Proposed paragraph (g)(6) applies to ESOs only and includes requirements for a health and fitness program. In proposed paragraph (g)(6)(i), the ESO would be required to establish and implement a health and fitness program that enables responders to develop and maintain a level of physical fitness that allows them to safely perform their assigned functions, based on the type, level, and tier of duty established in paragraph (d). Multiple studies and stakeholder organizations recognize the necessity of fitness programs to maintain the ability to perform job duties as well as to prevent or minimize injuries and to reduce the risk of heart disease and cancer (IAFF and IAFC (Document ID 0127, p. 33); NVFC (Docket ID 0128, p. 24); U.S. Fire Administration (USFA) (Document ID 0130, p. 131); NFPA (Docket ID 0135 p. 34); NIOSH (Document ID 0131, p. 4)).

As the proposed regulatory text indicates, these health and fitness requirements are focused solely on ensuring responders can safely perform their assigned functions. The requirements are aimed at minimizing the risk of occupational injury and illness posed by emergency response activities. OSHA intends these provisions to ensure that responders have the opportunity, means, and knowledge necessary to maintain fitness for duty and to prevent work-related injury and illness.

Proposed paragraphs (g)(6)(ii)(A) through (D) establish the minimum components of the fitness program that the ESO would be required to include. Proposed paragraph (g)(6)(ii)(A) would require that the fitness program have an individual designated to oversee it. If available, the ESO should designate an individual who has knowledge and skills that would benefit program implementation. To have the desired effect on responder health and fitness, a

fitness program needs an individual identified to provide guidance and assistance to responders with the health and fitness program and maintain accountability.

Paragraph (g)(6)(ii)(B) of the proposed rule would require a periodic fitness assessment for all responders, not to exceed every three years. The purpose of the fitness assessment is to inform the responder on their fitness status and whether their fitness has improved, maintained, or decreased. This physical fitness assessment is different from the fitness for duty evaluation described in proposed paragraph (g)(5) in that it is solely a physical fitness-related evaluation and is indirectly related to the evaluation of a responder's ability to perform essential job tasks. The physical fitness assessment should evaluate physical parameters such as responder muscular strength, muscular endurance, cardiovascular endurance, and mobility/flexibility. A physical fitness assessment can flag fitness conditions that may make a responder particularly vulnerable to a negative cardiovascular event. Maintaining fitness is important as responders with higher fitness levels perform essential job tasks at a lower exertion level as a percent of their maximum exertion. Performing essential job tasks at a lower exertion level reduces the responder's risk of suffering a negative cardiovascular event while performing those job tasks.

Proposed paragraph (g)(6)(ii)(C) would require exercise training that is available to all responders during working hours. This provision would not mandate a particular exercise regimen nor require the ESO to purchase or utilize any specific fitness equipment. Effective exercise training could be accomplished using common emergency response tools to provide the resistance necessary to achieve muscular overload. A program of body weight exercises, which use the responder's own body weight to provide resistance, would also satisfy the requirement.

Proposed paragraph (g)(6)(ii)(D) would require health promotion education and counseling for all responders. Health promotion education and counseling aims to provide responders with the knowledge necessary to ensure fitness for duty and is another avenue to address the risk factors and adverse health effects associated with emergency response activities. Responder health promotion can be accomplished with educational resources available in the community or on the internet. Topics that may be covered by the health promotion program could include heart disease risk reduction, smoking-vaping and tobacco cessation, healthy blood pressure, physical fitness, safer personal training methods and other ways to minimize risk of muscle breakdown (rhabdomyolysis), nutrition, weight management, the amount and quality of sleep, infectious disease prevention, and behavioral health topics such as stress management. OSHA emphasizes that these education and counseling resources are one element in the broader health and fitness program with the ultimate goal of ensuring the safe performance of emergency response activities.

OSHA is seeking input in Question (g)–5 whether the health and fitness program in proposed paragraph (g)(6) should be extended to include WEREs and team members. OSHA Question (g)–6 asks for input whether every three years is an appropriate length of time for fitness re-evaluation, and if not, what period of time would be appropriate. The agency is seeking any available data to support an alternative length of time between evaluations.

Paragraph (h) Training

Training is the backbone of WERTs and ESOs. Effective training produces team members and responders with the skills, knowledge, and confidence to safely perform their duties in the face of various hazards at emergency incidents. Paragraph (h) of the proposed rule contains requirements for initial and follow-up training for responders and team members, as well as requirements for maintaining proficiency in the necessary skills and knowledge through regular—at least annual—skills checks. These provisions ensure that team members and responders become and remain prepared and capable of performing their duties safely. Many of the provisions in proposed paragraph (h) are based on, or consistent with, provisions in NFPA 600, NFPA 1500, and other NFPA standards.

To ensure team members and responders are prepared to participate safely in emergency operations, WEREs and ESOs need to establish comprehensive training programs. Proposed paragraph (h)(1) addresses minimum training requirements for team members and responders. Paragraph (h)(1)(i) would require WEREs and ESOs to establish the minimum knowledge and skills required for each team member and responder to participate safely in emergency operations, based on the type and level of service(s), and tiers of team members and responders established in paragraphs (c) and (d) of this section. These minimum requirements will vary based on the type of emergency response being performed; for example, firefighters will have different training requirements than technical rescuers.

Paragraph (h)(1)(ii) of the proposed rule would require the WERE and ESO to ensure each team member and responder is provided with initial training, ongoing training, refresher training, and professional development commensurate with the safe performance of their expected duties and functions based on the tiers of team members and responders, and the type and level of service(s) established in paragraphs (c) and (d) of this section. Training is important at all stages of a team member's or responder's career. Initial training teaches team members and responders how to properly and safely perform their duties; and ongoing and refresher training ensures that these skills stay sharp over time. As they progress through their careers providing emergency service(s), team members and responders learn more about protecting their fellow team members and responders, particularly if they become team leaders, officers, or chiefs.

Proposed paragraph (h)(1)(iii) would require the WERE and ESO to restrict the activities of each new team member and responder during emergency operations until the team member or responder has demonstrated to a trainer/instructor, supervisor/team leader/officer, the skills and abilities to safely complete the tasks expected. Team members and responders performing tasks for which they are not appropriately trained pose a hazard not only to themselves, but also to other team members and responders. The proposed provision would ensure that team members and responders who are new to their jobs are properly trained before performing emergency service tasks.

Proposed paragraph (h)(1)(iv) would require the WERE and ESO to ensure that each instructor/trainer has the knowledge, skills, and abilities to teach the subject matter being presented. It is intuitive that those teaching should be more knowledgeable in the subject matter than those being taught, and when physical skills are required it can be important for the instructor/trainer to have the ability to demonstrate the skills or address a problem when it arises. This provision ensures that the training is conducted by competent individuals who can provide accurate and valuable instruction, leading to a higher level of understanding and proficiency among the trainees.

Proposed paragraph (h)(1)(v) of the proposed rule would require WEREs and ESOs to ensure that training is

provided in a language and at a literacy level that team members and responders understand, and that the training provides an opportunity for interactive questions and answers with the instructor/trainer. Team member and responder comprehension is critical to ensuring that training is effective. If training information is not presented in a way that all team members and responders understand, the training will not be effective. WEREs and ESOs must thus consider language, literacy, and social and cultural appropriateness when designing and implementing training programs for team members and responders. Compliance with the language requirement could be accomplished with an instructor/trainer providing direct instruction in the appropriate language or by use of an interpreter. The purpose of the literacy level provision is to make sure that each team member and responder understands the materials. WEREs and ESOs may consider providing training materials in a language which is as simple as possible without sacrificing necessary content.

The last part of the provision recognizes the fact that asking questions facilitates the learning process for many people. WEREs and ESOs may conduct training in different ways, such as in-person or virtually (*e.g.,* videoconference, recorded video). However, this paragraph requires the WERE and ESO to provide an opportunity to team members and responders to ask questions regardless of the medium of training. This may involve, for example, having a knowledgeable person present during the training in-person or via phone/video call. If it is not possible to have someone present during the training, WEREs and ESOs could also provide the contact information of the individual who team members or responders can contact to answer their questions (*e.g.,* an email or telephone contact).

Paragraph (h)(1)(vi) of the proposed rule would require the WERE and ESO to provide each team member and responder with training on the RMP (risk management plan) established in paragraph (f)(1) of this section. The training would ensure that team members and responders receive comprehensive instruction on various aspects of risk management. It would familiarize them with the specific protocols, procedures, and practices associated with WERE and ESO facilities, training activities, vehicle operations, response to emergency incidents, non-emergency services, and the risks associated with exposure to hazardous substances. Training would also need to include the PPE hazard assessment, the respiratory protection program, the infection control program, and the bloodborne pathogens exposure control plan required by paragraph (f)(1)(iii). Note that the training requirements of this standard are in addition to the training requirements of other standards such as the bloodborne pathogens standard (29 CFR 1910.1030(g)(2)).

Proposed paragraph (h)(1)(vii) would require the WERE and ESO to train each team member and responder about the safety and health policy established in paragraph (f)(2) of this section and the Standard Operating Procedures (SOPs) established in paragraph (q) of this section. Proposed paragraph (f)(2) would require the WERE and ESO to establish a policy for extraordinary situations when a team member or responder, after making a risk assessment determination based on the team member or responder's training and experience, is permitted to attempt to rescue a person in imminent peril, potentially without benefit of, for example, PPE and other equipment. As explained above, proposed paragraph (f)(2) is important because there might be times when team members or responders come across emergency incidents while they are not fully equipped with PPE or other equipment but could, for example, potentially save a life.

Team members and responders need to be trained so that they understand the policy established by the WERE or ESO for these extraordinary situations. SOPs form the foundation of how WEREs and ESOs expect team members and responders to perform at various types of incidents, where they will face a variety of hazards. The SOPs provide procedures intended to facilitate incident operations and keep team members and responders safe.

Paragraph (h)(1)(viii) of the proposed rule would require the WERE and ESO to provide each team member and responder with training that covers the selection, use, limitations, maintenance, and retirement criteria for all PPE used by the team member or responder based on the type and level of service(s), and tiers of team members and responders established in paragraphs (c) and (d) of this section. This training would provide team members and responders with the necessary knowledge and skills to effectively utilize the PPE they are required to wear on the basis of their duties. It would need to include various aspects, including selecting appropriate equipment, use including proper donning and doffing techniques, understanding the limitations of PPE, performing proper maintenance, and knowing when to retire and replace worn-out or damaged equipment. By providing this comprehensive training, WEREs and ESOs can enhance safety and ensure that team members and responders are well-prepared to utilize PPE effectively.

Paragraph (h)(1)(ix) proposes to require the WERE and ESO to train each team member and responder in the selection, proper use, and limitations of portable fire extinguishers provided for employee use in the WERE or ESO's facility and vehicles, in accordance with 29 CFR 1910.157. It is important for all team members and responders (firefighters, EMS providers, and technical rescuers) to be trained to use portable fire extinguishers. Most fires start out small enough that they can be easily controlled or extinguished by a portable fire extinguisher. Portable fire extinguishers are readily found in most workplaces and on many vehicles that team members and responders use, and it is important for team members and responders be trained about how to use them and what their limitations are.

Proposed paragraph (h)(1)(x) would require the WERE and ESO to train each team member and responder in the incident management system (IMS) established under paragraph (o) of this section, in order to operate safely within the scope of the IMS. Because the IMS is required to be used at all emergency incidents (see proposed paragraph (p)(1)(i)), everyone on every incident scene would be operating within it. The training should focus on team member and responder roles and responsibilities within the IMS, including incident scene assessment for hazards, incident safety oversight, means for reporting unsafe conditions, and interactive components for clear communication and effective operations.

Paragraph (h)(1)(xi) of the proposed rule would require the WERE and ESO to ensure that training for each team member and responder engaged in emergency activities includes procedures for the safe exit and accountability of team members and responders during orderly evacuations, rapid evacuations, equipment failure, or other dangerous situations and events. Development of the procedures is required by proposed paragraph (q)(2)(vii) of this section. Team members and responders need to be trained to know their roles in the accountability system. They need to be trained in the actions to take during an orderly evacuation, such as taking all their equipment with them as they back out to regroup their efforts, versus during a rapid evacuation, such as when a

structural collapse seems imminent, when the appropriate action may be to ''drop and run.'' PPE or equipment failure often occurs without warning. Team members and responders need to be trained in the proper procedures for evacuating safely and maintaining accountability should such a situation occur.

Paragraph (h)(1)(xii) proposes to require the WERE and ESO to ensure that each team member and responder is trained to meet the requirements of 29 CFR 1910.120(q)(6)(i) (HAZWOPER), First Responder Awareness Level. While all team members and responders who take part in actual emergency operations are already subject to these requirements per the requirements of the HAZWOPER standard, this training is also important for other responders and team members. Team members and responders who are not part of a hazardous materials (hazmat) team need to be aware of the precautions and actions to be taken at hazmat incidents because they are usually the first to arrive. This training focuses on equipping team members and responders with the necessary knowledge and skills to respond effectively to hazardous materials incidents and take appropriate actions, such as maintaining a safe distance away, evacuating other people, cordoning off the area, and summoning the appropriate resources.

Proposed paragraph (h)(1)(xiii) would require the WERE and ESO to ensure that each team member and responder who is not trained and authorized to enter specific hazardous locations (*e.g.,* confined spaces, trenches, and moving water) is trained to an awareness level (similar to the requirements in 29 CFR 1910.120(q)(6)(i)) to recognize such locations and their hazards and avoid entry. Similar to the requirements of proposed paragraph (h)(1)(xii) with respect to hazmat incidents, this training would provide team members and responders with an understanding of the potential risks and dangers posed by specific hazardous locations, enabling them to identify such locations, exercise caution, not enter the hazardous area, and request assistance from those trained to enter such areas.

Paragraph (h)(1)(xiv) of the proposed rule would require WEREs and ESOs to train each team member and responder to perform cardiopulmonary resuscitation (CPR) and use an automatic external defibrillator (AED). It is important that every team member and responder be able to perform CPR and use an AED as they may be nearby, or the first to arrive, when someone is experiencing a cardiac emergency. Proper training allows team members and responders to confidently respond to cardiac emergencies and perform potentially life-saving interventions. Furthermore, team members and responders need to know how to perform these procedures safely. For example, they need to know how to avoid electric shocks from an AED.

Proposed paragraph (h)(2) specifies vocational training that would be required for designated team members and responders to perform their duties safely. Paragraphs (h)(2)(i) through (viii) each reference a specific NFPA standard and require that team members and responders be trained to a level that is at least equivalent to the job performance requirements (JPR) of the identified standard, for the duties to which they are assigned. The particular editions of the NFPA standards noted in the proposed rule are the ones in existence at the time of the publication of this proposal. OSHA expects that in the final rule it will incorporate the particular edition most recently approved by the NFPA before the public comment period for this NPRM closes.

Paragraph (h)(2)(i) of the proposed rule would require each WERT team member who is designated to perform firefighting duties to be trained to safely perform the duties assigned, to a level that is at least equivalent to the job performance requirements of NFPA 1081, Standard for Facility Fire Brigade Member Professional Qualifications, 2018 ed. NFPA 1081 sets the professional qualifications for firefighting team members and specifies the essential competencies and performance standards required for effective firefighting. This training equips team members with necessary skills in fire suppression techniques, fire behavior, incident command, and other topics related to firefighting, ensuring their ability to perform their duties safely. As explained above, each individual team member need be trained only with respect to the specific job duties they are assigned to perform. For example, a WERT team member designated at the incipient stage tier would need to be trained to a level equivalent to the NFPA 1081 JPRs for that tier only, and not the JPRs for interior structural firefighting.

Paragraph (h)(2)(ii) of the proposed rule would require each ESO responder who is designated to perform interior structural firefighting duties to be trained to safely perform the duties assigned, to a level that is at least equivalent to the job performance requirements of NFPA 1001, Structural Fire Fighter Professional Qualifications, 2019 ed. NFPA 1001 sets the professional qualifications for structural firefighters and outlines the essential competencies and performance standards required for effective firefighting in interior structural environments. This training covers critical areas such as fire behavior, ventilation techniques, search and rescue operations, and incident command systems, ensuring that responders possess the necessary skills to perform their duties safely within interior structural firefighting scenarios.

Paragraph (h)(2)(iii) of the proposed rule would require each team member and responder who is designated to perform interior structural firefighting duties to be trained to safely perform search and rescue operational capabilities at least equivalent to the job performance requirements of NFPA 1407, Standard for Rapid Intervention Team Training, 2020 ed. NFPA 1407 sets the standards for rapid intervention team (RIT) training, specifically focusing on the operational capabilities required for effective search and rescue in hazardous environments. The training covers critical areas, such as search techniques, victim extrication, firefighter self-rescue, and effective communication strategies during rescue operations. This ensures that team members and responders possess the necessary skills to perform search and rescue operations safely and effectively within interior structural firefighting incidents.

Paragraph (h)(2)(iv) of the proposed rule would require each team member and responder who is a vehicle operator to be trained to safely operate that vehicle at a level that is at least equivalent to the job performance requirements of NFPA 1002, Standard for Fire Apparatus Driver/Operator Professional Qualifications, 2017 ed., or similar Emergency Vehicle Operator qualifications based on the type of vehicle the team member or responder operates. NFPA 1002 establishes the professional qualifications for fire apparatus driver/operators and outlines the essential competencies and performance standards required for safe and effective vehicle operation. The training covers critical areas such as vehicle handling, emergency vehicle operations, driving techniques, and knowledge of vehicle systems. This training will help ensure that team members and responders are capable of safely operating vehicles within the scope of their assigned responsibilities. Again, each individual team member or responder need be trained only with respect to the specific job duties they are assigned to perform. For example, a firefighter designated to only operate a

four-wheel drive pick-up truck with a skid-mounted pump and tank would only need to be trained to the equivalent JPRs for that vehicle, and not, for example, the JPRs for tillering a tractor-drawn aerial.

Paragraph (h)(2)(v) of the proposed rule would require each team member and responder who is a manager/supervisor (crew leader/officer) to be trained to safely perform at a level that is at least equivalent to the job performance requirements of NFPA 1021, Standard for Fire Officer Professional Qualifications, 2020 ed. NFPA 1021 establishes the professional qualifications for fire officers and outlines the essential competencies and performance standards required for effective leadership and supervision in fire and emergency service organizations. The training covers critical areas such as incident management, emergency response coordination, personnel management, risk assessment, and decision-making processes. This training will help ensure that managers and supervisors are equipped with the expertise to fulfill their roles while prioritizing the safety and well-being of team members and responders.

Paragraph (h)(2)(vi) of the proposed rule would require each wildland ESO responder to be trained to safely perform at a level that is at least equivalent to the job performance requirements of NFPA 1140, Standard for Wildland Fire Protection, 2022 ed., or that such responder has a ''Red Card'' in accordance with the National Wildfire Coordinating Group—Interagency Fire Qualifications. NFPA 1140 establishes the standards for wildland fire protection and outlines the essential competencies and performance requirements for personnel involved in wildland firefighting operations. The training covers critical areas such as fire behavior, incident management, communication systems, safety protocols, and effective use of firefighting equipment in wildland settings. This training will help ensure that wildland ESO responders are appropriately prepared to mitigate wildland fire risks and respond to these challenging situations in a safe and coordinated manner.

Paragraph (h)(2)(vii) of the proposed rule would require each technical search and rescue team member and responder who is designated to perform a technical rescue to be trained to safely perform at a level that is at least equivalent to the technician capabilities of the job performance requirements of NFPA 1006, Standard for Technical Rescuer Professional Qualifications, 2021 ed. NFPA 1006 establishes the professional qualifications for technical rescuers, defining the essential capabilities and performance requirements for personnel involved in technical rescue operations. By adhering to this standard, team members and responders can acquire the necessary knowledge and skills to safely perform technical rescues. The training covers critical areas such as rope rescue, confined space rescue, structural collapse rescue, vehicle and machinery rescue, and water rescue. This training will help ensure that technical rescuers possess the expertise required to operate safely in complex and hazardous rescue scenarios.

Paragraph (h)(2)(viii) of the proposed rule would require each firefighting team member and responder who operates in a marine environment to be trained to safely perform at a level that is at least equivalent to the job performance requirements of NFPA 1005, Standard for Professional Qualifications for Marine Fire Fighting for Land-Based Fire Fighters, 2019 ed. These individuals play a critical role in responding to fire incidents in marine settings, such as ports, marinas, or waterfront areas. NFPA 1005 sets the professional qualifications for land-based firefighters engaged in marine firefighting operations. It outlines the essential competencies and performance requirements necessary for effectively combating fires in marine environments. By adhering to this standard, firefighting team members and responders can acquire the necessary knowledge and skills to safely operate in marine settings. The training covers critical areas such as marine fire behavior, vessel fire suppression tactics, shipboard firefighting systems, water supply operations, and search and rescue techniques specific to marine environments. This training will help ensure that firefighters are appropriately prepared to handle the unique challenges presented by marine fire incidents.

Paragraph (h)(2)(ix) of the proposed rule would require the WERE and ESO ensure that each EMS team member and responder possesses the professional qualification, certification, or license, required by the applicable jurisdiction, which is relevant to the type and level of service established in paragraphs (c) and (d). This requirement, which was recommended by NACOSH, would help ensure that EMS providers are up to date on the latest methods for safely performing their duties.

Proposed paragraph (h)(3) contains requirements related to maintaining proficiency in the skills and knowledge required by paragraphs (h)(1) and (2). Proposed paragraph (h)(3) would require WEREs and ESOs to provide annual skills checks to ensure that each team member and responder maintains proficiency in the skills and knowledge commensurate with the safe performance of expected duties and functions, based on the type and level of service(s) established in paragraphs (c) and (d) of this section. Initial training is important, but ongoing training or on-the-job performance is just as essential so that team members and responders can maintain proficiency.

OSHA is proposing annual skills checks based on that periodicity referenced in national consensus standards such as NFPA 600, NFPA 1500, and NFPA 1670; and other OSHA regulations, such as 29 CFR 1910.120 and 1910.134, and the existing 29 CFR 1910.156. Conducting periodic skills checks for team members and responders at least once a year (each twelve-month period) is important to ensure they maintain a minimum level of proficiency for safely performing their assigned duties. By conducting regular skills checks, organizations can identify any gaps in proficiency and provide additional training or resources as needed to enhance the capabilities of team members and responders.

OSHA recognizes that skill checks may be completed in different ways, and within the minimum annual period between skill checks the appropriate interval for additional skill checks varies with the nature of the skill in question. For instance, if a pumper operator regularly operates the vehicle, including pumping hose lines, routine observation may substitute for a separate skills check. However, an operator who has not operated the vehicle and pump for nine months may need a more formal skills check to ensure they can still perform the tasks safely even if they last passed a skills check eleven months earlier. In Question (h)–1, OSHA is seeking stakeholder input and data regarding the appropriate methods and interval(s) for skills checks.

Paragraph (i) WERE Facility Preparedness

Proposed paragraph (i) provides requirements to ensure that WERE facilities are safe for team members. Paragraph (i)(1)(i) of the proposed rule would require WEREs to ensure their facilities comply with 29 CFR part 1910, subpart E, Exit Routes and Emergency Planning. Note, however, that the various ERP plans and programs required by this proposed rule (*e.g.,* IAPs, RMPs, PIPs) are not ''emergency

action plans'' for purposes of 29 CFR 1910.38. This proposed provision is not a new requirement because WEREs are already required to comply with subpart E. It is included here to reinforce the concept that compliant means of egress, emergency lightning, exit marking, etc., are of the utmost importance during emergency situations, for all workers, but especially for team members because they spend more time in the dangerous situation. For instance, an obstructed aisle or hallway could interfere with removing a sick or injured non-team-member employee by means of a wheelchair or ambulance cot. That same obstructed aisle or hallway could delay firefighting team members in reaching a fire, thus allowing the fire to grow, further endangering the team members, or block their escape path if they need to evacuate due to deteriorating conditions.

Proposed paragraph (i)(1)(ii) would require WEREs to provide facilities for the decontamination, disinfection, cleaning, and storage of PPE and equipment. Cleaning and decontamination of PPE and equipment is an important step in reducing or preventing exposure to bloodborne pathogens, carcinogens, and other contaminants which can cause cancer and other illnesses in team members and responders. The proposed requirement would ensure that team members have a means to decontaminate, disinfect, and clean their PPE and equipment as needed and as required by proposed paragraph (k). These requirements are based on NFPA 1581, Standard on Fire Department Infection Control Program, 2022 ed., and NFPA 1851, Standard on Selection, Care, and Maintenance of Protective Ensembles for Structural Fire Fighting and Proximity Fire Fighting, 2020 ed. In Question (i)–1, OSHA seeks input regarding what WEREs are currently doing for decontamination, disinfection, cleaning, and storage of PPE and equipment, and whether OSHA should include any additional requirements for these processes in a final standard.

The manner of compliance with this provision could vary depending on a WERE's facility, the activities of the WERT, and the manufacturer's instructions for particular PPE and equipment. Some WEREs may provide a dedicated room or area with commercial style washing machines or extractors for PPE. Others may only provide facilities for basic cleaning and gross decontamination using a utility hose and brushes, a large sink with spray nozzle, appropriate cleaning chemicals and disinfectants, and drying racks. Alternatively, if PPE is to be decontaminated or disinfected at another location, such as an off-site commercial launderer, WEREs would need to provide for bagging and storage of contaminated PPE while it is still at the WERE facility, to prevent exposure to employees and team members, and prevent cross contamination with clean PPE.

Proposed paragraph (i)(1)(iii) would require the WERE to ensure that fire detection, suppression, and alarm systems, and occupant notification systems are installed, tested, and maintained in accordance with manufacturer's instructions and 29 CFR part 1910, subpart L—Fire Protection. WEREs are already required to comply with subpart L. Cross-referencing this provision in the proposed rule serves as a reminder to WEREs and reinforces the importance of these requirements in the context of a WERT, where proper operation of these systems during a fire emergency could affect the safety of team members.

Proposed paragraph (i)(2) would require the WERE to ensure fire hose connections and fittings are compatible with, or adapters are provided for, firefighting infrastructure such as fire hydrants, sprinkler system and standpipe system inlet connections, and fire hose valves (FHV), to facilitate prompt firefighting support from mutual aid WERTs and ESOs. A majority of fire hose fittings and connections, with varying diameters, use a standard hose screw thread dimension. However, there are other screw thread dimensions that are available and used for fire hose connections and fittings, including nonthreaded connections. While OSHA believes it would be advantageous to have uniformity of all screw threads, it is more important that the fitting diameters, screw threads, and nonthreaded connections at the facility are compatible with those used by the WERT(s) and ESO(s) who would potentially provide firefighting support. Any delay in providing needed fire suppression water to a sprinkler system or standpipe system could result in a fire spreading and thus endangering or further endangering team members (as well as other employees at the facility). Inability to connect hoses from a fire engine to the inlet connections due to noncompatible screw treads or fitting diameter would certainly cause a delay in providing needed fire suppression water.

OSHA's existing standard for standpipe and hose systems, 29 CFR 1910.158, requires standardized screw threads or adapters for hose connections (29 CFR 1910.158(c)(2)(ii)) for quick connection of fire hoses. The existing provision applies within the employer's facility but fails to take into consideration the need for potential support from mutual aid WERTs or ESOs. Additionally, the existing provision predates the development of nonthreaded connections for large diameter fire hoses, which are sometimes used for sprinkler and standpipe inlet connections and fire hydrant fittings. The proposed provision would ensure mutual aid WERTs and ESOs, as required by proposed paragraph (c)(8) of this section, could provide needed water supply without delay, thus reducing the potential risk to team members, non-team member employees, and responders.

To provide added clarity and as noted elsewhere in this preamble, OSHA proposes in this rulemaking to revise 29 CFR 1910.158, Standpipe and hose systems and 1910.159, Automatic sprinkler systems, to add a provision for system inlet fitting compatibility with, or adapters provided for, mutual aid WERTs and ESOs, consistent with paragraph (i)(2) of this proposed rule.

Proposed paragraph (i)(3) would require WEREs to identify the location of each fire hose valve (FHV) in a manner suitable to the location, such as with a sign, painted wall, or painted column, to ensure prompt access to FHVs. The proposed provision excludes FHVs that are clearly visible on standpipes in enclosed stairways. Compliance with this provision could be achieved by various methods including marking the location of each FHV with a sign, painted wall, painted column, or other suitable means that would ensure that each FHV is clearly visible, thus making the FHV easier to locate during an emergency. This approach is particularly important in facilities with large open areas, such as parking garages, plant manufacturing areas, and storage rack areas, where FHVs may otherwise be difficult to locate, especially during an emergency.

Paragraph (j) ESO Facility Preparedness

Many responders spend a significant amount of time in the workplace, often sleeping and eating meals there, because they are required to be at the ESO facility to respond to emergency incidents quickly. While responders expect to encounter hazards at an emergency incident, they may also become injured or ill from hazards they are exposed to in ESO facilities. Proposed paragraph (j) provides requirements to ensure that ESO facilities are safe for responders.

Proposed paragraph (j)(1)(i) states that the ESO must ensure each ESO facility complies with 29 CFR part 1910,

subpart E—Exit Routes and Emergency Planning. This proposed provision is not a new requirement because ESOs are already required to comply with subpart E. It is included here to emphasize the necessity of safe means of egress, emergency lightning, exit marking, etc., during emergency situations.

Proposed paragraph (j)(1)(ii) would require the ESO to provide facilities for decontamination, disinfection, cleaning, and storage of PPE and equipment. As discussed in *Need for the Standard,* responders are exposed to a variety of hazardous substances from contaminated PPE and equipment. Cleaning and decontamination of PPE and equipment are important steps in reducing or preventing exposure to carcinogens, infectious diseases, and other contaminants which can cause other illnesses. This provision also aids compliance with proposed paragraph (k)(2)(viii), which would require the ESO to ensure that protective ensembles, ensemble elements, and protective equipment are decontaminated, cleaned, cared for, inspected and maintained in accordance with the manufacturer's instructions (see the *Summary and Explanation* for paragraph (k)).

The manner of compliance with proposed paragraph (j)(1)(ii) would vary depending on an ESO's facility and manufacturers' instructions. However, basic cleaning and gross decontamination typically involves using a utility hose and brushes, a large sink with a spray nozzle, appropriate cleaning chemicals and disinfectants, and drying racks. Some ESOs may choose to install commercial-style washing machines or extractors for PPE. Alternatively, if PPE is to be decontaminated off-site, ESOs must provide for bagging and storage of contaminated PPE while it is still at the ESO facility.

The requirements proposed in paragraph (j)(1)(ii) are based on NFPA 1581, Standard on Fire Department Infection Control Program, 2022 ed., and NFPA 1851, Standard on Selection, Care, and Maintenance of Protective Ensembles for Structural Fire Fighting and Proximity Fire Fighting, 2020 ed.

Proposed paragraph (j)(1)(iii) would establish requirements for fire poles, slides, and chutes. Under proposed paragraph (j)(1)(iii)(A), the ESO would need to ensure each responder who uses a fire pole maintains contact with the pole using all four extremities and is not holding anything other than the pole. Sliding down the pole is essentially a controlled fall, and maintaining contact with all four extremities offers the best chance for responders to control their speed while descending the pole. Ensuring the responder does not hold anything while using the pole would help them focus on the importance of gripping the pole and would avoid potential distraction such as spilling a cup of coffee or dropping a handful of papers.

Proposed paragraph (j)(1)(iii)(B) would require the ESO to ensure that each fire pole has a landing cushion that is at least 30 inches in diameter, has a contrasting color to the surrounding floor, and has impact absorption to reduce the likelihood and severity of injury. The minimum diameter requirement is meant to accommodate responders of varying shapes and sizes. The contrasting color would enhance visibility to the potential tripping hazard on the floor. The landing cushion would also need to be made of a material with sufficient thickness to reduce the impact of a responder landing on the cushion.

Proposed paragraph (j)(1)(iii)(C) would require ESOs to ensure that each floor hole with a fire pole, chute, or slide that provides rapid access to a lower level is secured or protected in accordance with 29 CFR part 1910, subpart D—Walking-Working Surfaces to prevent unintended falls through the floor hole. Given the importance of these requirements in addressing the hazard posed by these floor openings in ESO facilities, OSHA believes it is important to remind ESOs of their obligations under subpart D to reinforce compliance.

The trend in the design and construction of new ESO facilities is to install slides, chutes, and stairs as an alternative to installing new fire poles. In Question (j)–1, OSHA seeks input whether the agency should consider prohibiting the installation of fire poles in new ESO facilities. In addition to supporting data, the agency seeks input on a potential phase-in period should a prohibition against new poles is included in the final rule.

Paragraph (j)(1)(iv) of the proposed rule would require the ESO to ensure that fire detection, suppression, and alarm systems, and occupant notification systems are installed, tested, and maintained in accordance with manufacturer's instructions and 29 part CFR 1910, subpart L—Fire Protection. Fire protection systems are important for protecting responders from the danger of fire in ESO facilities. They must function properly to provide protection. Following the manufacturer's instructions for installing, testing, and maintaining this equipment will help to provide this protection because the instructions are tailored to deal with the unique features of a particular manufacturer's equipment. The last part of this provision serves as a reminder to comply with subpart L, which contains specific requirements to ensure the effectiveness of various types of fire detection, suppression, and alarm systems.

Paragraph (j)(2) proposes requirements for protective measures for sleeping and living areas of ESO facilities, as defined in proposed paragraph (b) of this section. Proposed paragraph (j)(2)(i) would require the ESO to ensure that interconnected hard-wired smoke alarms with battery back-up are installed inside each sleeping area, and outside in the immediate vicinity of each opening (door) to a sleeping area, and on all levels of the facility, including basements. Smoke detectors that are integral to a fire alarm system would also satisfy this proposed provision. Smoke alarms and detectors provide early warning about the presence of smoke, thus alerting occupants to the hazard and need for evacuation before they are overcome by smoke inhalation and typically before the fire grows to the point of preventing escape.

Proposed paragraph (j)(2)(ii) would require the ESO to ensure that each new ESO facility with one or more sleeping area(s) is protected throughout by an automatic sprinkler system. This provision would apply to new facilities constructed (as determined by the date of building permit issuance) two years or more after the final rule is published. It has long been established that automatic sprinklers save lives. They provide containment or extinguishment of a fire, often before those endangered by the fire are aware of the fire, particularly for those who are asleep. Automatic sprinkler systems are routinely installed in many places where people sleep, such as hotels, motels, dormitories, apartment buildings, and single-family dwellings. OSHA believes it is important for ESOs to provide the same protection for responders. The proposed rule provides ample time for ESOs in the preliminary planning process of designing new facilities to include the installation of sprinklers. In Question (j)–2, OSHA seeks input on whether ESO facilities with sleeping facilities should be protected by automatic sprinkler systems.

Proposed paragraph (j)(2)(iii) would require the ESO to ensure that each sleeping and living area has functioning carbon monoxide alarms installed. Similar to smoke alarms/detectors, carbon monoxide alarms alert occupants

to the presence of the poisonous gas, thus allowing them to evacuate before they become incapacitated. The risk of carbon monoxide exposure may be high for responders because ESO vehicle engines are started and run inside of ESO facilities.

Proposed paragraph (j)(2)(iv) would require the ESO to prevent responder exposure to, and contamination of sleeping and living areas by, exhaust emissions. OSHA believes that compliance with this provision can be achieved by any of several means, including direct or source capture systems attached to vehicle exhaust pipes, automatic ventilation systems, positive air pressure in sleeping and living areas, self-closing doors with weather seals, and others.

Paragraph (j)(2)(v) of the proposed rule would require the ESO to ensure that contaminated PPE is not worn or stored in sleeping and living areas. This provision, in conjunction with proposed paragraphs (j)(1)(ii) (decontamination, disinfection, cleaning, and storage facilities) and (k)(2)(viii) (decontamination and cleaning of PPE), would ensure that responders are not unnecessarily exposed to contaminants in sleeping and living areas.

Paragraph (k) Equipment and PPE

Proposed paragraph (k) contains requirements related to the provision, maintenance, and use of equipment and PPE. Team members and responders rely on PPE to provide protection from and minimize exposure to various hazards they may encounter during emergency response activities that may cause injuries, illnesses, or fatalities. Team members and responders are routinely exposed to hazards such as sharp edges, falling and flying objects, extreme temperatures, bodily fluids, combustion products, and a broad range of other potential contaminants. They depend on PPE because many of the hazards they are exposed to cannot be abated by administrative or engineering controls (see, *e.g.,* § 1910.1000(e)).

To train for and perform their duties properly and safely, team members and responders depend on a wide variety of equipment, such as hoses and nozzles; ladders; saws; hand tools; hydraulic, pneumatic, and electric rescue tools; rope access and fall protection equipment; ambulance cots; stethoscopes and blood pressure cuffs; and oxygen delivery systems. In the proposed rule, OSHA uses the general term *equipment* to be inclusive. (Note: Vehicles used in emergency response are addressed in proposed paragraph (l)). Malfunctioning or inoperable equipment may cause injuries or delays in performing emergency services which could escalate the seriousness of the incident, posing a greater hazard to team members and responders.

Equipment and PPE are routinely exposed to various contaminants and combustion products on emergency incident scenes. Decontamination reduces exposure of team members and responders to the detrimental health effects related to contaminants and combustion products. Many of the provisions in proposed paragraph (k) are based on, or consistent with, NFPA 1500.

Proposed paragraph (k)(1)(i) would require that each WERE and ESO provide or otherwise ensure access to the equipment that team members and responders need to train for and safely perform emergency services, based on the type and level of service(s) that the individual WERE or ESO has established in accordance with proposed paragraphs (c) and (d). The equipment must be provided at no cost to team members or responders. The provision states ''provide . . . or ensure access to'' because WEREs and ESOs may have their own training equipment for tasks they frequently perform, but may depend on a centralized cache of equipment, other WEREs or ESOs, or a training facility for other equipment. For example, all team members and responders would need to be trained to perform cardiopulmonary resuscitation (CPR) and in the use of an automatic external defibrillator (AED) as proposed in paragraph (h). The training for these skills typically uses a CPR manikin and a training model AED. Since this equipment is not frequently used, OSHA believes that instead of purchasing their own training equipment, some WEREs and ESOs would ensure team members and responders have access to the equipment from another source.

Employers are already required to provide necessary PPE at no cost to employees under OSHA's general PPE requirements, 29 CFR 1910.134(h). Proposed paragraph (k)(1)(i) reiterates this requirement and makes clear that non-PPE equipment needed to train for and safely perform emergency services must also be provided at no cost to team members and responders. This requirement is consistent with OSHA's longstanding position that ''[t]he OSH Act requires employers to pay for the means necessary to create a safe and healthful work environment'' (Employer Payment for Personal Protective Equipment, 72 FR 64342, 64344 (Nov. 15, 2007)).

Paragraph (k)(1)(ii) of the proposed rule would require that each WERE and ESO ensure that newly purchased or acquired equipment is safe for use in the manner the WERE or ESO intends to use it. ''Newly purchased or acquired'' means purchased or acquired after the effective date of any final rule that would result from this rulemaking. Often, when WEREs and ESOs purchase or obtain new(er) equipment, they donate or sell their older equipment to other WEREs or ESOs. This provision would require the receiving WERE and ESO to ensure that the equipment received is safe for use prior to utilizing the equipment. Under proposed paragraphs (k)(1)(iii), each WERE and ESO would be required to inspect, maintain, functionally test, and service test equipment at least annually, in accordance with the manufacturer's instructions and industry practices, and as necessary to ensure equipment is in safe working order. Functional testing and service testing are different in that functional testing is performed by using and observing the equipment as it would normally be used. Service testing involves following specific procedures and evaluating test criteria, such as hydrostatic testing of SCBA air cylinders and flow testing SCBA regulators. Proper inspection, maintenance, and testing are necessary to ensure equipment is in proper, safe, working order and ready for use by team members and responders. Many pieces of equipment, such as hand tools, ladders, and rope rescue equipment, would be inspected after each use, and some would only require annual service testing. The manufacturer's instructions are the best source of information about inspection frequency and appropriate maintenance and testing. However, if a WERE or ESO has reason to believe a piece of equipment may not be in safe working order, that equipment would need to be inspected and tested immediately or removed from service, regardless of the inspection frequency recommended by the manufacturer. Paragraph (k)(1)(iv) of the proposed rule would require that each WERE and ESO immediately remove from service any equipment found to be defective or in an unserviceable condition. Equipment that is defective or that is not ready or able to be used safely poses a hazard to team members and responders. The equipment would need to be immediately removed from service to prevent potential injuries to team members and responders. Once repaired to a safe operational condition, the equipment could be returned to service for use.

In proposed paragraph (k)(2)(i), each WERE and ESO would be required to

conduct a PPE hazard assessment for the selection of the protective ensemble, ensemble elements, and other protective equipment for team members and responders. WEREs and ESOs would evaluate their facilities or communities to determine what hazards their team members and responders could be exposed to and what PPE they would need to be protected during an emergency incident, based on the type and level of service established under paragraphs (c) and (d) of this section. Potential hazards requiring PPE could be acute (such as fire) or longer-term (such as exposure to carcinogens) and a comprehensive hazard assessment would identify hazards in both categories. Examples of ensemble elements include gloves, safety glasses and goggles, safety shoes and boots, earplugs and muffs, hard hats and helmets, respirators and Self-Contained Breathing Apparatus (SCBA), protective coats and pants, hoods, coveralls, vests, and full body suits.

Paragraph (k)(2)(ii) of the proposed rule would require that each WERE and ESO provide team members and responders with properly fitting protective ensembles, ensemble elements, and protective equipment designed to provide protection from hazards to which they are likely to be exposed and suitable for the tasks they are expected to perform, as determined by the PPE hazard assessment conducted under paragraph (k)(2)(i). It is OSHA's position that ''properly fits'' means the PPE is the appropriate size to provide the team member or responder with the necessary protection from hazards and does not create additional safety and health hazards arising from being either too small or too large. As with the equipment required by proposed paragraph (k)(1), all required PPE would need to be provided at no cost to team members and responders.

Proposed paragraph (k)(2)(iii) would require that each WERE and ESO ensure that PPE complies with 29 CFR part 1910, subpart I, Personal Protective Equipment. This provision makes clear that the specific PPE requirements in the proposed standard supplement, but do not replace, OSHA's existing PPE requirements. Because most exposures to hazards on emergency incident scenes cannot be abated by administrative or engineering controls, it is particularly important that team members and responders have appropriate PPE to perform their jobs safely. OSHA's existing PPE standard contains important requirements regarding selection of PPE, employee training, and fit testing, among other requirements, that ensure PPE is effective.

Proposed paragraph (k)(2)(iv) would require the WERE and ESO to ensure that existing PPE complies with the requirements of the edition of the respective standard, listed in proposed (k)(2)(v), in effect when the PPE was manufactured. Manufacturers of compliant PPE typically include a tag or label in or on the PPE that indicates the standard to which it was manufactured.

Proposed paragraph (k)(2)(v) lists the PPE-related national consensus standards that the WERE and ESO would need to follow where applicable. These standards represent industry consensus regarding the proper means of selecting, using, and maintaining specific types of PPE. Compliance with these consensus standards ensures that the relevant PPE serves its intended purpose and effectively protects team members and responders. The standards are proposed to be incorporated by reference as noted in section II.C., *National Consensus Standards.* These national consensus standards are as follows:

(A) NFPA 1951, Standard on Protective Ensembles for Technical Rescue Incidents, 2020 ed.;

(B) NFPA 1952, Standard on Surface Water Operations Protective Clothing and Equipment, 2021 ed.;

(C) NFPA 1953, Standard on Protective Ensembles for Contaminated Water Diving, 2021 ed.;

(D) NFPA 1971, Standard on Protective Ensembles for Structural Fire Fighting and Proximity Fire Fighting, 2018 ed.;

(E) NFPA 1977, Standard on Protective Clothing and Equipment for Wildland Fire Fighting and Urban Interface Fire Fighting, 2022 ed.;

(F) NFPA 1981, Standard on Open-Circuit Self-Contained Breathing Apparatus (SCBA) for Emergency Services, 2019 ed.;

(G) NFPA 1982, Standard on Personal Alert Safety Systems (PASS), 2018 ed.;

(H) NFPA 1984, Standards on Respirators for Wildland Fire-Fighting Operations and Wildland Urban Interface Operations, 2022 ed.;

(I) NFPA 1986, Standard on Respiratory Protection for Tactical and technical Operations, 2023 ed.;

(J) NFPA 1987, Standard on Combination Unit Respirator Systems for Tactical and Technical Operations, 2023 ed.;

(K) NFPA 1990, Standard on Protective Ensembles for Hazardous Materials and CBRN Operations, 2022 ed.;

(L) NFPA 1999, Standard on Protective Clothing and Ensembles for Emergency Medical Operations, 2018 ed.; and

(M) ANSI/ISEA 207, American National Standard for High-Visibility Public Safety Vests, 2011 ed.

Proposed paragraph (k)(2)(vi) would require each WERE and ESO to ensure that air-purifying respirators are not used in atmospheres that are immediately dangerous to life and health (IDLH), as defined in paragraph (b), and are only used for those contaminants that NIOSH certifies them against. Air-purifying respirators are ineffective in IDLH atmospheres because they do not provide protection from the inhalation of gases and vapors, particularly the superheated gases present during fires. They are, however, appropriate for use by team members and responders performing duties such as post-fire overhaul, fire investigation, collapsed building search and rescue, trench/excavation rescue when exposure to respirable crystalline silica is possible, and for emergency medical operations where an airborne infectious disease is known or suspected to be present.

Proposed paragraph (k)(2)(vii) would require that each WERE and ESO ensure that each team member and responder properly uses or wears the protective ensemble, ensemble elements, and protective equipment whenever the team member or responder is exposed, or potentially exposed to the hazards for which it is provided. PPE is effective only when it is worn and used properly. This provision makes clear that the WERE or ESO is not only responsible for providing required PPE and equipment, but must also ensure that they are used whenever exposure to the hazard for which they are provided is reasonably foreseeable.

Paragraph (k)(2)(viii) of the proposed rule would require that each WERE and ESO ensure that protective ensembles, ensemble elements, and protective equipment are decontaminated, cleaned, cared for, inspected and maintained in accordance with the manufacturer's instructions. Proper care and maintenance ensure the PPE will perform as designed. Cleaning and decontaminating ensure that team members and responders are not exposed to carcinogens and pathogens from their PPE. Cleaning, care, and maintenance consistent with this paragraph would include appropriate inspection and testing of the PPE to ensure that it continues to function and protect as it was designed.

During the 2021 SBREFA process, some SERs expressed concern over the PPE retirement schedule in NFPA 1851, Standard on Selection, Care, and

Maintenance of Protective Ensembles for Structural Fire Fighting and Proximity Fire Fighting (Document ID 0115, pp. 13–14), which calls for PPE to be retired ten years after the date of manufacture. OSHA recognizes that there are users with concerns that there may be a gap in the scientific evidence on whether PPE aged beyond the retirement schedule published in NFPA 1851 is incapable of providing the designed protection level, regardless of the amount of use. Additionally, OSHA recognizes that older PPE may still be of use for activities where the primary protective properties of the PPE are not needed, for example for some exterior activities on fire scenes, during some training scenarios, and firefighting PPE used for identification and for protection against sharp edges at vehicle accident scenes. However, there is concern that older PPE could be used in situations where it is no longer able to provide the needed protection. In the proposed rule, OSHA is not proposing specific retirement age criteria for any PPE, and instead requires that PPE be cared for and maintained in accordance with manufacturer's instructions. OSHA is seeking input in Question (k)–1 on whether the agency should specify retirement age(s) for PPE.

Paragraph (k)(2)(ix) of the proposed rule would require each WERE and ESO to immediately remove from service any defective or damaged protective ensembles, ensemble elements, or protective equipment. Defective or damaged PPE is not protective and could expose team members and responders to the hazards that the PPE is supposed to be protecting against.

Proposed paragraph (k)(2)(x) would require that when a WERE or ESO permits a team member or responder to provide their own protective ensemble, ensemble element, or other protective equipment for personal use, the requirements of paragraphs (k)(2)(iii) through (ix) of this section are met. Some WEREs and ESOs permit their team members and responders to provide and use their own protective equipment. The proposed provision would require that, to ensure safety and health protections, team member or responder-provided PPE meet the same requirements as that provided by the WERE and ESO. OSHA emphasizes that the use of team member or responder-provided PPE and protective equipment must be truly voluntary. As discussed above, the WERE or ESO possesses primary responsibility for ensuring necessary PPE and equipment is provided at no cost to team members or responders.

Finally, paragraph (k)(3) of the proposed rule addresses protection from contaminants. Paragraph (k)(3)(i) would require that, to the extent feasible, each WERE and ESO ensure that contaminated PPE and non-PPE equipment undergo gross decontamination or are separately contained before leaving the incident scene. Paragraph (k)(3)(ii) would require that, to the extent feasible, team members and responders are not exposed to contaminated PPE and non-PPE equipment in the passenger compartment(s) of vehicles. Decontaminating these items as soon as possible after an incident is an important step in protecting team members and responders from contaminants. It is preferable to perform gross decontamination of PPE and non-PPE equipment before the team member or responder leaves the incident scene. Gross decontamination is defined in paragraph (b) of this section. Examples include rinsing with a hose to reduce or dilute liquid contaminants, or rinsing and brushing to displace solid particulate matter. At times it may not be possible to gross decontaminate equipment at the scene due to weather or other operational considerations. In these situations, to the extent feasible the contaminated PPE or non-PPE equipment should be separated from team members and responders by bagging the contaminated PPE or non-PPE equipment, or separating it by some other physical means, such as storing it in an equipment compartment outside of the vehicle seating area(s). OSHA is seeking input in Question (k)–2 regarding whether and how WEREs and ESOs currently provide this type of separation.

As discussed in section II.A., *Need for the Standard,* exposure to contaminated PPE has been identified as one of the many ways in which team members and responders have been exposed to carcinogens. Beginning the decontamination process at the incident scene and separating contaminated PPE from the team members and responders after the incident have been shown to reduce or eliminate many of these exposures. Full decontamination of PPE by removing or neutralizing contaminants by a mechanical, chemical, thermal, or combined process should occur as soon as operational requirements allow in accordance with the standard operating procedures required by proposed paragraph (q) (see the summary and explanation for paragraph (q), Standard Operating Procedures).

According to the U.S. Environmental Protection Agency (EPA), per- and polyfluorinated substances (PFAS) are widely used, long-lasting chemicals found in many different consumer, commercial, and industrial products. (Further information regarding PFAS is available at: *https://www.epa.gov/pfas/pfas-explained*.) EPA says there are thousands of PFAS chemicals and because of their widespread use and persistence in the environment, they are found in low levels in a variety of food products, water sources, and the environment. PFAS are found in the blood of some people and animals all around the world. OSHA is aware of the emerging concern of PFAS, their carcinogenicities, and potential exposure to firefighters from PFAS in some firefighting foam and firefighting PPE. While current information leans towards ingestion being the most common mode of exposure to PFAS, such as drinking water contaminated with it, concerns have been raised about other modes of exposure.

Performance testing requirements in NFPA 1971, 2018 ed. resulted in firefighting PPE manufacturers using PFAS in their products. OSHA is also aware that manufacturers of firefighting foams and PPE are considering options for reducing or eliminating the use of PFAS in their products. OSHA seeks information in Question (k)–3 whether there is evidence of PFAS in PPE causing health issues for team members and responders. NFPA routinely updates their standards. OSHA seeks information in Question (k)–4 whether NFPA's future standard update(s) will address or alleviate stakeholder's concerns.

Paragraph (l) Vehicle Preparedness and Operation

Paragraph (l) of the proposed rule establishes requirements for vehicle safety both in preparation of and during operation in both emergency and non-emergency incidents. Many team members and responders are injured and killed in vehicle-related incidents and collisions, as discussed in section II.A.I. *Fatality and Injury Analysis.*

Some are due to poor or improper vehicle maintenance or repair, or the manner that the vehicles are operated. Others are a result of improper or lack of use of seat belts and restraints as designed and intended. The controls in paragraph (l) are aimed at mitigating these hazards.

While not defined in the proposed rule, OSHA intends for the term vehicle to include any device used to transport responders and team members while performing their duties. This covers a broad range of modes of conveyance for transporting a person or people by land,

water, or air. Examples include bicycles, motorcycles, snowmobiles, golf carts, utility carts, cars, trucks, buses, ambulances, watercraft, and aircraft.

Proposed paragraph (l)(1) would ensure that vehicles are prepared for safe use by team members and responders. Paragraph (l)(1)(i) of the proposal would require the WERE or ESO to ensure that each vehicle provided by the WERE or ESO and driven or operated by team members or responders be inspected, maintained, and repaired in accordance with the manufacturer's instructions. Inspection and maintenance schedules can vary widely based on the type of vehicle and the nature of the inspection or maintenance. WEREs and ESOs may choose to conduct more frequent inspections and maintenance, based on the type of vehicle and the amount of use. A robust vehicle inspection, maintenance, and repair program ensures vehicle safety.

Proposed paragraph (l)(1)(ii) would require the WERE or ESO to ensure that vehicles are immediately removed from service when safety deficiencies are discovered. Once properly repaired the vehicle could be returned to service. Deficiencies could be discovered by team members and responders during the inspection performed in accordance with paragraph (l)(1)(i) or at times such as when being driven or operated, or during normal daily activities. Examples include a bird strike on the windshield that affects the driver's visibility, a missing or broken windshield wiper during inclement weather, the driver's seat belt not functioning properly, a door not latching closed properly, loose or missing lug nuts, brakes not functioning properly, a cot retention mechanism not latching, and no heat or air conditioning in the patient transport compartment. Manufacturers' instructions and guidance from national consensus standards such as NFPA 1910, 2024 ed., offer a broad range of examples of potential deficiencies. When a safety-related deficiency is identified, the vehicle would be required to be taken out of service as soon as possible.

Some SERs expressed concern that OSHA would adopt the vehicle replacement schedule recommended in NFPA 1910, Standard for Inspection, Maintenance, Refurbishment, Testing, and Retirement of In-Service Emergency Vehicles and Marine Firefighting Vessels, 2024 ed. (Document ID 0115, pp. 19–20, 30). OSHA recognizes that there are many variables related to the amount of use and conditions of operation for the wide variety of vehicles used by team members and responders that can affect the safe working life of a particular vehicle and firm deadlines for retiring vehicles may result in costly and unwarranted replacement. Given this variability, OSHA is not proposing particular timeframes for vehicle replacement. Instead, the proposed rule requires that vehicles be inspected, maintained, and repaired as specified by the manufacturer and that any vehicle with a safety-related deficiency be immediately removed from service.

Paragraph (l)(1)(iii) of the proposed rule would require the WERE or ESO to ensure that each vehicle is provided with a seat for each riding position, and each riding position is provided with a functioning seat belt or vehicle safety harness that is designed to accommodate a team member or responder with and without heavy clothing, unless the vehicle is designed, built, and intended for use without seat belts or vehicle safety harnesses. The seat belts and vehicle safety harnesses would need to accommodate a team member or responder wearing a duty uniform or other daily apparel or heavy clothing, such as a winter coat or firefighting PPE. The benefits of seatbelts and vehicle safety harnesses in preventing and reducing injuries and fatalities are well known. A vehicle safety harness would be used in place of a seatbelt, typically in a patient transport vehicle where the EMS provider needs access to treat a patient that would not be possible while using a seatbelt. Team members and responders would be required to use the seats, seatbelts, and vehicle safety harnesses as specified in proposed paragraph (l)(2) of this section.

OSHA realizes that many types of vehicles used by team members and responders are designed, built, and intended for use without seatbelts or vehicle safety harnesses. Examples include some All-Terrain Vehicles, passenger seats in buses, bicycles, motorcycles, snowmobiles, boats, and personal watercraft. Such vehicles are exempted from the requirements in paragraph (1)(1)(iii).

Proposed paragraphs (l)(1)(iv) and (v) would require the WERE or ESO to ensure that vehicles with aerial devices and vehicles with vehicle-mounted water pumps be inspected, maintained, and service tested in accordance with the manufacturer's instructions or in a manner at least equivalent to the criteria specified in NFPA 1910, 2024 ed. The testing and maintenance program specified in the manufacturer's instructions and the consensus standard are recognized as the most effective programs to ensure the safety of these devices. Failure to inspect and maintain an aerial device could result in serious injuries or fatalities should a catastrophic failure occur when the device is elevated or extended. Water provided through vehicle mounted pumps is needed for fire suppression. Team members and responders depend on the water to protect them when they are in close proximity to a fire. They could be injured or killed if a pump were to malfunction or breakdown due to inadequate maintenance. Service testing ensures that aerial devices and pumps are functioning properly.

Proposed paragraph (l)(2) would ensure vehicles are driven and operated in a manner that would keep team members and responders safe. While the primary focus of this provision is for the safety of team members and responders, it would also have the effect of protecting the public such as other drivers on the road and their passengers, bystanders, and patients being transported by EMS providers.

Proposed paragraph (l)(2)(i) would require the WERE and ESO to ensure that each vehicle is operated by a team member or responder who has successfully completed an operator training program commensurate with the type of vehicle the team member or responder will operate, or by a trainee operator who is under the supervision of a qualified operator. Operators of vehicles would have to be adequately trained, or in the process of being trained, to operate the vehicle. An untrained or inadequately trained operator poses a safety hazard to team members and responders riding in the vehicle, to operators of other vehicles, and to bystanders.

Proposed paragraph (l)(2)(ii) would require the WERE or ESO to ensure that each vehicle is driven or operated in accordance with the standard operating procedures (SOP) developed in proposed paragraph (q)(2)(iv) (see the Summary and Explanation for paragraph (q)). The proposed SOP provision includes several safety-related topics that are key to safe vehicle operation. Paragraph (l)(2)(ii) requires the WERE or ESO to ensure that these important procedures are not only established but that they are understood and followed by team members and responders.

Paragraphs (l)(2)(iii) and (iv) are aimed at protecting team members and responders both during the normal operation of the vehicle and in the event of an accident. Paragraph (l)(2)(iii) would require that the WERE or ESO ensure the team member or responder operating the vehicle does not move the vehicle until all team members or

responders in or on the vehicle are seated and secured with seat belts or vehicle safety harnesses in approved riding positions, except for vehicles without seat belts and vehicle safety harnesses as noted in proposed paragraph (l)(1)(iii), or as provided in proposed paragraph (l)(2)(viii). The proposed provision anticipates that the driver or operator would verify with team members and responders that they are safely secured in an appropriate position or are otherwise prepared for vehicle movement. In Question (l)–1 OSHA is interested in getting information on whether there are any other situations or vehicles where OSHA should require, or exclude, the use of seat belts and vehicle harnesses? If so, please explain.

Whereas proposed paragraph (l)(2)(iii) would ensure team members and responders are ready for the vehicle to move, proposed paragraph (l)(2)(iv) would require the WERE or ESO to ensure they remain seated and secured any time that the vehicle is in motion and ensure seat belts and vehicle safety harnesses are not released or loosened for any purpose while the vehicle is in motion, including the donning (putting on) or doffing (taking off) of PPE.

When dispatched to an incident from the WERE or ESO facility, OSHA anticipates team members and responders would don PPE before being seated and secured, as required by proposed paragraph (l)(2)(iii). However, there are often occurrences when team members and responders are not wearing PPE while the vehicle is moving, such as for driver training, community assessment and familiarity, and other non-response driving situations, and they are dispatched to respond to an incident that requires donning PPE. The proposed provision requires that they not release or loosen seat belts or vehicle safety harnesses to don PPE when the vehicle is moving. Conversely, if the PPE has already been donned, the proposed provision prohibits the loosening of seat belts or vehicle safety harnesses to doff the PPE when the PPE is no longer needed, such as when the response is terminated. Question (l)–2 asks how would compliance be achieved? Would the team members or responders stop enroute or wait until arrival at the scene?

Paragraph (l)(2)(v) of the proposed rule would require the WERE or ESO to ensure that team members and responders actively performing necessary emergency medical care while the vehicle is in motion are secured to the vehicle by a seat belt, or by a vehicle safety harness designed for occupant restraint, to the extent consistent with the effective provision of such emergency medical care. Restraining EMS providers who are providing care during transport reduces the likelihood of serious injury or death, should the vehicle make abrupt turns, stops, or starts; or become involved in a collision or rollover. In Question (l)–(3), OSHA is seeking input on whether it should also require that the patient be restrained to prevent an unrestrained patient from being thrown into a team member or responder in the event of a vehicle collision or an evasive driving maneuver?

Proposed paragraph (l)(2)(vi) would require the WERE or ESO to ensure that the establishment and implementation of a procedure for driver training on vehicles with tiller steering that ensures when the instructor and trainee are both located at the tiller position, they are both adequately secured to the vehicle whenever it is in motion.

Tractor-drawn aerial (TDA) ladder trucks, and tractor-drawn heavy duty and technical rescue vehicles, are unique in that they are required to have two operators; the main driver in the front, similar to other tractor-trailer trucks, and a second (tiller) operator who steers the wheels at the rear end of the trailer. They are also unique in that there is no passenger seat for the tiller instructor to sit in, as there would be when training the main driver at the front of the truck.

Some manufacturers provide a detachable seat with a seat belt for the instructor to use. There are other options for compliance including the use of a vehicle safety harness with a designated anchor point that has sufficient strength to support a fallen team member or responder and is not just an ordinary handhold/grab rail.

OSHA recognizes that boats are vehicles subject to the proposed standard, and some boats have tiller steering. However, this proposed provision would not apply to boats with tiller steering because they are designed, built, and intended for use without seat belts or vehicle safety harnesses, as noted in the discussion above regarding proposed paragraph (l)(1)(iii) of this section.

Paragraph (l)(2)(vii) of the proposed rule would require the WERE or ESO to ensure that a vehicle safety harness designed for occupant restraint is provided to secure the team member or responder in a designated stand-up position during pump-and-roll operations. While manufacturers have typically phased out stand-up positions on newer models, many older model vehicles used for wildland or wildland urban interface firefighting have designated stand-up positions for operating the water delivery systems. Stand-up positions pose a fall hazard to team members and responders if they are not restrained.

Proposed paragraph (l)(2)(viii) would require the WERE or ESO to ensure that policies and procedures are established and implemented for ensuring the safety of team members and responders when it is determined that it is not feasible for each team member, responder, or person to be belted in a seat. Examples include when moving the vehicle while reloading long lays of hose, standing as honor guards during a funeral procession, transporting people acting as holiday figures or other characters or mascots (*e.g.,* Santa Claus, Easter Bunny, Smokey Bear, Superman, etc.), during parades, and for vehicles without seatbelts as noted in proposed paragraph (l)(1)(iii) of this section. The policies and procedures would differ depending upon the type of vehicle and activity taking place. OSHA anticipates a variety of alternatives for compliance such as the use of ladder belts, harnesses, or other fall protection, and limitations on the speed vehicles may travel.

When an emergency incident occurs, some WEREs and many ESOs depend on team members or responders driving to their facilities to provide staffing for emergency response vehicles, or to respond directly to the incident scene to provide emergency services. In these instances, as noted in section VII., *Preliminary Economic Analysis and Initial Regulatory Flexibility Analysis,* some team members and responders are injured and killed while responding in privately owned vehicles (POVs). OSHA is including requirements in the proposed rule to address this hazard.

Proposed paragraph (l)(2)(ix) would require the WERE or ESO to ensure that policies and procedures are established and implemented for team members and responders who, when alerted of an emergency incident, are authorized by the WERE or ESO to respond in vehicles not under the direct control of the WERE or ESO to the emergency incident scene or to the WERE facility. Such vehicles are those that are, for example, privately owned, leased, rented, or otherwise under the control of the team member or responder (including on-loan from a friend or family member).

Some WEREs and ESOs depend on ''home response'' by team members and responders. In other words, team members are at home or otherwise on personal time, and directly respond in their POV to the incident location or to the WERE or ESO facility when alerted

of an emergency incident. This response is typically time-sensitive, requiring the team member or responder to travel with haste, often while communicating and coordinating with the WERE, ESO, or other team members or responders. This scenario presents hazards that are directly related to emergency response activities. As such, OSHA does not consider this sort of home response to be a commute to the workplace as described in 29 CFR 1904.5(b)(2)(vii), which is not treated as work-related for purposes of recordkeeping and injury and illness reporting requirements under 29 CFR part 1904. Rather, OSHA intends to cover these types of home responses under the proposed standard. Under the proposal, the WERE's or ESO's procedures for use of POV vehicles in these circumstances would need to include the same elements as those for driving their emergency vehicles, including requirements for wearing seatbelts, speed limits, stopping and proceeding at traffic control devices, passing other vehicles, and the use of warning lights and signals.

Paragraph (l)(2)(x) proposes to require the WERE or ESO to ensure that, where tools, equipment, and respiratory equipment are carried within enclosed seating areas of vehicles, each is secured either by an effective mechanical means of holding the item in its stowed position or by placement in a compartment with an effective latching mechanism. This would ensure that these items do not become flying projectiles that could injure team members and responders should the vehicle be involved in a collision or roll-over.

Paragraph (m) WERE Pre-Incident Planning

Pre-incident plans (PIPs) help team members effectively manage incidents and maximize the protection of team members as well as facility employees and the facility. PIPs provide critical information to team members that can guide their response to an emergency incident. PIPs typically include maps of the facility and diagrams and drawings, along with the designation of predetermined locations for emergency vehicle positioning during an incident. An accurate, up-to-date PIP is a valuable tool for assisting team members with safe and effective mitigation of incidents.

Under paragraph (m)(1) of the proposed rule, the WERE would be required to develop PIPs for locations within the facility where team members may be called to provide service. The PIPS are based on the facility vulnerability assessment and the type(s) and level(s) of service(s) established in paragraph (c) of this section. The facility and vulnerability assessment would identify the locations and processes in the facility where WERT services are likely to be needed.

Proposed paragraph (m)(2) would require the WERE to include in the PIP(s) the locations of unusual hazards that team members may encounter, such as storage and use of flammable liquids and gases, explosives, toxic and biological agents, radioactive sources, water-reactive substances, permit-required confined spaces, and hazardous processes. Unusual hazards are those hazards that are particularly dangerous to the health and safety of team members when carrying out their activities on the WERT. Including them in the PIP provides team members with notice of their presence and thus allows team members to prepare for them and to take appropriate action during emergency situations.

Proposed paragraph (m)(3) would require that the WERE include in the PIPs the locations of fire pumps, fire hose valves, control valves, control panels, and other equipment for fire suppression systems, fire detection and alarm systems, and smoke control and evacuations systems. During an emergency, team members need quick access to built-in protective systems, equipment, and components. Including their locations in the PIPs makes it easier for team members to find these items when needed. PIPs may also be used in training situations for familiarizing team members with the facility layout and locations of the important items specified in the proposed provision.

Under paragraph (m)(4) of the proposed rule, the WERE would ensure that the most recent versions of PIPs are provided to the WERT and are accessible and available to team members operating at emergency incidents. To be useful, PIPs must be accessible to responding team members, especially the incident commander. PIPs should also be made available as a training tool.

Proposed paragraph (m)(5) would require the WERE, to the extent feasible, to include in PIPs the actions to be taken by team members if the scope of the incident is beyond the capability of the WERT. For example, a PIP that includes the location of an unusual hazard that the WERT is not trained for might indicate that team members must remain a safe distance from the area, ensure facility workers are being evacuated, and summon mutual aid to mitigate the incident. Including these procedures in the PIP ensures that team members know the steps to take when faced with unusual hazards that are beyond their capability. It also helps to ensure team members do not expose themselves to hazards they are unequipped to handle by articulating the expectation in the event of such a hazard.

Paragraph (m)(6) would require that WEREs review PIPs annually and when conditions or hazards change at the facility. They shall be updated as needed. To be useful, PIPs must be up to date. OSHA believes that requiring the WERE to review PIPs when condition or hazards change and at least annually is sufficient to ensure the WERE identifies deficiencies in the PIP and keeps it up to date. The requirement ensures the WERE addresses known changes that might affect the WERT in a timely manner while the annual review allows the WERE to identify small changes that may have been overlooked since the past review. For example, the WERE would know when significant changes are made to the facility, such as building renovations and additions. This knowledge would prompt an update of the PIP as soon as reasonably possible. A smaller change, such as the relocation of bottled gas storage from one room to another, is something that might be identified during an annual review of the PIPs and appropriate updates would then be made.

Paragraph (n) ESO Pre-Incident Planning

Pre-incident plans (PIPs) help responders effectively manage incidents and maximize the protection of responders by planning in advance. Also, PIPs provide critical information to responders that can guide their response to an emergency incident. PIPs typically include maps of the subject facility, and diagrams and drawings, along with designation of predetermined locations for emergency vehicle positioning during an incident. The provisions in proposed paragraph (n) are based on the pre-incident planning paragraphs in NFPA 1660, Standard for Emergency, Continuity, and Crisis Management: Preparedness, Response, and Recovery, 2024 ed. While not required by the proposed rule, ESOs would benefit from using a standard form and format for PIPs for ease of use by incident commanders (IC) and other responders during an incident.

Under paragraphs (n)(1) and (2) of the proposed rule, the ESO would be required to determine the locations and facilities where responders may be called to provide services that need a PIP, based on the community or facility

vulnerability assessment and the type(s) and level(s) of service(s) established in paragraph (d), and develop PIPs for facilities, locations, and infrastructure where emergency incidents may occur. The proposed rule does not require a PIP for every incident imaginable. Rather, through the community or facility vulnerability assessment, the ESO must identify structures, facilities, and other locations where a PIP would help the ESO prepare for an incident, and then assist the IC with the development of the IAP in paragraph (p)(2)(vi).

ESOs should prioritize PIP development according to the type and magnitude of the potential incident. Hazards to life and health are of the utmost importance and would have the highest priority in creating PIPs. Likewise, the larger or more complex a structure or facility is, the greater the risk in mitigating an emergency incident at these places and therefore the need for a PIP would also be greater.

Proposed paragraph (n)(3) would require the ESO to prepare a PIP for each facility within the ESO's primary response area that is subject to reporting requirements under 40 CFR part 355 pursuant to the Emergency Planning and Community Right-to-Know Act (EPCRA) (also referred to as the Superfund Amendments and Reauthorization Act of 1986 (SARA)), 42 U.S.C. 11001 *et seq.* These types of facilities are particularly hazardous because they involve hazardous chemicals, and PIPs are necessary to ensure ESOs are sufficiently prepared to respond to incidents at these facilities. Additionally, these facilities may not have a WERT organized to mitigate emergencies, or the size and scope of the emergency may be beyond the WERT's capabilities.

Under proposed paragraph (n)(4), the ESO would need to ensure that, when preparing a PIP for a facility, the facility personnel the ESO consults are knowledgeable about the facility's use, contents, processes, hazards, and occupants. It is important that all potential hazards are identified to responders preparing PIPs, so it is important that the facility personnel assisting with the PIP development have thorough knowledge of the facility. It may be necessary to consult with more than one facility representative to ensure that all the necessary information needed for the PIP is accurately conveyed. While preparing the PIP, the responder may be provided access to information, materials, or processes that are considered proprietary business information. A note to proposed paragraph (n)(4) recommends that the ESO develop a policy for protecting this information.

Paragraph (n)(5) of the proposed rule would require that the ESO ensure that the responders responsible for PIP preparation know how to identify the information to be collected and included in the PIP. The PIP is only as good as the information contained in it. For instance, all necessary facility information must be recorded, items of concern must be noted, and accurate sketches or diagrams must be prepared.

Proposed paragraph (n)(6) would require the ESO to ensure that PIPs have a level of detail commensurate with the facility's complexity and hazards. PIPs for facilities which are not complex can be developed with minimal amounts of data. However, additional data are required for more complex facilities with more hazards. For example, the PIP for a multi-story high school would be expected to be more complex than the PIP for a fast-food restaurant. Regardless of facility complexity, the PIP details should be presented as concisely as possible to make them easily understandable to the appropriate responders.

Paragraph (n)(7) of the proposed rule would require the ESO to ensure that PIPs include actions to be taken by responders if the scope of an incident is beyond the capacity of the ESO. The PIP would be developed with an understanding of the ESO's response capability based on the type(s) and level(s) of service established in paragraph (d), and this provision would require planning for what to do if the ESO encounters an incident that exceeds that response capability. For example, the PIP might include what mutual aid ESO or skilled support resources would be needed. The PIP would also describe action(s) the ESO would take, such as establishing defensive firefighting positions, establishing no-entry zones, ensuring surrounding areas are evacuated, etc. In some situations, the appropriate action might be simply to pull back all responders to a safe distance away from the hazard.

Under proposed paragraph (n)(8), the ESO must ensure that the most recent PIPs are disseminated as needed and are accessible and available to responders operating at emergency incidents. OSHA is aware that some ESOs use electronic versions of PIPs in a database, while others use hardcopies kept in binders in response vehicles. Any method that ensures the PIPs are accessible and available would comply with the provision. PIPs can only be useful if they are available at the incident site and accessible to responders operating at emergency incidents. Also, they should be easy for responders to understand. PIPs are particularly important for the IC's use during an incident.

Paragraph (n)(9) of the proposed rule would require the ESO to ensure that PIPs be reviewed annually and updated as needed. For example, during the course of their daily routines, responders might observe facilities being renovated, additions being built, or a change of occupancy. Observations such as these might prompt a PIP update. Other information on PIPs might not be easily observed, such as names and phone numbers for responsible parties, access codes for doors and gates, etc. This type of information would be gathered during an annual review.

Paragraph (o) Incident Management System

WERTs and ESOs respond to a wide variety of incidents; most of which are considered routine and involve a small commitment of resources. Some incidents are more complex and involve larger commitments of resources, and potentially higher-risk operations. It is important for the WERE and ESO to develop an incident management system (IMS) that accommodates all types and sizes of incidents and provides for a systematic process of escalation from the arrival of the first units at a routine incident, to an appropriate response to larger and more complex incidents.

As discussed in the *Summary and Explanation* of proposed paragraph (b), the proposed rule defines an IMS as ''a system used for managing and directing incident scene operations and activities. It includes establishing functions for managing incidents, describes the roles and responsibilities to be assumed by team members and responders, and standard operating procedures to be utilized.'' Because OSHA is aware that some WERTs and ESOs use the terms IMS and Incident Command System (ICS) synonymously, the definition also indicates that incident command is a functional component of the IMS.

An IMS provides for the safety and health of team members and responders by establishing structure and coordination for the management of emergency incident operations. Several commenters responding to OSHA's 2007 RFI indicated that an IMS is appropriate for managing all types of emergency incidents and is effective in reducing injuries and illnesses to team members and responders (Document ID 0018; 0022; 0024; 0030; 0032; 0036; 0037; 0039; 0041; 0044; 0046; 0047; 0048;

0049; 0050; 0051; 0052; 0053; 0060; 0070; 0071; 0072; 0073; 0074; 0078; 0080; 0081; 0082; 0083; 0085). Lack of, or deficiencies in, an IMS are routinely cited by NIOSH in their investigation reports for team member and responder injuries and fatalities (Document ID 0326; 0327; 0328; 0329; 0330). Examples of deficiencies noted include multiple team members and responders serving in command roles in an uncoordinated manner, lack of an established accountability system for tracking team members and responders, not establishing a rapid intervention crew (RIC), and not designating an Incident Safety Officer (ISO) or otherwise ensuring for the safety and health of team members and responders.

Paragraphs (o)(1)(i) through (iii) of the proposed rule would require that each WERE and ESO develop and implement an IMS to manage emergency incidents based on the type and level of service(s) established in paragraphs (c) and (d) of this section, the facility or community vulnerability assessment conducted in accordance with paragraphs (c) and (d) of this section, and the pre-incident plans developed in accordance with paragraphs (m) and (n) of this section. An IMS provides a standard approach to managing the broad range of emergency incidents that team members and responders may encounter. The IC should be able to apply the IMS in a manner that supports the effective and efficient management of the incident. Each WERE and ESO should evaluate existing systems as it develops and implements an IMS that meets its own requirements and provides compatibility with systems used by mutual aid WERTs and ESOs, and other agencies that it would reasonably be expected to work with at emergency incidents.

Proposed paragraph (o)(2)(i) would require that WEREs and ESOs ensure that their IMS include flexible and scalable components that are adaptable to any situation. A note included with the proposed provision indicates that standardization of the IMS, such as provided in the NIMS and the National Response Framework (NRF), developed by FEMA, an agency of the U.S. Department of Homeland Security, is essential to the successful coordination and function of WERTs and ESOs in incident response operations. The NRF provides guidance for how the nation responds to all types of disasters and emergencies. It is built on scalable, flexible, and adaptable concepts identified in the NIMS to align key roles and responsibilities. The NIMS guides WERTs and ESOs with shared vocabulary, systems, and processes for working effectively together at emergency incidents. In Question (o)-1, OSHA asks for stakeholder input about their current use of an IMS, whether the NIMS and NRF were used as guidance for the IMS, and if there are any concerns with being compatible with NIMS.

Paragraph (o)(2)(ii) of the proposed rule would require that each WERE and ESO ensure that, in the absence of a dedicated ISO, the IC assesses the incident scene for existing and potential hazards and oversees incident safety. Many incidents have an ISO whose primary responsibilities are to assess the incident scene for existing and potential hazards and oversee incident safety. Small-scale incident scenes, however, may not have a team member or responder who is designated as the ISO. In these circumstances, the IC would need to oversee incident safety.

Paragraph (o)(2)(iii) of the proposed rule would require that each WERE and ESO ensure that the IMS includes a means for team members or responders to notify the IC or Unified Command (UC) of unsafe conditions and actions on the incident scene. Unsafe conditions or actions may become evident to team members and responders while they are performing their duties. It is important that they be able to alert the ISO, IC or UC as soon as possible, by means of portable radio, cell phone, face-to-face communication, or another method designated in the IMS, so that actions can be taken by the IC or UC to address the hazard.

Paragraph (o)(2)(iv) of the proposed rule would require that each WERE and ESO ensure that the IMS consists of collaborative components that provide the basis for clear communication and effective operations. Components, such as those identified in the NIMS—resource management, command and coordination, and communications and information management—would provide structure and coordination for ICs and UCs to manage emergency incident operations, which would provide for the safety and health of team members and responders.

Proposed paragraphs (o)(3)(i) through (iii) would require that each WERE and ESO designate the responsibilities of the IC that at least include front-line management of the incident, overall incident safety, and tactical planning and execution. The front-line management of the incident could include activities such as establishing a command post, conducting size-ups of the incident, and controlling incident communications. The overall incident safety responsibility of the IC could cover activities such as including team member and responder safety in the IAP, and continuously assessing the risk to the safety and health of team members and responders. The tactical planning and execution could include activities such as developing an overall strategy and an IAP, assigning duties and tasks to team members and responders, establishing hazard control zones, maintaining resource and team member or responder accountability, and updating the IAP as needed.

Under proposed paragraph (o)(3)(iv), the WERE and ESO would also designate to the IC the responsibility of determining if additional assistance is needed, and relaying requests for internal resources, mutual aid, and skilled support assistance through the emergency communications and dispatch center. The IC is in the best position to know what and when additional assistance is needed. Assistance is requested by the IC through the dispatch center which would contact the requested internal resources, mutual aid WERT or ESO, or the employer who can provide the requested skilled support.

Paragraph (o)(4) of the proposed rule would require that each WERE and ESO ensure that the IC has the training and authority to perform IC duties. Training would vary depending on the team member's or responder's tier of duty. For example, NFPA 1021, Standard for Fire Officer Professional Qualifications, 2020 ed., identifies four levels for minimum requirements for leadership and supervision over others and operations, which includes incident management. Level 1 is a tier for an entry level/first-line supervisor, ESO ''company officer,'' or team leader. Level 4 is the top level or top tier for the chief of the ESO. On a single unit response incident, typically the senior team member or responder would be the IC. On a multi-unit response incident, the senior team member or responder could be the initial IC, but the role of IC would pass up the chain of command as more senior/higher tier team members or responders arrive on the scene. Additionally, as part of the IMS, the WERE and ESO would need to authorize the appropriate team members and responders to serve as an IC.

Many of the provisions in this section are based on, or are consistent with, NFPA 1500, and NFPA 1561, Standard on Emergency Services Incident Management System and Command Safety, 2024 ed. OSHA has preliminarily determined that development and use of an IMS would make incident scenes safer and prevent injuries and fatalities. In Question (o)-2, OSHA is seeking input on which

aspects of an IMS are the most effective and the least effective in protecting the safety and health of team members and responders. Commenters should explain how and why certain IMS components are or are not effective.

Paragraph (p) Emergency Incident Operations

During emergency incident operations, team members and responders face the most challenging aspects, both physically and psychologically, of their vocation. Ensuring safe operations at incidents can reduce team member and responder injuries and fatalities, and limit exposure to health hazards. Paragraph (p) of the proposed rule is based on current industry practices, as reflected by NFPA consensus standards and FEMA's ''National Incident Management System,'' and would not present new requirements for most ESOs and WEREs.

Proposed paragraph (p)(1) would establish requirements for incident command and management. Paragraphs (p)(1)(i) and (ii) would require the WERE and ESO to ensure that the IMS developed in accordance with paragraph (o) of this section is used at every emergency incident and that every incident has an Incident Commander (IC) or a Unified Command (UC). For an IMS to be effective on large scale incidents, it needs to be used on small scale incidents so that all involved are familiar with it and experienced with working within its scope. Also, it is important that every incident, no matter how large or how small, has a person designated to be in charge. For a simple EMS response for a sick person laying in the yard with two EMS providers on the ambulance, one provider would be designated the leader, or IC, and in charge of response activities for the incident.

Under proposed paragraph (p)(1)(iii), the WERE and ESO would need to ensure that the task of overseeing incident safety is addressed, or an ISO is assigned and designated to monitor and assess the incident scene for safety hazards and unsafe situations and develop measures for ensuring team member and responder safety. The task of overseeing incident safety is sometimes referred to as the ''safety'' role. Typically, the IC would oversee the safety role on small(er) incidents. For larger or more complex incidents, where division of labor is appropriate so that the IC is not overwhelmed, a team member or responder (usually with seniority or in a higher tier) can be designated to fill the safety role as the ISO. Whoever fulfills the safety role needs to be mindful of observed and anticipated safety hazards and develop measures to stop or correct them to prevent injuries or fatalities.

Proposed paragraph (p)(1)(iv) would require the WERE and ESO to ensure that if an incident escalates in size and complexity, the IC divides the incident into strategic or tactical level management components. Dividing complex incidents into manageable components allows for an appropriate span of control for team members and responders managing the components and reduces the likelihood that the IC or component managers will be overwhelmed. For example, a derailed and overturned passenger train is a large-scale incident that involves multiple WERTs or ESOs spread apart by distance, due to the length of the train, and also by the train itself being a large obstruction physically separating one side of the incident from the other. In this situation, the ESO could separate the incident into geographic areas, separating each side of the tracks (north/south, east/west) into individual divisions (as described in NIMS), with an overall IC, and a senior team member or responder designated as the division leader.

Under proposed paragraph (p)(1)(v), the WERE and ESO would need to ensure that a Unified Command (UC) structure is utilized on incidents where the complexity requires a shared responsibility among two or more WEREs, ESOs, or other agencies. For example, a common situation requiring a UC could be during a large-scale wildfire that crosses jurisdictional boundaries, such as town/city, county, state, and Federal lands (such as national parks). The UC would likely be comprised of individuals who would be the IC in their own jurisdiction, to coordinate efforts and operate together to achieve a common goal to mitigate the incident and prevent injuries and fatalities.

Proposed paragraph (p)(1)(vi) would require the WERE and ESO ensure that IC(s), team members, and responders are rotated or replaced during complex or extended operations, as determined by the WERE or ESO. Emergency response activities can be physically and mentally challenging, resulting in fatigue that can impair the team member or responder's ability to safely and effectively perform their duties. It is important that team members and responders receive adequate rest breaks and the opportunity to mentally decompress.

Proposed paragraph (p)(2) would establish requirements for the incident commander. Paragraph (p)(2)(i) would require the WERE and ESO to ensure a team member or responder is assigned as the IC. Each incident needs someone to be in charge, who would serve as the IC. However, the team member or responder designated to fill the role of IC may change as the incident progresses and more senior tier team members or responders arrive at the scene, or as the incident escalates in size or complexity.

Paragraph (p)(2)(ii) would require each WERE and ESO to ensure that the identity of the IC and the location of the command post are communicated to the team members or responders who are on the incident scene or responding to it. The IC should announce via radio the specific location of the command post. For communications via radio between the sender and receiver, the command post could be anywhere within range of the radio. However, most often incident scene communication occurs face-to-face. Thus, team members and responders need to know who and where the IC is on the scene. Often, response vehicles are used as the command post, but where multiple vehicles are on the scene, it may be difficult to distinguish which vehicle is being used as the command post. The command post could also be a free-standing table/command board located close to incident operations or away from vehicles. A visible object, such as a steady or flashing light of a distinct color, or a flag, banner, or other visible marker could be used to help identify the location of the command post. If the IC is outside of the identified vehicle, a distinguishing garment, such as a reflective vest with ''Command,'' or other suitable means should be used to identify the IC.

Under proposed paragraphs (p)(2)(iii) and (iv), the WERE and ESO would need to ensure the IC conducts a comprehensive and ongoing size-up of the incident scene that places life safety as the highest priority and conducts a risk assessment based on the size up before actively engaging the incident. Factors involved in a size-up vary depending on the type of incident (*e.g.,* fire, EMS, technical rescue), but all size-ups need to include evaluation of the safety hazards to the person/people involved in the incident, bystanders, and team members and responders. Size-up is an ongoing process that includes a continuing evaluation of information received and assessment of the hazards present. When feasible, the size-up should include a 360-degree walkaround survey of the involved structure or incident scene to evaluate the incident from all angles so that a

clear mental picture of the scope of the incident can be developed.

Under proposed paragraph (p)(2)(v), the WERE and ESO would ensure the IC coordinates and directs all activities for the duration of the incident. This provision would require the IC, or successive ICs, to remain engaged in managing the incident from beginning to end. Similar to the IC role being passed as an incident escalates, the IC role could be passed again as the incident de-escalates. Because all activities must be conducted under the direction of the IC, ''freelancing'' (operating without direction from the IC and outside the scope of the IMS) on the incident scene would be prohibited.

Proposed paragraph (p)(2)(vi) would require the WERE and ESO to ensure the IC develops an Incident Action Plan (IAP) that prioritizes life safety for each incident, updates it as needed during the incident, and utilizes the information contained in the PIP. The IAP helps to coordinate incident operations and activities, and ensure they support the incident mitigation objectives. The IAP provides structure to manage the incident. For the majority of incidents, the IAP is usually not a formal, written plan, although for some large-scale incidents the IC or UC may develop a written plan. Often, the IAP may only be documented on a fill-in incident management/incident command template, chart, magnetic or wipe-off board, or others means depending on the IC's preference. If a PIP was developed for the incident scene location, proposed provision (p)(2)(vi) would require that it be used in the development of the IAP. The purpose for requiring the development of PIPs in proposed paragraphs (m) and (n) is to aid the IC's management of the incident.

Proposed paragraph (p)(3) would establish requirements for control zones. In paragraph (p)(3)(i), the WERE and ESO would be required to establish control zones at every emergency incident to identify the level of risk to team members and responders and the appropriate protective measures needed, including PPE. Control zones serve to delineate the areas where certain team members and responders are designated to operate. In addition to the protective measures or PPE needed for each zone, the differentiation among control zones may also indicate the required level of training (*i.e.,* team member or responder tier) appropriate to operate in each zone.

Proposed paragraphs (p)(3)(ii) and (iii) would require the WERE and ESO to ensure the perimeters of control zones are designated by the IC, and that any changes to the perimeters during the incident are communicated to all team members and responders on the scene. For control zones to serve their intended purpose, team members and responders need to be notified of the zone perimeters. As an incident escalates or de-escalates the boundaries of the zones are likely to expand or contract. For example, when a fire extends from one attached dwelling (*i.e.,* townhouse, rowhouse) to another the zones would expand to include the additional dwelling on fire. As the fire is brought under control, the zones would contract. Team members and responders would need to be notified of these changes via radio or visually by the relocation of the marking method required by proposed paragraph (p)(3)(iv)(B).

Under proposed paragraphs (p)(3)(iv)(A) through (C), the WERE and ESO would need to ensure that control zones are established as no-entry, hot, warm, and cold, as defined in proposed paragraph (b); marked in a conspicuous manner, with colored tape, signage, or other appropriate means, unless such marking is not possible; and communicated to all team members and responders attending the incident before the team member or responder is assigned to a control zone. These proposed provisions elaborate on the general requirements in the preceding provisions. The individual zones are defined in proposed paragraph (b), and further explained in the *Summary and Explanation* for paragraph (b). In Question (p)–1, OSHA is seeking stakeholder input on current practices for identifying and communicating the various zone boundaries. What marking methods are used? How are they communicated to team members and responders? Do the marking methods help or hinder on-scene operations?

Proposed paragraph (p)(3)(v) would require the WERE and ESO to ensure that only team members and responders with an assigned task are permitted in the hot zone. The hot zone is the area with the greatest potential for risk of injury or exposure to hazards. Team members or responders entering the hot zone without an assigned task would be considered to be freelancing, thus operating outside the scope of the IMS, and therefore placing themselves at risk, and potentially increasing the risk to those designated to operate within the zone. Freelancing team members and responders are also likely to be difficult to track in the personnel accountability system established in proposed paragraph (p)(2)(vi).

Paragraph (p)(3)(vi) of the proposed rule would require the WERE and ESO ensure that where a no-entry zone is designated, team members and responders are prohibited from entering the area. A no-entry zone can be established for any number of reasons. The most important reason is to protect team members and responders from injury or death. For example, during a structure fire, there is the danger of a wall or other part of a structure collapsing. The area where the collapsing structural components are likely to fall would be designated as a no-entry zone, and team members and responders would be prohibited from entering that area. While not a hazard to team members and responders, a no-entry zone could be established to protect evidence for a potential criminal investigation.

In paragraph (p)(3)(vii) of the proposed rule, the WERE and ESO would be required to ensure that for each zone the appropriate protective measures are designated, including PPE, that are commensurate with the hazards in the zone the team member and responder will be operating in, and that each team member and responder appropriately uses the protective measures for that zone. The protective levels of PPE needed vary for each zone level, with the highest level needed for the hot zone. A protective measure for a downed electrical wire could be to a maintain a certain, safe distance away from the downed wire (a no-entry zone), with no specific PPE needed.

Proposed paragraph (p)(4) would require safety and health measures to be taken on the incident scene. Under proposed paragraphs (p)(4)(i) and (ii), WEREs and ESOs would be required to identify the minimum staffing needed to ensure that incidents are mitigated safely and effectively and ensure that operations are limited to those that can be safely performed by the team members and responders available on the scene. OSHA recognizes that many WERTs and ESOs ''do more with less.'' The proposed provisions would require the WERE and ESO to identify the staffing needed for various types of incidents that they may respond to, potentially prompting a request for mutual aid resources, but also that they limit operations to those that can be safely performed with the team members and responders on the scene. NFPA 1710 and NFPA 1720 provide guidance on staffing levels for various types of firefighting ESOs. To be clear, OSHA is not specifying, nor recommending minimum staffing levels for emergency response vehicles, or the minimum number of team members or responders needed on an incident scene for safe incident operations, except with respect to the ''2-in, 2-out'' requirement discussed below. Operations on the

incident scene would need to be limited to those that can be safely conducted by the team members or responders on the scene.

Proposed paragraphs (p)(4)(iii) through (v) are essentially carried forward into the proposed rule from the existing requirements in 29 CFR 1910.134(g)(4), Respiratory Protection; Procedures for interior structural firefighting. The existing provisions are commonly referred to as the ''2-in, 2-out'' rule. As part of this rulemaking, OSHA intends to delete existing paragraph (g)(4) from 29 CFR 1910.134 and insert a note there referring readers to this rule for the requirements on interior structural firefighting. WEREs and ESOs are required to continue to comply with the remaining provisions of 29 CFR 1910.134. In addition, under proposed paragraphs (p)(4)(iii) through (v), the coverage is expanded to include all IDLH atmospheres that team members and responders enter, not just interior structural firefighting. Team members and responders performing other duties, such as technical rescue in an IDLH, face many of the same hazards as those performing interior structural firefighting, and need to be afforded the same protective measures.

Paragraph (p)(4)(iii) of the proposed rule would require the WERE and ESO to ensure that at least four team members or responders are assembled before operations are initiated in an IDLH atmosphere in a structure or enclosed area, unless upon arrival at an emergency scene, the initial team member(s) or responder(s) find an imminent life-threatening situation where immediate action could prevent the loss of life or serious injury, in which case such action would be permitted with fewer than four team members or responders present. The requirement in this provision of a minimum of four team members or responders is consistent with existing 29 CFR 1910.134(g)(4), which requires at least two team members or responders to enter the IDLH environment and at least two team members or responders located outside the IDLH environment.

This provision includes an exception to the 2-in, 2-out requirement and coincides with proposed provision (f)(2) of this section. OSHA's intent is that this exception is for the rescue of a person in imminent peril only, where team members or responders observe, or are informed by a witness of the imminent life hazard. The traditional emergency services adage may be relevant when considering whether an exception to the 2-in, 2-out requirement would be appropriate: ''Risk a lot to save a lot, risk little to save little; risk nothing to save nothing.'' This proposed provision is not intended to be used as a loophole for non-compliance with proposed paragraph (p)(4)(iii). Some organizations have tried to use the existing 2-in, 2-out requirement to justify minimum staffing levels on emergency response vehicles, which is a mischaracterization of the requirement. The four team members or responders need not arrive on the same vehicle and could arrive at the incident scene separately to be in compliance with the proposed provision.

Under proposed paragraph (p)(4)(iv), the WERE and ESO would need to ensure that at least two team members or responders enter the structure or enclosed area with an IDLH atmosphere as a team and remain in visual or voice contact with one another at all times, unless there is insufficient space for two team members or responders, such as for example, in a confined space or collapsed structure. Two team members or responders are needed to work together as a team in case one has an issue that requires the assistance of the other one. Often visible contact is not possible in dark or smoke-filled locations. Voice contact is person-to-person, without the use of radios, so that they can hear one another in case one needs help.

Proposed paragraph (p)(4)(v) would require the WERE and ESO to ensure that outside the structure or enclosed area with the IDLH atmosphere, a minimum of two team members or responders are present to provide assistance to, or rescue of the team operating in the IDLH atmosphere. One of the two team members or responders located outside the IDLH atmosphere may be assigned to an additional role, such as IC, so long as this team member or responder is able to perform assistance or rescue activities without jeopardizing the safety or health of other team members or responders operating at the incident.

Paragraph (p)(4)(vi) of the proposed rule would require WEREs and ESOs ensure each team member and responder in the IDLH atmosphere uses positive-pressure SCBA or a supplied-air respirator in accordance with the respiratory protection program specified in proposed paragraph (f) of this section. The air pressure inside the facepiece of a positive-pressure SCBA and supplied air respirators is constantly higher than the air pressure outside the facepiece. Therefore, if a break in the seal of the facepiece to the face should occur, the high internal air pressure will push air out thus preventing contaminated air from entering.

Proposed paragraph (p)(4)(vii) would require the WERE and ESO to ensure that each supplied-air respirator used in an IDLH atmosphere is equipped with a NIOSH-certified emergency escape air cylinder and pressure-demand facepiece. An escape cylinder is needed in case something happens that stops the air flow from the air hose, or an event occurs that requires the team member or responder to rapidly escape, thus disconnecting from the air hose to avoid being hindered by a potentially entangled air hose.

Under proposed paragraph (p)(4)(viii), the WERE and ESO would ensure that team members and responders use NIOSH-certified respiratory protection during post-fire extinguishment activities, such as overhaul and fire investigation. Once the fire has been substantially extinguished, team members and responders typically begin overhaul activities to find and expose any smoldering or hidden pockets of fire in the area that has burned. Usually, SCBA is no longer needed to protect team members' and responders' respiratory systems from the heated gases. However, other combustion products are still present. Thus, NIOSH-certified respiratory protection suitable for carcinogenic combustion products would be needed. Fire investigator team members and responders are also exposed to combustion products while performing their duties on a fire scene, even after an emergency incident is contained. Therefore, these team members and responders would also need to use respiratory protection.

Proposed paragraph (p)(5) would establish requirements for communication between the emergency communications and dispatch center, and team members and responders and the IC; and for on-scene communication. Paragraph (p)(5)(i) of the proposed rule would require the WERE and ESO ensure, to the extent feasible, that there is adequate dispatch and monitoring of on-scene radio transmissions by an emergency communications and dispatch center. Emergency communications and dispatch centers are known by many different terms, such as emergency communications center, public safety communications center, and 911 center. OSHA recognizes that WEREs and ESOs may not have direct supervision or authority over the emergency communications and dispatch. However, OSHA expects that emergency communications and dispatch centers would do what they can to ensure adequate monitoring of on-scene radio transmissions. Even where the WERE or ESO does not have direct supervision or authority over the

communications and dispatch center, the WERE or ESO must still take all feasible steps to ensure adequate monitoring of on-scene radio, such as by notifying the communications and dispatch center of the need for monitoring and cooperating with them to facilitate such monitoring. Where a WERE or private ESO does not utilize the public emergency communications and dispatch center or knows that the center will not be monitoring on-scene radio transmissions, the WERE or ESO must ensure that their own means of communication with team members and responders are monitored in accordance with proposed paragraph (p)(5)(i). Monitoring of incident scene radio transmissions is important for relaying information, ensuring requests for additional resources are acknowledged and processed, and most importantly, ensuring Mayday calls are not missed.

Proposed paragraph (p)(5)(ii) would require the WERE and ESO ensure there is effective communication capability between team members or responders and the IC. This may involve providing each team member and responder their own portable, two-way radio. However, in many cases effective communication may be achieved by ensuring all team members and responders work with someone who has a radio.

Proposed paragraph (p)(5)(iii) would require the WERE and ESO ensure that communications equipment allows mutual aid team members and responders to communicate with the IC and other team members and responders. For mutual aid to be effective, WEREs and ESOs need to be able to communicate with each other on the incident scene. Radio technology has evolved through the years and continues to evolve such that some two-way radios used by team members and responders have communication capabilities across many radio channels and frequencies. OSHA is not proposing to require that WEREs and ESOs replace existing radio equipment with the latest equipment. Instead, the proposed provision would require the WERE or ESO to ensure communication capability, which could be that those WEREs or ESOs with mutual aid agreements be equipped with two-way radios that match or work with each other's frequency(ies), or that a separate mutual aid frequency be established and provided on their existing radios.

Under proposed paragraph (p)(6), OSHA would require the WERE and ESO to ensure that the personnel accountability system established in proposed paragraph (q)(2)(vii) is implemented at all incidents. As the name implies, the personnel accountability system is intended to keep track of team members and responders operating on the incident scene. Its primary purpose is to identify any missing team member or responder. For instance, if a WERE or ESO establishes that personnel accountability check be conducted at a certain time interval and at that time interval it is determined that someone is missing, the personnel accountability system should be able to identify the individual and where they were expected to be operating on the incident scene. Many WEREs and ESOs are accustomed to using some form of personnel accountability system. The proposed provision would require that a personnel accountability system be used at every incident.

Paragraph (p)(7) of the proposed rule would require the WERE and ESO to implement a Rapid Intervention Crew (RIC) at each structure fire incident where team members or responders are operating in an IDLH atmosphere, in accordance with the SOP established in paragraph (q)(2)(viii) of this section. Rescuing a team member or responder who is in trouble and in need of rescue is a difficult process. It is important that a properly staffed and equipped RIC be established at incidents where team members and responders are operating in IDLH atmospheres so that they can be deployed quickly when needed as team members and responders operating in an IDLH have a limited supply of air available in their SCBA.

Proposed paragraph (p)(8) would require the WERE and ESO ensure that medical monitoring and rehabilitation procedures are implemented, as needed, in accordance with the SOP established in paragraph (q)(2)(ix) of this section. The IC would need to consider the circumstances of each incident and make provisions for rest, medical monitoring, and rehabilitation of team members or responders operating at the scene. Requirements for on-scene rehabilitation were considered appropriate by several commenters to the 2007 RFI (Document ID 0022; 0032; 0037; 0041; 0044; 0046; 0047; 0049; 0051; 0052; 0060; 0063; 0071; 0072; 0083). Having preplanned medical monitoring and rehabilitation procedures that can be applied to a variety of incident types is essential for the health and safety of team members and responders.

Paragraph (p)(9) of the proposed rule would require that the WERE and ESO implement the traffic safety procedures, as needed, in accordance with the SOP established in paragraph (q)(2)(x) of this section. As noted in section II.A., *Need for the Standard,* many responders are injured and killed while operating at incidents on roadways and highways. To reduce the likelihood of injuries and fatalities, WEREs and ESOs would need to establish traffic safety procedures that could include using a large vehicle to block traffic lanes and the wearing of reflective PPE. Also, WEREs and ESO should consult with the appropriate authorities regarding procedures for the complete shutdown of traffic movement on the roadway or highway to protect team members and responders from moving vehicles on the scene of an emergency incident.

Some emergency incidents may necessitate the WERE and ESO to call upon the services of employers who do not typically provide emergency services. One example would be to call upon the services of a heavy-duty wrecker-rotator and operator to lift a tractor-trailer truck that has overturned unto a car with people trapped inside or calling a construction company to provide a bulldozer and operator to cut a fire line or access road for a wildland fire. Another example is calling a plumber with a sewer camera to search for trapped victims in a collapsed structure. These workers would provide their skills and equipment, when needed, to support team members and responders operating at an emergency incident. Known in the proposed rule as skilled support workers (SSW), they would potentially be exposed to some of the same hazards as team workers and responders.

Proposed paragraphs (p)(10)(i) through (v) would require the WERE and ESO to ensure that prior to participation at an incident scene, each SSW has and utilizes PPE appropriate to the task(s) to be performed; an initial briefing is provided to each SSW that includes, at a minimum, what hazards are involved, what safety precautions are to be taken, and what duties are to be performed by the SSW; an effective means of communication between the IC and each SSW is provided; where appropriate, a team member or responder is designated and escorts the SSW at the emergency incident scene; and all other appropriate on-scene safety and health precautions provided to team members and responders are used to ensure the safety and health of each SSW.

The SERs participating in the 2021 SBREFA panel generally agreed that SSWs did not need additional emergency response-specific PPE when responding to emergency incidents (Document ID 0115, p. 10). The SERs indicated that, even at emergency incidents, SSWs generally would need only the PPE they normally would use

on any job. Any additional PPE that the SSW would need to be protected at the incident scene would need to be provided by the WERE or ESO.

Paragraph (q) Standard Operating Procedures

Use of Standard Operating Procedures (SOPs) helps to reduce the risk of injuries and fatalities by providing written guidance to team members and responders with established safe procedures for actions to be taken during a wide variety of incident responses. They provide direction for team members and responders on what they need to do to safely perform job tasks that are routine and predictable. SOPs ensure consistent work performance, contribute to a safe work environment, and create a template for how to resolve issues and overcome obstacles. NIOSH, in its firefighter fatality investigation and prevention program, frequently cites a lack of, or inadequacy of, standard operating procedures as a contributing factor in firefighter fatalities (Document ID 0326; 0327; 0328; 0329; 0330).

Paragraph (q)(1) of the proposed rule would require that WEREs and ESOs develop and implement SOPs for emergency events they are likely to encounter, based on the type(s) and level(s) of service(s) established in paragraphs (c) and (d) of this section, and the community or facility vulnerability assessment developed in accordance with paragraphs (c) and (d) of this section. For example, many communities have single family dwellings. An appropriate SOP for firefighting ESOs might include the location for response vehicles to be positioned as they arrive at a house on fire, and the duties of responders arriving on the scene.

Paragraph (q)(2)(i) of the proposed rule would require that WEREs and ESOs establish SOPs that describe the actions to be taken by team members and responders in situations involving unusual hazards. Examples of unusual hazards include downed power lines, natural gas or propane leaks, flammable liquid spills, bomb threats, derailments of railroad and subway systems, fast-moving water, and floods. Team members and responders are sometimes dispatched to incident scenes with unusual hazards to evaluate the hazard, and a basic SOP may be to set up a security barrier to protect people from the hazard, request assistance from the resource provider such as a utility company, or initiate or assist with evacuation of people in the area. SOPs should also include additional key information to guide team members and responders in the appropriate action(s) to be taken in each of these scenarios to protect themselves and other responders from those hazards.

Proposed paragraph (q)(2)(ii) would require that each WERE and ESO establish SOPs that address how team members and responders are to operate at incidents that are beyond the capability of the WERT or ESO, as specified in paragraphs (c) and (d) of this section. Typically, this would include actions to preserve lives, stabilize the scene, and summon mutual aid resources to help resolve the situation or perform duties that the WERT or ESO is unable to perform, such as technical rescue.

Under paragraphs (q)(2)(iii) of the proposed rule, each WERE and ESO would be required to establish SOPs to provide a systemic approach for protecting team members and responders from contaminants and for decontamination of team members, responders, PPE, and equipment. The SOPs would need to include at a minimum: proper techniques for doffing contaminated PPE; on-scene gross decontamination and decontamination at the WERE's or ESO's facility of PPE, equipment, and team members and responders; encouraging team members and responders to shower with soap and water, as soon as reasonably practicable, and change into clean clothing; and protecting team members and responders from contaminated PPE after an incident. On-scene gross decontamination helps to remove combustion products which helps prevent further contamination of team members and responders and reduces cross-contamination of the transport vehicle.

Proposed paragraph (q)(2)(iv) would require that each WERE and ESO establish SOPs for vehicle operations that meet the requirements of paragraph (l)(2) of this section, and include procedures for safely driving vehicles during both non-emergency travel and emergency response; criteria for actions to be taken at stop signs and signal lights; vehicle speed; crossing intersections; driving on the opposite side of the road with oncoming traffic; use of cross-over/turnaround areas on divided highways; traversing railroad grade crossings; the use of emergency warning devices; and the backing of vehicles. For backing vehicles with obstructed views to the rear, the SOP would need to include the use of at least one of the following: a spotter, a 360-degree walk-around of the vehicle by the operator, or a back-up camera. Other than for backing vehicles with obstructed views to the rear, OSHA is not specifying the particular content of the vehicle-related SOPs. The agency is aware that State vehicle laws often permit exceptions for emergency vehicles which should be included in the SOPs; for example, an allowance to exceed the posted speed limit by a certain amount. WEREs and ESOs should consult the appropriate State laws when considering development of their SOPs. While OSHA intends to provide discretion to WEREs and ESOs in the crafting of most provisions of the SOPs, it does not intend to allow WEREs and ESOs to avoid the mandatory requirements in this proposal even if similar requirements are exempted at the state or local level. For example, if a state or local law exempts emergency vehicles from requirements related to addressing obstructed views to the rear, OSHA's requirement in proposed paragraph (q)(2)(iv) would still apply.

Under proposed paragraph (q)(2)(v), WEREs and ESOs would be required to establish SOPs to provide for the use of standard protocols and terminology for radio communications at all types of incidents. Standard protocols should include instructions on, for example: the operation of portable and mobile radios, with a preference for identifying the unit being called first (receiver), then identifying the sender; and the need for speaking in a calm voice and as clearly, concisely, and precisely as possible. Protocols should also include instructions on use of dispatch and incident scene/tactical radio frequencies, use of the emergency alert button, ''Mayday'' situations, and other special situations. The NIMS recommends, and OSHA agrees, that acronyms, unique jargon, and codes should not be used in radio communication (Document ID 0344, p. 57). NIMS and OSHA recommend, but do not require, the use of common terms, plain language, and clear text to help ensure all team members and responders can transmit and understand all information being communicated. This would be particularly helpful during incidents where multiple entities, such as mutual aid WERTs and ESOs, are participating.

Paragraph (q)(2)(vi) of the proposed rule would require that WEREs and ESOs establish procedures for operating at structures and locations that are identified as, or determined to be, vacant, structurally unsound, or otherwise unsafe for entry by team members or responders. Structures such as these are typically unsafe to enter under normal circumstances and are even more dangerous during an emergency incident, particularly when

on fire. They pose a serious risk to team members and responders should they enter, especially if there is a fire in the structure that could obstruct or conceal structurally unsafe conditions. Structural collapse and falls through unstable structures have been responsible for many injuries and fatalities to team members and responders, as explained in section II.A.I., *Fatality and Injury Analysis.* OSHA does not intend that WEREs and ESOs develop SOPs that prohibit entry to these structures (although WEREs and ESOs may choose to prohibit entry as they see fit), but the SOPs should establish protocols for minimizing risks and avoiding hazards during such entries.

Paragraph (q)(2)(vii) of the proposed rule would require each WERE and ESO to establish SOPs for maintaining accountability and coordinating evacuation of all team members and responders operating at an incident that includes periodic accountability checks and reports; procedures for orderly evacuation of team members and responders; and procedures for rapid evacuation of team members and responders from escalating situations, such as rapid growth of fire, impending collapse, impending explosion, and acts of active violence against team members and responders. Accountability means keeping track of each team member and responder on an incident scene. The sooner a team member or responder is identified as missing, the sooner efforts to find them could be initiated and the more likely harm could be avoided, so periodic accountability checks are important during incidents and evacuations. OSHA is aware that there are various methods already in use for maintaining accountability and performing periodic accountability checks to ensure all team members and responders are accounted for. Under this proposed provision, WEREs and ESOs would need to establish procedures that best fit their operations and use them at all incidents. The provision would also require SOPs for an orderly evacuation, which typically include instructions such as pulling back and regrouping, as well as procedures for rapid evacuation such as drop-and-run.

Proposed paragraph (q)(2)(viii) would require that each WERE and ESO establish SOPs for Mayday situations, such as when a team member or responder becomes lost, trapped, injured, or ill. These SOPs would need to cover the use of radio emergency alert buttons and implementation of a rapid intervention crew (RIC) for immediate deployment to search and rescue any missing, disoriented, injured, ill, lost, unaccounted-for, or trapped team members or responders. The establishment of a RIC is required by proposed paragraph (p)(7) of this section at each structural fire incident where team members or responders are operating in an IDLH atmosphere. The SOP would need to specify the minimum number of team members or responders needed for the RIC, based on the size and complexity of potential incidents; and a standard list of equipment to be assembled by the RIC, for foreseeable incidents.

Proposed paragraph (q)(2)(ix) would require that each WERE and ESO establish SOPs for a systematic approach to provide team members and responders with medical monitoring and rehabilitation at emergency incidents as needed, such as rest, medical treatment, rehydration (fluid replacement), active warming or cooling, and protection from extreme elements. While most emergency incidents are handled without the need for medical monitoring and rehabilitation, when it is needed procedures need to be in place to implement it quickly.

Provisions in proposed paragraph (q)(3) apply to ESOs only. Proposed paragraph (q)(3)(i) would require that each ESO establish SOPs for operating at an emergency incident on, or adjacent to, roadways and highways. The SOP would need to cover setting up a safe work zone beginning with proper placement of the first arriving ESO vehicle and subsequent ESO vehicles, a means of coordination with law enforcement and mutual aid WERTs or ESOs, and use of safety vests that have high visibility and are reflective. Consideration should be given to using a large vehicle, such as a fire engine/pumper or ladder truck, to position as a blocker to prevent vehicles from driving into or through an incident scene where team members or responders are operating. ESOs should coordinate with law enforcement regarding authority over closing travel lanes or the entire roadway or highway for the protection of team members and responders. High-visibility and reflective vests help drivers see team members and responders during daylight and at night, thus reducing the risk of striking those operating on an incident.

Proposed paragraph (q)(3)(ii) would require the ESO to establish SOPs for operating at incident scenes that are primarily related to law enforcement, such as crime scenes, active shooters, and civil disturbances. ESOs may be called upon to stand by at these types of incidents in case they are needed, and as such the SOP should provide direction for staging so that responders will not interfere with the law enforcement activities or be in harm's way. Paragraph (q)(3)(ii) identifies subjects that must each be addressed in the SOPs, but this is not a comprehensive list of everything that an employer could address in an SOP. For example, a typical SOP will prohibit team members and responders from approaching or entering an incident scene where there is ongoing violence, and require them to wait until law enforcement has secured the scene and indicated that it is safe for team members and responders to enter. Typical SOPs for these types of incident scenes will also address whether team members and responders need to be wearing identifying uniforms, ballistic vests, PPE, reflective vests or other apparel to differentiate team members and responders from law enforcement officers, bystanders and other citizens.

Under proposed paragraph (q)(3)(iii), ESOs would be required to establish a baseline set of procedures for conducting non-emergency services. Rather than just requiring the ESO to address certain subjects, these would be mandatory SOPs with specific minimum requirements that could then be supplemented with additional detail at the ESO's discretion: responders must present themselves in uniforms, PPE, vests, or other apparel that clearly identifies them as fire/rescue/EMS responders and must wear ballistic vests if they are provided by the ESO and appropriate for the type of incident. In non-emergency situations, team members and responders might not wear their usual, identifiable PPE. However, it is important for them to be identifiable by some means so as not to be confused with bystanders, appear to be trespassers or intruders, or be mistaken for law enforcement officers. Often, when family members or friends are unable to contact an individual, they call 911 and ask for assistance in checking on the well-being of the individual. These situations can pose a risk to the responders because if they are not wearing something that identifies them as responders, they may appear to be trespassers or intruders. In these situations, the same concerns would dictate that the SOP would need to require the wearing of ballistic vests if they are provided by the ESO.

OSHA is also concerned with workplace violence experienced by workers in various aspects of providing health care, both facility-based and home-based. In Question (q)–1, OSHA seeks input on whether the agency

should include requirements for SOPs regarding protections against workplace violence for team members and responders, and for any data or documentation to support or refute potential requirements. OSHA notes that its regulatory agenda includes a separate rulemaking addressing Workplace Violence against health care workers. While OSHA has not published a proposed rule in that rulemaking, OSHA welcomes comments on whether violence against health care emergency responders should be addressed in this emergency response proposal in addition to that Workplace Violence rulemaking, instead of in that rulemaking, or primarily in that other rulemaking.

Paragraph (r) Post-Incident Analysis

Paragraph (r) of the proposed rule contains requirements for Post-Incident Analysis (PIA). A PIA serves as a systematic review of incident operations and activities, and determines whether programs, plans, and procedures developed by the WERE or ESO perform as intended. The PIA should be fact-based and focus on strengths, weaknesses, lessons learned, and recommendations for improvement to enhance health and safety protections for team members and responders. The primary purpose of a PIA is to make improvements for the future.

Paragraph (r)(1) of the proposed rule would require the WERE and ESO to promptly conduct a PIA to determine the effectiveness of the WERT's or ESO's response after a significant event such as a large-scale incident involving multiple WERTs or ESOs; a significant near-miss incident; a team member, responder, or SSW injury or illness requiring off-scene treatment; or a team member, responder, or SSW fatality. OSHA believes that requiring a PIA after significant events will help WEREs and ESOs identify strengths and challenge points where improvements are needed in their systems, plans, and procedures. For example, large-scale incidents may test the ESO's or WERE's systems, plans, and procedures and reveal areas for improvement, while near-misses, injuries, illnesses, or fatalities may signal inadequacies. The requirement that the PIA take place promptly following the incident ensures important information and observations are relayed before team member's and responder's memories fade.

Proposed paragraph (r)(2) would require the WERE and ESO to include in the PIA, at a minimum, a review and evaluation of the RMP, IMS, PIPs, IAPs, and SOPs for accuracy and adequacy. The PIA would include evaluation of available information and resources relating to the significant event. It would include a basic review of the conditions present upon arrival at the incident scene and any changes during the incident, the actions taken by team members and responders, and any effect of the conditions and actions on the safety and health of team members or responders. The RMP would be evaluated for its effectiveness regarding anticipated outcomes and to identify flaws or shortcomings that need to be corrected. The IMS would be evaluated to determine if it functioned as intended. While proposed paragraphs (m) and (n) of this section would require the development of PIPs for certain types of locations, there are many locations where incidents occur where PIPs would not be required, and so would be non-existent. If a PIP was developed, it would be evaluated to ensure it is up to date and accurate, and if it functioned as intended or if revisions are needed. The PIA may also indicate that a PIP is needed for a particular type of location where one was not previously developed. SOPs would be reviewed to determine if they were followed and effective, or if changes are needed. IAPs are typically developed on the incident scene and may be documented. A review of the IAP would determine its effectiveness and whether different actions should be taken at future similar incidents. OSHA anticipates that during a post-incident analysis conducted under paragraph (r), WEREs and ESOs will involve team members and responders. In Question (r)–1, OSHA is considering adding to (r)(2) a requirement to permit team members, responders, and their representative to be involved in the review and evaluation of the relevant plans as part of the PIA and would like stakeholder input on whether to add this requirement.

Proposed paragraph (r)(3) would require the WERE and ESO to promptly identify and implement changes needed to the RMP, IMS, PIPs, IAPs, and SOPs based on the lessons learned as a result of the PIA; or if the recommended changes cannot be promptly implemented, the WERE or ESO would need to develop a written timeline for implementation. Where implementation cannot be done promptly, the proposed rule requires that any needed changes be implemented as soon as feasible. The purpose of the PIA is to determine what improvements are needed to the systems, plans, and procedures for future success, and not for finding fault with or to blame individuals. Changes and improvements would need to be implemented in a timely manner so that such changes are in place before the next significant incident. If prompt implementation is not possible, a timeline for implementation as soon as feasible must be followed to ensure protective measures for team members and responders are put into place.

Paragraph (s) Program Evaluation

The ERP is intended to be a dynamic program, with components that are periodically reviewed and updated. Periodic review and evaluation are key to ensure that the program functions appropriately, adapts to changing circumstances or new information as needed, and protects the health and safety of team members or responders.

Paragraphs (s)(1) through (3) of the proposed rule would require the WERE and ESO to evaluate the adequacy and effectiveness of the ERP at least annually, and upon discovery of deficiencies, and document when the evaluation(s) are conducted; determine if it was implemented as designed or if modifications are necessary to correct deficiencies; and identify and implement recommended changes to the ERP and provide a written timeline for correcting identified deficiencies as soon as feasible based on the program review, giving priority to recommendations that most significantly affect team member or responder safety and health. The agency recommends that all safety and health programs, such as the ERP, be reviewed at least annually to evaluate the program to ensure that it functions as intended, is effective in controlling identified hazards, and makes progress toward established safety and health goals and objectives (*https://www.osha.gov/safety-management/program-evaluation*). The proposed provisions would require a review of the ERP be conducted to identify any revisions or updates needed that had not been identified previously, such as a result of the PIA required by proposed paragraph (r) of this section. There may be discrepancies between how the ERP was designed and intended to function versus how it was implemented or functions during actual use. Another deficiency could be, for example, finding that a component of the ERP was overlooked during development. Periodic evaluations are one method of measuring how the program is being conducted. Any changes needed based on the review would need to be implemented with priority given to the recommendations that most significantly affect team member or responder safety and health.

Paragraph (t) Severability

The severability provision, paragraph (t) of the proposed rule, serves two purposes. First, it expresses OSHA's intent that the general presumption of severability should be applied to this standard; *i.e.,* if any section or provision of the proposed rule is held invalid or unenforceable or is stayed or enjoined by any court of competent jurisdiction, the remaining sections or provisions should remain effective and operative. Second, the severability provision also serves to express OSHA's judgment, based on its technical expertise, that each individual section and provision of the proposed rule can continue to sensibly function in the event that one or more sections or provisions are invalidated, stayed, or enjoined; thus, the severance of any provisions, sections, or applications of the standard will not render the rule ineffective or unlawful as a whole. Consequently, the remainder of the rule should be allowed to take effect.

With respect to this rulemaking, it is OSHA's intent that all provisions and sections be considered severable. In this regard, the agency intends that: (1) in the event that any provision within a section of the rule is stayed, enjoined, or invalidated, all remaining provisions within shall remain effective and operative; (2) in the event that any whole section of the rule is stayed, enjoined, or invalidated, all remaining sections shall remain effective and operative; and (3) in the event that any application of a provision is stayed, enjoined, or invalidated, the provision shall be construed so as to continue to give the maximum effect to the provision permitted by law.

Although OSHA always intends for a presumption of severability to be applied to its standards, the agency has opted to include an explicit severability clause in this standard to remove any potential for doubt as to its intent. OSHA believes that this clarity is useful because of the multilayered programmatic approach to risk reduction it proposes here. The agency has preliminarily determined that the suite of programmatic requirements described in the *Summary and Explanation of the Proposed Rule,* section V. of this preamble, is reasonably necessary and appropriate to protect emergency responders from the significant risks posed by their workplace activities. While OSHA preliminarily finds that these requirements substantially reduce emergency responders' risk of occupational injury and illness when implemented together, the agency also believes that each individual requirement will independently reduce this risk to some extent, and that each requirement added to the first will result in a progressively greater reduction of risk. Therefore, it is OSHA's intent to have as many protective measures implemented in as many workplaces as possible to reduce emergency responders' risk of occupational exposure to injury, illness, and death. Thus, should a court of competent jurisdiction determine that any provision or section of this standard is invalid on its face or as applied, the court should presume that OSHA would have issued the remainder of the standard without the invalidated provision(s) or application(s). Similarly, should a court of competent jurisdiction determine that any provision, section, or application of this standard is required to be stayed or enjoined, the court should presume that OSHA intends for the remainder of the standard to take effect. See, *e.g., Am. Dental Ass'n* v. *Martin,* 984 F.2d 823, 830–31 (7th Cir. 1993) (affirming and allowing most of OSHA's bloodborne pathogens standard to take effect while vacating application of the standard to certain employers).

E. Section 1910.157 Portable Fire Extinguishers

OSHA is proposing to update 29 CFR 1910.157, Portable Fire Extinguishers, to include Class K fires and Class K portable fire extinguishers, as defined in proposed 29 CFR 1910.155(c), and to update this standard, including revisions to Table L–1, to conform with the current national consensus standard. The existing standard was last updated in 2002, just as Class K was entering into consideration in the national consensus standard, NFPA 10, Portable Fire Extinguishers.

F. Section 1910.158 Standpipe Hose Systems

As discussed previously, proposed § 1910.156(i)(2) requires each WERE to ensure that fire hose connections and fittings are compatible with, or adapters are provided for, firefighting infrastructure such as fire hydrants, sprinkler system and standpipe system inlet connections, and fire hose valves (FHV). Existing 29 CFR 1910.158, which addresses standpipe and hose systems, does not require fire hose threads to be compatible with the hoses used by the local fire department. For the same reasons discussed in the summary and explanation for § 1910.156(i)(2), OSHA is proposing to add a new provision to 29 CFR 1910.158, at paragraph (c)(2)(iii), requiring the employer to ensure that standpipe system inlet connections and fittings are compatible with, or adapters are provided for, the fire hose couplings used by the fire department(s) or Workplace Emergency Response Team(s) that pump water into the standpipe system through the connections or fittings.

G. Section 1910.159 Automatic Sprinkler Systems

Existing 29 CFR 1910.159, which includes requirements for automatic sprinkler systems, does not require fire hose threads on inlet connections for automatic sprinkler systems to be compatible with the hoses used by the local fire department. For the same reasons discussed in the summary and explanation for § 1910.156(i)(2), OSHA is proposing to add a new provision, 29 CFR 1910.159(c)(12), requiring the employer to ensure that sprinkler system inlet connections and fittings are compatible with, or adapters are provided for, the fire hose couplings used by the fire department(s) or Workplace Emergency Response Team(s) that pump water into the sprinkler system through the connections or fittings.

VI. Technological Feasibility

As discussed in *Pertinent Legal Authority* (Section III), OSHA must prove, by substantial evidence in the rulemaking record, that its standards are technologically and economically feasible, which the Supreme Court has defined as ''capable of being done, executed, or effected'' (*American Textile Mfrs. Inst.* v. *Donovan* (Cotton Dust), 452 U.S. 490, 508–09 (1981)). A standard is technologically feasible if the protective measures it requires already exist, can be brought into existence with available technology, or can be created with technology that can reasonably be expected to be developed (*Am. Iron & Steel Inst.* v. *Occupational Safety & Health Admin.* (Lead II), 939 F.2d 975, 980 (D.C. Cir. 1991); *United Steelworkers* v. *Marshall* (Lead I), 647 F.2d 1189, 1272 (D.C. Cir, 1980), *cert. denied,* 453 U.S. 913 (1981)).

For this proposed rule, OSHA evaluated each proposed provision to identify those that required the implementation of protective measures or addressed facility and equipment-related aspects of emergency response, as opposed to those that established programs, processes, or procedures. OSHA also reviewed the emergency response safety practices currently in place across industry and the recommended practices of industry trade associations and standards-setting organizations, including NFPA standards. The NFPA standards provide

guidelines for industry and are generally compatible with current industry practices and technology. OSHA did not find any barriers to technological feasibility with regard to the protective measures, equipment, or facilities required to comply with these provisions. This subsection presents the details of this conclusion with regard to specific requirements for equipment and facilities.

The proposed rule contains requirements for ensuring that team members and responders who respond to emergency incidents are prepared for the wide variety of situations where they may be called upon to provide service. The provisions of the proposed rule are largely programmatic and require employers to implement a written Emergency Response Program (ERP) that describes the employer's basic organizational structure and outlines how the employer is addressing the provisions of the rule. As part of the ERP, the proposed rule requires employers to develop a Risk Management Plan (paragraph (f)), conduct pre-incident planning (paragraphs (m) and (n)), and develop standard operating procedures (paragraph (q)). Other provisions require employers to involve employees in various phases of the program (paragraph (e)), conduct a post-incident analysis after major incidents (paragraph (r)), and evaluate the program periodically (paragraph (s); or outline the requirements for medical and physical fitness (paragraph (g)). These provisions do not include protective measures requiring the use of specific equipment or technology and therefore do not pose a technological feasibility concern.

Paragraph (h) of the proposed rule requires that team members and responders receive training to establish the minimum knowledge and skills necessary to participate in emergency operations, based on the tiers of team members and responders and the type and level of service(s) established in paragraphs (c) and (d), including training on a number of specific topics. It also requires the employer to provide initial training, on-going training, refresher training, and professional development for each team member and responder, including periodic skills checks to verify the minimum proficiency of team members and responders. Proposed paragraph (h) does not mandate a particular form of training nor require the use of particular technology. Moreover, the proposed requirements are not substantially different from the requirements of existing NFPA consensus standards (NFPA 1001, NFPA 1002, NFPA 1005, NFPA 1006, NFPA 1021, NFPA 1081, NFPA 1140, NFPA 1407, NFPA 1500, NFPA 1581), demonstrating that the training required under the proposed standard has widespread acceptance throughout the industry. Accordingly, OSHA has preliminarily determined that such training will not present technological feasibility concerns.

Paragraph (i) of the proposed rule requires WEREs to ensure that their facilities comply with 29 CFR part 1910, subpart E—Exit Routes and Emergency Planning, provide facilities for decontamination, disinfection, cleaning and storage of PPE and equipment, and ensure that facilities are protected with fire protection systems in accordance with 29 CFR part 1910, subpart L—Fire Protection. This paragraph also contains requirements related to fire hose connections and fire hose valves. The majority of these provisions are already addressed by NFPA 1581 or required by existing OSHA standards. With regard to paragraphs (i)(1)(i) and (iii), and (i)(2), the proposed rule does not substantially modify existing requirements or create new requirements; compliance with the existing standards under subpart E and subpart L would generally also meet the requirements of the proposed standard. Paragraph (i)(1)(ii) requires facilities for decontamination, disinfection, cleaning, and storage of PPE and equipment. Similar requirements exist under the HAZWOPER standard (29 CFR 1910.120(k)(8)) and the sanitation standard (29 CFR 1910.141(e)). The latter requires employers to provide change rooms equipped with storage facilities whenever employees are required to wear protective clothing because of possible contamination with toxic materials. Employer compliance with these existing provisions demonstrates that this kind of facility is feasible for employers to provide. Furthermore, the proposed rule does not mandate which of a wide variety of currently used and readily available materials must be used to meet the performance-oriented criteria for decontamination and storage. Based on these considerations, OSHA has preliminary determined that the proposed requirements in paragraph (i) are technologically feasible.

Paragraph (j)(1) of the proposed rule similarly requires ESOs to provide facilities for decontamination, disinfection, cleaning, and storage of PPE and equipment, and to comply with 29 CFR part 1910, subpart E—Exit Routes and Emergency Planning and subpart L—Fire Protection. Paragraph (j)(1)(iii) also requires employers to ensure employees are protected from hazards associated with the use of slide poles. The requirements related to slide poles are based on NFPA 1500 section 10.1.8, which requires that openings around slide poles be secured by a cover, enclosure or other means to prevent someone from accidentally falling through the hole. As discussed above regarding paragraph (i), the majority of these provisions are already addressed in existing NFPA standards or required by existing OSHA standards.

Paragraph (j)(2) addresses sleeping and living areas of the ESO's facility and requires the use of interconnected hard-wired smoke alarms with battery back-up on all levels of the facility and in sleeping areas. In addition, it requires that all sleeping and living areas be equipped with a functioning carbon monoxide detector and be maintained free from the contamination of exhaust emissions, and that the new construction of sleeping quarters have sprinkler systems installed. Employers must also ensure that contaminated PPE is not worn or stored in sleeping and living areas. OSHA based the requirements in this paragraph on NFPA 1581, section 10. Because the requirements of the provision are not substantially different from those in the NFPA standard, and because the equipment required (smoke alarms, carbon monoxide detectors, and sprinkler systems) is readily available on the market, OSHA has preliminarily determined that these requirements are technologically feasible.

Paragraph (k)(1) of the proposed rule contains design, manufacturing, inspection, testing, and access requirements for equipment used in emergency operations. The requirements applicable to equipment in paragraph (k)(1) of the proposed rule reflect common industry safety practices, including those found in NFPA 1500, and currently available equipment meets these criteria. The proposed provisions generally do not require changes in current technology or practices for employers who use standard equipment and follow standard safety procedures.

Paragraph (k)(2) addresses PPE used by team members and responders. The provision expands on the existing requirements under 29 CFR part 1910, subpart I,Personal Protective Equipment by requiring the employer to ensure that PPE complies with certain relevant NFPA and ANSI consensus standards; pay for all required protective equipment without exceptions; implement procedures to ensure all protective equipment, not just respiratory protection, is

decontaminated, cleaned, cared for, inspected and maintained, in accordance with the manufacturer's instructions; and ensure air-purifying respirators are not used in IDLH atmospheres and are only used for those contaminants that NIOSH certifies them against. Paragraph (k)(3) requires decontamination or containment of contaminated PPE and equipment before leaving an incident scene, where feasible, as well as ensuring employees are not exposed to contaminated PPE in passenger compartments of vehicles.

The proposed rule's PPE requirements expand on existing OSHA requirements, incorporate widely accepted consensus standards and, as with the equipment requirements discussed above, do not require changes in current technology. The proposed rule allows the employer to choose any of a wide variety of currently used and readily available properly fitting equipment designs to meet the performance-oriented criteria, based on the hazards their team members and responders may encounter. With respect to the decontamination and cleaning requirements, the PPE must be decontaminated and cleaned according to the manufacturer's instructions. Such instructions are presumptively technologically feasible. Decontamination and cleaning typically involve methods such as rinsing with a hose to reduce or dilute liquid contaminants or rinsing and brushing to displace solid particulate matter. In any situation where PPE and equipment cannot be appropriately cleaned, it can be replaced. Based on these considerations, OSHA preliminarily concludes that the proposed requirements for equipment and PPE are technologically feasible.

Paragraph (l) includes requirements for the inspection, repair, and maintenance of vehicles in paragraph (l)(1) and operation of vehicles in paragraph (l)(2). All provisions contained in proposed paragraph (l) establish program elements with the exception of paragraph (l)(1)(iii), which requires the use of seats, and seatbelts or a vehicle safety harness where equipped; paragraph (l)(2)(vii), which requires the use of a safety harness when riding in a standing position; and paragraph (l)(2)(x), which requires a positive latching enclosure for storage of tools, equipment, or respiratory protection carried within enclosed seating areas of vehicles. OSHA drew the requirements for seats, seat belts, safety harnesses, and the securing of tools and equipment from NFPA 1500, 1901 and 1911; indicating that industry already adopted the requirements as a feasible industry practice using existing technology. The proposed requirements for use of seats and safety belts reflect basic safety considerations already adopted by manufacturers of equipment and by employers. Readily available and currently used technology is capable of meeting these requirements. Where vehicles are designed, built, and intended for use without seat belts or vehicle safety harnesses, the employer is not required to comply with the requirement in paragraph (l)(1)(iii).

Paragraph (p) of the proposed rule contains requirements for Emergency Incident Operations. In addition to outlining various roles and responsibilities, paragraph (p) requires employers to establish hazard control zones, implement traffic safety procedures, establish site communications, and establish incident safety procedures such as the use of protective equipment and minimum staffing levels for certain operations. Most of the provisions in paragraph (p) establish program and/or policy elements and procedures and compliance with these provisions does not require any additional or new technology.

Paragraph (p)(5) contains requirements for the use of effective communication equipment, which can be satisfied with currently available compatible communication devices or radio technology. Moreover, the requirements in paragraph (p) are similar to existing OSHA requirements for certain hazardous chemical response activities in the HAZWOPER standard (29 CFR 1910.120) and to NFPA consensus codes, indicating that industry has already adopted the requirements as an industry practice using existing technology. Therefore, OSHA has preliminarily determined that the requirements of paragraph (p) can be met with existing technology.

In conclusion, the proposed rule is largely programmatic and allows the employer to choose any of a wide variety of currently used and readily available materials, equipment, and procedures to meet the performance-oriented criteria. For the few provisions where OSHA has specified requirements for equipment, the requirements are based on existing consensus standards, incorporate existing OSHA standards, or are similar to existing OSHA requirements in other standards. Both existing and new requirements can be met with readily available and currently used equipment and technology. Accordingly, OSHA has preliminarily determined that the proposed rule is technologically feasible.

VII. Preliminary Economic Analysis

Introduction

OSHA has examined the impacts of this rulemaking as required by Executive Order 12866 on Regulatory Planning and Review (September 30, 1993), Executive Order 13563 on Improving Regulation and Regulatory Review (January 18, 2011), Executive Order 14094 entitled ''Modernizing Regulatory Review'' (April 6, 2023), the Regulatory Flexibility Act (RFA) (September 19, 1980, Pub. L. 96–354), section 202 of the Unfunded Mandates Reform Act of 1995 (March 22, 1995; Pub. L. 104–4), and Executive Order 13132 on Federalism (August 4, 1999).

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).[7] The Executive Order 14094 entitled ''Modernizing Regulatory Review'' (hereinafter, the Modernizing E.O.) amends section 3(f)(1) of Executive Order 12866 (Regulatory Planning and Review). The amended 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 $200 million or more in any 1 year (adjusted every 3 years by the Administrator of OIRA for changes in gross domestic product), or 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, territorial, or tribal governments or communities; (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) raise legal or policy issues for which centralized review would meaningfully further the President's priorities or the principles set forth in this Executive order, as specifically authorized in a timely manner by the Administrator of OIRA in each case.

A regulatory impact analysis (RIA) must be prepared for major rules with significant regulatory action/s and/or with significant effects as per section

[7] While OSHA presents the following analysis under the requirements of Executive Orders 12866 and 13563, the agency ultimately cannot simply maximize net benefits due to the overriding legal requirements in the OSH Act.

3(f)(1) ($200 million or more in any 1 year). Based on our estimates, OMB's Office of Information and Regulatory Affairs has determined this rulemaking is significant per section 3(f)(1) as measured by the $200 million or more in any 1 year. Accordingly, OSHA has prepared this Preliminary Economic Analysis [8] that to the best of the agency's ability presents the costs and benefits of the rulemaking. Therefore, OMB has reviewed this proposed regulation, and the agency has provided the following assessment of its impact.

A. Market Failure and Need for Regulation

I. Introduction

Executive Order 12866 (58 FR 51735 (September 30, 1993)) and Executive Order 13563 (76 FR 3821 (January 18, 2011)) direct regulatory agencies to assess whether, from a legal or an economic view, a Federal regulation is needed to the extent it is not ''required by law.'' Executive Order 12866 states: ''Federal agencies should promulgate only such regulations as are required by law, are necessary to interpret the law, or are made necessary by compelling public need, such as material failures of private markets to protect or improve the health and safety of the public, the environment, or the well-being of the American people.'' This Executive order further requires that each agency ''identify the problem that it intends to address (including, where applicable, the failures of private markets or public institutions that warrant new agency action)'' and instructs agencies to ''identify and assess available alternatives to direct regulation.'' (58 FR 51735 (September 30, 1993)). This section addresses those issues of market failure and alternatives to regulation as directed by the Executive order.

OSHA is proposing to replace its existing Fire Brigades standard, 29 CFR 1910.156, with a new standard to fully address the workplace hazards faced by firefighters and other emergency responders because, based on the evidence in the record, there is a compelling public need for a stricter, comprehensive standard under OSH Act legal standards. OSHA presents the legal standards governing this rule and its preliminary findings and conclusions supporting the proposed rule in section II. of the Preamble, Pertinent Legal Authority, and throughout other sections of the Preamble. Even a perfectly functioning market maximizes efficient allocation of goods and services at the expense of other important social values to which the market (as reflected in the collective actions of its participants) is indifferent or undervalues. In such cases, government intervention might be justified to address a compelling public need. The history and enactment of the OSH Act indicate a Congressional view that American markets undervalued occupational safety and health when it set forth the Act's protective purposes and authorized the Secretary of Labor to promulgate occupational safety and health standards.

OSHA has preliminarily determined that emergency responders are exposed to occupational hazards that place them at a significant risk of serious injury, material impairment of health and functional capacity, and death. Emergency responders suffer higher incidence and death rates of heart attacks and some types of cancers than the general population, high rates of fatal and nonfatal injuries, and high rates of suicide and other adverse behavioral health outcomes. OSHA's proposed rule would reduce the number of fatalities from certain types of cancer, fatal injuries, and suicide by an estimated 61 deaths per year and would prevent approximately 11,015 nonfatal injuries per year. These benefits show the need to protect emergency responders from the hazards faced while on duty.

OSHA has preliminarily determined that the standard is technologically and economically feasible (see Section V of the preamble and Chapter VI of this PEA) and not only finds that this proposed rule is necessary and appropriate to ensure the safety and health of emergency responders, as required by the OSH Act, but also demonstrates, in this section, that this rulemaking corrects a market failure in which private and public labor markets fail to adequately protect human health. Although a majority of emergency responders are employed in the public sector, many are not, and OSHA is mandated to ensure, so far as possible, a critical minimum level of safety for these workers. In addition, as discussed, most of these issues pertain to the public sector labor market as well which, left unchecked, could undermine the efficiency of even the labor market as it affects government jobs. Further, in passing section 18 of the OSH Act, Congress determined that public sector employees in states with OSHA-approved State Plans should receive the same protections as private sector employees under those State Plans who, in turn, must receive protections at least as effective as those provided by Federal standards (29 U.S.C. 667(c)(2), (6)). In doing so, Congress determined that protections for these public sector workers should not be left solely to the public sector labor market.

As discussed in this chapter, OSHA concludes there is a demonstrable failure of labor markets to protect workers from exposure to unnecessary risks from emergency response activity. In making this statement, the agency recognizes that many firms and governments have responded to the risks to emergency responders by implementing control programs for their workers. In fact, some existing control programs go beyond the requirements of the proposed rule, and information that OSHA has collected suggests that a significant percentage of all employees in workplaces where emergency responder risks are present are currently receiving at least some level of protection against the risks posed by emergency response activities. For these organizations and these workers, the economic incentives provided by the current labor market appears to be working effectively. Nevertheless, the effectiveness of labor markets in providing the level of worker health and safety required by the OSH Act is not universal, as many other employers in the same sectors fail to provide their workers with equivalent levels of protection against emergency response hazards, as evidenced by the documented injuries, illnesses, and deaths discussed throughout this preamble. Accordingly, the general availability of adequate protections speaks to the feasibility of the standard, not necessarily to the lack of need.

In this case, OSHA has preliminarily determined that, despite existing OSHA standards, new protections are needed to ensure the safety and health of emergency responders. If markets worked efficiently there would be no need for either the existing standards or a new one. This section is devoted to showing that markets fail with respect to optimal risk for occupational exposure to emergency response hazards. Other sections of this preamble address whether, given that markets fail, a new regulation is needed to replace the existing regulation.

The discussion below considers why labor markets, as well as information dissemination programs, workers' compensation systems, and tort liability options, each may fail to protect workers from emergency response hazards, resulting in the need for a more

[8] OSHA historically has referred to their regulatory impact analyses as Economic Analyses in part because performing an analysis of economic feasibility is a core legal function of their purpose. But a PEA (or Final Economic Analysis) should be understood as including an RIA.

protective OSHA emergency response rule.

II. Labor Market Imperfections

Under suitable conditions, a market system is economically efficient in the following sense: resources are allocated where they are most highly valued; the appropriate mix of goods and services, embodying the desired bundle of characteristics, is produced; and further improvements in the welfare of any member of society cannot be attained without making at least one other member worse off.

Economic theory, supported by empirical data, argues that, in the job market, employers and workers bargain over the conditions of employment, including not only salary and other worker benefits, but also occupational risks to worker safety and health. Employers compete among themselves to attract workers. In order to induce workers to accept hazardous jobs, employers must offer a higher salary—termed a ''wage premium for risk'' or ''risk premium'' for short—to compensate for the additional job risk.[9] Because employers must pay higher wages for more hazardous work, they have an incentive to make the workplace safer by making safety-related investments in equipment and training or by using more costly but safer work practices. According to economic theory, the operation of the job market will provide the optimal level of occupational risk when each employer's additional cost for job safety just equals the avoided payout in risk premiums to workers. The theory assumes that each employer is indifferent to whether it pays the higher wage or pays for a safer or more healthful workplace but will opt for whichever costs less or improves productivity more.

For the job market to function in a way that leads to optimal levels of occupational risk, three conditions must be satisfied. First, workers and employers must have the same, perfect information—that is, they must be fully informed about their workplace options, including job hazards, or be able to less costly acquire such information. Second, participants in the job market must directly bear all the costs and obtain all the benefits of their actions. In other words, none of the direct impacts of job market transactions can be externalized to outside parties. Third, the relevant job market must be perfectly competitive, which means it must contain such a large number of employers and such a large number of workers that no individual economic agent is able to influence the risk-adjusted wage.

The discussion below examines (1) imperfect information, (2) externalities, and (3) imperfect competition in the job market in more detail, with particular emphasis on worker exposure to emergency response hazards, as appropriate.[10]

A. Imperfect Information

As described below, imperfect information about job hazards is present at several levels that reinforce each other: employers frequently lack knowledge about workplace hazards and how to reduce them; workers are often unaware of the workplace health and safety risks to which they are exposed; and workers typically have difficulty in understanding the risk information they are able to obtain. Imperfect information at these various levels has likely impeded the efficient operation of the job market regarding workplace risk because workers—unaware of job hazards—do not seek, or receive, full compensation for the risks they bear. As a result, even if employers have full knowledge about the risk, their employees do not. If employees do not have full knowledge about the risk, employers have less incentive to invest in safer working conditions than they would in the presence of full information since wages are suppressed below what full knowledge by the workers would yield.

(i) Lack of Employer Information

In the absence of regulation, employers may lack economic incentives to optimally identify the health risks that their workers face.[11] Furthermore, employers have an economic incentive to withhold the information they do possess about job hazards from their workers, whose response would be to demand safe working conditions or higher wages to compensate for the risk. Relatedly, in the absence of regulation, employers, as well as third parties, may have fewer incentives to develop new technological solutions to protect workers on the job. For evidence of regulatory stimuli inducing innovations to improve worker health and safety, see, for example, Ashford, Ayers, and Stone (1985) OSHA–2010–0034, Document ID 0536, as well as more recent evidence from OSHA's regulatory reviews under section 610 of the RFA (5 U.S.C. 610).

As a result, without regulation, many employers are unlikely to make themselves aware of the magnitude of emergency responder safety and health risks in the workplace or of the availability of effective ways of ameliorating or eliminating these risks.

(ii) Lack of Worker Information About Health Hazards

Although some of the safety risks in emergency response may be somewhat apparent to the employee because they are obvious (*e.g.,* a fire, a hole in the floor, or falling objects), the occupational *health* hazards are less obvious and well known to employers and employees. Whereas the relationship between a workplace accident and the resultant injury is usually both immediate and visible, the connection between exposure to an occupational health hazard and the resultant disease may not be. Even though falls and physical trauma occur in everyday life, it is easier to know when the injuries occurred on the job than to know the cause of a cancer that may be associated with occupational exposure to a toxic substance. Some diseases have multiple potential causes and may be the result of synergistic effects, thus creating difficulties in ascertaining whether, in some specific situations, a worker's disease is job-related rather than an ''ordinary disease of life'' resulting from genetic, physiological, lifestyle, or non-occupational environmental factors.[12]

Compounding this causation problem is the fact that there is frequently a long latency period between exposure to the occupational health hazard and the manifestation of the resultant disease. Consequently, without specialized knowledge, the connection between work conditions and a chronic disease is more easily missed than an acute injury and more easily attributed to non-occupational exposures. Furthermore, by the time that signs and symptoms of occupational health problems arise, it is often too late for workers to make use of that information. Therefore, any

[9] The concept of compensating wage differentials for undesirable job characteristics, including occupational hazards, goes back to Adam Smith's *The Wealth of Nations,* which was originally published in 1776.

[10] The section on workers' compensation insurance later in this chapter identifies and discusses other related market imperfections.

[11] Other private parties may lack sufficient incentives to invest resources to collect and analyze occupational risk data due to the public-good nature of the information. See Ashford and Caldart (1996), OSHA–2010–0034, Document ID 0538, p. 234.

[12] It is true that, in rare circumstances, the cause of a disease is unique or nearly so. Examples of such ''signature'' diseases include mesothelioma and angiosarcoma, which are caused by exposure to asbestos and vinyl chloride, respectively. In the case of exposure to combustion products the toxic exposure is almost inevitably a complex mixture of substances lacking any clear signature.

incentive an employer has to invest in occupational disease prevention is diluted by the lengthy passage of time between exposure and disease manifestation (by which time the employees may be working elsewhere or retired) and the various uncertainties regarding causation in any specific case. Markets cannot adequately address this risk of latent occupational disease if employees and employers are unaware of the changes in risk brought about by an employer's actions. Even if employees and employers are aware of a risk, the employer may have limited economic motivation to install controls unless the employees are able to accurately assess the effects of those controls on their occupational risks.

Accordingly, even if workers have general knowledge that they are at increased risk of disease from occupational exposure, it is unrealistic to expect, absent mandatory regulatory requirements, that they know the calculated risks associated with different exposure levels or the exposures they are experiencing or accumulated in the past, much less that they can use that knowledge to negotiate a significant reduction in exposures and other protections or (if more desirable) trade it for greater hazard pay. And without any way to enforce standards agreed to by an employer, employees would have no way to check that they are getting the benefit of their bargain or hold the employer to it. Another reason that imperfect information impairs a worker's decision-making ability is that workers are unlikely to know the workplace risks associated with their particular employer, or with one potential employer versus another, even if the types of work assignments are the same.

Both experimental studies and observed market behavior suggest that individuals have considerable difficulty rationally processing information about low-probability, high-consequence events such as occupational fatalities and long-term disabilities.[13] For example, many individuals may not be able to comprehend or rationally act on risk information when it is presented, as risk analysis often is, in mathematical terms—a 1/1,000 versus a 1/10,000 versus a 1/100,000 annual risk of death from occupational causes.

Of course, in the abstract, many of the problems that employers and workers face in obtaining and processing occupational risk can lead workers to overestimate as well as underestimate the risk. However, in the case of toxic exposure, the related diseases—including various forms of cancer—may be sufficiently unfamiliar and unobvious that many workers may be completely unaware of the risk, and therefore will underestimate it.

In addition, for markets to optimally address this risk, employees need to be aware of the changes in risk brought about by an employer's actions. Even if employees are aware of a risk, the employer may have limited economic motivation to install controls unless the employees are able to accurately assess the effects of those controls on their occupational risks. Furthermore, there is substantial evidence that most individuals are unrealistically optimistic, even in high-stakes, high-risk situations and even if they are aware of the statistical risks (Thaler and Sunstein, 2009, OSHA–2010–0034, Document ID 1697, pp. 31–33). Although the agency lacks specific evidence on the effect of these attitudes on assessing occupational safety and health risks, this suggests that some workers underestimate their own risk of work-related injury, disease, or fatality and, therefore, fail to demand adequate compensation for bearing those risks. Finally, the difficulty that workers have in distinguishing marginal differences in risk at alternative worksites, both within an industry and across industries, creates a disincentive for employers to incur the costs of reducing workplace risk.

B. Externalities

Externalities arise when an economic transaction generates direct positive or negative spillover effects on third parties not involved in the transaction. The resulting spillover effect, which leads to a divergence between private and social costs, undermines the efficient allocation of resources in the market because the market is imparting inaccurate cost and price signals to the transacting parties. Applied to the job market, when costs are externalized, they are not reflected in the decisions that employers and workers make—leading to allocative distortions in that market.

Negative externalities exist in the job market because many of the costs of occupational injury and illness are borne by parties other than individual employers or workers. The major source of these negative externalities, for chronic occupational diseases, is the occupational illness cost that workers' compensation does not cover.[14] Workers and their employers often bear only a portion of these costs. Outside of workers' compensation, workers incapacitated by an occupational injury or illness and their families often receive health care, rehabilitation, retraining, direct income maintenance, or life insurance benefits, much of which are paid for by society through Social Security and other social insurance and social welfare programs.[15] Moreover, specifically in the case of Emergency Response, volunteer responders may or may not be covered by Workers Compensation in any form.[16]

Furthermore, substantial portions of the medical care system in the United States are heavily subsidized by the government so that part of the medical cost of treating injured or ill workers is paid for by the rest of society (Nichols and Zeckhauser, 1977, Docket OSHA–2010–0034, Document ID 0834, pp. 44–45). To the extent that employers and workers do not bear the full costs of occupational injury and illness, they will ignore these externalized costs in their job-market negotiations. The result may be an inefficiently high level of occupational risk.

An extreme case of ''spillovers'' is one of a ''public good'': defined as a commodity such that if it is provided to one, it is zero cost for another individual to also ''consume'' the commodity. One classic example is national defense: a defense umbrella helps protect everyone in a country, though at no charge to any particular person. Marginal cost pricing can break down and there can be pressure for other institutional arrangements such as voting mechanisms and economic ''clubs.'' [17] OMB's circular A–4

[13] The literature documenting risk perception problems is extensive. See, in particular, the classic work of Tversky and Kahneman (1974), OSHA–2010–0034, Document ID 1675. For a recent summary of risk perception problems and their causes, see Thaler and Sunstein (2008), OSHA–2010–0034, Document ID 1697, pp. 17–37.

[14] Workers' compensation is discussed separately later in this chapter. As described there, in many cases (particularly for smaller firms), the premiums that an individual employer pays for workers' compensation are only loosely related, or unrelated, to the occupational risks that that employer's workers bear. However, workers' compensation does not cover chronic occupational diseases in most instances. For that reason, negative externalities tend to be a more significant issue in the case of occupational exposures that result in diseases.

[15] In addition, many occupational injuries and most occupational illnesses are not processed through the workers' compensation system at all. In these instances, workers receive care from their own private physician rather than from their employer's physician.

[16] This depends on the individual state law and how the ESO is organized. See *https://workinjurysource.com/workers-compensation-for-volunteer-firefighters/*.

[17] The original classic reference on public goods is ''The Pure Theory of Public Expenditure,'' Samuelson, Paul A., The Review of Economics and

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specifically notes that public good aspects can be a valid reason to turn to a regulation. That document discusses various types of market failure as being a possible reason for regulation, stating: '''Public goods,' such as defense or basic scientific research, are goods where provision of the good to some individuals cannot occur without providing the same level of benefits free of charge to other individuals'' (OMB Circular A–4, Regulatory Analysis (Sept. 17, 2003), p. 4, available at *https://www.whitehouse.gov/wp-content/uploads/legacy_drupal_files/omb/circulars/A4/a-4.pdf*).

With respect to this proposed rule, the specific nature of emergency response means that in this industry, even more so than in others, ordinary market mechanisms do not operate to ensure an optimal level of employee safety and health. Fires and other types of emergencies are by their nature unplanned, and there would be no opportunity, for example, for a fire department to bargain with the owner of a burning building about the level of toxicity of the burning materials. Accordingly, fire departments and other emergency response employers have a prima facie case that regulation can be a replacement for a missing private market.

(C) Imperfect Competition

In the idealized job market, the actions of large numbers of buyers and sellers of labor services establish the market-clearing, risk-compensated wage, so that individual employers and workers effectively take that wage as given. In reality, however, the job market is not one market but many markets differentiated by location, occupation, and other factors; entrants in the labor market face search frictions because of limited information on employment options; and, furthermore, in wage negotiations with their own workers, employers are typically in an advantageous position relative to all other potential employers. In these situations, discussed below, employers may have sufficient power to influence or to determine the wage their workers receive. This may undermine the conditions necessary for perfect competition and can result in inadequate compensation for workers exposed to workplace hazards. Significant unemployment levels, local or national, may also undermine the conditions necessary for adequate compensation for exposure to workplace hazards.

Beyond the classic—but relatively rare—example of a town dominated by a single company, there is significant evidence that some employers throughout the economy are not wage-takers but, rather, face upward-sloping labor supply curves and enjoy some market power in setting wages and other conditions of employment.[18] An important source of this phenomenon is the cost of a job search and the employer's relative advantage, from size and economies of scale, in acquiring job market information.[19] Another potentially noteworthy problem in the job market is that, contrary to the model of perfect competition, workers with jobs cannot without cost quit and obtain a similar job at the same wage with another employer. Workers leaving their current job may be confronted with the expense and time requirements of a job search, the expense associated with relocating to take advantage of better employment opportunities, the loss of firm-specific human capital (*i.e.,* firm-specific skills and knowledge that the worker possesses), the cost and difficulty of upgrading job skills, and the risk of a prolonged period of unemployment. In addition, employers derive market power from the fact that a portion of the compensation their workers receive is not transferable to other jobs. Examples include job-specific training and associated compensation, seniority rights and associated benefits, and investments in a pension plan.

Under the conditions described above, employers would not have to take the market-clearing wage as given but could offer a lower wage than would be observed in a perfectly competitive market,[20] including less than full compensation for workplace health and safety risks. As a result, relative to the idealized competitive job market, employers would have less incentive to invest in workplace safety. In any event, for reasons already discussed, an idealized wage premium is not an adequate substitute for a workplace that puts a premium on health and safety.

It is worth further noting that while there might be elements of competition in the labor market for emergency responders, the local fire department or EMS *does* in some ways approximate a monopolistic employer in many localities, for those individuals with emergency responder skills who choose to use them for the benefit of the community. Volunteers as well as career employees may have limited options as to which ESO they choose to join within a certain geographic area.

The following discussion considers whether non-market and quasi-market alternatives to the final rule would be capable of protecting emergency response workers from numerous workplace hazards. The alternatives under consideration are information dissemination programs, workers' compensation systems, and tort liability options.

(i) Information Dissemination Programs

One alternative to OSHA's proposed Emergency Response rule could be the dissemination of information, either voluntarily or through compliance with a targeted mandatory information rule, akin to OSHA's Hazard Communication standard (29 CFR 1910.1200), which would provide more information about the safety and health risks associated with workplace exposure to the physical hazards and toxic substances emergency responders might be exposed to. Better informed workers could more accurately assess the occupational risks associated with different jobs, thereby facilitating, through labor market transactions, higher risk premiums for more hazardous work and inducing employers to make the workplace less hazardous. The proposed rule recognizes the link between the dissemination of information and workplace risks by requiring that emergency response workers be provided with information and training about the risks they encounter and ways to prevent them. There are several reasons, however, why reliance on information dissemination programs alone would not yield the level of worker protection achievable through the proposed rule, which incorporates hazard communication as part of a comprehensive approach designed to control the hazard in addition to providing for the disclosure of information about it.

First, in the context of the Hazard Communication standard, which

Statistics, Nov. 1954. For related ''club theory,'' the original reference is ''An Economic Theory of Clubs,'' Buchanan, James M., Economica, Feb., 1965.

[18] See, for example, Borjas (2000) Docket OSHA–2010–0034, Document ID 0565. See also Ashenfelter, Farber, and Ransom (2010) and Boal and Ransom (1997), providing supplemental evidence. The term ''monopsony'' power is sometimes applied to this situation, but it does not necessarily require a single employer.

[19] See Borjas (2000), Docket OSHA–2010–0034, Document ID 0565. As supplemental authorities, Weil (2014) presents theory and evidence both in support of this proposition and to show that, in many situations, larger firms have more monopsony power than smaller firms, while Boal and Ransom (1997, p. 97) note that the persistent wage dispersion observed in labor markets is a central feature of equilibrium search models.

[20] For a graphical demonstration that an employer with monopsony power will pay less than the competitive market wage, see Borjas (2000), Docket OSHA–2010–0034, Document ID 0565, pp. 187–189.

requires employers to transmit information about hazardous substances, that standard alone does not require that sufficient information be provided to identify risks in specific workplaces. Emergency responder-related risks, for instance, are highly specific to individual tasks and work environments. More hazard-specific training required under the proposed standard would supplement that.

Second, in the case of voluntary information dissemination programs, absent a regulation, there may be significant economic incentives, for all the reasons discussed in the Labor Market Failure section above, for the employer *not* to gather relevant exposure data or distribute occupational risk information so that the workers would not change jobs or demand higher wages to compensate for their newly identified occupational risks.

Third, even if workers were better informed about workplace risks and hazards, all of the defects in the functioning of the private job market previously discussed—the limited ability of workers to evaluate risk information, externalities, and imperfect competition—would still apply. Because of the existence of these defects, better information alone would not lead to wage premiums for risk in accordance with efficient market theory.

Finally, as discussed in the Benefits chapter, a number of additional safety provisions under the proposal would complement information and training provided by other regulatory vehicles. For example, while it is useful to know about what toxic substances one would encounter on the job, proper use and maintenance of PPE are critical to protecting emergency responders.

Thus, while improved access to information about emergency response-related hazards can provide for more rational decision-making in the private job market, OSHA concludes that information dissemination programs would not, by themselves, produce an adequate level of worker protection.

(ii) Workers' Compensation Systems

Another theoretical alternative to OSHA regulation could be to determine that no rule is needed because State workers' compensation programs augment the workings of the job market to limit occupational risks to worker safety and health. After all, one of the objectives of the workers' compensation system is to shift the costs of occupational injury and disease from workers to employers in order to induce employers to improve working conditions. Two other objectives relevant to this discussion are to provide fair and prompt compensation to workers for medical costs and lost wages resulting from workplace injury and disease and, through the risk-spreading features of the workers' compensation insurance pool, to prevent individual employers from suffering a catastrophic financial loss (Ashford, 2007, Docket OSHA–2010–0034, Document ID 1702, p. 1712).

OSHA identifies three primary reasons, discussed below, why the workers' compensation system has fallen short of the goal of shifting to employers the costs of workplace injury and disease—including, in particular, the costs of worker exposure to emergency response related hazards. As a result, OSHA concludes that workers' compensation programs alone do not adequately protect workers. In addition, although not necessary to support this conclusion, OSHA takes notice of several studies highlighting the general decline in the adequacy and fairness of State workers' compensation programs, the significant variability among State workers' compensation programs, and the compensation inadequacies that ultimately shift these costs back to the workers or to the government (Docket OSHA–2010–0034, Document ID 0386. Document ID 0387).

(a) Failure To Provide Compensation for Most Occupational Diseases

The first, and most important, reason that workers' compensation is not an adequate alternative is that State workers' compensation programs tend not to provide benefits for most work-related diseases—including those resulting from exposure to combustion products and other hazards encountered in emergency response situations. Several related factors account for this:

- Most occupational diseases have multiple causes and are indistinguishable from ordinary diseases of life. Therefore, it is difficult for workers' compensation to trace the cause of these diseases to the workplace;
- Many occupational diseases have long latency periods, which tends to obscure the actual cause of disease or the place of employment where exposure occurred;
- Workers (as well as medical personnel) often do not realize that a disease is work-related and, therefore, fail to file a workers' compensation claim; and
- Most States have statutes of limitations that are 10 years or less for filing workers' compensation claims. This may preclude claims for illnesses involving long latency periods. Also, many States have a minimum exposure time period before a disease can be attributed to an occupational cause.

With the exception of musculoskeletal disorders, workers' compensation covers only 5 percent of occupational diseases (including emergency response-related occupational diseases) and 1.1 percent of occupational fatalities (Ashford, 2007, Docket OSHA–2010–0034 Document ID 1702, p. 1714).

(b) Limitations on Payouts

The second reason that employers do not fully pay the costs of work-related injuries and disease under the workers' compensation system is that, even for those claims that are accepted into the system, states have imposed significant limitations on payouts. Depending on the State, these limitations and restrictions include:

- Caps on wage replacement based on the average wage in the State rather than the injured workers' actual wage;
- Restrictions on which medical care services are compensated and the amount of that compensation;
- No compensation for non-pecuniary losses, such as pain and suffering or impairment not directly related to earning power;
- Either no, or limited, cost-of-living increases;
- Restrictions on permanent, partial, and total disability benefits, either by specifying a maximum number of weeks for which benefits can be paid or by imposing an absolute ceiling on dollar payouts; and
- A low absolute ceiling on death benefits.

The last two restrictions may be the most limiting for occupational diseases with long-term health effects and possible fatal outcomes, such as those associated with worker exposure to emergency response-related hazards.

(c) A Divergence Between Workers' Compensation Premiums and Workplace Risk

The third reason workers' compensation does not adequately shift the costs of work-related injuries and illnesses to employers is that the risk-spreading objective of workers' compensation conflicts with, and ultimately helps to undermine, the cost-internalization objective.[21] For the 99 percent of employers who rely on workers' compensation insurance,[22] the

[21] Recall from the earlier discussion of externalities that the failure to internalize costs leads to allocative distortions and inefficiencies in the market.

[22] Only the largest firms, constituting approximately 1 percent of employers and representing approximately 15 percent of workers,

Continued

payment of premiums represents their primary cost for occupational injuries and illnesses, such as emergency response-related injuries and illnesses. However, the mechanism for determining an employer's workers' compensation insurance premium typically fails to reflect the actual occupational risk present in that employer's workplace.

Approximately 85 percent of employers have their premiums set based on a ''class rating,'' which is based on *industry* illness and injury history. Employers in this class are typically the smallest firms and represent only about 15 percent of workers (Ashford, 2007, Docket OSHA–2010–0034, Document ID 1702, p. 1713). Small firms are often ineligible for experience rating because of insufficient claims history or because of a high year-to-year variance in their claim rates. These firms are granted rate reductions only if the experience of the entire class improves. The remaining 14 percent of employers, larger firms representing approximately 70 percent of workers, have their premiums set based on a combination of ''class rating'' and ''experience rating,'' which adjusts the class rating to reflect a firm's individual claims experience. A firm's experience rating is generally based on the history of workers' compensation payments to workers injured at that firm's workplace, not on the quality of the firm's overall worker protection program or safety and health record. Thus, for example, the existence of circumstances that may lead to catastrophic future losses are not included in an experience rating—only actual past losses are included.[23] Insurance companies do have the right to refuse to provide workers' compensation insurance to an employer—and frequently exercise that right based on their inspections and evaluations of a firm's health and safety practices. However, almost all States have assigned risk pools that insist that any firm that cannot obtain workers' compensation policies from any insurer must be provided workers' compensation insurance at a State-mandated rate that reflects a combination of class and experience rating. Workers' compensation insurance does protect individual employers against a catastrophic financial loss due to work-related injury or illness claims. As a result of risk spreading, however, employers' efforts to reduce the incidence of occupational injuries and illnesses are not fully reflected in reduced workers' compensation premiums. Conversely, employers who devote fewer resources to promoting worker safety and health may not incur commensurately higher workers' compensation costs. This creates a type of moral hazard, in that the presence of risk spreading in workers' compensation insurance may induce employers to make fewer investments in equipment and training to reduce the risk of workplace injuries and illnesses.

In short, the premiums most individual employers pay for workers' compensation insurance coverage do not reflect the actual cost burden those employers impose on the worker's compensation system. Consequently, employers considering measures to lower the incidence of workplace injuries and illnesses can expect to receive a less-than-commensurate reduction in workers' compensation premiums. Thus, for all the reasons discussed above, the workers' compensation system does not provide adequate incentives to employers to control occupational risks to worker safety and health.

III. Tort Liability Options

Another alternative to OSHA regulation could be for workers to use the tort system to seek redress for work-related injuries and diseases, including emergency response-related ones. A tort is a civil wrong (other than breach of contract) for which the courts can provide a remedy by awarding damages. The application of the tort system to occupational injury and disease would allow workers to sue their employer, or other responsible parties (*e.g.,* ''third parties'' such as suppliers of hazardous material or equipment used in the workplace) to recover damages. In theory, the tort system could shift the liability for the direct costs of occupational injury and illness from the worker to the employer or to other responsible parties. In turn, the employer or third parties would be induced to improve worker safety and health.

With limited exceptions, the tort system has not been a viable alternative to occupational safety and health regulation because State statutes make workers' compensation the ''exclusive remedy'' for work-related injuries and illnesses. Workers' compensation is essentially a type of no-fault insurance. In return for employers' willingness to provide, through workers' compensation, timely wage-loss and medical coverage for workers' job-related injuries and diseases, regardless of fault, workers are barred from suing their employers for damages, except in cases of intentional harm or, in some States, gross negligence (Ashford and Caldart, 1996, Docket OSHA–2010–0034, Document ID 0538, p. 233). Practically speaking, in most cases, workers' compensation is the exclusive legal remedy available to workers for workplace injuries and illnesses.

Workers are thus generally barred from suing their own employers in tort for occupational injuries or disease but may attempt to recover damages for work-related injuries and disease from third parties through the tort system. However, the process may be lengthy, adversarial, and expensive. In addition, in tort cases involving chronic occupational disease, the likelihood of prevailing in court and ultimately obtaining compensation may be small because:

- In a tort action, the burden of proof is on the plaintiff (*i.e.,* the worker) to demonstrate by ''a preponderance of the evidence'' that the defendant (*i.e.,* the responsible third party) owed a duty to the plaintiff, that the defendant breached that duty, and that the breach caused the worker's injury or disease;
- To establish third-party liability the worker must typically show that the third party's products or equipment or instructions were defective or negligently designed. Liability is often in dispute and difficult to prove;
- In cases of chronic disease, especially those with long latency periods, it is typically even more difficult to prove that the third-party was causally responsible. The worker must prove that not only was the disease the result of occupational exposure and not an ordinary disease of life or the result of non-occupational exposure, but also the causal exposure was due to the defendant's product at the plaintiff's particular worksite rather than exposure to some other third party's product or exposure at some other worksite;
- For chronic diseases, the potentially lengthy latency period between worker exposure and manifestation of disease lowers the probability that the responsible third party will still be in business when tort claims are ultimately

are self-insured. These individual firms accomplish risk-spreading as a result of the large number of workers they cover. See Ashford (2007), Docket OSHA–2010–0034, Document ID 1702, p. 1712.

[23] In order to spread risks in an efficient manner, it is critical that insurers have adequate information to set individual premiums that reflect each individual employer's risks. As the preceding discussion has made clear, by and large, they do not. In that sense, insurers can be added to employers and workers as possessing imperfect information about job hazards.

filed and have sufficient assets to cover the claims; [24] and

• Workers may be deterred from filing tort actions because of the substantial costs involved—including attorney fees, court costs, and the costs of obtaining evidence and securing witnesses—and the lengthy period before a final decision is rendered.

In sum, the use of the tort system as an alternative to regulation is severely limited because of the ''exclusive remedy'' provisions in workers' compensation statutes; because of the various legal and practical difficulties in seeking recovery from responsible third parties, particularly in cases of occupational disease such as cancer; and because of the substantial costs associated with a tort action. The tort system, therefore, does not adequately protect workers from exposure to hazards in the workplace.

IV. Summary

OSHA's primary reasons for proposing this rule are based on the requirements of the OSH Act and are discussed in section II of the preamble, Pertinent Legal Authority. As shown in the preamble to the proposed rule and this PEA, OSHA has determined that emergency responders are exposed to numerous safety and health hazards in the workplace. This section has shown that labor markets—even when augmented by information dissemination programs, workers' compensation systems, and tort liability options—appear to still operate at a level of risk for these workers that is higher than socially optimal due to a lack of information about safety and health risks, the presence of externalities or imperfect competition, and other factors discussed above.

The following sections present OSHA's estimates of the costs, benefits, and other impacts anticipated to result from the proposed rule. The estimated costs are based on employers achieving full compliance with the requirements of the proposed rule. They do not include prior costs associated with firms whose current practices are already in compliance with the proposed rule requirements. The purposes of this analysis are to:

• Identify the establishments and industries affected by the proposed rule;

• Estimate and evaluate the costs and economic impacts that regulated establishments will incur to achieve compliance with the proposed rule;

• Evaluate the economic feasibility of the proposed rule for affected industries;

• Estimate the benefits resulting from employers coming into compliance with the proposed rule in terms of reductions in injuries and fatalities; and

• Assess the impact of the proposed rule on small entities through an Initial Regulatory Flexibility Analysis (IRFA), which includes an evaluation of significant regulatory alternatives to the proposed rule that OSHA has considered.

B. Profile of Affected Industries

I. Introduction

This chapter presents a profile of the entities and employees within the emergency response service sectors that would be affected by OSHA's proposed Emergency Response Standard. OSHA first identifies the types of organizations that provide emergency response services that would be subject to the standard. Next, OSHA provides summary statistics for the affected entities, including the number of affected entities and the number of affected workers. This information is provided for each affected emergency response service sector in total as well as for small entities as defined by the RFA and by the SBA.

II. Affected Industries and Responders

The proposed rule would apply to employers that provide one or more of the following emergency response services as a primary function: firefighting, emergency medical service, and technical search and rescue; or the employees perform the emergency service(s) as a primary duty for the employer. OSHA refers to these employers as Emergency Service Organizations (ESOs) and their employees as responders. The proposed rule also would apply to Workplace Emergency Response Employers (WEREs), which are defined as employers that have an emergency response team where employees, as a collateral duty to their regular daily work assignments, respond to emergency incidents to provide services such as fire suppression, emergency medical care, and technical search and rescue. The team is called a Workplace Emergency Response Team (WERT), and the employees assigned to the team are called team members.

The proposed rule would directly cover private ESOs and WERTs but would also impact a significant number of state and local government entities, as well as Federal Government entities under the Departments of Defense, Agriculture, and the Interior. Firefighting services, as well as technical search and rescue groups, are often part of state and local governments. These emergency response services are also prominent functions of the Federal Government. Emergency medical services (*e.g.,* ambulance services) are more commonly provided by private entities but may also be provided by state or local governments. While state and local government employees are not directly covered by Federal OSHA, they are covered by states with OSHA-approved State Plans because the OSH Act requires State Plans to cover government employees. Under Executive Order 12866, agencies must consider the likely effects of their rulemakings on state and local governments in their regulatory analyses. For this analysis, OSHA is assuming that State Plan states would adopt the requirements in this proposed rule as written. Emergency response activities undertaken by WERT members at private worksites are fully covered by Federal OSHA.

Another issue in determining the entities that would be affected by the proposed rule is that many emergency responders are volunteers. OSHA does not regulate volunteers, but some State Plan states, listed below, have laws that treat volunteers as employees for occupational safety and health purposes. Therefore, in those situations, State Plans would have to cover those volunteers.

The proposed rule would *not* cover employers performing disaster site clean-up or recovery duties following natural disasters such as earthquakes, hurricanes, tornados, and floods; and human-made disasters such as explosions and transportation incidents.

The specific types of organizations that would be covered by the proposed rule are as follows:

• Firefighting Services—These organizations include private and public entities engaged in structural, wildland, proximity, marine, and aerial firefighting. Employees of these entities may be volunteer or career team members or responders. This group represents the vast majority of entities, team members and responders potentially affected by the proposed rule.

• Emergency Medical Services (EMS)—These organizations include private and public entities engaged in provision of pre-hospital emergency medical service. Employees of these entities may be volunteer or career team members and responders, emergency

[24] The same qualification about the firm being in business and having sufficient assets to pay claims may also apply to liability insurers, in those cases where the firm has purchased liability insurance.

medical technicians (EMTs), paramedics, and registered nurses.

• Technical Search and Rescue—These organizations are involved in complex search and rescue situations, such as rope, vehicle/machinery, structural collapse, trench, and technical water rescue. Employees of these entities may be volunteer or career team members and responders.

Detailed descriptions of these organization types are provided in section 4.

III. Entities Not Covered by the Proposed Rule

As noted above, Federal OSHA does not cover public ESOs in States without OSHA-approved State Plans. Therefore, for the PEA, public ESOs and responders in States without OSHA-approved State Plans are excluded from the analysis. The following states and territories have State Plans [25]: Alaska, Arizona, California, Connecticut, Hawaii, Illinois, Indiana, Iowa, Kentucky, Maine, Maryland, Massachusetts, Michigan, Minnesota, Nevada, New Jersey, New Mexico, New York, North Carolina, Oregon, Puerto Rico, South Carolina, Tennessee, Utah, U.S. Virgin Islands, Vermont, Virginia, Washington, and Wyoming. The remaining states and territories that are assumed to classify volunteers as covered employees include Alaska, Arizona, California, Hawaii, Indiana, Iowa, Michigan, Minnesota, Nevada, Oregon, Puerto Rico, South Carolina, Washington, Connecticut, Illinois, Maine, Massachusetts, New Jersey, New York, and U.S. Virgin Islands.

Also noted above, many emergency responders are unpaid volunteers rather than paid employees. Some State Plans cover volunteers, and some do not. This analysis does not include volunteer responders in State Plan states where the State Plan does not cover volunteers. State Plan states do not define ''employee'' in a standard way. Therefore, determining which employees are covered is not straightforward. For example, some states may provide benefits in the form of insurance and tax benefits to volunteers that might affect whether they are considered employees. Additionally, some State Plans may extend OSHA protections to volunteer firefighters but not to volunteer EMS providers or other non-firefighting volunteers, while other State Plans extend OSHA protections to all volunteers or to no volunteers. OSHA has determined that the following State Plan states *do not* consider volunteers to be employees and therefore do not extend OSHA protections to volunteers.[26] As a result, volunteers in these states are *not* included in this analysis (although career responders for public entity ESOs are included): Kentucky, Maryland, New Mexico, North Carolina, Tennessee, Utah, Vermont, Virginia, and Wyoming.

OSHA welcomes feedback on why this is or is not an appropriate approach to estimating the number of affected responders. The agency welcomes additional data or information on how volunteer responders are treated regarding OSHA protections in State Plan states.

Some states utilize prison labor to fight wildfires. These inmate firefighters are either paid significantly less per hour than career firefighters or are not paid at all. While some state plans, such as California clearly extend OSH coverage to prison labor,[27] it is somewhat ambiguous whether all such states do. Therefore, for this PEA, OSHA assumed that State Plan states that extend OSH coverage to volunteers do the same for inmate firefighters.

Table VII–B–1 shows the number and percentage of volunteer ESOs and responders in State Plan states where volunteers are and are not covered. ESOs in State Plan states that do not cover volunteers, and which are entirely staffed by volunteer responders, would not be affected by the proposed rule. Approximately 60.2 percent of volunteer ESOs and 62.9 percent of volunteer responders in State Plan states are covered overall.

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[25] Seven of these—Connecticut, Illinois, Maine, Massachusetts, New Jersey, New York, and the Virgin Islands—only cover public sector employees. However, the comparatively limited number of private sector employees in those states are covered by Federal OSHA and have been included in this analysis.

[26] There are an additional three states (Connecticut, Minnesota, and South Carolina), plus the U.S. Virgin Islands, for which it was somewhat ambiguous and where OSHA was unable to determine whether volunteers are considered employees under their State Plans. For this analysis, OSHA assumed that these states do consider volunteers as employees, so as not to underestimate the impacts of the standard.

[27] The California Prison Industry Authority (CALPIA) was cited by the state Division of Occupational Safety and Health (Cal/OSHA) and fined for exposing prisoners employed in a metal fabrication and vehicle-outfitting facility at California State Prison-Solano to COVID–19. *https://www.prisonlegalnews.org/news/2021/apr/1/california-prison-factories-fined-exposing-unwitting-workers-covid-19/.*

Table VII-B-1. Volunteer ESOs & Responders in State Plan States that Cover and Do Not Cover Volunteers

Type of State Plan	Number		Percentage	
	ESOs	Responders	ESOs	Responders
Fire Departments				
Volunteers Covered	5,216	174,895	67.5%	71.6%
Volunteers not Covered	2,517	69,290	32.5%	28.4%
Total	**7,733**	**244,183**	**100.0%**	**100.0%**
Wildland Fire Services [a]				
Volunteers Covered	7	3,737	58.3%	82.1%
Volunteers not Covered	5	815	41.7%	17.9%
Total	**12**	**4,552**	**100.0%**	**100.0%**
Emergency Medical Services				
Volunteers Covered	221	15,379	69.5%	88.0%
Volunteers not Covered	97	2,092	30.5%	12.0%
Total	**318**	**17,471**	**100.0%**	**100.0%**
Technical Search and Rescue				
Volunteers Covered	1,572	60,106	43.7%	43.7%
Volunteers not Covered	2,028	77,570	56.3%	56.3%
Total	**3,600**	**137,676**	**100.0%**	**100.0%**
All Groups				
Volunteers Covered	7,015	254,117	60.2%	62.9%
Volunteers not Covered	4,467	149,766	39.8%	37.1%
Total	**11,662**	**403,883**	**100.0%**	**100.0%**

Source: OSHA derived from USFA, 2022; Office of the Arizona Governor, 2021; CDCR, 2023; Maddux, 2020; Nevada Division of Forestry, 2023; Biancolli, 2018; Stenvick, 2020; WA DOC, 2023; NAEMT, 2014, BLS, 2023; Brewster, 2022; USLA, 2022b; U.S. Census Bureau, 2017a; Miley, 2022; and Wildland Fire Jobs, 2022.

Note: The USFA data in this table does not include Federal entities. However, appendix A, which includes data on all fire departments whether or not they are included in the analysis, does include Federal entities.

[a] The count of wildland fire services ESOs and responders include inmate firefighters and the state governments that utilize prison labor for wildland fighting activities.

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IV. Affected WEREs, ESOs, and Responders

Emergency response services provided by WEREs and ESOs can overlap (*e.g.,* firefighters may also be trained to provide medical assistance and technical search and rescue). Additionally, OSHA assumes that WERTs will likely provide all emergency response services within each facility. Given the overlap among these groups, OSHA first profiles WEREs as one group (vs. separately for each emergency response activity) and then profiles each type of ESO (firefighter, EMS, technical search and rescue).

A. WEREs

OSHA's estimate of the number of WEREs was derived using data from the U.S. Fire Administration (USFA) registry on the number of ''private or industrial fire brigades.'' These entities include private companies that have indicated they have employees (team members) who, collateral to their normal duties, provide firefighting and other emergency response services at the workplace.[28] Upon examination, OSHA found that unlike ESOs, WEREs typically do not appear in the registry. OSHA asked the USFA how representative the National Fire Registry data is, with USFA stating that the number of fire departments in the Registry accounted for about 92% of U.S. fire departments. The National Fire Registry indicates there are 27,091 organizations in the fire registry with available counts on employees. Multiplying 27,091 by 1/0.92 yields an estimate of 29,447 total emergency response organizations overall in the United States. The agency made an additional adjustment for an undercount of private ESOs, estimating that there are 788 private ESOs in the U.S. (twice the official count of 394). This leaves a residual of approximately 1,582 emergency response teams unaccounted for. Based in part on this, the agency estimates that approximately 1,500 emergency response teams are unaccounted for and exist in the form of WEREs. Based on communications with SERs, OSHA believes these WEREs to be within larger establishments across a number of industries such as refineries, auto assembly plants, paper mills, chemical plants, hospitals, and airports, among others.

To account for potential underreporting of these types of entities to the registry as well as to account for other types of WEREs that may not be captured by this registry, OSHA adjusted the number of WEREs to 1,500 WEREs. OSHA scaled the number of WERT members that are captured in the Registry (1,548) by the ratio of adjusted

[28] Note that not all private firefighting organizations reported in the NFPA data are WEREs.

WEREs (1,500) to WEREs captured in the Registry (36). Using this ratio (1,500/36 = 41.7), OSHA estimates that there are 64,500 team members employed in total by 1,500 WEREs. The agency welcomes additional data about the number of WEREs and team members who would fall within the scope of the proposed rule.

B. Fire Departments

According to the USFA registry, in 2022 there were 27,144 fire departments; 52,177 fire stations; and approximately 1,232,980 firefighting and non-firefighting individuals employed by fire departments in the United States.[29] The registry data also include the fire department's organization type (*e.g.,* private, state, local, etc.), department type (*i.e.,* career, volunteer, mostly career, mostly volunteer), and firefighter type (*e.g.,* active career, paid per call, active volunteer, etc.). ''Mostly career'' and ''mostly volunteer'' departments are those with a majority of responders who are career or volunteer firefighters, respectively, and are considered to be ''mixed'' departments.

Table VII–B–2 provides an overview of the number of fire departments in the USFA (2022) registry data by type of department based on firefighter type. This estimate includes all fire departments, whether or not they would be covered by the proposed rule. Table VII–B–2 shows that the majority of fire departments (approximately 61 percent) are volunteer.[30]

Table VII-B-2. Summary Statistics by Fire Department Type

Department Type	ESOs	Percentage
Career	6,844	25%
Volunteer	16,541	61%
Mixed	3,759	14%
Total Fire Departments	**27,144**	**100%**

Source: OSHA derived from USFA (2022).
Notes: ESOs are designated as career if they employ 100 percent career and/or paid-per-call firefighters, and as volunteer if they employ 100 percent volunteer firefighters. Figures may not add to totals due to rounding.

The USFA data also enumerate responders by type at each department in the registry and characterize whether they are career, volunteer, ''paid per call'' (*i.e.,* firefighters employed on a per-incident basis), or non-firefighting employees and volunteers. (This estimate includes all firefighters and non-firefighters, whether or not they would be covered by the proposed rule.) Table VII–B–3 summarizes these data, showing that a plurality of fire department personnel are volunteer firefighters (approximately 47 percent), career firefighters (approximately 30 percent) being the next most common type and paid-per-call firefighters constituting 11 percent of all personnel.

Table VII-B-3. Summary Statistics by Personnel Type

Firefighter Type	Number	Percentage
Active Firefighters - Career	365,311	30%
Active Firefighters - Volunteer	578,565	47%
Active Firefighters - Paid per Call	131,177	11%
Non-Firefighting Personnel	157,927	13%
Total Firefighters	**1,232,980**	**100%**

Source: OSHA derived from USFA (2022).
Note: Figures may not add to totals due to rounding.

Table VII–B–4 shows the interplay between department and personnel types (including all departments and personnel, whether or not they would be covered by the proposed rule). As noted above, the numbers below have been adjusted so that the ''volunteer'' department type includes data for those departments comprising only volunteer firefighters.

[29] These statistics are based on the USFA registry database as of May 17, 2022. Registry data are voluntarily reported by fire departments.

[30] The fire registry data are self-reported by individual fire departments, and in some cases, departments have classified themselves as a ''volunteer'' department even though they also reported some career or paid-per-call responders. OSHA has reclassified these departments such that only those departments where all active firefighters are volunteers are listed as ''volunteer'' departments and only those where all active firefighters are either career or paid per call are ''career,'' with the remainder being ''mixed.''

Table VII-B-4. Summary Statistics by Department and Personnel Type

Department Type	Number of Stations	Active Firefighters - Career	Active Firefighters - Volunteer	Active Firefighters - Paid per Call	Non-Firefighting Personnel
Career	20,023	294,408	0	112,520	35,581
Volunteer	21,725	0	452,512	0	87,996
Mixed	10,429	70,903	126,053	18,657	34,350
Total	**52,177**	**365,311**	**578,565**	**131,177**	**157,927**

Source: OSHA derived from USFA (2022).
Notes: ESOs are designated as career if they employ 100 percent career and/or paid-per-call firefighters, and as volunteer if they employ 100 percent volunteer firefighters.

As shown in Table VII–B–5, the vast majority of fire departments (approximately 96 percent) are operated by local governments. When other public non-federal fire departments (state governments, tribal governments, transportation authority/airport fire departments, and ''other'' departments) are included, public fire departments account for about 97.6 percent of fire departments.

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Table VII-B-5. Summary Statistics by Fire Department Operator for All Fire Department

Organization Type	Departments		Responders	
	Number	Percent	Number	Percent
Local Government (includes career, mixed, and volunteer)	25,973	95.7%	1,019,599	94.8%
State Government	188	0.7%	15,951	1.5%
Transportation Authority or Airport Fire Department	85	0.3%	1,936	0.2%
Tribal Government	64	0.2%	2,595	0.2%
Other	183	0.7%	6,775	0.6%
Federal Government (Department of Defense)	190	0.7%	10,476	1.0%
Federal Government (Executive Branch)	63	0.2%	3,946	0.4%
Contract Fire Department	254	0.9%	8,939	0.8%
Private or Industrial Fire Brigade	144	0.5%	4,836	0.4%
Non-Federal Public (Local, State, Tribal, Transportation Authority/Airport, and Other)	**26,493**	**97.6%**	**1,046,856**	**97.4%**
Federal Government	**253**	**0.9%**	**14,422**	**1.3%**
Private (Contract, Private or Industrial Fire Brigade)[1]	**398**	**1.5%**	**13,775**	**1.3%**
Total	**27,144**	**100.0%**	**1,075,053**	**100.0%**

While OSHA is not using the term "Industrial Fire Brigade" in this standard, this term is used in the NFPA database which is being summarized here.
Source: OSHA derived from USFA (2022).
Note: Figures may not add to totals due to rounding.

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Not all fire departments and responders included in Table VII–B–5 would be covered by the proposed rule. OSHA does not estimate costs or impacts for fire departments reporting zero responders [31] and the non-firefighting personnel included in the USFA (2022) registry data. Further, the analysis excludes public fire departments in non-State Plan states, volunteers in State Plan states where volunteers are not covered by the State Plan, and all-volunteer fire departments in State Plan states that do not cover volunteers. OSHA thus limits the fire department profile to include all private fire departments, all public fire departments in State Plan states that cover volunteers, all public fire departments in State Plan states that do not cover volunteers except those departments that are 100 percent volunteer, and all Federal fire departments. In addition to *removing* some fire departments and responders that are not covered, OSHA checked to ensure that all fire departments operated by tribal governments were removed from this analysis for being out-of-

[31] There are 90 fire departments with no reported active firefighting personnel in the 2022 USFA Registry.

scope. After these adjustments, OSHA estimates that there are 12,096 fire departments and 534,599 responders (see Table VII–B–6) that would be affected by the proposed rule.

Table VII-B-6. Fire Departments and Firefighters in Scope by Department Type

Department Type	Departments	% Departments	Responders	% Responders
Career	4,266	35.3%	246,561	46.1%
Volunteer	5,674	46.9%	187,621	35.1%
Mixed	2,156	17.8%	100,417	18.8%
Total	**12,096**	**100.0%**	**534,599**	**100.0%**

Source: OSHA derived from USFA (2022).
Note: Excludes public ESOs in non-State Plan states, volunteer ESOs in State Plan states where volunteers are not covered, and ESOs with zero responders.

C. Wildland Firefighting Services

In addition to fire departments, many private-sector fire suppression organizations provide wildland firefighting and other emergency services, primarily to Federal, State, and local agencies. These services include direct firefighting as well as support services and are assumed to fall into NAICS 115310 Support Activities for Forestry.[32] The total number of such organizations and the associated personnel is unknown. However, the National Wildfire Suppression Association (NWSA) states that it represents 348 private wildland firefighting services contractors with 24,000 employees who operate on an as-needed basis to provide Federal, State, and local agencies with a variety of resources for wildland firefighting and other emergency incidents (such as hurricanes and other disasters) (Miley, 2022). These for-profit companies represent between 65 and 70 percent of for-profit wildland firefighting services (Miley, 2022). Taking the midpoint of NWSA's representativeness range (67.5 percent), OSHA estimates that 516 companies offer wildland firefighting services across the United States.

Using addresses for member companies as well as other contractor lists (*WildlandFireJobs.com*) and projecting to the total estimated number of organizations, OSHA calculated the percent and total wildland firefighting entities within each state.

Total employment was calculated by dividing the number of wildland firefighting service estimated above by the number of firms in NAICS 115310 and multiplying this percentage by the total number of employees in NAICS 115310, according to the 2021 Statistics of U.S. Businesses (SUSB). This calculation results in an estimated 35,556 employees. All wildland firefighting entities are private entities, according to the NWSA. All responders are considered career; none of these employees are volunteers.

In some states, prison labor is also employed to fight wildfires. To estimate the number of inmate firefighters, OSHA conducted internet searches regarding the number of state prison inmates participating in firefighting training and deployment programs, focusing on State Plan states. While there are non-State Plan states that have inmate firefighting programs, those inmates are not within OSHA's jurisdiction, since the state prisons are publicly owned and operated. OSHA used the search terms ''[state] inmate firefighters,'' ''[state] corrections forestry camps,'' ''[state] prisoner wildfires,'' and ''[state] corrections firefighter training.'' Among the 27 states and two territories that have State Plans, OSHA found evidence of inmate firefighting programs in 14 states. For this PEA, OSHA assumes that inmate firefighters are treated as volunteers within State Plan states. Therefore, only inmate firefighters in State Plan states where the State Plan covers volunteers would be affected. Of the 14 State Plan states for which OSHA found evidence of inmate firefighting programs, seven of them cover volunteers. The counts of inmate firefighters for each of these states are provided in Table VII–B–7. For some states, OSHA found more than one count of inmate firefighters. In these instances, OSHA uses the highest estimate.

[32] This industry comprises establishments primarily engaged in performing particular support activities related to timber production, wood technology, forestry economics and marketing, and forest protection. These establishments may provide support activities for forestry, such as estimating timber, forest firefighting, forest pest control, treating burned forests from the air for reforestation or on an emergency basis, and consulting on wood attributes and reforestation. (U.S. Census Bureau, 2021).

Table VII-B-7. State Wildland Firefighting Programs and Inmate Firefighters Affected

State	Inmate Firefighters	% Inmate Firefighters
Arizona	720	19.3%
California	1,600	42.8%
Indiana	17	0.5%
Nevada	720	19.3%
New York	5	0.1%
Oregon	345	9.2%
Washington	330	8.8%
Total	**3,737**	**100.0%**

Source: OSHA derived from Office of the Arizona Governor, 2021; CDCR, 2023; Maddux, 2020; Nevada Division of Forestry, 2023; Biancolli, 2018; Stenvick, 2020; WA DOC, 2023.

The Federal Government also employs wildland firefighters within the Forest Service. There are approximately 18,700 dedicated wildland firefighters (GAO, 2022) and an additional 50,000 reserve wildland firefighters (USDA, 2023).

D. Emergency Medical Services

The proposed rule, or its State Plan equivalent, would cover public and private ESOs that provide emergency medical services (EMS). However, detailed data for EMS providers similar to those for fire departments are not available. Available data on EMS providers are not captured adequately in the data sources typically used by OSHA that allow the agency to delineate affected entities by NAICS industry. OSHA combined data from several sources to construct a profile with similar parameters to the firefighter profile. OSHA welcomes information on additional or alternate data sources that would allow the agency to better estimate the universe of EMS providers.

First, statistics reported by the National Association of Emergency Medical Technicians (NAEMT, 2014) based on 2008 data suggest that there are an estimated 15,276 ambulance services ESOs in the United States, which NAEMT breaks down into detailed categories (see Table VII–B–8). NAEMT reported that an estimated 49 percent of EMS providers are fire departments with either cross-trained or separate EMS responders. Other ''government or third party'' providers represent an estimated 15 percent of the total, while private EMS providers account for 18 percent, and hospital-based services represent 7 percent.

The ESOs considered in this section exclude EMS responders that operate as part of a fire department (as they are already included in the fire department profile detailed above) and public ESOs located in non-State Plan states. OSHA combined all other public EMS ESOs to arrive at an estimated affected population of ambulance service providers. OSHA based the estimate of the percentages of public ESOs that are in State Plan and non-State Plan states on the ratio of employment in Standard Occupational Classification (SOC) codes 29–2042 Emergency Medical Technicians and 29–2043 Paramedics in State Plan states to employment of those two SOCs in all states in BLS (2023) Occupational Employment and Wage Statistics (OEWS) data for May 2022. Based on this calculation, OSHA assumes that 59.04 percent of public ESOs are based in State Plan states, with 40.96 percent of public ESOs based in non-State Plan states.

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Table VII-B-8. Ambulance Services by Detailed Type of Provider

	Ambulance ESOs	
	Percentage [d]	**Total [d]**
Total U.S.		
Fire Department with Cross-Trained EMS Personnel	40.0%	6,110
Fire Department with Separate EMS Personnel	9.0%	1,375
Private Company	18.0%	2,750
Other	8.0%	1,222
Hospital-Based Service	7.0%	1,069
Public Utility Model (Private Contractor)	2.0%	306
Government or Third Party	14.5%	2,215
Police Department with Cross-Trained EMS Personnel	0.5%	76
Police Department with Separate EMS Personnel	1.0%	153
Total Ambulance Services	**100%**	**15,276**
Total Excluding Fire Departments		
Private [a]	68.6%	5,347
Public, State Plan State [b] [c]	18.5%	1,443
Public, Non-State Plan State [b] [c]	12.9%	1,001
Total Ambulance Services	**100%**	**7,791**
Total Affected		
Private [a]	79.9%	5,347
Public, State Plan State [b] [c]	20.1%	1,346
Total Ambulance Services	**100%**	**6,693**

Sources: OSHA derived from NAEMT (2014) and BLS (2023).

Notes:

[a] The "private" category includes private company, other, hospital-based service, and public utility model (private contractor).

[b] The public category includes "government or third party" and police department ambulance services. This count excludes fire departments, which are profiled in the previous section.

[c] The portion of public services in state plan states is based on the ratio of employment in SOCs 29-2042 'Emergency Medical Technicians' and 29-2043 'Paramedics' in state plan states to employment of those two occupations in all states in BLS OEWS data for May 2022 (BLS, 2023), which equals 59.04%.

[d] Figures may not add to totals due to rounding.

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NAEMT (2014) estimates that ambulance services employ 840,669 responders, which includes first responders, EMTs, paramedics, and registered nurses. This analysis assumes that those responders are distributed proportionately among the ambulance services of each type, which yields an estimate of 360,957 responders at affected ESOs, with 66,723 of these responders at public ESOs in State Plan states and 294,234 responders at private ESOs nationwide.

NAEMT (2014) estimates that approximately 39 percent of ambulance service entities are staffed by career responders, 21 percent by volunteers, and 41 percent by both. Unlike the USFA (2022) data used for the firefighter profile, NAEMT does not specify responder types at ''mixed'' ambulance services (*e.g.,* how many career responders are at ESOs that are primarily staffed with volunteers). For the fire departments and firefighters analysis, OSHA identified different types of staffing arrangements for fire departments, including where departments were mostly, but not completely, staffed by volunteers and vice versa. Lacking any data to make similar determinations, this analysis of ambulance ESOs assumes that entities reported as staffed by career responders are staffed entirely by career responders, entities reported as volunteer services are staffed entirely by volunteers, and an unknown mix of career and volunteer responders staff services in the ''mixed'' category. The estimates of career, volunteer, and ''mixed'' services and responders are shown in Table VII–B–9.

As with fire departments and firefighters, volunteer responders and ESOs where 100 percent of responders are volunteers are excluded in OSHA State Plan states where the State Plan does not cover volunteers. Since the NAEMT and BLS data are not granular enough to allow an exact calculation of the percentage of volunteers in State Plan states that cover or do not cover volunteers, OSHA assumes that the percentage of volunteer emergency medical service ESOs and responders located in these states is the same as for firefighters.

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Table VII-B-9. Estimated Number of Ambulance Services and Personnel – Career, Volunteer, and Mixed

	Private [a]	Public, State Plan State [b] [c]	Total Affected [d]
Ambulance ESOs			
Number			
Career	2,032	548	**2,580**
Volunteer	1,176	221	**1,397**
Mixed	2,139	577	**2,716**
Total	**5,347**	**1,346**	**6,693**
Percent of Total Affected			
Career	30%	8%	**39%**
Volunteer	18%	3%	**21%**
Mixed	32%	9%	**41%**
Total	**80%**	**20%**	**100%**
Personnel			
Number			
Career	111,809	30,177	**141,986**
Volunteer	64,732	15,379	**80,111**
Mixed	117,694	21,166	**138,860**
Total	**294,234**	**66,723**	**360,957**
Percent of Total Affected			
Career	31%	8%	**39%**
Volunteer	18%	4%	**22%**
Mixed	33%	6%	**38%**
Total	**82%**	**18%**	**100%**

Sources: OSHA derived from NAEMT (2014), USFA (2022), and BLS (2023).

Notes:

[a] The "private" category includes private company, other, hospital-based service, and public utility model (private contractor).

[b] The public category includes "government or third party" and police department ambulance services. This count excludes fire departments, which are profiled in the previous section.

[c] The portion of public services in State Plan states is based on the ratio of employment in SOCs 29-2042 'Emergency Medical Technicians' and 29-2043 'Paramedics' in State Plan states to employment in those two occupations all states in BLS OEWS data for May 2022 (BLS, 2023), which equals 59.04%.

[d] Figures may not add to totals due to rounding.

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E. Technical Search and Rescue

The proposed rule covers technical search and rescue organizations using special knowledge, skills, and specialized equipment to resolve complex search and rescue situations, such as rope, vehicle/machinery, structural collapse, trench, and technical water rescue. The term covers a variety of activities and operations that may be performed by different types of team members and responders. (The proposed rule does not include technical search and rescue activities specifically covered by other OSHA standards, such as permit-required confined spaces covered by 29 CFR 1910.146.) OSHA specifically uses the term ''technical'' to limit the proposed rule's coverage to search and rescue activities that utilize special knowledge and skills and specialized equipment to resolve complex search and rescue situations because these activities are particularly hazardous for emergency responders. There are activities with the same or similar names that would not be covered by the proposed rule because they do not use specialized knowledge, skills, or equipment. For example, the term ''wilderness search and rescue'' could apply to both technical and non-technical operations. Hiking or riding horseback through the wilderness searching for a lost hiker does not necessarily require special skills, knowledge, or equipment. However, if it is mountainous terrain where rescuing the hiker requires rope rescue techniques, for example, then it is technical search and rescue.

These services are provided by a range of organizations that may focus on one or more skills (*e.g.,* trench, technical water rescue) or environments (*e.g.,* wilderness, urban) and may be provided by volunteers, private companies, fire departments, or law enforcement agencies. Employers that provide these services do not appear in any one defined NAICS industry. OSHA's research showed that these employers are many disparate industries and are frequently providing technical search and rescue services in conjunction with other lines of business (*e.g.,* they may primarily train people in occupational safety practices or rent equipment but also provide technical search and rescue). To profile these organizations,

OSHA obtained information from several sources including the National Association for Search and Rescue (NASAR) and the Mountain Rescue Association (MRA). OSHA supplemented the MRA and NASAR information with data on private companies offering specialized skills and equipment, such as rope/high angle rescue, estimates of Federal Park Rangers who can perform technical rescue, and U.S. lifeguarding entities providing specialized skills and equipment to better estimate the total number of entities and employees involved in technical search and rescue. OSHA assumed that all WEREs whose WERT members perform technical search and rescue also perform firefighting operations. Therefore, all WERE and WERT members were captured above and none are profiled in this section as providing only technical search and rescue.

According to NASAR, there are between 4,000 and 6,000 search and rescue organizations in the United States. Information was not available on the total number of individuals involved in search and rescue. NASAR estimates that 90 percent of these organizations are focused on wilderness search and rescue and the other 10 percent are urban search and rescue organizations (Boyer, 2022). Urban search and rescue groups are sponsored by fire departments and run by FEMA. Given the overlap with fire departments, which are accounted for above, urban search and rescue organizations are excluded from the count of affected technical search and rescue groups estimated below. Wilderness search and rescue organizations are typically under the purview of law enforcement agencies (*e.g.,* police departments, sheriff's offices, etc.) and are staffed by volunteers.

An estimated 80 percent of wilderness search and rescue groups use special skills or equipment during search and/or rescue (Boyer, 2022) and are therefore considered to be technical search and rescue groups. Combining the midpoint (5,000) of NASAR's estimate of total search and rescue organizations with these estimates, OSHA estimates that there are approximately 3,600 wilderness search and rescue groups that use technical skills or equipment during missions (5,000 search and rescue organizations × 90 percent wilderness × 80 percent using technical skills or equipment). OSHA distributed these 3,600 groups across each state based on the proportion of the population within each state according to the U.S. Census Bureau (2022b). Accounting only for groups in State Plan states where volunteers are considered employees, OSHA estimates a total of 1,572 affected technical search and rescue groups.

Based on the number of MRA member organizations and individuals, OSHA assumed that there are 30 volunteers per technical search and rescue group (Miraglia, 2022). After multiplying the number of technical search and rescue groups within each state by this estimate, OSHA distributed these employees across employee class sizes using ratios of employees within specific employee class sizes compared to the total number of employees derived from Government Units Survey data. OSHA made a further adjustment to account for instances where the number of technical search and rescue groups exceeded the number of volunteers estimated. These instances can occur since the relationships between MRA's estimates, the Government Units Survey data, and U.S. Census population data are not uniform from one state to another. In instances where the number of technical search and rescue groups exceeded the number of volunteers, the number of entities was capped at half of the number of employees.[33] OSHA then calculated the ratio between the original number of technical search and rescue groups (3,600) and the new adjusted number of technical search and rescue groups (2,824) to scale the number of entities and employees to reflect the original estimate of technical search and rescue groups. This process results in a preliminary estimate of 3,600 technical search and rescue groups and 137,675 technical search and rescue responders. All of these technical search and rescue groups are public entities and all associated responders are considered volunteers. After accounting for State Plan status and whether or not a State Plan state covers volunteers, the number of affected technical search and rescue responders is adjusted to 60,106. OSHA welcomes comment on the estimates and assumptions presented here. The agency also encourages anyone with additional data that could be used to refine these estimates to submit those data to the rulemaking record.

OSHA separately researched private companies offering technical search and rescue services using internet searches. However, given the range of industrial sectors to which these companies appear to belong, OSHA was not able to identify a comprehensive list of all such companies in the U.S. Therefore, OSHA assumes that the number of private companies involved in technical search and rescue is equal to the number of FEMA Urban Search and Rescue Task Force locations (28).[34] OSHA requests additional data on private technical search and rescue service providers that would allow the agency to better estimate the universe of these employers.

To estimate the number of responders at these private technical search and rescue companies, OSHA used the sample of companies it identified via internet searches. Using Demographics Now (2023), OSHA obtained the number of employees associated with each company. OSHA also searched for employment numbers for each company through Manta and ZoomInfo. OSHA then aggregated the companies and their respective employee estimates into employment class sizes (<25, 25–49, 50–99, 100–249, 250–499, and 500+). Using the percentage of companies that fell into each employee class size, OSHA then scaled the number of employees within each employee class size to reflect expected employment figures for the estimated 28 companies. With this method, OSHA estimated 1,304 employees across private technical search and rescue companies.

OSHA used publicly available information to estimate approximately 15,000 Park Rangers employed in the United States (Zippia, 2023). OSHA assumes that a third of these Park Rangers have technical rescue skills, resulting in 5,000 additional technical search and rescue responders, which are included in this industry profile.

To calculate the number of technical water rescue entities and responders affected by the proposed rule, OSHA developed estimates of the total number of public and private lifeguard agencies that use specialized knowledge and skills using data from the USLA (USLA, 2022a). While pool and waterpark lifeguards would be excluded because they do not use specialized equipment, beach and open water lifeguard employees may be included, depending on whether or not they use specialized equipment such as SCUBA, boats, personal watercraft, and ATVs. There are other emergency responders, notably firefighters, who also provide technical water rescue, but their numbers are already accounted for elsewhere in the analysis. For the purposes of this analysis, OSHA assumed that use of

[33] OSHA assumes that there are at least 2 volunteer responders per technical search and rescue group.

[34] *https://www.fema.gov/emergency-managers/national-preparedness/frameworks/urban-search-rescue/task-force-locations.*

rescue vehicles [35] was linked to the provision of specialized equipment and skills among lifeguards. Using USLA data on ownership of rescue vehicles by lifeguard agencies, OSHA determined how many of these employees might use rescue vehicles and therefore be potentially subject to the proposed rule. The U.S. has 144 USLA-certified lifeguard agencies (USLA, 2022b). According to USLA, 70 percent of all public lifeguard agencies are USLA-certified (Brewster, 2022). OSHA, therefore, estimates that there are 206 public lifeguard agencies nationwide. USLA also indicated that 95 percent of all lifeguard entities are public, which translates to an estimated 217 total (public and private) lifeguard entities nationwide (Brewster, 2022), all of which are assumed to have the potential to use rescue vehicles.

OSHA counted the number of USLA-certified agencies in each state in the USLA data and then proportionally distributed the remaining lifeguard agencies based on the percentage of all USLA-certified agencies within the state. Based on the statistics presented above, 95 percent of all agencies were assumed to be public and the remaining 5 percent private. Accounting only for public groups in State Plan States and all private entities, OSHA estimates a total of 134 additional affected technical water rescue entities.

OSHA used the same approach as used for the other technical search and rescue organizations to distribute public and private agencies among each employee class size for technical water rescue organizations. Partial data on the number of full-time and part-time employees at each lifeguard agency by year was available from USLA. However, employment data for some currently certified lifeguard agencies was unavailable. To fill in these gaps, OSHA calculated the average number of full-time and part-time employees among the currently certified lifeguard agencies with recorded employment data. OSHA then calculated the average number of full-time and part-time employees per agency in each state. These estimates were then multiplied by the number of public and private entities in each state to estimate total full-time and part-time employees within public and private entities. OSHA then used USLA data on ownership of rescue vehicles by lifeguard agency to determine how many of these employees might use rescue vehicles and therefore be providing specialized equipment and skills. OSHA calculated the average number of employees per rescue vehicle across currently USLA-certified lifeguard entities and multiplied it by the number of rescue vehicles per entity to estimate the number of employees potentially operating rescue vehicles per entity. Next, OSHA took the difference between total employment at each entity and the expected number of employees given the number of rescue vehicles to determine ''excess'' employees, or the employees at an entity that may not operate a rescue vehicle. OSHA divided the total number of ''excess'' employees by total employment to determine the percentage of all employees that do not use rescue vehicles. Then the percentage of employees that do use rescue vehicles was multiplied by total public and private employment within each employee class size to determine the number of affected employees within each state. As a final step, OSHA used the same approach as outlined above for the search and rescue organizations, capping the number of entities at half the number of employees estimated given the number of entities originally estimated exceeded the number of employees. The number of entities and employees was then scaled back up so that the total number of entities estimated matched the original estimate. As shown in Table VII–B–10, there are an estimated 8,275 affected technical water rescuers.

[35] USLA defines rescue vehicles as lifeguard emergency vehicles described as four-wheel-drive motor vehicles which are legally permitted to drive on streets and highways.

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Table VII-B-10. Technical Water Rescue Entities and Employees Affected

Size Class	ESOs	% ESOs	Responders	% Responders
Total				
Public – State Plan State	123	56.7%	7,676	64.1%
Public – Non-State Plan State	83	38.2%	3,699	30.9%
Private	11	5.1%	599	5.0%
Total	**217**	**100.0%**	**11,974**	**100.0%**
Total Affected				
Public – State Plan State	123	91.8%	7,676	92.8%
Public – Non-State Plan State	0	0.0%	0	0.0%
Private	11	8.2%	599	7.2%
Total	**134**	**100.0%**	**8,275**	**100.0%**

Source: OSHA derived from Brewster (2022), USLA (2022b), and U.S. Census Bureau (2017a).
Note: Figures may not add to totals due to rounding.

In summary, the total number of affected technical search and rescue organizations and responders is presented in Table VII–B–11.

Table VII-B-11. Estimated Number of Technical Search and Rescue Organizations and Responders – Career and Volunteer

	Private	Public, State Plan State	Federal	Total in Scope [a]
Technical Search and Rescue Organizations				
Number				
Career	28	0	1	**29**
Volunteer	0	1,572	0	**1,572**
Total	**28**	**1,572**	**1**	**1,601**
Percent of Total in Scope				
Career	2%	0%	0%	**2%**
Volunteer	0%	98%	0%	**98%**
Total	**2%**	**98%**	**0%**	**100%**
Technical Search and Rescue Responders				
Number				
Career	1,304	0	5,000	**6,304**
Volunteer	0	60,106	0	**60,106**
Total	**1,304**	**60,106**	**5,000**	**66,409**
Percent of Total in Scope				
Career	2%	0%	8%	**9%**
Volunteer	0%	91%	0%	**91%**
Total	**2%**	**91%**	**8%**	**100%**
Technical Water Rescue Organizations				
Number				
Career	11	123	0	**134**
Volunteer	0	0	0	**0**
Total	**11**	**123**	**0**	**134**
Percent of Total in Scope				
Career	8%	92%	0%	**100%**
Volunteer	0%	0%	0%	**0%**
Total	**8%**	**92%**	**0%**	**100%**
Technical Water Rescue Responders				
Number				
Career	599	7,676	0	**8,275**
Volunteer	0	0	0	**0**

	Private	Public, State Plan State	Federal	Total in Scope [a]
Total	**599**	**7,676**	**0**	**8,275**
Percent of Total in Scope				
Career	7%	93%	0%	**100%**
Volunteer	0%	0%	0%	**0%**
Total	**7%**	**93%**	**0%**	**100%**
Total Technical Search and Rescue Organizations				
Number				
Career	39	123	1	**163**
Volunteer	0	1,572	0	**1,572**
Total	**39**	**1,695**	**1**	**1,735**
Percent of Total in Scope				
Career	2%	7%	0%	**9%**
Volunteer	0%	91%	0%	**91%**
Total	**2%**	**98%**	**0%**	**100%**
Technical Search and Rescue Responders				
Number				
Career	1,902	7,676	5,000	**14,579**
Volunteer	0	60,106	0	**60,106**
Total	**1,902**	**67,782**	**5,000**	**74,685**
Percent of Total in Scope				
Career	3%	10%	7%	**20%**
Volunteer	0%	80%	0%	**80%**
Total	**3%**	**91%**	**7%**	**100%**

Sources: OSHA derived from Boyer (2022), Brewster (2022), Demographics Now (2023), Manta (2023a-b), USLA (2022b), U.S. Census Bureau (2017a-b), U.S. Census Bureau (2022b), and Zippia (2023).
Notes:
[a] Figures may not add to totals due to rounding.

F. Summary of Affected WEREs, ESOs, Responders, and Team Members

Table VII–B–12 summarizes the total estimated number of organizations and responders affected by the proposed rule, drawing from the profiles for WEREs, firefighters (Table VII–B–6), wildland firefighters, emergency medical services (Table III–9), and technical search and rescue groups (Table VII–B–11).

Table VII-B-12. Combined Profile of WEREs, Fire Departments, Emergency Medical Services, and Technical Search and Rescue Entities – Summary

Group Type	Total in Scope	
	Organizations	Responders
WEREs		
Career	1,500	64,500
Total	**1,500**	**64,500**
Fire Departments		
Career	4,266	246,561
Volunteer	5,674	187,621
Mixed	2,156	100,417
Total	**12,096**	**534,599**
Wildland Fire Services [a]		
Career	521	54,256
Volunteer	8	53,737
Total	**529**	**107,993**
Emergency Medical Services		
Career	2,580	141,986
Volunteer	1,397	80,111
Mixed	2,716	138,860
Total	**6,693**	**360,957**
Technical Search and Rescue		
Career	163	14,579
Volunteer	1,572	60,106
Total	**1,735**	**74,685**
All Groups		
Career	9,030	521,881
Volunteer	8,650	381,574
Mixed	4,872	239,277
Total	**22,552**	**1,142,733**

Sources: OSHA derived from USFA (2022), NAEMT (2014), BLS (2022a), Firehouse Magazine (2018, 2022), U.S. Census Bureau (2021), Miley (2022), Wildland Fire Jobs (2022), Government Accountability Office (2022), USDA (2023), Boyer (2022), U.S. Census Bureau (2022b), U.S. Census Bureau (2017b), Brewster (2022), USLA (2022b), Demographics Now (2023), Manta (2023a-b), U.S. Census Bureau (2017a), and Zippia (2023).

Note: Excludes public ESOs in non-State Plan states, volunteer ESOs in State Plan states where volunteers are not covered, and ESOs with zero responders.

[a] The count of wildland fire services ESOs and responders includes inmate firefighters captured in Table VII-B-7.

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V. Potentially Affected Small Entities

A. Determining Entity Size

Under the RFA, small governmental jurisdictions (sometimes referred to as ''small governments'' in this analysis) are defined as ''governments of cities, counties, towns, townships, villages, school districts, or special districts, with a population of less than fifty thousand.'' 5 U.S.C. 601(5). For this PEA, fire departments, EMS providers, and technical search and rescue groups that are part of state and local governments are referred to as small entities if the government they are part of meets this definition of a small governmental jurisdiction. For private entities, the RFA uses the definition of ''small business'' found in the Small Business Act, which authorizes the SBA to define ''small business'' by regulation. This analysis uses the SBA's definition of a small business for each industry sector (according to NAICS code) as defined in the SBA table of size standards (SBA, 2019).

The available data on small governmental jurisdictions does not allow OSHA to identify the number of fire departments or EMS providers that serve these jurisdictions, or the number of firefighters and EMS providers employed by small governments. To derive these estimates, OSHA estimated the median population served per fire department employee and used that to estimate how many workers a department would need to employ to serve a population greater than 50,000. OSHA used data from multiple Firehouse Magazine surveys to determine the median population served per employee for career, volunteer, and mixed fire departments at various employment size classes to extrapolate to the entire universe of fire

departments. Part 1 of Firehouse Magazine's (2022) 2021 National Run Survey presents data from 229 career fire departments' statistics about population and staffing. Similarly, Firehouse Magazine has volunteer and mixed fire department data from the 2021 Volunteer Fire Department Run Survey and 2021 Combination Fire Department Run Survey, respectively. Estimates of the median population served per employee derived from each survey are multiplied by the number of employees for each department in the U.S. Fire Administration's (USFA, 2022) registry data (used for the Fire Department profile (see Section VII.B.IV.B)) within each employee size class to determine how many departments serve populations of fewer than 50,000.

No comparable data are available for publicly operated EMS or technical search and rescue groups. Therefore, OSHA calculated the number of fire departments serving various population sizes compared to the total number of fire departments and applied this ratio to the total number of each of these other responder groups. This approach estimates the number of government-operated EMS providers and technical search and rescue groups serving populations of each size.

As mentioned above, private entities are defined as small pursuant to the SBA's regulations at 13 CFR 121.201, which include different definitions for each NAICS industry. For private fire departments, the USFA (2022) registry data do not include the NAICS code of each department, and these entities represent several industries, each with a unique SBA definition.[36] Most private firefighting entities are in NAICS 561000 Administrative and Support Services, but WEREs can be found across a wide variety of manufacturing, oil and gas, petrochemical, and other industries and each 6-digit NAICS industry can define small entities differently. As a simplifying assumption, OSHA used an employment size class definition of 500 employees or fewer to classify private fire departments as small. On balance, this approach likely overestimates the number of affected small entities. While some SBA size class definitions within NAICS 561000 use revenue definitions of ''small'' that approximate to 500 employees, more industries' definitions of ''small'' within this NAICS code approximate to 100 employees. OSHA uses the 500-employee definition of small fire departments for this analysis—a method that would pull more ESOs into the scope of this analysis than a lower threshold would.

Wildland firefighting services may also be distributed across several NAICS codes given that many of these entities provide other forestry support services such as logging, earth moving, and planting. To estimate the number of wildland firefighting services for the small entity analysis, OSHA used the proportion of firms in NAICS 115310 (Support Activities for Forestry) that are classified as SBA small to distribute total wildland firefighting services into an SBA classification. The SBA small entity definition for NAICS 115310 is $8,000,000 in receipts, which OSHA converted to 100 employees.[37]

For private emergency medical services (NAICS 621910 Ambulance Services), SBA defines a small entity as one with annual revenues of $16.5 million or less. To use this definition in conjunction with the U.S. Census data used to profile this industry, OSHA converted the revenue data to an employment size class-based definition.[38] The result is that entities with fewer than 500 employees are determined to meet the SBA definition of a small entity.

This PEA examines costs by entity employment size class including the six employment size classes used to estimate unit costs for entities of various sizes (fewer than 25, 25–49, 50–99, 100–249, 250–499, and 500-plus employees). For state prison inmate populations engaged in wildfire fighting, the state is assumed to be the affected entity, where all affected states are assumed to be large based on the RFA definition.

For fire departments, the USFA (2022) registry data used for the profile provides an estimate of the number of employees of various types at each department, and departments are allotted to employment size classes using the total number of employees. For wildland firefighting services, OSHA combined data on the number of these entities represented by the NWSA with the distribution of entities and associated employees in NAICS 115310 Support Activities for Forestry to estimate the number of wildland firefighting service employees per employment size class.

For emergency medical services, OSHA allocated the NAEMT (2014) data on the total number of responders and ESOs into employment size classes using the distribution in the U.S. Census Bureau's (2021) SUSB data for NAICS 621910 Ambulance Services for 2017, which includes data on the number of entities and employees by detailed size class.

For the public technical search and rescue services, OSHA estimated the total number of organizations from NASAR and MRA and adjusted this estimate for the percent that use specialty skills or equipment during search and rescue. Because there were no available data on these organizations' location or size characteristics, OSHA distributed these groups across each state using the percent of the overall U.S. population residing in a given state (U.S. Census Bureau, 2022b). Next, OSHA distributed the entities by employee class size using the Government Units Survey (GUS) data from U.S. Census Bureau (U.S. Census Bureau, 2017b) as a proxy for local government law enforcement agencies. OSHA then calculated the proportion of all local government entities that fall within each employee class size using the GUS data and multiplied these proportions by the total number of search and rescue groups in each state. The same approach was used to distribute total employees (developed from MRA data on the average number of employees per organization) by employee class size. As outlined in section VII.B.VI.E, OSHA made a further adjustment to cap the number of entities to half of the number of employees and then scaled the number of entities and employees back up to reflect the number of entities originally estimated.

For private technical search and rescue companies, OSHA used employment and revenue figures for the sample of companies it identified via internet searches and their respective SBA definitions. Each of the identified technical search and rescue companies has a unique SBA definition of a small entity, with some based on employment and others on revenues. Based on the varying definitions for these companies, OSHA determined that seven of the eight companies are considered small based on their SBA definition. OSHA then scaled up to obtain an estimated total of 25 small technical search and rescue companies.

[36] Some information on the NAICS distribution of private firefighting services is available from the BLS employment data, but these are not at the 6-digit NAICS level needed to determine small entity status using the SBA definitions.

[37] This conversion was made by finding the largest employment size class with revenue less than $8.0 million per entity in the U.S. Census Bureau's (2021) Statistics of U.S. Businesses data for 2017, with revenue adjusted to 2022$ using the Bureau of Economic Analysis (BEA, 2023) implicit price deflators for gross domestic product.

[38] This conversion was made by finding the largest employment size class with revenue less than $16.5 million per entity in the U.S. Census Bureau's (2021) Statistics of U.S. Businesses data for 2017, with revenue adjusted to 2022$ using the Bureau of Economic Analysis (BEA, 2023) implicit price deflators for gross domestic product.

Finally, for the additional group of technical water rescuers, OSHA used data on lifeguarding entities in the U.S., limiting the affected employees to those using rescue vehicles in their activities to indicate those individuals using specialized equipment or skills. OSHA used the same process for allocating entities and employees to employee class sizes as outlined above for technical search and rescue.

B. WEREs

In the absence of data specific enough to identify the industry sector associated with each of the 1,500 WEREs, OSHA assumed that all 1,500 WEREs are small under SBA definitions, with all 64,500 WERT members working at these small WEREs.

C. Fire Departments and Responders by Population Served

As noted above, the population served by each fire department is estimated using the number of firefighters in the USFA (2022) registry data and the ratio of the population served to firefighters in Firehouse Magazine's (2022) surveys for career, volunteer, and mixed departments. Table VII–B–13 presents the number of public fire departments estimated to serve a population of 50,000 people or fewer affected by the proposed rule, accounting for the adjustments noted earlier in this chapter (removing public entities in non–State Plan states, removing volunteers in State Plan states that do not cover volunteers, and removing non-firefighting volunteers and civilians).

Table VII-B-13. Small Fire Departments Affected

	SBA/RFA Definition Small		
	Private	**Public**	**Total**
Career	218	3,297	3,515
Volunteer	450	5,199	5,649
Mixed	118	1,839	1,957
Total	**786**	**10,335**	**11,121**

Source: OSHA derived from USFA (2022) and Firehouse Magazine (2022).

Table VII–B–14 shows the number of firefighters estimated to serve a population of 50,000 people or fewer.

Table VII-B-14. Affected Firefighters at Small Fire Departments

	SBA/RFA Definition Small		
	Private	**Public**	**Total**
Career	8,252	100,612	108,864
Volunteer	12,624	169,019	181,643
Mixed	5,340	56,096	61,436
Total	**26,216**	**325,727**	**351,943**

Source: OSHA derived from USFA (2022) and Firehouse Magazine (2022).

D. Wildland Firefighting Services

As mentioned in section VII.B.V.A, OSHA used the proportion of firms in NAICS 115310 that are small from the Census Bureau's SUSB dataset (2021) based on that NAICS' SBA definition ($8,000,000 in receipts, which OSHA converted to 100 employees) to determine the number of small wildland firefighting entities. Table VII–B–15 shows the number of wildland firefighting entities that are small based on the SBA definition, as well as the responders at those small entities.

Table VII-B-15. Small Wildfire Fighting Entities and Responders Affected

	SBA Definition Small
ESOs	
Career	507
Responders	
Career	25,816

Source: OSHA derived from Miley (2022), Wildland Fire Jobs (2022), and U.S. Census Bureau (2021).

E. Emergency Medical Services

As outlined in section VII.B.V.A, small entity determinations for private EMS entities are based on the SBA definition for NAICS 621910 Ambulance Services ($16.5 million or less in revenue, which OSHA converted to 500 employees or less). Public EMS entities are small if they serve a

population of fewer than 50,000 people. Table VII–B–16 presents the number of small EMS entities based on both definitions. Table VII–B–16 also shows the number of responders at these small EMS entities.

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Table VII-B-16. Small Emergency Medical Service Entities and Responders Affected

	SBA/RFA Definition Small		
	Private	**Public**	**Total**
ESOs			
Career	1,971	524	2,495
Volunteer	1,141	211	1,352
Mixed	2,075	552	2,626
Total	**5,186**	**1,287**	**6,473**
Responders			
Career	99,185	28,843	128,028
Volunteer	57,423	14,699	72,122
Mixed	104,405	20,231	124,636
Total	**261,013**	**63,773**	**324,786**

Sources: OSHA derived from NAEMT (2014) and BLS (2023).
Note: Figures may not add to totals due to rounding.

F. Technical Search and Rescue

As described above, OSHA's method for estimating the technical search and rescue universe included data from wilderness and urban search and rescue organizations, lifeguard agencies, and private companies. Table VII–B–17 presents the estimated number of affected small technical search and rescue groups, as well as the number of responders among those affected entities.

Table VII-B-17. Small Technical Search and Rescue Groups and Responders Affected

	SBA/RFA Definition Small		
	Private	**Public**	**Total**
Wilderness and Urban Search and Rescue			
ESOs			
Career	25	0	25
Volunteer	0	1,502	1,502
Total	**25**	**1,502**	**1,527**
Responders			
Career	954	0	954
Volunteer	0	57,448	57,448
Total	**954**	**57,448**	**58,402**
Additional Technical Water Rescue			
ESOs			
Career	10	118	128
Volunteer	0	0	0
Total	**10**	**118**	**128**
Responders			
Career	197	7,337	7,534
Volunteer	0	0	0
Total	**197**	**7,337**	**7,534**
Total Technical Search and Rescue			
ESOs			
Career	35	118	152
Volunteer	0	1,502	1,502
Total	**35**	**1,620**	**1,655**
Responders			
Career	1,151	7,337	8,488
Volunteer	0	57,448	57,448
Total	**1,151**	**64,786**	**65,937**

Source: OSHA derived from Boyer (2022), U.S. Census Bureau (2022b), and U.S. Census Bureau (2017b).
Note: Figures may not add to totals due to rounding.

G. Summary of Affected Small Entities

Table VII–B–18 summarizes the number of small organizations and responders according to either RFA definitions (for public ESOs) or SBA definitions (for private ESOs and WEREs).[39]

[39] See section V for a discussion of how entity size was determined.

Table VII-B-18. Combined Profile of Fire Departments, Emergency Medical Services, and Technical Search and Rescue Groups - RFA/SBA Small

	RFA/SBA Small	
	Organizations	**Responders**
WEREs		
Career	1,500	64,500
Subtotal	**1,500**	**64,500**
Fire Departments		
Career	3,515	108,864
Volunteer	5,649	181,643
Mixed	1,957	61,436
Subtotal	**11,121**	**351,943**
Wildland Fire Services		
Career	507	25,816
Subtotal	**507**	**25,816**
Emergency Medical Services		
Career	2,495	128,028
Volunteer	1,352	72,122
Mixed	2,626	124,636
Subtotal	**6,473**	**324,786**
Technical Search and Rescue		
Career	152	8,488
Volunteer	1,502	57,448
Subtotal	**1,655**	**65,937**
All Groups		
Career	8,169	335,696
Volunteer	8,503	311,214
Mixed	4,583	186,072
Total	**21,256**	**832,982**

Sources: OSHA derived from USFA (2022), NAEMT (2014), BLS (2022a), Firehouse Magazine (2018, 2022), U.S. Census Bureau (2021), Miley (2022), Wildland Fire Jobs (2022), Government Accountability Office (2022), USDA (2023), Boyer (2022), U.S. Census Bureau (2022b), U.S. Census Bureau (2017b), Brewster (2022), USLA (2022b), Demographics Now (2023), Manta (2023a-b), U.S. Census Bureau (2017a), and Zippia (2023).

Note: Excludes public ESOs in non-State Plan states, volunteer ESOs in State Plan states where volunteers are not covered, and ESOs with zero responders.

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C. Costs of Compliance

I. Introduction

This chapter presents OSHA's preliminary analysis of the compliance costs associated with the proposed emergency response standard.

OSHA estimates that the proposed rule would cost $661 million per year in 2022 dollars.[40] All costs were annualized using a discount rate of 3 percent, which—along with 7 percent and 0 percent—is one of the discount rates recommended by OMB.[41] A 10-year period is used to annualize one-time costs. Note that the benefits of the standard, discussed in section D of this PEA, were annualized over a 50-year period to reflect the time needed to sufficiently capture the full benefits of the proposal. Therefore, the time horizon of OSHA's complete analysis of this rule is 50 years. Employment and production in affected sectors are implicitly held constant over this time horizon for purposes of the analysis. All non-annual costs are implicitly estimated to repeat every ten years over the 50-year time horizon, including one-time costs that recur because of changes in operations over time or because of new entrants that must comply with the standard.[42]

The remainder of this chapter is organized as follows: first, OSHA discusses cost assumptions used in the analysis, followed by the derivation of the wage information used in the analysis. Next OSHA presents unit and total costs by affected emergency response service sectors and by applicable provision of the proposed rule. The final section presents the total costs of the proposed rule for all affected entities and responders as well as those that meet the SBA/RFA definitions of small entities and those with fewer than 20 employees.

II. Cost Assumptions

This section describes the cost assumptions used in this analysis including those relevant to baseline conditions and type and frequency of medical exams for certain responders (*i.e.,* firefighters).

A. Baseline Non-Compliance Rates

The estimated costs of the proposed rule are measured against the baseline activities of the affected emergency services sectors. The baseline for this analysis includes existing conformity with the provisions of the proposed rule, which is discussed in terms of entities with practices that currently do not conform with the proposed rule and would therefore incur costs to comply with it.

Table VII–C–1 shows the estimated baseline non-compliance rate for each provision of the proposed rule by entity size, for WEREs, fire departments, wildland firefighting services, EMS providers, and technical search and rescue groups. OSHA has estimated that few to no small WEREs and ESOs currently have many of the plans required by the proposed rule while the majority of very large ESOs are doing much of what this proposed rule would require. This conclusion is consistent with comments made by SERs during the SBREFA process suggesting that larger organizations are likely to have more resources to implement consensus standards like NFPA 1582 (Document ID 0115). OSHA's estimates of baseline non-compliance rates were based on consultation with emergency response organizations and the professional expertise of OSHA personnel. Non-compliance rates were first estimated for organizations with 250–499 responders and then scaled to the other size classes.

For both structural and wildland fire departments, the percentage of firefighters in each group that currently do not receive a full medical exam as defined in the proposed rule is presented in Table VII–C–1. For structural firefighters, the estimates of non-compliance for the full medical exam are broken out by the department

[40] Any adjustments to the price year reflect the use of the GDP Deflator (*https://www.bea.gov/data/prices-inflation/gdp-price-deflator*).

[41] Table VII–C–16 provides estimated costs using a 7% discount rate, while Table VII–C–17 provides undiscounted costs.

[42] To the extent one-time costs do not recur, OSHA's cost estimates, when expressed as an annualization over a 10-year period, will overstate the cost of the proposed standard.

type in which firefighters serve (career, volunteer, or mixed). These estimates are derived from a 2016 survey conducted by the IAFC's Safety, Health and Survival Section (LeDuc, 2018). The non-compliance rate for professional wildland firefighters is assumed to be the same as for career firefighters, while the non-compliance rate for inmate firefighters is assumed to be the same as for volunteer firefighters.

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Table VII-C-1. Baseline Non-Compliance Rate by Provision of the Proposed Rule and Organization Size

Provision of the Proposed Rule	Organization Size by Number of Responders					
	<25	25-49	50-99	100-249	250-499	500+
Rule Familiarization	100%	100%	100%	100%	100%	100%
Organization of the WERT and Establishment of ERP, Paragraph (c)	93%	88%	75%	63%	50%	38%

Provision of the Proposed Rule	Organization Size by Number of Responders					
	<25	25-49	50-99	100-249	250-499	500+
ESO Establishment of ERP and Emergency Service(s) Capability, Paragraph (d)	93%	88%	75%	63%	50%	38%
Team Member and Responder Participation, Paragraph (e)	19%	18%	15%	13%	10%	8%
WERT and ESO Risk Management Plan, Paragraph (f)	93%	88%	75%	63%	50%	38%
Medical and Physical Requirements, Paragraph (g)	93%	88%	75%	63%	50%	38%
Additional ESO Surveillance (Full NFPA Medical Exam) - Career, Paragraph (g)(3) [a]	20%	20%	20%	20%	20%	20%
Additional ESO Surveillance (Full NFPA Medical Exam) - Volunteer, Paragraph (g)(3) [a]	55%	55%	55%	55%	55%	55%
Additional ESO Surveillance (Full NFPA Medical Exam) - Mixed, Paragraph (g)(3) [b]	36%	36%	36%	36%	36%	36%
Training, Paragraph (h)	9%	9%	8%	6%	5%	4%
WERE Facility Preparedness, Paragraph (i)	37%	35%	30%	25%	20%	15%
ESO Facility Preparedness, Paragraph (j)	37%	35%	30%	25%	20%	15%
Equipment and PPE, Paragraph (k)	37%	35%	30%	25%	20%	15%
Vehicle Preparedness and Operation, Paragraph (l)	28%	26%	23%	19%	15%	11%
WERE Pre-Incident Planning, Paragraph (m)	100%	100%	100%	88%	70%	53%
ESO Pre-Incident Planning, Paragraph (n)	100%	100%	100%	88%	70%	53%
Incident Management System Development, Paragraph (o)	28%	26%	23%	19%	15%	11%
Emergency Incident Operations, Paragraph (p)	19%	18%	15%	13%	10%	8%
Standard Operating Procedures, Paragraph (q)	100%	100%	100%	88%	70%	53%
Post Incident Analysis, Paragraph (r)	100%	100%	100%	100%	80%	60%
Program Evaluation, Paragraph (s)	100%	100%	100%	100%	90%	68%

Source: OSHA; LeDuc, 2018.

[a] The full NFPA 1582 medical exam is only applicable to responders who meet or exceed the combustion products exposure threshold outlined in the standard. Only structural and wildland firefighters are assumed to have any responders meeting that threshold, therefore these provisions are only applicable to structural and wildland fire departments.

[b] It is assumed that there are no "mixed" wildland firefighting services, therefore this specific non-compliance rate for additional ESO medical surveillance is only applicable to structural fire departments.

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B. Type and Frequency of Medical Exams

(i) Exposure Threshold Adjustments

The proposed rule requires all team members and responders, except those in a support tier, to receive a basic medical exam, with additional screening required in certain circumstances. This exam must be given once initially and repeated at least biennially. In addition, team members and responders who are, or based on experience may be, exposed to combustion products 15 or more times a year without regard to the use of respiratory protection must be provided an expanded medical exam that is at least equivalent to the criteria specified in a national consensus standard (like NFPA 1582). Therefore, OSHA made additional adjustments to the population of responders for which ESOs would incur the cost of each medical exam based on how many times per year responders are exposed to combustion products. Table VII–C–2 presents the percentage of responders within each responder group that would be required to undergo each type of medical exam. WERT members are all expected to undergo the minimum medical exam, with 12.5 percent of those team members estimated to also require additional heart screening tests.[43] OSHA assumes that no WERT members will reach the 15-times-a-year exposure threshold for expanded medical exams.

For responders at EMS and technical search and rescue ESOs, OSHA assumed that no responders would meet the 15-combustion product exposure event threshold that would require an expanded medical exam. Therefore, responders in these groups all undergo the minimum medical evaluation, with 12.5 percent estimated to undergo further heart screening tests. In order to estimate the percentage of firefighters that would meet the 15-combustion product exposure event threshold, OSHA obtained data from the NFPA on the number of firefighters and fire calls responded to categorized by department type (all-career, mostly career, mostly volunteer, and all-volunteer) and population served size brackets. OSHA extrapolated the NFPA data to represent a national estimation of firefighters and fire calls by each department type and population served bracket. Assuming that an average of eight firefighters respond to a single fire call, OSHA determined that 96.4 percent of firefighters at career fire departments within the 250–499 employee class size, 21.9 percent at mixed fire departments, and 0.2 percent at volunteer fire departments would meet the 15-combustion product exposure event threshold. OSHA scaled these percentages to reflect an assumption that the percentage of firefighters meeting the exposure threshold would decrease as the department size decreased. Firefighters with more than 15 exposures, plus a subset of firefighters that do not exceed the threshold but have medically indicated health risks warranting more medical evaluation (assumed to be 2 percent of firefighters within each department type), are estimated to undergo an expanded medical exam (referred to as additional ESO surveillance in the proposed rule and in Table VII–C–2). Firefighters who do not meet the event threshold would undergo the minimum medical exam, with 12.5 percent of those firefighters also undergoing the additional heart screening.

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[43] Le Duc 2018 indicated approximately 12.5 percent of firefighters had some type of underlying, significant cardiovascular issues such as hypertension, elevated cholesterol levels, or abnormal stress that indicated a need for additional screening.

Table VII-C-2. Percentage of Responders and Team Members by Employment Size Class Needing Medical Exams

	Employment Size Class					
	<25	25-49	50-99	100-249	250-499	500+
WEREs						
Minimum Medical Surveillance - Career	100.0%	100.0%	100.0%	100.0%	100.0%	100.0%
Minimum Medical Surveillance - Volunteer	100.0%	100.0%	100.0%	100.0%	100.0%	100.0%
Minimum Medical Surveillance - Mixed	100.0%	100.0%	100.0%	100.0%	100.0%	100.0%
Additional Heart Screening - Career	12.5%	12.5%	12.5%	12.5%	12.5%	12.5%
Additional Heart Screening - Volunteer	12.5%	12.5%	12.5%	12.5%	12.5%	12.5%
Additional Heart Screening - Mixed	12.5%	12.5%	12.5%	12.5%	12.5%	12.5%
Additional ESO Surveillance (Full NFPA Medical Exam) - Career	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%
Additional ESO Surveillance (Full NFPA Medical Exam) - Volunteer	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%
Additional ESO Surveillance (Full NFPA Medical Exam) - Mixed	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%
Fire Departments and Firefighters						
Minimum Medical Surveillance - Career [a]	51.8%	42.2%	42.2%	27.7%	3.6%	0.0%
Minimum Medical Surveillance - Volunteer [a]	99.9%	99.9%	99.9%	99.8%	99.8%	99.7%
Minimum Medical Surveillance - Mixed [a]	89.0%	86.9%	86.9%	83.6%	78.1%	67.1%
Additional Heart Screening - Career	6.5%	5.3%	5.3%	3.5%	0.5%	0.0%
Additional Heart Screening - Volunteer	12.5%	12.5%	12.5%	12.5%	12.5%	12.5%
Additional Heart Screening - Mixed	11.1%	10.9%	10.9%	10.5%	9.8%	8.4%
Additional ESO Surveillance (Full NFPA Medical Exam) - Career [a]	50.2%	59.8%	59.8%	74.3%	98.4%	100.0%
Additional ESO Surveillance (Full NFPA Medical Exam) - Volunteer [a]	2.1%	2.1%	2.1%	2.2%	2.2%	2.3%
Additional ESO Surveillance (Full NFPA Medical Exam) - Mixed [a]	13.0%	15.1%	15.1%	18.4%	23.9%	34.9%
Wildland Firefighting Services						
Minimum Medical Surveillance - Career [a]	51.8%	42.2%	42.2%	27.7%	3.6%	0.0%
Minimum Medical Surveillance - Volunteer [a]	99.9%	99.9%	99.9%	99.8%	99.8%	99.7%

	Employment Size Class					
	<25	25-49	50-99	100-249	250-499	500+
Additional Heart Screening - Career	6.5%	5.3%	5.3%	3.5%	0.5%	0.0%
Additional Heart Screening - Volunteer	12.5%	12.5%	12.5%	12.5%	12.5%	12.5%
Additional ESO Surveillance (Full NFPA Medical Exam) - Career [a]	50.2%	59.8%	59.8%	74.3%	98.4%	100.0%
Additional ESO Surveillance (Full NFPA Medical Exam) - Volunteer [a]	2.1%	2.1%	2.1%	2.2%	2.2%	2.3%
Emergency Medical Services						
Minimum Medical Surveillance - Career	100.0%	100.0%	100.0%	100.0%	100.0%	100.0%
Minimum Medical Surveillance - Volunteer	100.0%	100.0%	100.0%	100.0%	100.0%	100.0%
Minimum Medical Surveillance - Mixed	100.0%	100.0%	100.0%	100.0%	100.0%	100.0%
Additional Heart Screening - Career	12.5%	12.5%	12.5%	12.5%	12.5%	12.5%
Additional Heart Screening - Volunteer	12.5%	12.5%	12.5%	12.5%	12.5%	12.5%
Additional Heart Screening - Mixed	12.5%	12.5%	12.5%	12.5%	12.5%	12.5%
Additional ESO Surveillance (Full NFPA Medical Exam) - Career	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%
Additional ESO Surveillance (Full NFPA Medical Exam) - Volunteer	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%
Additional ESO Surveillance (Full NFPA Medical Exam) - Mixed	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%
Technical Search and Rescue Groups						
Minimum Medical Surveillance - Career	100.0%	100.0%	100.0%	100.0%	100.0%	100.0%
Minimum Medical Surveillance - Volunteer	100.0%	100.0%	100.0%	100.0%	100.0%	100.0%
Additional Heart Screening - Career	12.5%	12.5%	12.5%	12.5%	12.5%	12.5%
Additional Heart Screening - Volunteer	12.5%	12.5%	12.5%	12.5%	12.5%	12.5%
Additional ESO Surveillance (Full NFPA Medical Exam) - Career	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%
Additional ESO Surveillance (Full NFPA Medical Exam) - Volunteer	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%

Sources: OSHA based on ERG estimate; LeDuc, 2018; NFPA, 2022; NFPA, 2023a; and NFPA, 2023b.
[a] Adding the minimum and additional groups will exceed 100% because 2% of firefighters are estimated to receive both exams, as some of the <15 annual combustion exposure group will require a full NFPA examination due to signs and symptoms revealed under minimum medical surveillance.

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(ii) Frequency of Medical Exams

Unlike most provisions of the proposed rule, the number of responders undergoing each medical exam type changes each year due to new hires needing a medical exam. Other established employees may need to be reexamined, since the minimum medical exam is required every other year. OSHA calculated the number of responders and team members expected to undergo each medical exam based on the hire rates for each responder group, the percentage of responders needing each medical exam based on the event threshold of 15 or more combustion product exposure events per year, and how often the exam is required under this standard.

OSHA derived a formula (shown below in Equation 1) for the number of responders requiring a medical exam n_t in a given year t. Initially, a very large cohort would receive their first medical exam together in the first year after implementation of the proposed rule. In subsequent years, new hires would require their initial exam, and those who are not new hires would be re-examined periodically. However, the initial cohort would continue to have a large effect, as they would all be re-examined together every k years. During years when this initial cohort is not up for re-examination, the number receiving an exam will be smaller and limited to individuals who were hired later and entered the workforce when the initial cohort was not being re-examined. As time passes, the imbalance produced by this initial cohort will gradually reduce, and the initial cohort will decrease in size due to turnover. The number of exams given per year will approach a long-run value n_{equil}.

Equation 1, explained in detail below, accounts for all of these effects associated with the initial cohort, its re-examination years, and new hires. The number of responders requiring a medical exam n_t in year t takes one of three forms depending on whether the year t in question (a) is re-examination year for the first large cohort, (b) immediately follows a re-examination year for the first large cohort, or (c) is more than one year after a re-examination year for the first large cohort.

$$n_t = \begin{cases} n_{\text{equil}} + \left(N - n_{\text{equil}}\right)p^{t-1} & \text{if re-examination year for initial cohort,} \\ n_{\text{equil}} + \left(N(1-p) + n_{\text{equil}}\right)(p^{t-2}) & \text{if initial cohort was re-examined in the preceding year,} \\ n_{t-1} & \text{if initial is not being re-examined that year or in the preceding year} \end{cases} \quad (1)$$

Where:

- n_t is the number of responders requiring a medical exam in year t.
- N is the total number of responders.
- p is the retention rate, which could alternatively be defined as 1 minus the hire rate.
- n_{equil} is the long-run number of medical exams per year.
- n_{t-1} is the number of exams given in the preceding year $t-1$.

The long-run number of medical exams per year n_{equil} is calculated in the following way and depends on the time between exams k. For example, if an exam is required every 5 years, then $k = 5$.

$$n_{\text{equil}} = N\frac{1-p}{1-p^k} = N\frac{H}{1-(1-H)^k} \quad (2)$$

Based on the hiring rates for similar jobs with EMS providers reported in Patterson et al., 2010 and BLS job growth projections, OSHA estimated that the annual hire rate for fire departments is 10 percent. For EMS providers, the annual hire rate is estimated to be 10.7 percent (Patterson et al., 2010). OSHA assumed wildland fire services, search and rescue groups, and technical water rescue entities have a similar hire rate to firefighters for this analysis.

III. Wage Estimates Used in the Analysis

Labor costs associated with the proposed rule were derived using wage data from BLS' cross-industry OEWS for May 2022 (BLS, 2023). Table VII–C–3 shows the loaded hourly wages used in the analysis. To the extent possible, OSHA employed the relevant occupational wage category. As discussed below, for example, OSHA used SOC code 33–2011 *Firefighters* to estimate the wage for career firefighters.

Volunteer firefighters, volunteer EMS providers, and volunteer technical search and rescue group members, however, do not receive wages for their services, and the career emergency responder wages may not be an accurate characterization of the opportunity cost of volunteers' time. The same is true for inmate firefighters, who are typically paid very little or nothing for their work.[44] Therefore, OSHA is not using career responder wages to estimate compliance costs for volunteer responders and inmate firefighters. For these responders, OSHA believes it is more appropriate to use the overall private industry median hourly wage, $21.42, because volunteers come from a broad spectrum of the workforce; their primary occupational wage is a proxy for the opportunity cost of their time. OSHA recognizes that compliance costs related to inmate firefighters are likely an overestimate since the opportunity cost of their time is different from the average non-incarcerated individual. Accordingly, OSHA created a weighted average for responders of all types using the number of volunteer[45] and non-volunteer responders who would be covered by the proposed rule. For firefighters, the weighted average is calculated with 332,658 career and paid-per-call firefighters making the BLS OEWS median hourly wage for SOC 33–2011 *Firefighters* ($24.85) and 187,519 volunteer firefighters making

[44] *https://www.prisonpolicy.org/blog/2017/04/10/wages/*.

[45] For the purposes of this PEA, inmate firefighters are treated the same as volunteer responders.

the private industry median hourly wage ($21.42), for a weighted average base hourly wage of $23.61. These estimates are also used to represent wildland firefighter wages, including inmate wildland firefighters. For WEREs, OSHA used the cross-industry, private sector median wage for SOC code 11–1021 General and Operations Managers to represent the wage of WERT leaders and the cross-industry, private sector median wage of all occupations to represent the wage of WERT members. These wages equal $46.65 and $21.42, respectively. For EMS providers, the weighted average is calculated with 280,846 responders in career and mixed (career and volunteer) ESOs making the BLS OEWS median hourly wage for SOC 29–2040 Emergency Medical Technicians and Paramedics ($18.95) and 80,111 responders in volunteer ESOs making the private industry median hourly wage ($21.42), for a weighted average base hourly wage of $19.50. Note that while the median wage used for volunteers is higher than the BLS OEWS wage for EMS providers, OSHA uses that median wage for volunteer EMS providers as well as for volunteer firefighters in this analysis to maintain consistency. OSHA solicits comments on these estimates and, in particular, is interested in whether the valuation of volunteers' time and incarcerated individuals' time is reasonable. The agency welcomes suggestions and thoughts on different wage rates that commenters feel might better capture the value of these responders' time.

OSHA developed separate wage estimates for wilderness and urban search and rescue and additional technical water rescue groups. For wilderness and urban search and rescue responders, the weighted average is calculated with 1,304 responders in career ESOs making the BLS OEWS median hourly wage for SOC 33–9092 Lifeguards, Ski Patrol, and Other Recreational Protective Service Workers ($13.11) and 60,106 responders in volunteer ESOs making the private industry median hourly wage ($21.42), for a weighted average base hourly wage of $21.24. There are no volunteer technical water rescuers in the industry profile, so the BLS OEWS median hourly wage for SOC code 33–9092 Lifeguards, Ski Patrol, and Other Recreational Protective Service Workers ($13.11) is used in this analysis for technical water rescuers.

OSHA applied a fringe benefits rate of 31.0 percent to the base wages, drawn from BLS' Employer Costs for Employee Compensation for December 2022 (BLS, 2023) to account for the value of fringe benefits provided by the employer. OSHA then calculated total compensation as wages plus benefits. There are also indirect expenses that cannot be tied to producing a specific product or service, called overhead costs. Common examples include rent, utilities, and office equipment. There is no general consensus on the cost elements that fit this definition and the lack of a common definition has led to a wide range of overhead estimates. Consequently, the treatment of overhead costs needs to be case-specific. In this analysis, OSHA used an overhead rate of 17 percent of base wages (EPA, 2002; Rice, 2002). This 17 percent rate is based on an estimate of overhead costs for safety and health professionals in large private organizations. This overhead rate is consistent with, for example, the overhead rate used for sensitivity analyses in the Final Economic Analysis (FEA) in support of the 2017 final rule delaying the deadline for electronic submission of certain injury and illness data (82 FR 55761) and the FEA in support of OSHA's 2016 final standard on Occupational Exposure to Respirable Crystalline Silica [46] (83 FR at 36501). OSHA expects that this rate may be an overestimate in this context, as this reflects a component of *average* overhead; in this case, however, the agency anticipates that, for example, emergency responders will be able to work within the general physical infrastructure they currently operate in. A rate of 17 percent of base wages is equivalent to 11.73 percent of the hourly wage rate with fringe applied.[47] To calculate the fully loaded hourly labor cost, OSHA added the three components together: base wages + fringe benefits (31.0 percent of base wages) + applicable overhead (17 percent of base wages).

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[46] See the sensitivity analyses in the Improved Tracking FEA (*https://www.gpo.gov/fdsys/pkg/FR-2017-11-24/pdf/2017-25392.pdf,* page 55765) and the FEA in support of OSHA's 2016 final standard on Occupational Exposure to Respirable Crystalline Silica (81 FR 16285) (*https://www.gpo.gov/fdsys/pkg/FR-2016-03-25/pdf/2016-04800.pdf pp.16488-16492*.). The methodology was modeled after an approach used by the Environmental Protection Agency. More information on this approach can be found at: U.S. Environmental Protection Agency, ''Wage Rates for Economic Analyses of the Toxics Release Inventory Program,'' June 10, 2002 (Ex. 2066). This analysis itself was based on a survey of several large chemical manufacturing plants: Heiden Associates, *Final Report: A Study of Industry Compliance Costs Under the Final Comprehensive Assessment Information Rule,* Prepared for the Chemical Manufacturers Association, December 14, 1989, Ex. 2065.

[47] This is calculated as 69 percent × 17 percent, *i.e.,* the percent of wages that are the base hourly rate exclusive of fringe (69 percent) multiplied by the overhead rate as a percentage of base hourly wages (17 percent).

Table VII-C-3. Wage Rates Used in the Analysis

Labor Category	SOC	Occupation	Median Hourly Wage [a]	Fringe [b]	Overhead [c]	Loaded Hourly Wage [d]
Private Industry Median	00-0000	All Occupations	$21.42	31.0%	17.00%	$34.69
WERE Leader	11-1021	General and Operations Managers	$46.65	31.0%	17.00%	$75.54
WERT Member	00-0000	All Occupations	$21.42	31.0%	17.00%	$34.69
Fire Chief	33-1021	First-Line Supervisors of Firefighting and Prevention Workers	$38.53	31.0%	17.00%	$62.39
Firefighter (OEWS)	33-2011	Firefighters	$24.85	31.0%	17.00%	$40.24
Firefighter (Weighted Average)	00-0000/33-2011	All Occupations/Firefighters	$23.61	31.0%	17.00%	$38.24
EMD	11-9160	Emergency Management Directors	$38.07	31.0%	17.00%	$61.65
EMT/Paramedic (OEWS)	29-2040	Emergency Medical Technicians and Paramedics	$18.95	31.0%	17.00%	$30.69
EMT/Paramedic (Weighted Average)	00-0000/29-2040	All Occupations/Emergency Medical Technicians and Paramedics	$19.50	31.0%	17.00%	$31.57
Search and Rescue Supervisor	33-1012	First-Line Supervisors of Police and Detectives	$46.29	31.0%	17.00%	$74.96
Search and Rescue Worker (OEWS)	33-9092	Lifeguards, Ski Patrol, and Other Recreational Protective Service Workers	$13.11	31.0%	17.00%	$21.23
Search and Rescue Worker (Weighted Average)	00-0000/33-9092	All Occupations/Lifeguards, Ski Patrol, and Other Recreational Protective Service Workers	$21.24	31.0%	17.00%	$34.40
Technical Water Rescue Supervisor	33-1099	First-Line Supervisors of Protective Service Workers, All Other	$29.34	31.0%	17.00%	$47.51
Technical Water Rescuer (OEWS)	33-9092	Lifeguards, Ski Patrol, and Other Recreational Protective Service Workers	$13.11	31.0%	17.00%	$21.23
Technical Water Rescuer (Weighted Average)	00-0000/33-9092	All Occupations/Lifeguards, Ski Patrol, and Other Recreational Protective Service Workers	$13.11	31.0%	17.00%	$21.23

Sources: OSHA derived from BLS (2023), BLS (2023), EPA (2002) and Rice (2002).

Note: All dollar figures are presented in 2022$.

[a] Median hourly wage rates are drawn from BLS' cross-industry OEWS for May 2022. For all responders, a weighted average of the private industry median and BLS OEWS wage, weighted by the number of volunteer and non-volunteer responders in scope is used.

[b] The fringe rate is drawn from BLS' Employer Costs for Responder Compensation for December 2022.

[c] The overhead rate is derived from EPA (2002) and Rice (2002).

[d] The loaded hourly wage is derived by dividing the median hourly wage by (1 - the fringe rate) and then multiplying by (1 + the fringe-adjusted overhead rate).

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IV. Estimated Compliance Costs

This section presents the unit and total costs of the proposed rule by emergency services sector and provision. First, the components of each provision as they pertain to fire departments and wildland fire services are detailed, followed by a description of any differences in requirements or approaches to deriving estimates for WEREs, emergency medical services ESOs, and technical search and rescue ESOs. Where appropriate, to account for variations in unit costs by size of entity, OSHA first estimated the labor hours per provision for establishments in the 250–499 employee size class. Using that estimate as the base, OSHA scaled the estimates proportionally for the unit time estimates for establishments in the other size classes. Generally, where an activity is estimated to take less than an hour, the same estimate is used across organization sizes since scaling down very small time estimates would result in unreasonably low time estimates for smaller establishments.

Unless otherwise noted in this section, the time estimates for complying with proposed provisions are based on OSHA's professional expertise, considering what the proposed rule requires and estimates of the hours necessary to comply with similar requirements in other OSHA rules.

A. Firefighting

As described in the Profile of Affected Industries, these organizations include private and public entities engaged in structural and wildland firefighting. Responders at these entities may be volunteer or career. This group represents the vast majority of entities and responders who would be affected by the proposed rule.

Wildland firefighting services providers include private sector ESOs that provide less common types of firefighting services, primarily to state and Federal agencies. These services typically support wildland fire suppression and include direct firefighting as well as support services such as transportation and food supply services. There are also some states that utilize prison labor as supplementary personnel for state wildfire fighting programs.[48]

(i) Rule Familiarization

All ESOs and WEREs affected by the proposed rule would need to review the requirements under the proposed rule. OSHA estimates that rule familiarization would take an organization leader two hours to complete.

(ii) ESO Establishment of ERP and Emergency Service(s) Capability

Under paragraph (d) of the proposed rule, ESOs would be required to develop, update, and revise an emergency response program. They would have to conduct a community and/or facility vulnerability assessment to establish their emergency response capabilities, develop mutual aid agreements with other ESOs as necessary to ensure adequate resources are available to safely mitigate foreseeable incidents, evaluate resources needed, and establish tiers of responders. Except for the ERP revision and update, all of these tasks are one-time activities, and all would be carried out by an organization leader. See Table VII–C–5 for the specific labor hours OSHA estimates would be incurred for each activity at ESOs in all employment size classes. Table VII–C6 presents the associated unit costs.

(iii) Team Member and Responder Participation

Under paragraph (e) of the proposed rule, ESOs would be required to involve team members and responders in the process of developing, updating, implementing, and evaluating the ERP and in inspections and incident investigations at their own facilities. ESOs would also have to encourage responders to report safety and health concerns and respond to those concerns within a reasonable timeframe. In addition, they would be required to post signs explaining procedures in place for reporting on safety and health concerns. Both of these activities would occur annually, with labor hours incurred by firefighters for all activities except the posting of signs, which would be carried out by an organization leader. See Table VII–C–5 for the specific labor hours OSHA estimates would be incurred for each activity at ESOs in all employment size classes. Table VII–C–6 presents the associated unit costs.

(iv) WERT and ESO Risk Management Plan

Under paragraph (f) of the proposed rule, ESOs would be required to prepare and annually update a comprehensive risk management plan (RMP). The minimum requirements to be covered in the plan are itemized in paragraph (f)(1) of the proposed rule. Development of the plan is a one-time activity while updating should occur annually.[49] Both of these activities would be carried out by an organization leader. See Table VII–C–5 for the specific labor hours OSHA estimates would be incurred for each activity at ESOs in all employment size classes. Table VII–C–6 presents the associated unit costs.

(v) Medical and Physical Requirements

Under paragraph (g) of the proposed rule, and as discussed in detail in the Summary and Explanation, ESOs must establish minimum medical requirements for responders, have responders medically evaluated (at no cost to the responder), and have their fitness for duty evaluated. Exposures to combustion products would be tracked and all medical information would be maintained in a confidential record for each responder. Beyond these requirements, ESOs would be required to establish and implement a health and fitness program that enables responders to develop and maintain a level of physical fitness that allows them to safely perform their assigned functions, as well as a behavioral health and wellness program to maintain mental fitness to safely perform their duties and to address occupational risk factors for behavioral health. Developing the plan for the health and fitness program is a one-time activity, while a fitness assessment would take place every three years and would involve both the time of a responder and organization leader, one hour each (this estimate may overstate the amount of time necessary for the fitness assessment if groups of responders can be evaluated at the same time). OSHA assumes that fitness for duty assessments and fitness education and counseling will coincide with periodic refresher training or similar events, which are already captured in the training provision (see Section IV.I.E.).

The proposed rule would provide a framework for encouraging responders to maintain fitness levels commensurate with their responsibilities including, for example, providing exercise training. However, the agency believes that the proposed rule would not require an increase in responder compensation by their organizations. For example, fitness exercises are routine among firefighters

[48] Note that in this analysis, the seven State Plan states with inmates potentially engaged in wildfire fighting are assumed to incur the costs of the proposed rule. This approach means that state governments would be the organization and would incur organization level costs once. It may be possible that organization level costs are incurred for each conservation camp (the minimum-security camps that house inmates serving as firefighters) that has inmates potentially engaged in wildfire fighting. OSHA welcomes comment on this issue.

[49] For this analysis, OSHA estimates that as-needed plan updates will occur infrequently enough that assuming annual updates for all entities will be representative of the average firm.

during downtime (see Poston, et al. (2013), which found that between 80 and 95 percent of firefighters surveyed reported engaging in exercise at least ''some days'' while at the fire station). The agency welcomes comment on this aspect of the analysis. Table VII–C–5 presents estimates of the labor hours incurred for each activity at ESOs by employment size class. Table VII–C–6 presents the associated unit costs.

The proposed rule would require that responders receive, at a minimum, a medical evaluation every two years that includes a medical and work history, physical examination, spirometry, and assessment of heart disease risk (includes assessment of blood pressure, cholesterol levels, and relevant heart disease risk factors such as blood glucose). Note that OSHA's estimated cost of these services accounts for the fact that some individuals may already be receiving them (see Section C.II.A on Baseline Non-Compliance Rates). Responders who show signs of heart disease risk or who are, or may be, exposed to combustion products 15 or more times a year will require additional screening. To estimate the percentage of responders needing each type of exam, OSHA relied on the frequencies in the 2018 NFPA 1582 standard's recommendations for occupational medical programs. In addition, since some tests are only recommended or needed for firefighters of certain ages or sex, OSHA also used NFPA's (2022) estimate of the number of firefighters by age and sex. The percentage of firefighters needing each exam is multiplied by the unit cost for each exam to derive a weighted average unit cost for initial and periodic medical surveillance (for example, if only half of all firefighters needed a given test, the weighted average per firefighter for all firefighters would be 50 percent of the cost of the test). Table VII–C–4 presents the derivation of the weighted average unit costs for medical surveillance.

The proposed rule would require additional medical screening for responders if determined by the ESO or WERE to be appropriate for the particular type and level of service provided or if deemed appropriate by the PLHCP conducting the baseline screening. OSHA assumed that this additional screening would include an electrocardiogram (EKG), a coronary artery calcium (CAC) score test, and an exercise stress test (EST).

The proposed rule would also require that responders who are either exposed to combustion products 15 times or more a year or show signs or symptoms that may have resulted from exposure to combustion products receive a medical evaluation that is at least equivalent to the criteria outlined by a national consensus standard. For this PEA, OSHA uses the NFPA 1582 medical exam to represent the estimated costs of this additional medical evaluation. As outlined above, not every responder would need every component of the NFPA 1582 exam since certain medical components are age- and/or sex-specific. The unit costs and percentages of responders undergoing each medical component are presented in Table VII–C–4.

The unit costs for medical surveillance are drawn from the Centers for Medicare & Medicaid Services (CMS, 2022a) Physician Fee Schedule data for 2022, CMS (2022b) Clinical Laboratory Fee Schedule data for 2022, the Centers for Disease Control and Prevention (CDC, 2023) Adult Vaccine Price List, GoodRx's (Khan, 2023) estimate of the cost of a colonoscopy, HealthInsurance.com's (2022) estimate of the cost to receive a vision test, and Tatar et al.'s (2020) estimate of the cost of Hepatitis C screening. The unit costs are applied per exam per employee. The cost of the exam is added to the per hour cost for the employee to undergo the exam.

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Table VII-C-4. Medical Surveillance Unit Costs - Structural and Wildland Fire Services and Firefighters

	Percent / Unit Cost	Frequency
Minimum Medical Surveillance		
% Receiving Each Exam		
Office Visit [a]	100.0%	Biennial
Spirometry	100.0%	Biennial
Blood Cholesterol Test	100.0%	Biennial
Blood Glucose Test	100.0%	Biennial
Blood Pressure	100.0%	Biennial
Unit Medical Costs		
Office Visit [a]	$84	Biennial
Spirometry	$27	Biennial
Blood Cholesterol Test	$4	Biennial
Blood Glucose Test	$3	Biennial
Blood Pressure	$15	Biennial
Weighted Average Unit Cost - Minimum Medical Surveillance	**$135**	**Biennial**
Additional Heart Screening		
% Receiving Each Exam		
EKG	100.0%	Biennial
CAC	100.0%	Biennial
EST	100.0%	Biennial
Unit Medical Costs		
EKG	$15	Biennial
CAC	$266	Biennial
EST	$348	Biennial
Weighted Average Unit Cost - Additional Heart Screening	**$629**	**Biennial**
Additional ESO Surveillance (Full NFPA Medical Exam)		
% Receiving Each Exam		
Office Visit	100.0%	Annual

	Percent / Unit Cost	Frequency
Audiogram	100.0%	Annual
Chest X–Ray	100.0%	Annual
Vision Test	100.0%	Annual
Misc. Testing	0.0%	Annual
EKG	50.0%	Annual
Mammography	3.3%	Annual
Colonoscopy	2.7%	Annual
Lung Cancer Screening Using Low-Dose CT	1.3%	Annual
Blood Tests	66.7%	Annual
Urinalysis	100.0%	Annual
PSA Testing	24.4%	Annual
HIV Screening	25.0%	Annual
Hepatitis C screening	100.0%	Annual
Heavy Metal Screening	100.0%	Annual
Immunization – Influenza	80.0%	Annual
Immunization – TDAP	10.0%	Annual
Immunization – MMR	5.0%	Annual
Immunization – Varicella	5.0%	Annual
Immunization – Hepatitis A/Hepatitis B	5.0%	Annual
Immunization – Polio	100.0%	Annual
Immunization – Administration	10.0%	Annual
Unit Medical Costs		
Office Visit	$84	Annual
Audiogram	$38	Annual
Chest X–Ray	$48	Annual
Vision Test	$95	Annual
Misc. Testing	$0	Annual
EKG	$15	Annual
Mammography	$133	Annual
Colonoscopy	$2,750	Annual
Lung Cancer Screening Using Low-Dose CT	$147	Annual
Blood Tests	$62	Annual
Urinalysis	$4	Annual
PSA Testing	$18	Annual
HIV Screening	$18	Annual
Hepatitis C screening	$140	Annual
Heavy Metal Screening	$43	Annual
Immunization – Influenza	$18	Annual
Immunization – TDAP	$52	Annual
Immunization – MMR	$90	Annual
Immunization – Varicella	$160	Annual
Immunization – Hepatitis A/Hepatitis B	$121	Annual
Immunization – Polio	$41	Annual
Immunization – Administration	$17	Annual
Weighted Average Unit Cost - Additional ESO Surveillance (Full NFPA Medical Exam)	**$670**	**Annual**

Sources: OSHA based on ERG estimate; CMS, 2022a; CMS, 2022b; Khan, 2023; eHealthInsurance.com, 2022; Tatar et al., 2020; CDC, 2023; and NFPA, 2022.

Note: All dollar figures are presented in 2022$. Unit costs are shown with zero decimal places, but unrounded figures are used in the underlying calculations.

[a] The medical history and physical examination are both covered by the "Office Visit" item.

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(vi) Training

Under paragraph (h) of the proposed rule, ESOs would be required to establish the minimum knowledge and skills required for each responder to perform emergency response operation activities. ESOs would be required to provide initial, ongoing, and refresher trainings, as well as professional development for each responder. The hours necessary to complete trainings can vary significantly by state and by type of firefighter (career, volunteer, or paid per call).

While most emergency responders already receive vocational training for their duties, the PEA estimates the cost of bringing the remainder up to minimum requirements. OSHA used the time needed to complete an NFPA-approved volunteer firefighter course (estimated at 110 hours) (*VolunteerFD.org,* 2018) to represent initial responder training labor time for volunteers at fire departments. For career firefighters, OSHA identified a selection of state firefighter training programs and their estimated completion times (CA OSFM, 2019a; CA OSFM, 2019b; Florida Department of Financial Services, 2022; MFSI, 2017; MFRI, 2023a; MFRI, 2023b; New Hampshire Fire Academy and EMS, 2023a; New Hampshire Fire Academy and EMS, 2023b; Ohio EMS, 2023; Washington State Patrol, 2023). OSHA calculated the average time to complete these training programs and used this labor time estimate (308 hours) to represent initial responder training for career firefighters. For mixed fire departments, OSHA calculated the weighted average of the initial training time estimates using the percentages of volunteer and career (or paid-per-call) firefighters within mixed fire departments according to the National Fire Registry. Using this method, OSHA estimates that, for the 250–499 employee class size, a ''typical'' firefighter would complete about 245.5 hours of initial responder training. On-going refresher training time estimates reflect OSHA's estimation that firefighters work 10 shifts per month, with firefighter training occurring during two of those shifts. Under this assumption, firefighters are training during six shifts per quarter, or 24 shifts per year. Assuming firefighters train for two hours per training session, OSHA estimates 48 hours of training annually. To estimate the annual time spent on refresher training courses, OSHA multiplied the maximum time for NREMT cognitive exams (two hours) by the number of certifications that responders need, which OSHA estimated was three (NREMT, 2018). This calculation yields six hours every two years, or three hours every year. OSHA determined that the use of EMT re-certification estimates was also appropriate for firefighters given that most career firefighters are also EMTs (Unitek EMT, 2022). OSHA assumes that other training required by the proposed rule, including that on various policies developed under this standard, training on PPE, training to an awareness level on confined spaces, and others, are either costed under another OSHA standard (*i.e.,* the PPE standard) or are included in the training times estimated here.

ESOs would also be required to ensure each responder maintains proficiency in the skills commensurate with their respective emergency response activities. Organization leaders would need to document responders' professional qualifications to ensure proficiency.

Aside from the requirement to establish minimum knowledge and skills, which occurs once, all other training labor hours would be incurred annually. OSHA expects an organization leader to establish minimum knowledge and skills and document professional qualifications, while firefighters would need labor hours to be trained. Of note, initial training would only apply to new hires, so the unit cost is only multiplied by a percentage (the hire rate) of the number of firefighters in the estimation of total costs for this provision. See Table VII–C–5 for the specific labor hours OSHA estimates would be incurred for each activity at ESOs by employment size class. Table VII–C–6 presents the associated unit costs.

(vii) ESO Facility Preparedness

Under paragraph (j) of the proposed rule, ESOs would be required to ensure that each facility complies with 29 CFR part 1910, subpart E—Exit Routes and Emergency Planning; provide facilities for the decontamination, disinfection, cleaning, and storage of PPE and equipment; and ensure that fire detection, suppression, and alarm systems, and occupant notification systems are installed, tested, and maintained. Additional requirements are directed at ensuring the safety of firehouse slide poles and sleeping and living areas, including requirements for smoke alarms, sprinkler systems, carbon monoxide detectors, vehicle exhaust emissions, and properly handling contaminated PPE. These activities would be conducted annually by an organization leader. See Table VII–C–5 for the specific labor hours OSHA estimates would be incurred for each activity at ESOs in all employment size classes. Table VII–C–6 presents the associated unit costs.

(viii) Equipment and PPE

Under paragraph (k) of the proposed rule, ESOs would be required to provide access to equipment that is compliant with applicable existing standards as well as to inspect, maintain, and test equipment at prescribed intervals. Additionally, ESOs would be required to conduct a hazard assessment to select appropriate PPE; provide PPE to responders that is compliant with 29 CFR part 1910, subpart I, Personal Protective Equipment; and ensure SCBA meet applicable requirements, and maintain all PPE. OSHA expects that equipment and PPE inspection and maintenance would be conducted by firefighters annually. Organization leaders are expected to expend labor hours annually to ensure new equipment meets design and manufacturing requirements, as well as on a one-time basis to conduct the hazard assessment and provide the PPE. Firefighters would be expected to annually inspect, maintain, and test equipment, as well as perform maintenance of PPE. See Table VII–C–5 for the specific labor hours OSHA estimates would be incurred for each activity at ESOs by employment size class. Table VII–C–6 presents the associated unit costs.

(ix) Vehicle Preparedness and Operation

Under paragraph (l) of the proposed rule, ESOs would be required to ensure that vehicles are prepared for safe use by inspecting, maintaining, and repairing their vehicles and associated parts (*e.g.,* aerial devices, water pumps). ESOs would be required to develop written SOPs for operating their own and other vehicles as necessary. OSHA assumes that an organization leader would perform these activities with the development of the SOPs being a one-time activity and all others occurring annually. See Table VI–5 for the specific labor hours OSHA estimates would be incurred for each activity at ESOs by employment size class. Table VI–6 presents the associated unit costs.

(x) ESO Pre-Incident Planning

Under paragraph (n) of the proposed rule, ESOs would be required to develop pre-incident plans (PIPs) for facilities where responders may be called to provide service, based on the community or facility vulnerability assessment and other factors. ESOs would need to review their PIPs annually and update them as needed.

Additionally, ESOs would have to prepare a PIP for any facility in their response area that is subject to the Emergency Planning and Community Right-to-Know Act (EPCRA). OSHA expects that organization leaders will conduct these one-time activities. See Table VII–C–5 for the specific labor hours OSHA estimates would be incurred each activity at ESOs by employment size class. Table VII–C–6 presents the associated unit costs.

(xi) Incident Management System Development

Under paragraph (o) of the proposed rule, ESOs would be required to develop and implement an Incident Management System (IMS) to manage all emergency incidents. OSHA expects that organization leaders would establish a procedural template for such activities one time initially. See Table VII–C–5 for the specific labor hours OSHA estimates would be incurred at ESOs by employment size class. Table VII–C–6 presents the associated unit costs.

(xii) Emergency Incident Operations

Under paragraph (p) of the proposed rule, ESOs would be required to ensure that the IMS is employed at each emergency incident. OSHA expects that organization leaders would conduct this activity, including developing an Incident Action Plan (IAP) for every incident. While overseeing responder operations at an emergency incident is underlying job duty for organization leaders, the PEA nonetheless assumes a limited incremental amount of time at each incident for implementing the requirements set forth in paragraph (p) of the proposal. See Table VII–C–5 for the specific labor hours OSHA estimates would be incurred at WEREs and ESOs by employment size class. Table VII–C–6 presents the associated unit costs.

(xiii) Standard Operating Procedures

Under paragraph (q) of the proposed rule, ESOs would be required to develop and implement SOPs for emergency events that they are likely to encounter, based on the community or facility vulnerability assessments they have developed as well as SOPs for unusual hazards, responder protection from contaminants and for decontamination, vehicle operations, radio communication, Mayday situations, and others. OSHA expects that organization leaders would conduct this one-time activity. See Table VII–C–5 for the specific labor hours OSHA estimates would be incurred at ESOs by employment size class. Table VII–C–6 presents the associated unit costs.

(xiv) Post Incident Analysis

Under paragraph (r) of the proposed rule, ESOs would be required to conduct a Post-Incident Analysis (PIA) to determine the effectiveness of the ESO's response to an incident after any significant event such as, for example, a large-scale incident, significant near-miss incident, serious injury, or responder fatality. ESOs would be required to implement changes to the RMP, IMS, PIPs, IAPs, and SOPs based on lessons learned. OSHA estimates that organization leaders would spend five minutes per incident to conduct these activities. OSHA recognizes that the number of significant events is less than the number of incidents and adjusted the per-incident time estimate accordingly. OSHA estimated the number of incidents an organization would respond to based on whether the organization is composed of career responders, volunteer responders, or a mix of career and volunteer responders, as well as the employment class size of the organization. See Table VII–C–5 for the specific labor hours OSHA estimates would be incurred for each activity at ESOs by employment size class. Table VII–C–6 presents the associated unit costs.

(xv) Program Evaluation

Under paragraph (s) of the proposed rule, ESOs would be required to conduct annual evaluations of the adequacy and effectiveness of their ERP. They must also identify and implement changes to the ERP based on the review of the program. OSHA expects that organization leaders would conduct these annual activities. See Table VII–C–5 for the specific labor hours OSHA estimates would be incurred for each activity at ESOs in all employment size classes. Table VII–C–6 presents the associated unit costs.

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Table VII-C-5. Unit Labor Hours for Labor-Based Costs by Employment Size Class – Structural and Wildland Fire Services and Firefighters

	Employment Size Class						Basis	Labor Category	Frequency
	<25	25-49	50-99	100-249	250-499	500+			
Rule Familiarization									
Rule Familiarization	2.00	2.00	2.00	2.00	2.00	2.00	Organization	Fire Chief	One-time
ESO Establishment of ERP and Emergency Service(s) Capability									
ESO Develop ERP	20.00	24.00	24.00	30.00	40.00	60.00	Organization	Fire Chief	One-time
ESO Update and Revise ERP	4.00	5.00	5.00	6.00	8.00	12.00	Organization	Fire Chief	Annual
ESO Establishment of Service(s) Capability	12.00	14.00	14.00	18.00	24.00	36.00	Organization	Fire Chief	One-time
ESO Community or Facility Vulnerability and Risk Assessment	40.00	48.00	48.00	60.00	80.00	120.00	Organization	Fire Chief	One-time
ESO Develop Mutual Aid Agreements	1.00	1.00	1.00	1.00	1.00	2.00	Organization	Fire Chief	One-time
Team Member and Responder Participation									
Responder Participation-Meetings	8.00	10.00	10.00	12.00	16.00	24.00	Organization	Firefighter	Annual
Responder Participation-Post Sign	0.05	0.05	0.05	0.05	0.05	0.05	Organization	Fire Chief	Annual
WERT and ESO Risk Management Plan									
Prepare Written RMP	12.00	14.00	14.00	18.00	24.00	36.00	Organization	Fire Chief	One-time
Update Written RMP	5.00	6.00	6.00	8.00	10.00	15.00	Organization	Fire Chief	Annual
Medical and Physical Requirements									
Minimum Medical Requirement - Statement	8.00	10.00	10.00	12.00	16.00	24.00	Organization	Fire Chief	One-time
Confidential Records System	0.08	0.08	0.08	0.08	0.08	0.08	Responder	Fire Chief	One-time
Establish Health and Fitness Program - Written Plan	8.00	10.00	10.00	12.00	16.00	24.00	Organization	Fire Chief	One-time
Minimum Medical Surveillance	2.50	2.50	2.50	2.50	2.50	2.50	Responder	Firefighter	Varies
Additional Heart Screening	1.25	1.25	1.25	1.25	1.25	1.25	Responder	Firefighter	Varies
Additional ESO Surveillance (Full NFPA Medical Exam)	2.50	2.50	2.50	2.50	2.50	2.50	Responder	Firefighter	Varies
Implement Fitness Assessment	1.00	1.00	1.00	1.00	1.00	1.00	Responder	Fire Chief	Varies
Undergo Fitness Assessment	1.00	1.00	1.00	1.00	1.00	1.00	Responder	Firefighter	Varies
Behavioral Health & Wellness Program	1.00	1.00	1.00	2.00	2.00	3.00	Organization	Fire Chief	Annual
Document Combustion Product Exposures - Career Fire Departments [a]	3.59	4.31	4.31	5.39	7.18	10.77	Organization	Fire Chief	Annual
Document Combustion Product Exposures - Volunteer Fire Departments [a]	0.31	0.38	0.38	0.47	0.63	0.94	Organization	Fire Chief	Annual

	Employment Size Class						Basis	Labor Category	Frequency
	<25	25-49	50-99	100-249	250-499	500+			
Document Combustion Product Exposures - Mixed Fire Departments [a]	1.74	2.08	2.08	2.61	3.47	5.21	Organization	Fire Chief	Annual
Document Combustion Product Exposures - All Wildland Fire Services [a]	0.42	0.08	0.28	1.06	7.35	10.27	Organization	Fire Chief	Annual
Training									
Establish Minimum Knowledge and Skills	8.00	10.00	10.00	12.00	16.00	24.00	Organization	Fire Chief	One-time
Initial New Responder Training - Career	308.00	308.00	308.00	308.00	308.00	308.00	Responder	Firefighter	Annual
Initial New Responder Training - Volunteer	110.00	110.00	110.00	110.00	110.00	110.00	Responder	Firefighter	Annual
Initial New Responder Training - Mixed	192.00	198.87	212.76	207.67	245.46	282.04	Responder	Firefighter	Annual
Ongoing Responder Training	24.00	29.00	29.00	36.00	48.00	72.00	Responder	Firefighter	Annual
Refresher Responder Training	2.00	2.00	2.00	2.00	3.00	5.00	Responder	Firefighter	Annual
Professional Development	20.00	24.00	24.00	30.00	40.00	60.00	Responder	Firefighter	Annual
Document Professional Qualifications	20.00	24.00	24.00	30.00	40.00	60.00	Organization	Fire Chief	Annual
ESO Facility Preparedness									
ESO Facility Preparedness	40.00	48.00	48.00	60.00	80.00	120.00	Organization	Fire Chief	Annual
Equipment and PPE									
Equipment Preparedness	40.00	48.00	48.00	60.00	80.00	120.00	Organization	Fire Chief	Annual
Inspect, Maintain, and Test Equipment	40.00	48.00	48.00	60.00	80.00	120.00	Organization	Firefighter	Annual
PPE Hazard Assessment	8.00	10.00	10.00	12.00	16.00	24.00	Organization	Fire Chief	One-time
PPE Provision	8.00	10.00	10.00	12.00	16.00	24.00	Organization	Fire Chief	One-time
PPE Maintenance	40.00	48.00	48.00	60.00	80.00	120.00	Organization	Firefighter	Annual
Vehicle Preparedness and Operation									
Written SOPs - Vehicle Preparedness and Operation	8.00	10.00	10.00	12.00	16.00	24.00	Organization	Fire Chief	One-time
Vehicle Inspection and Maintenance	40.00	48.00	48.00	60.00	80.00	120.00	Organization	Fire Chief	Annual
ESO Pre-Incident Planning									
ESO Pre-Incident Planning	20.00	24.00	24.00	30.00	40.00	60.00	Organization	Fire Chief	One-time
ESO PIP Annual Review	4.00	5.00	5.00	6.00	8.00	12.00	Organization	Fire Chief	Annual
Incident Management System Development									
Incident Management System Development	12.00	14.00	14.00	18.00	24.00	36.00	Organization	Fire Chief	One-time
Emergency Incident Operations									
Emergency Incident Operations - Career Fire Departments [a]	8.98	10.77	10.77	13.46	17.95	26.93	Organization	Fire Chief	Annual

	Employment Size Class						Basis	Labor Category	Frequency
	<25	25-49	50-99	100-249	250-499	500+			
Emergency Incident Operations - Volunteer Fire Departments [a]	0.79	0.94	0.94	1.18	1.57	2.36	Organization	Fire Chief	Annual
Emergency Incident Operations - Mixed Fire Departments [a]	4.34	5.21	5.21	6.52	8.69	13.03	Organization	Fire Chief	Annual
Emergency Incident Operations - All Wildland Fire Services [a]	1.04	0.21	0.69	2.65	18.38	25.68	Organization	Fire Chief	Annual
Standard Operating Procedures									
SOPs	20.00	24.00	24.00	30.00	40.00	60.00	Organization	Fire Chief	One-time
Post Incident Analysis									
Post Incident Analysis - Career Fire Departments [a]	8.98	10.77	10.77	13.46	17.95	26.93	Organization	Fire Chief	Annual
Post Incident Analysis - Volunteer Fire Departments [a]	0.79	0.94	0.94	1.18	1.57	2.36	Organization	Fire Chief	Annual
Post Incident Analysis - Mixed Fire Departments [a]	4.34	5.21	5.21	6.52	8.69	13.03	Organization	Fire Chief	Annual
Post Incident Analysis - All Wildland Fire Services [a]	1.04	0.21	0.69	2.65	18.38	25.68	Organization	Fire Chief	Annual
ID/Implement Changes to Pre-Incident Plan	1.00	1.00	1.00	1.00	1.00	2.00	Organization	Fire Chief	Annual
Program Evaluation									
ERP Program Evaluation	20.00	24.00	24.00	30.00	40.00	60.00	Organization	Fire Chief	Annual
ID and Implement Changes to ERP	1.00	1.00	1.00	1.00	1.00	2.00	Organization	Fire Chief	Annual
More Frequent ID and Implement Changes to ERP	1.00	1.00	1.00	1.00	1.00	2.00	Organization	Fire Chief	Annual

Source: OSHA, unless otherwise noted in text.

[a] These estimates are calculated using the expected number of events/incidents for a given responder group type and employee class size. The expected number of events/incidents does not always follow the expected pattern of smaller employment class sizes incurring lower numbers of events/incidents. This is why some unit labor hour estimates do not go in order from smallest to largest by employee class size.

Table VII-C-6. Labor-Based Unit Costs by Employment Size Class - Structural and Wildland Fire Services and Firefighters

	Employment Size Class						Basis	Labor Category	Frequency
	<25	25-49	50-99	100-249	250-499	500+			
Rule Familiarization									
Rule Familiarization	$125	$125	$125	$125	$125	$125	Organization	Fire Chief	One-time
ESO Establishment of ERP and Emergency Service(s) Capability									
ESO Develop ERP	$1,248	$1,497	$1,497	$1,872	$2,496	$3,744	Organization	Fire Chief	One-time

	Employment Size Class						Basis	Labor Category	Frequency
	<25	25-49	50-99	100-249	250-499	500+			
ESO Update and Revise ERP	$250	$312	$312	$374	$499	$749	Organization	Fire Chief	Annual
ESO Establishment of Service(s) Capability	$749	$874	$874	$1,123	$1,497	$2,246	Organization	Fire Chief	One-time
ESO Community or Facility Vulnerability and Risk Assessment	$2,496	$2,995	$2,995	$3,744	$4,991	$7,487	Organization	Fire Chief	One-time
ESO Develop Mutual Aid Agreements	$62	$62	$62	$62	$62	$125	Organization	Fire Chief	One-time
Team Member and Responder Participation									
Responder Participation-Meetings	$306	$382	$382	$459	$612	$918	Organization	Firefighter	Annual
Responder Participation-Post Sign	$3	$3	$3	$3	$3	$3	Organization	Fire Chief	Annual
WERT and ESO Risk Management Plan									
Prepare Written RMP	$749	$874	$874	$1,123	$1,497	$2,246	Organization	Fire Chief	One-time
Update Written RMP	$312	$374	$374	$499	$624	$936	Organization	Fire Chief	Annual
Medical and Physical Requirements									
Minimum Medical Requirement - Statement	$499	$624	$624	$749	$998	$1,497	Organization	Fire Chief	One-time
Confidential Records System	$5	$5	$5	$5	$5	$5	Responder	Fire Chief	One-time
Establish Health and Fitness Program - Written Plan	$499	$624	$624	$749	$998	$1,497	Organization	Fire Chief	One-time
Minimum Medical Surveillance [a]	$96	$96	$96	$96	$96	$96	Responder	Firefighter	Varies
Additional Heart Screening [a]	$48	$48	$48	$48	$48	$48	Responder	Firefighter	Varies
Additional ESO Surveillance (Full NFPA Medical Exam) [a]	$96	$96	$96	$96	$96	$96	Responder	Firefighter	Varies
Implement Fitness Assessment	$62	$62	$62	$62	$62	$62	Responder	Fire Chief	Varies
Undergo Fitness Assessment	$38	$38	$38	$38	$38	$38	Responder	Firefighter	Varies
Behavioral Health & Wellness Program	$62	$62	$62	$125	$125	$187	Organization	Fire Chief	Annual
Document Combustion Product Exposures - Career Fire Departments	$224	$269	$269	$336	$448	$672	Organization	Fire Chief	Annual
Document Combustion Product Exposures - Volunteer Fire Departments	$20	$24	$24	$29	$39	$59	Organization	Fire Chief	Annual
Document Combustion Product Exposures - Mixed Fire Departments	$108	$130	$130	$163	$217	$325	Organization	Fire Chief	Annual

	Employment Size Class						Basis	Labor Category	Frequency
	<25	25-49	50-99	100-249	250-499	500+			
Document Combustion Product Exposures - All Wildland Fire Services	$26	$5	$17	$66	$459	$641	Organization	Fire Chief	Annual
Training									
Establish Minimum Knowledge and Skills	$499	$624	$624	$749	$998	$1,497	Organization	Fire Chief	One-time
Initial New Responder Training - Career	$11,777	$11,777	$11,777	$11,777	$11,777	$11,777	Responder	Firefighter	Annual
Initial New Responder Training - Volunteer	$4,206	$4,206	$4,206	$4,206	$4,206	$4,206	Responder	Firefighter	Annual
Initial New Responder Training - Mixed	$7,342	$7,604	$8,135	$7,941	$9,386	$10,785	Responder	Firefighter	Annual
Ongoing Responder Training	$918	$1,109	$1,109	$1,377	$1,835	$2,753	Responder	Firefighter	Annual
Refresher Responder Training	$76	$76	$76	$76	$115	$191	Responder	Firefighter	Annual
Professional Development	$765	$918	$918	$1,147	$1,530	$2,294	Responder	Firefighter	Annual
Document Professional Qualifications	$1,248	$1,497	$1,497	$1,872	$2,496	$3,744	Organization	Fire Chief	Annual
ESO Facility Preparedness									
ESO Facility Preparedness	$2,496	$2,995	$2,995	$3,744	$4,991	$7,487	Organization	Fire Chief	Annual
Equipment and PPE									
Equipment Preparedness	$2,496	$2,995	$2,995	$3,744	$4,991	$7,487	Organization	Fire Chief	Annual
Inspect, Maintain, and Test Equipment	$1,530	$1,835	$1,835	$2,294	$3,059	$4,589	Organization	Firefighter	Annual
PPE Hazard Assessment	$499	$624	$624	$749	$998	$1,497	Organization	Fire Chief	One-time
PPE Provision	$499	$624	$624	$749	$998	$1,497	Organization	Fire Chief	One-time
PPE Maintenance	$1,530	$1,835	$1,835	$2,294	$3,059	$4,589	Organization	Firefighter	Annual
Vehicle Preparedness and Operation									
Written SOPs - Vehicle Preparedness and Operation	$499	$624	$624	$749	$998	$1,497	Organization	Fire Chief	One-time
Vehicle Inspection and Maintenance	$2,496	$2,995	$2,995	$3,744	$4,991	$7,487	Organization	Fire Chief	Annual
ESO Pre-Incident Planning									
ESO Pre-Incident Planning	$1,248	$1,497	$1,497	$1,872	$2,496	$3,744	Organization	Fire Chief	One-time
ESO PIP Annual Review	$250	$312	$312	$374	$499	$749	Organization	Fire Chief	Annual
Incident Management System Development									
Incident Management System Development	$749	$874	$874	$1,123	$1,497	$2,246	Organization	Fire Chief	One-time

	Employment Size Class						Basis	Labor Category	Frequency
	<25	25-49	50-99	100-249	250-499	500+			
Emergency Incident Operations									
Emergency Incident Operations - Career Fire Departments	$560	$672	$672	$840	$1,120	$1,680	Organization	Fire Chief	Annual
Emergency Incident Operations - Volunteer Fire Departments	$49	$59	$59	$74	$98	$147	Organization	Fire Chief	Annual
Emergency Incident Operations - Mixed Fire Departments	$271	$325	$325	$406	$542	$813	Organization	Fire Chief	Annual
Emergency Incident Operations - All Wildland Fire Services	$65	$13	$43	$166	$1,147	$1,602	Organization	Fire Chief	Annual
Standard Operating Procedures									
SOPs	$1,248	$1,497	$1,497	$1,872	$2,496	$3,744	Organization	Fire Chief	One-time
Post Incident Analysis									
Post Incident Analysis - Career Fire Departments	$560	$672	$672	$840	$1,120	$1,680	Organization	Fire Chief	Annual
Post Incident Analysis - Volunteer Fire Departments	$49	$59	$59	$74	$98	$147	Organization	Fire Chief	Annual
Post Incident Analysis - Mixed Fire Departments	$271	$325	$325	$406	$542	$813	Organization	Fire Chief	Annual
Post Incident Analysis - All Wildland Fire Services	$65	$13	$43	$166	$1,147	$1,602	Organization	Fire Chief	Annual
ID/Implement Changes to Pre-Incident Plan	$62	$62	$62	$62	$62	$125	Organization	Fire Chief	Annual
Program Evaluation									
ERP Program Evaluation	$1,248	$1,497	$1,497	$1,872	$2,496	$3,744	Organization	Fire Chief	Annual
ID and Implement Changes to ERP	$62	$62	$62	$62	$62	$125	Organization	Fire Chief	Annual
More Frequent ID and Implement Changes to ERP	$6	$6	$6	$6	$6	$12	Organization	Fire Chief	Annual

Sources: OSHA based on BLS (2023), BLS (2023), EPA (2002) and Rice (2002).

Note: All dollar figures are presented in 2022$. Unit costs are shown with zero decimal places, but unrounded figures are used in the underlying calculations.

[a] These costs to undergo medical exams are only inclusive of the labor costs. The cost of the medical exam components are presented in Table VII-C-4.

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B. WEREs

WEREs potentially affected by the proposed rule are private organizations whose employees, as a collateral duty to their regular daily work assignments, are part of a workplace emergency response team (WERT) and respond to emergency incidents to provide services such as fire suppression, emergency medical care, and technical search and rescue. These organizations would be required to comply with many provisions of the proposed rule, with some requirements taking less time for WEREs compared to ESOs. OSHA's methods for estimating labor hours and costs by provision and employee size class are the same as for firefighters for the following provisions:

- Rule Familiarization;
- Team Member and Responder Participation;
- WERT and ESO Risk Management Plan;
- Equipment and PPE;
- Vehicle Preparedness and Operation;
- Incident Management System Development;
- Standard Operating Procedures; and
- Program Evaluation.

There are two provisions that, while specific to WEREs, have the same labor hour estimates as the corresponding ESO-specific provisions:

- Organization of the WERT and Establishment of the ERP and Emergency Service(s) Capability (this provision has the same labor hour estimates as the ESO Establishment of ERP and Emergency Service(s) Capability provision); and
- WERE Pre-Incident Planning (this provision has the same labor hour estimates as the ESO Pre-Incident Planning provision).

Estimation methods differ for the following provisions:

- Medical and Physical Requirements;
- Training;
- WERE Facility Preparedness;
- Emergency Incident Operations; and
- Post-Incident Analysis.

The methods specific to WEREs are described below.

(i) Medical and Physical Requirements

Under paragraph (g) of the proposed rule, WEREs are not required to establish or implement a health and fitness program, whereas ESOs are. Team members must receive the same minimum medical evaluation that responders receive and must also receive any additional screening determined to be appropriate by the WERE or the PLHCP. Team members are not required to receive the full NFPA 1582 screening required for responders exposed to combustion materials. OSHA assumes that all WERT members would undergo each component of the minimum medical exam, and all WERT members that exhibit signs and symptoms warranting additional heart screening (12.5 percent of all WERT members, as shown in Table VII–C–2) would undergo all components of the additional heart screening.[50] The percentage needing each exam is multiplied by the unit cost for each exam to derive a weighted average unit cost for the minimum medical evaluation and additional heart screening. Table VII–C–7 shows the derivation of the weighted average unit cost for medical surveillance.

The unit costs for medical surveillance are drawn from the Centers for Medicare & Medicaid Services' (CMS, 2022a) Physician's Fee Schedule for 2022 and CMS (2022b) Clinical Laboratory Fee Schedule. The unit costs are applied per exam per employee. The cost of the exam is added to the per hour cost for the employee to undergo the exam.

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[50] Le Duc, 2018 indicated approximately 12.5 percent of firefighters had some type of underlying, significant cardiovascular issues such as hypertension, elevated cholesterol levels, or abnormal stress.

Table VII-C-7. Medical Surveillance Unit Costs - WEREs

	Percent / Unit Cost	Frequency
Minimum Medical Surveillance		
% Receiving Each Exam		
Office Visit [a]	100.0%	Biennial
Spirometry	100.0%	Biennial
Blood Cholesterol Test	100.0%	Biennial
Blood Glucose Test	100.0%	Biennial
Blood Pressure	100.0%	Biennial
Unit Medical Costs		
Office Visit [a]	$84	Biennial
Spirometry	$27	Biennial
Blood Cholesterol Test	$4	Biennial
Blood Glucose Test	$3	Biennial
Blood Pressure	$15	Biennial
Weighted Average Unit Cost - Minimum Medical Surveillance	**$135**	**Biennial**
Additional Heart Screening		
% Receiving Each Exam		
EKG	100.0%	Biennial
CAC	100.0%	Biennial
EST	100.0%	Biennial
Unit Medical Costs		
EKG	$15	Biennial
CAC	$266	Biennial
EST	$348	Biennial
Weighted Average Unit Cost - Additional Heart Screening	**$629**	**Biennial**

Sources: OSHA based on CMS, 2022a and CMS, 2022b.
Note: All dollar figures are presented in 2022$. Unit costs are shown with zero decimal places, but unrounded figures are used in the underlying calculations.
[a] The medical history and physical examination are both covered by the "Office Visit" item.

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(ii) Training

The time estimate used to determine initial team member training for WEREs is assumed to be equal to the time estimate for responders in volunteer fire departments (110 hours). All other training-related items are the same as for fire departments.

(iii) WERE Facility Preparedness

WEREs are assumed to take less time than ESOs to meet facility preparedness requirements, since these facilities would not have to account for elements such as firepoles or sleeping areas. However, under paragraph (i) of the proposed rule, WEREs have some additional requirements that ESOs do not have, such as ensuring readiness for prompt support from mutual aid groups and identifying fire hose valves. WEREs are estimated to take half the time of fire departments to prepare their facilities.

(iv) Emergency Incident Operation

OSHA assumes that WEREs would spend the same amount of time (five minutes) as all other ESOs performing emergency incident operations. OSHA further assumes that the number of incidents that WERT members would respond to in a given year equals the number of incidents to which volunteer fire departments respond.

(v) Post-Incident Analysis

Similar to emergency incident operations, OSHA assumes that WEREs would spend the same amount of time (five minutes) as all other ESOs conducting a post-incident analysis after each incident. OSHA has adjusted this time estimate to be based on the number of incidents, as the expectation is that organizations would need to conduct a post-incident analysis only when a significant event occurs. OSHA further assumes that the number of incidents for which WERT members conduct post-incident analyses in a given year equals the number of incidents for which volunteer fire departments conduct post-incident analyses.

Table VII–C–8 shows the specific labor hours that OSHA estimates would be incurred at WEREs by employment size class. Table VII–C–9 shows the estimated unit costs for each requirement in the proposed rule for WEREs by employee class size.

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Table VII-C-8. Unit Labor Hours for Labor-Based Costs by Employment Size Class – WEREs

	Employment Size Class						Basis	Labor Category	Frequency
	<25	25-49	50-99	100-249	250-499	500+			
Rule Familiarization									
Rule Familiarization	2.00	2.00	2.00	2.00	2.00	2.00	Organization	WERE Leader	One-time
Organization of the WERT and Establishment of the ERP and Emergency Service(s) Capability									
WERE Develop ERP	20.00	24.00	24.00	30.00	40.00	60.00	Organization	WERE Leader	One-time
WERE Update and Revise ERP	4.00	5.00	5.00	6.00	8.00	12.00	Organization	WERE Leader	Annual
WERE Establishment of Service(s) Capability	12.00	14.00	14.00	18.00	24.00	36.00	Organization	WERE Leader	One-time
WERE Community or Facility Vulnerability and Risk Assessment	40.00	48.00	48.00	60.00	80.00	120.00	Organization	WERE Leader	One-time
WERE Develop Mutual Aid Agreements	1.00	1.00	1.00	1.00	1.00	2.00	Organization	WERE Leader	One-time
Team Member and Responder Participation									
Responder Participation-Meetings	8.00	10.00	10.00	12.00	16.00	24.00	Organization	WERT Members	Annual
Responder Participation-Post Sign	0.05	0.05	0.05	0.05	0.05	0.05	Organization	WERE Leader	Annual
WERT and ESO Risk Management Plan									
Prepare Written RMP	12.00	14.00	14.00	18.00	24.00	36.00	Organization	WERE Leader	One-time
Update Written RMP	5.00	6.00	6.00	8.00	10.00	15.00	Organization	WERE Leader	Annual
Medical and Physical Requirements									
Minimum Medical Requirement - Statement	8.00	10.00	10.00	12.00	16.00	24.00	Organization	WERE Leader	One-time
Confidential Records System	0.08	0.08	0.08	0.08	0.08	0.08	Responder	WERE Leader	One-time
Minimum Medical Surveillance	2.50	2.50	2.50	2.50	2.50	2.50	Responder	WERT Members	Varies
Additional Heart Screening	1.25	1.25	1.25	1.25	1.25	1.25	Responder	WERT Members	Varies
Additional ESO Surveillance (Full NFPA Medical Exam)	2.50	2.50	2.50	2.50	2.50	2.50	Responder	WERT Members	Varies

	Employment Size Class						Basis	Labor Category	Frequency
	<25	25-49	50-99	100-249	250-499	500+			
Behavioral Health & Wellness Program	1.00	1.00	1.00	2.00	2.00	3.00	Organization	WERE Leader	Annual
Document Combustion Product Exposures	0.31	0.38	0.38	0.47	0.63	0.94	Organization	WERE Leader	Annual
Training									
Establish Minimum Knowledge and Skills	8.00	10.00	10.00	12.00	16.00	24.00	Organization	WERE Leader	One-time
Initial New Responder Training	110.00	110.00	110.00	110.00	110.00	110.00	Responder	WERT Members	Annual
Ongoing Responder Training	24.00	29.00	29.00	36.00	48.00	72.00	Responder	WERT Members	Annual
Refresher Responder Training	2.00	2.00	2.00	2.00	3.00	5.00	Responder	WERT Members	Annual
Professional Development	20.00	24.00	24.00	30.00	40.00	60.00	Responder	WERT Members	Annual
Document Professional Qualifications	20.00	24.00	24.00	30.00	40.00	60.00	Organization	WERE Leader	Annual
WERE Facility Preparedness									
WERE Facility Preparedness	20.00	24.00	24.00	30.00	40.00	60.00	Organization	WERE Leader	Annual
Equipment and PPE									
Equipment Preparedness	40.00	48.00	48.00	60.00	80.00	120.00	Organization	WERE Leader	Annual
Inspect, Maintain, and Test Equipment	40.00	48.00	48.00	60.00	80.00	120.00	Organization	WERT Members	Annual
PPE Hazard Assessment	8.00	10.00	10.00	12.00	16.00	24.00	Organization	WERE Leader	One-time
PPE Provision	8.00	10.00	10.00	12.00	16.00	24.00	Organization	WERE Leader	One-time
PPE Maintenance	40.00	48.00	48.00	60.00	80.00	120.00	Organization	WERT Members	Annual
Vehicle Preparedness and Operation									
Written SOPs - Vehicle Preparedness and Operation	8.00	10.00	10.00	12.00	16.00	24.00	Organization	WERE Leader	One-time
Vehicle Inspection and Maintenance	40.00	48.00	48.00	60.00	80.00	120.00	Organization	WERE Leader	Annual
WERE Pre-Incident Planning									

	Employment Size Class						Basis	Labor Category	Frequency
	<25	25-49	50-99	100-249	250-499	500+			
WERE Pre-Incident Planning	10.00	12.00	12.00	15.00	20.00	30.00	Organization	WERE Leader	One-time
WERE PIP Annual Review	2.00	2.00	2.00	3.00	4.00	6.00	Organization	WERE Leader	Annual
Incident Management System Development									
Incident Management System Development	12.00	14.00	14.00	18.00	24.00	36.00	Organization	WERE Leader	One-time
Emergency Incident Operations									
Emergency Incident Operations	0.79	0.94	0.94	1.18	1.57	2.36	Organization	WERE Leader	Annual
Standard Operating Procedures									
SOPs	20.00	24.00	24.00	30.00	40.00	60.00	Organization	WERE Leader	One-time
Post Incident Analysis									
Post Incident Analysis	0.79	0.94	0.94	1.18	1.57	2.36	Organization	WERE Leader	Annual
ID/Implement Changes to Pre-Incident Plan	1.00	1.00	1.00	1.00	1.00	2.00	Organization	WERE Leader	Annual
Program Evaluation									
ERP Program Evaluation	20.00	24.00	24.00	30.00	40.00	60.00	Organization	WERE Leader	Annual
ID and Implement Changes to ERP	1.00	1.00	1.00	1.00	1.00	2.00	Organization	WERE Leader	Annual
More Frequent ID and Implement Changes to ERP	1.00	1.00	1.00	1.00	1.00	2.00	Organization	WERE Leader	Annual

Source: OSHA, unless otherwise noted in text.

Table VII-C-9. Labor-Based Unit Costs by Employment Size Class - WEREs

	Employment Size Class						Basis	Labor Category	Frequency
	<25	25-49	50-99	100-249	250-499	500+			
Rule Familiarization									
Rule Familiarization	$151	$151	$151	$151	$151	$151	Organization	WERE Leader	One-time
Organization of the WERT and Establishment of the ERP and Emergency Service(s) Capability									

	Employment Size Class						Basis	Labor Category	Frequency
	<25	25-49	50-99	100-249	250-499	500+			
WERE Develop ERP	$1,511	$1,813	$1,813	$2,266	$3,022	$4,533	Organization	WERE Leader	One-time
WERE Update and Revise ERP	$302	$378	$378	$453	$604	$907	Organization	WERE Leader	Annual
WERE Establishment of Service(s) Capability	$907	$1,058	$1,058	$1,360	$1,813	$2,720	Organization	WERE Leader	One-time
WERE Community or Facility Vulnerability and Risk Assessment	$3,022	$3,626	$3,626	$4,533	$6,043	$9,065	Organization	WERE Leader	One-time
WERE Develop Mutual Aid Agreements	$76	$76	$76	$76	$76	$151	Organization	WERE Leader	One-time
Team Member and Responder Participation									
Responder Participation-Meetings	$277	$347	$347	$416	$555	$832	Organization	WERT Members	Annual
Responder Participation-Post Sign	$4	$4	$4	$4	$4	$4	Organization	WERE Leader	Annual
WERT and ESO Risk Management Plan									
Prepare Written RMP	$907	$1,058	$1,058	$1,360	$1,813	$2,720	Organization	WERE Leader	One-time
Update Written RMP	$378	$453	$453	$604	$755	$1,133	Organization	WERE Leader	Annual
Medical and Physical Requirements									
Minimum Medical Requirement - Statement	$604	$755	$755	$907	$1,209	$1,813	Organization	WERE Leader	One-time
Confidential Records System	$6	$6	$6	$6	$6	$6	Responder	WERE Leader	One-time
Minimum Medical Surveillance [a]	$87	$87	$87	$87	$87	$87	Responder	WERT Members	Varies
Additional Heart Screening [a]	$43	$43	$43	$43	$43	$43	Responder	WERT Members	Varies
Additional ESO Surveillance (Full NFPA Medical Exam) [a]	$87	$87	$87	$87	$87	$87	Responder	WERT Members	Varies
Behavioral Health & Wellness Program	$76	$76	$76	$151	$151	$227	Organization	WERE Leader	Annual
Document Combustion Product Exposures	$24	$29	$29	$36	$47	$71	Organization	WERE Leader	Annual
Training									

	Employment Size Class						Basis	Labor Category	Frequency
	<25	25-49	50-99	100-249	250-499	500+			
Establish Minimum Knowledge and Skills	$604	$755	$755	$907	$1,209	$1,813	Organization	WERE Leader	One-time
Initial New Responder Training	$3,815	$3,815	$3,815	$3,815	$3,815	$3,815	Responder	WERT Members	Annual
Ongoing Responder Training	$832	$1,006	$1,006	$1,249	$1,665	$2,497	Responder	WERT Members	Annual
Refresher Responder Training	$69	$69	$69	$69	$104	$173	Responder	WERT Members	Annual
Professional Development	$694	$832	$832	$1,041	$1,387	$2,081	Responder	WERT Members	Annual
Document Professional Qualifications	$1,511	$1,813	$1,813	$2,266	$3,022	$4,533	Organization	WERE Leader	Annual
WERE Facility Preparedness									
WERE Facility Preparedness	$1,511	$1,813	$1,813	$2,266	$3,022	$4,533	Organization	WERE Leader	Annual
Equipment and PPE									
Equipment Preparedness	$3,022	$3,626	$3,626	$4,533	$6,043	$9,065	Organization	WERE Leader	Annual
Inspect, Maintain, and Test Equipment	$1,387	$1,665	$1,665	$2,081	$2,775	$4,162	Organization	WERT Members	Annual
PPE Hazard Assessment	$604	$755	$755	$907	$1,209	$1,813	Organization	WERE Leader	One-time
PPE Provision	$604	$755	$755	$907	$1,209	$1,813	Organization	WERE Leader	One-time
PPE Maintenance	$1,387	$1,665	$1,665	$2,081	$2,775	$4,162	Organization	WERT Members	Annual
Vehicle Preparedness and Operation									
Written SOPs - Vehicle Preparedness and Operation	$604	$755	$755	$907	$1,209	$1,813	Organization	WERE Leader	One-time
Vehicle Inspection and Maintenance	$3,022	$3,626	$3,626	$4,533	$6,043	$9,065	Organization	WERE Leader	Annual
WERE Pre-Incident Planning									
WERE Pre-Incident Planning	$755	$907	$907	$1,133	$1,511	$2,266	Organization	WERE Leader	One-time
WERE PIP Annual Review	$151	$151	$151	$227	$302	$453	Organization	WERE Leader	Annual
Incident Management System Development									

	Employment Size Class						Basis	Labor Category	Frequency
	<25	25-49	50-99	100-249	250-499	500+			
Incident Management System Development	$907	$1,058	$1,058	$1,360	$1,813	$2,720	Organization	WERE Leader	One-time
Emergency Incident Operations									
Emergency Incident Operations	$59	$71	$71	$89	$119	$178	Organization	WERE Leader	Annual
Standard Operating Procedures									
SOPs	$1,511	$1,813	$1,813	$2,266	$3,022	$4,533	Organization	WERE Leader	One-time
Post Incident Analysis									
Post Incident Analysis	$59	$71	$71	$89	$119	$178	Organization	WERE Leader	Annual
ID/Implement Changes to Pre-Incident Plan	$76	$76	$76	$76	$76	$151	Organization	WERE Leader	Annual
Program Evaluation									
ERP Program Evaluation	$1,511	$1,813	$1,813	$2,266	$3,022	$4,533	Organization	WERE Leader	Annual
ID and Implement Changes to ERP	$76	$76	$76	$76	$76	$151	Organization	WERE Leader	Annual
More Frequent ID and Implement Changes to ERP	$8	$8	$8	$8	$8	$15	Organization	WERE Leader	Annual

Sources: OSHA based on BLS (2023), BLS (2023), EPA (2002) and Rice (2002).

Note: All dollar figures are presented in 2022$. Unit costs are shown with zero decimal places, but unrounded figures are used in the underlying calculations.

[a] These costs to undergo medical exams are only inclusive of the labor costs. The cost of the medical exam components are presented in Table VII-C-7.

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C. Emergency Medical Services (EMS)

Emergency medical services subject to the proposed rule, or its State Plan equivalent, include private and public entities engaged in first response and provision of emergency medicine. Employees of EMS ESOs may be volunteer or career and include first responders, emergency medical technicians (EMTs), paramedics, and registered nurses. These organizations would be required to comply with all provisions of the proposed rule, as described in section D.IV.A. OSHA's methods for estimating labor hours and costs by provision and employee size class are the same as for firefighters for the following provisions:

- Rule Familiarization;
- ESO Establishment of the ERP and Emergency Service(s) Capability;
- Team Member and Responder Participation;
- WERT and ESO Risk Management Plan;
- Vehicle Preparedness and Operation;
- ESO Pre-Incident Planning;
- Incident Management System Development;
- Standard Operating Procedures; and
- Program Evaluation.

Estimation methods differ for the following provisions:

- Medical and Physical Requirements;
- Training;
- ESO Facility Preparedness;
- Equipment and PPE; and
- Post-Incident Analysis.

The methods specific to EMS are described below.

(i) Medical and Physical Requirements

EMS providers typically have a lower risk of exposure to hazardous environments or materials relative to firefighters and therefore EMS providers have fewer medical exam requirements. Specifically, EMS providers are not expected to undergo a full NFPA 1582 medical exam since they are not anticipated to reach the 15-times-per-year exposure threshold to combustion products. OSHA assumes that all EMS providers would undergo each component of the minimum medical exam, and all EMS providers that exhibit signs and symptoms warranting additional heart screening (12.5 percent of all EMS providers, as shown in Table VII–C–2) would undergo all components of the additional heart screening.[51] The percentage needing each exam is multiplied by the unit cost for each exam to derive a weighted average unit cost for the minimum medical evaluation and additional heart screening. The weighted average unit cost for medical surveillance is the same as for WEREs, as shown in Table VII–C–7.

(ii) Training

The initial training time for EMS providers varies widely depending on the responder's certification level. Estimates for training hours for emergency responders, basic EMTs, advanced EMTs and paramedics were based on information from the National Highway Traffic Safety Administration's (NHTSA, 2009) Emergency Medical Services (EMS) National Emergency Medical Services Education Standards and UCLA Center for Prehospital Care (2018). NHTSA (2009) reports a range of hours of training needed to attain each certification level. OSHA made an initial assumption that EMS providers at smaller ESOs would have lower levels of certification but welcomes comment on this assumption. OSHA then assigned the estimated hours of training at the low end of that range to the smallest establishments (those with <25 and 25–49 employees) and the hours of training estimated at the higher end of that range to the remaining size classes. The agency then estimated the weighted average initial training hours by multiplying the number of training hours by the estimated share of responders at each certification level (NAEMT, 2014). As shown in Table VII–C–10, for the size class 250–499, the initial training course is estimated at 776 hours.

OSHA used a similar approach to estimate the hours required for ongoing training. OSHA obtained training hours estimates for emergency responders, basic EMTs, advanced EMTs and paramedics from the NREMT (2018a–d), and multiplied those estimates by the estimated share of responders at each certification level (NAEMT, 2014) to estimate the weighted average ongoing training hours.

(iii) ESO Facility Preparedness

ESOs would be required to ensure that each facility complies with 29 CFR part 1910, subpart E—Exit Routes and Emergency Planning and provide facilities for the decontamination, disinfection, cleaning, and storage of PPE and equipment. They would also need to ensure that fire detection, suppression, and alarm systems and occupant notification systems are installed, tested, and maintained in accordance with manufacturer's instructions and 29 CFR part 1910, subpart L—Fire Protection and that any sleeping and living areas meet the requirements in paragraph (j)(2). These activities would be conducted annually by an organization leader. Table VII–C–10 presents estimates of labor hours incurred for each activity at EMS ESOs by employment size class.

(iv) Equipment and PPE

Under paragraph (k) of the proposed rule, all ESOs would be required to provide access to equipment that conforms with applicable existing standards as well as inspect, maintain, and test equipment at prescribed intervals. Additionally, all ESOs would be required to conduct a hazard assessment to select appropriate PPE; provide PPE to responders that conforms with 29 CFR part 1910, subpart I, Personal Protective Equipment; ensure SCBA meet applicable requirements, and maintain all PPE. While OSHA assumes that equipment preparation and the inspection, maintenance and testing of equipment would take as long for EMS as for fire departments, OSHA estimates that the PPE hazard assessment, provision of PPE, and maintenance of PPE would take less time for EMS than for fire departments. OSHA bases this assumption on the fact that EMS PPE are primarily disposable (*i.e.,* gloves and masks). Organization leaders are expected to expend labor hours annually to ensure new equipment meets design and manufacturing requirements, as well as on a one-time basis to conduct the hazard assessment and provide the PPE. EMTs would be expected to annually inspect, maintain, and test equipment, as well as perform maintenance of PPE. See Table VII–C–10 for the specific labor hours OSHA estimates that would be incurred for each activity at EMS ESOs by employment size class.

(v) Post-Incident Analysis

While EMS organizations would still be required to conduct a post-incident analysis to determine the effectiveness of the ESO's response to an incident after any significant event, OSHA expects that the average time per incident for an EMS organization to conduct a post-incident analysis will be less than the average time for fire departments. OSHA believes that most incidents to which EMS organizations respond would not be characterized as significant events (large-scale incidents, significant near-miss incidents, incidents involving injury or illness to responders requiring off-scene

[51] Le Duc, 2018 indicated approximately 12.5 percent of firefighters had some type of underlying, significant cardiovascular issues such as hypertension, elevated cholesterol levels, or abnormal stress.

treatment, or incidents involving a responder fatality). Based on this assumption, OSHA estimates that EMS organizations would spend one minute per incident to meet this requirement. See Table VII–C–10 for the specific labor hours OSHA estimates that would be incurred annually for this activity at EMS ESOs by employment size class.

Table VII–C–11 shows the estimated unit costs for each requirement in the proposed rule for emergency medical services by employee class size. Note that where unit labor hours are the same as for firefighters, unit costs differ due to the application of wage rates for EMS providers rather than firefighters.

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Table VII-C-10. Unit Burden for Labor-Based Costs by Employment Size Class - Emergency Medical Service Organizations and Responders

	Employment Size Class						Basis	Labor Category	Frequency
	<25	25-49	50-99	100-249	250-499	500+			
Rule Familiarization									
Rule Familiarization	2.00	2.00	2.00	2.00	2.00	2.00	Organization	EMD	One-time
ESO Establishment of ERP and Emergency Service(s) Capability									
ESO Develop ERP	20.00	24.00	24.00	30.00	40.00	60.00	Organization	EMD	One-time
ESO Update and Revise ERP	4.00	5.00	5.00	6.00	8.00	12.00	Organization	EMD	Annual
ESO Establishment of Service(s) Capability	12.00	14.00	14.00	18.00	24.00	36.00	Organization	EMD	One-time
ESO Community or Facility Vulnerability and Risk Assessment	40.00	48.00	48.00	60.00	80.00	120.00	Organization	EMD	One-time
ESO Develop Mutual Aid Agreements	1.00	1.00	1.00	1.00	1.00	2.00	Organization	EMD	One-time
Team Member and Responder Participation									
Responder Participation-Meetings	8.00	10.00	10.00	12.00	16.00	24.00	Organization	EMT/Paramedic	Annual
Responder Participation-Post Sign	0.05	0.05	0.05	0.05	0.05	0.05	Organization	EMD	Annual
WERT and ESO Risk Management Plan									
Prepare Written RMP	12.00	14.00	14.00	18.00	24.00	36.00	Organization	EMD	One-time
Update Written RMP	5.00	6.00	6.00	8.00	10.00	15.00	Organization	EMD	Annual
Medical and Physical Requirements									
Minimum Medical Requirement - Statement	8.00	10.00	10.00	12.00	16.00	24.00	Organization	EMD	One-time
Confidential Records System	0.08	0.08	0.08	0.08	0.08	0.08	Responder	EMD	One-time
Establish Health and Fitness Program - Written Plan	8.00	10.00	10.00	12.00	16.00	24.00	Organization	EMD	One-time
Minimum Medical Surveillance	2.50	2.50	2.50	2.50	2.50	2.50	Responder	EMT/Paramedic	Varies
Additional Heart Screening	1.25	1.25	1.25	1.25	1.25	1.25	Responder	EMT/Paramedic	Varies
Additional ESO Surveillance (Full NFPA Medical Exam)	2.50	2.50	2.50	2.50	2.50	2.50	Responder	EMT/Paramedic	Varies
Implement Fitness Assessment	1.00	1.00	1.00	1.00	1.00	1.00	Responder	EMD	Varies
Undergo Fitness Assessment	1.00	1.00	1.00	1.00	1.00	1.00	Responder	EMT/Paramedic	Varies
Behavioral Health & Wellness Program	1.00	1.00	1.00	2.00	2.00	3.00	Organization	EMD	Annual
Training									
Establish Minimum Knowledge and Skills	8.00	10.00	10.00	12.00	16.00	24.00	Organization	EMD	One-time
Initial New Responder Training	513.32	513.32	776.23	776.23	776.23	776.23	Responder	EMT/Paramedic	Annual
EMR	*48.00*	*48.00*	*60.00*	*60.00*	*60.00*	*60.00*	Responder	EMT/Paramedic	Annual
EMT	*120.00*	*120.00*	*190.00*	*190.00*	*190.00*	*190.00*	Responder	EMT/Paramedic	Annual
Advanced EMT (AEMT)	*270.00*	*270.00*	*440.00*	*440.00*	*440.00*	*440.00*	Responder	EMT/Paramedic	Annual
Paramedic	*1,200.00*	*1,200.00*	*1,800.00*	*1,800.00*	*1,800.00*	*1,800.00*	Responder	EMT/Paramedic	Annual
Ongoing Responder Training	45.67	45.67	45.67	45.67	45.67	45.67	Responder	EMT/Paramedic	Annual

	Employment Size Class						Basis	Labor Category	Frequency
	<25	25-49	50-99	100-249	250-499	500+			
EMR	*16.00*	*16.00*	*16.00*	*16.00*	*16.00*	*16.00*	Responder	EMT/Paramedic	Annual
EMT	*40.00*	*40.00*	*40.00*	*40.00*	*40.00*	*40.00*	Responder	EMT/Paramedic	Annual
Advanced EMT (AEMT)	*50.00*	*50.00*	*50.00*	*50.00*	*50.00*	*50.00*	Responder	EMT/Paramedic	Annual
Paramedic	*60.00*	*60.00*	*60.00*	*60.00*	*60.00*	*60.00*	Responder	EMT/Paramedic	Annual
Refresher Responder Training	2.00	2.00	2.00	2.00	3.00	5.00	Responder	EMT/Paramedic	Annual
Professional Development	20.00	24.00	24.00	30.00	40.00	60.00	Responder	EMT/Paramedic	Annual
Document Professional Qualifications	20.00	24.00	24.00	30.00	40.00	60.00	Organization	EMD	Annual
ESO Facility Preparedness									
ESO Facility Preparedness	8.00	10.00	10.00	12.00	16.00	24.00	Organization	EMD	Annual
Equipment and PPE									
Equipment Preparedness	40.00	48.00	48.00	60.00	80.00	120.00	Organization	EMD	Annual
Inspect, Maintain, and Test Equipment	40.00	48.00	48.00	60.00	80.00	120.00	Organization	EMT/Paramedic	Annual
PPE Hazard Assessment	2.00	2.00	2.00	3.00	4.00	6.00	Organization	EMD	One-time
PPE Provision	1.00	1.00	1.00	1.00	1.60	2.00	Organization	EMD	One-time
PPE Maintenance	4.00	5.00	5.00	6.00	8.00	12.00	Organization	EMT/Paramedic	Annual
Vehicle Preparedness and Operation									
Written SOPs - Vehicle Preparedness and Operation	8.00	10.00	10.00	12.00	16.00	24.00	Organization	EMD	One-time
Vehicle Inspection and Maintenance	40.00	48.00	48.00	60.00	80.00	120.00	Organization	EMD	Annual
ESO Pre-Incident Planning									
ESO Pre-Incident Planning	20.00	24.00	24.00	30.00	40.00	60.00	Organization	EMD	One-time
ESO PIP Annual Review	4.00	5.00	5.00	6.00	8.00	12.00	Organization	EMD	Annual
Incident Management System Development									
Incident Management System Development	12.00	14.00	14.00	18.00	24.00	36.00	Organization	EMD	One-time
Emergency Incident Operations									
Emergency Incident Operations	48.33	188.47	389.63	844.92	2,723.62	2,980.78	Organization	EMD	Annual
Standard Operating Procedures									
SOPs	20.00	24.00	24.00	30.00	40.00	60.00	Organization	EMD	One-time
Post Incident Analysis									
Post Incident Analysis	9.67	37.69	77.93	168.98	544.72	596.16	Organization	EMD	Annual
ID/Implement Changes to Pre-Incident Plan	1.00	1.00	1.00	1.00	1.00	2.00	Organization	EMD	Annual
Program Evaluation									
ERP Program Evaluation	20.00	24.00	24.00	30.00	40.00	60.00	Organization	EMD	Annual
ID and Implement Changes to ERP	1.00	1.00	1.00	1.00	1.00	2.00	Organization	EMD	Annual
More Frequent ID and Implement Changes to ERP	1.00	1.00	1.00	1.00	1.00	2.00	Organization	EMD	Annual

Source: OSHA.

[a] These estimates are calculated using the expected number of events/incidents for a given responder group type and employee class size. The expected number of events/incidents does not always follow the expected pattern of smaller employment class sizes incurring lower numbers of events/incidents. This is why some unit labor hour estimates do not go in order from smallest to largest by employee class size.

Table VII-C-11. Labor-Based Unit Costs by Employment Size Class - Emergency Medical Service Organizations and Responders

	Employment Size Class						Basis	Labor Category	Frequency
	<25	25-49	50-99	100-249	250-499	500+			
Rule Familiarization									
Rule Familiarization	$123	$123	$123	$123	$123	$123	Organization	EMD	One-time
ESO Establishment of ERP and Emergency Service(s) Capability									
ESO Develop ERP	$1,233	$1,480	$1,480	$1,849	$2,466	$3,699	Organization	EMD	One-time
ESO Update and Revise ERP	$247	$308	$308	$370	$493	$740	Organization	EMD	Annual
ESO Establishment of Service(s) Capability	$740	$863	$863	$1,110	$1,480	$2,219	Organization	EMD	One-time
ESO Community or Facility Vulnerability and Risk Assessment	$2,466	$2,959	$2,959	$3,699	$4,932	$7,398	Organization	EMD	One-time
ESO Develop Mutual Aid Agreements	$62	$62	$62	$62	$62	$123	Organization	EMD	One-time
Team Member and Responder Participation									
Responder Participation-Meetings	$253	$316	$316	$379	$505	$758	Organization	EMT/Paramedic	Annual
Responder Participation-Post Sign	$3	$3	$3	$3	$3	$3	Organization	EMD	Annual
WERT and ESO Risk Management Plan									
Prepare Written RMP	$740	$863	$863	$1,110	$1,480	$2,219	Organization	EMD	One-time
Update Written RMP	$308	$370	$370	$493	$616	$925	Organization	EMD	Annual
Medical and Physical Requirements									
Minimum Medical Requirement - Statement	$493	$616	$616	$740	$986	$1,480	Organization	EMD	One-time
Confidential Records System	$5	$5	$5	$5	$5	$5	Responder	EMD	One-time
Establish Health and Fitness Program - Written Plan	$493	$616	$616	$740	$986	$1,480	Organization	EMD	One-time
Minimum Medical Surveillance [a]	$79	$79	$79	$79	$79	$79	Responder	EMT/Paramedic	Varies
Additional Heart Screening [a]	$39	$39	$39	$39	$39	$39	Responder	EMT/Paramedic	Varies
Additional ESO Surveillance (Full NFPA Medical Exam) [a]	$79	$79	$79	$79	$79	$79	Responder	EMT/Paramedic	Varies
Implement Fitness Assessment	$62	$62	$62	$62	$62	$62	Responder	EMD	Varies
Undergo Fitness Assessment	$32	$32	$32	$32	$32	$32	Responder	EMT/Paramedic	Varies
Behavioral Health & Wellness Program	$62	$62	$62	$123	$123	$185	Organization	EMD	Annual
Training									
Establish Minimum Knowledge and Skills	$493	$616	$616	$740	$986	$1,480	Organization	EMD	One-time
Initial New Responder Training	$16,207	$16,207	$24,509	$24,509	$24,509	$24,509	Responder	EMT/Paramedic	Annual
Ongoing Responder Training	$1,442	$1,442	$1,442	$1,442	$1,442	$1,442	Responder	EMT/Paramedic	Annual
Refresher Responder Training	$63	$63	$63	$63	$95	$158	Responder	EMT/Paramedic	Annual
Professional Development	$631	$758	$758	$947	$1,263	$1,894	Responder	EMT/Paramedic	Annual
Document Professional Qualifications	$1,233	$1,480	$1,480	$1,849	$2,466	$3,699	Organization	EMD	Annual
ESO Facility Preparedness									

	Employment Size Class						Basis	Labor Category	Frequency
	<25	25-49	50-99	100-249	250-499	500+			
ESO Facility Preparedness	$493	$616	$616	$740	$986	$1,480	Organization	EMD	Annual
Equipment and PPE									
Equipment Preparedness	$2,466	$2,959	$2,959	$3,699	$4,932	$7,398	Organization	EMD	Annual
Inspect, Maintain, and Test Equipment	$1,263	$1,516	$1,516	$1,894	$2,526	$3,789	Organization	EMT/Paramedic	Annual
PPE Hazard Assessment	$123	$123	$123	$185	$247	$370	Organization	EMD	One-time
PPE Provision	$62	$62	$62	$62	$99	$123	Organization	EMD	One-time
PPE Maintenance	$126	$158	$158	$189	$253	$379	Organization	EMT/Paramedic	Annual
Vehicle Preparedness and Operation									
Written SOPs - Vehicle Preparedness and Operation	$493	$616	$616	$740	$986	$1,480	Organization	EMD	One-time
Vehicle Inspection and Maintenance	$2,466	$2,959	$2,959	$3,699	$4,932	$7,398	Organization	EMD	Annual
ESO Pre-Incident Planning									
ESO Pre-Incident Planning	$1,233	$1,480	$1,480	$1,849	$2,466	$3,699	Organization	EMD	One-time
ESO PIP Annual Review	$247	$308	$308	$370	$493	$740	Organization	EMD	Annual
Incident Management System Development									
Incident Management System Development	$740	$863	$863	$1,110	$1,480	$2,219	Organization	EMD	One-time
Emergency Incident Operations									
Emergency Incident Operations	$2,980	$11,619	$24,020	$52,088	$167,906	$183,760	Organization	EMD	Annual
Standard Operating Procedures									
SOPs	$1,233	$1,480	$1,480	$1,849	$2,466	$3,699	Organization	EMD	One-time
Post Incident Analysis									
Post Incident Analysis	$596	$2,324	$4,804	$10,418	$33,581	$36,752	Organization	EMD	Annual
ID/Implement Changes to Pre-Incident Plan	$62	$62	$62	$62	$62	$123	Organization	EMD	Annual
Program Evaluation									
ERP Program Evaluation	$1,233	$1,480	$1,480	$1,849	$2,466	$3,699	Organization	EMD	Annual
ID and Implement Changes to ERP	$62	$62	$62	$62	$62	$123	Organization	EMD	Annual
More Frequent ID and Implement Changes to ERP	$6	$6	$6	$6	$6	$12	Organization	EMD	Annual

Sources: OSHA based on BLS, 2023; BLS, 2023; EPA, 2002; Rice, 2002.

Note: All dollar figures are presented in 2022$. Unit costs are shown with zero decimal places, but unrounded figures are used in the underlying calculations.

[a] These costs to undergo medical exams are only inclusive of the labor costs. The cost of the medical exam components are presented in Table VII-C-7.

D. Technical Search and Rescue Groups

Technical search and rescue groups are involved in wilderness and urban search and rescue using technical skills and equipment. These organizations would be required to comply with all provisions of the proposed rule, as described in section IV.I.. Technical search and rescue groups are assumed to incur the same labor hours and medical costs as EMS organizations for most provisions, as described in section IV.III., with three exceptions. First, for initial and ongoing training OSHA assumes that technical search and rescue employees would expend 200 hours on initial training and would spend the same amount of time as firefighters on ongoing training. Second, in the case of emergency incident operations, the per incident time estimate is the same for both EMS and technical search and rescue; however, the number of incidents that these groups respond to each year differs, which results in different annual time spent responding to all incidents. Third, the time per incident for technical search and rescue groups to conduct a post-incident analysis is five minutes instead of one minute as estimated for EMS.

As described in the Industry Profile, to fully capture the universe of technical search and rescue organizations, OSHA obtained data from multiple sources, which, for the purposes of estimating unit costs, requires the derivation of separate wage rates. The unit costs are provided for both subgroups of technical search and rescue in sections VII.D(i) and VII.D(ii)

(i) Wilderness and Urban Search and Rescue

Wilderness and urban search and rescue groups are involved in and use special Vknowledge, skills, and specialized equipment to resolve complex search and rescue situations, such as rope, vehicle/machinery, structural collapse, trench, and technical water rescue. Table VII–C–12 and Table VII–C–13 show the estimated unit labor hours and costs, respectively, for each requirement in the proposed rule for wilderness and urban search and rescue groups by employee class size. Note that while the unit labor hours are largely the same as for EMS organizations, unit costs differ due to the application of wage rates for wilderness and urban search and rescue responders rather than EMS responders.

Table VII-C-12. Unit Burden for Labor-Based Costs by Employment Size Class - Wilderness and Urban Search and Rescue Groups and Responders

	Employment Size Class						Basis	Labor Category	Frequency
	<25	25-49	50-99	100-249	250-499	500+			
Rule Familiarization									
Rule Familiarization	2.00	2.00	2.00	2.00	2.00	2.00	Organization	Search and Rescue Supervisor	One-time
ESO Establishment of ERP and Emergency Service(s) Capability									
ESO Develop ERP	20.00	24.00	24.00	30.00	40.00	60.00	Organization	Search and Rescue Supervisor	One-time
ESO Update and Revise ERP	4.00	5.00	5.00	6.00	8.00	12.00	Organization	Search and Rescue Supervisor	Annual
ESO Establishment of Service(s) Capability	12.00	14.00	14.00	18.00	24.00	36.00	Organization	Search and Rescue Supervisor	One-time
ESO Community or Facility Vulnerability and Risk Assessment	40.00	48.00	48.00	60.00	80.00	120.00	Organization	Search and Rescue Supervisor	One-time
ESO Develop Mutual Aid Agreements	1.00	1.00	1.00	1.00	1.00	2.00	Organization	Search and Rescue Supervisor	One-time
Team Member and Responder Participation									
Responder Participation-Meetings	8.00	10.00	10.00	12.00	16.00	24.00	Organization	Search and Rescue Worker	Annual
Responder Participation-Post Sign	0.05	0.05	0.05	0.05	0.05	0.05	Organization	Search and Rescue Supervisor	Annual
WERT and ESO Risk Management Plan									
Prepare Written RMP	12.00	14.00	14.00	18.00	24.00	36.00	Organization	Search and Rescue Supervisor	One-time
Update Written RMP	5.00	6.00	6.00	8.00	10.00	15.00	Organization	Search and Rescue Supervisor	Annual
Medical and Physical Requirements									
Minimum Medical Requirement - Statement	8.00	10.00	10.00	12.00	16.00	24.00	Organization	Search and Rescue Supervisor	One-time
Confidential Records System	0.08	0.08	0.08	0.08	0.08	0.08	Responder	Search and Rescue Supervisor	One-time
Establish Health and Fitness Program - Written Plan	8.00	10.00	10.00	12.00	16.00	24.00	Organization	Search and Rescue Supervisor	One-time
Minimum Medical Surveillance	2.50	2.50	2.50	2.50	2.50	2.50	Responder	Search and Rescue Worker	Varies
Additional Heart Screening	1.25	1.25	1.25	1.25	1.25	1.25	Responder	Search and Rescue Worker	Varies

	Employment Size Class						Basis	Labor Category	Frequency
	<25	25-49	50-99	100-249	250-499	500+			
Additional ESO Surveillance (Full NFPA Medical Exam)	2.50	2.50	2.50	2.50	2.50	2.50	Responder	Search and Rescue Worker	Varies
Implement Fitness Assessment	1.00	1.00	1.00	1.00	1.00	1.00	Responder	Search and Rescue Supervisor	Varies
Undergo Fitness Assessment	1.00	1.00	1.00	1.00	1.00	1.00	Responder	Search and Rescue Worker	Varies
Behavioral Health & Wellness Program	1.00	1.00	1.00	2.00	2.00	3.00	Organization	Search and Rescue Supervisor	Annual
Training									
Establish Minimum Knowledge and Skills	8.00	10.00	10.00	12.00	16.00	24.00	Organization	Search and Rescue Supervisor	One-time
Initial New Responder Training	200.00	200.00	200.00	200.00	200.00	200.00	Responder	Search and Rescue Worker	Annual
Ongoing Responder Training	24.00	29.00	29.00	36.00	48.00	72.00	Responder	Search and Rescue Worker	Annual
Refresher Responder Training	2.00	2.00	2.00	2.00	3.00	5.00	Responder	Search and Rescue Worker	Annual
Professional Development	20.00	24.00	24.00	30.00	40.00	60.00	Responder	Search and Rescue Worker	Annual
Document Professional Qualifications	20.00	24.00	24.00	30.00	40.00	60.00	Organization	Search and Rescue Supervisor	Annual
ESO Facility Preparedness									
ESO Facility Preparedness	8.00	10.00	10.00	12.00	16.00	24.00	Organization	Search and Rescue Supervisor	Annual
Equipment and PPE									
Equipment Preparedness	40.00	48.00	48.00	60.00	80.00	120.00	Organization	Search and Rescue Supervisor	Annual
Inspect, Maintain, and Test Equipment	40.00	48.00	48.00	60.00	80.00	120.00	Organization	Search and Rescue Worker	Annual
PPE Hazard Assessment	2.00	2.00	2.00	3.00	4.00	6.00	Organization	Search and Rescue Supervisor	One-time
PPE Provision	1.00	1.00	1.00	1.00	1.60	2.00	Organization	Search and Rescue Supervisor	One-time
PPE Maintenance	4.00	5.00	5.00	6.00	8.00	12.00	Organization	Search and Rescue Worker	Annual
Vehicle Preparedness and Operation									

	Employment Size Class						Basis	Labor Category	Frequency
	<25	25-49	50-99	100-249	250-499	500+			
Written SOPs - Vehicle Preparedness and Operation	8.00	10.00	10.00	12.00	16.00	24.00	Organization	Search and Rescue Supervisor	One-time
Vehicle Inspection and Maintenance	40.00	48.00	48.00	60.00	80.00	120.00	Organization	Search and Rescue Supervisor	Annual
ESO Pre-Incident Planning									
ESO Pre-Incident Planning	20.00	24.00	24.00	30.00	40.00	60.00	Organization	Search and Rescue Supervisor	One-time
ESO PIP Annual Review	4.00	5.00	5.00	6.00	8.00	12.00	Organization	Search and Rescue Supervisor	Annual
Incident Management System Development									
Incident Management System Development	12.00	14.00	14.00	18.00	24.00	36.00	Organization	Search and Rescue Supervisor	One-time
Emergency Incident Operations									
Emergency Incident Operations	2.77	1.68	1.54	1.66	3.27	2.49	Organization	Search and Rescue Supervisor	Annual
Standard Operating Procedures									
SOPs	20.00	24.00	24.00	30.00	40.00	60.00	Organization	Search and Rescue Supervisor	One-time
Post Incident Analysis									
Post Incident Analysis	2.77	1.68	1.54	1.66	3.27	2.49	Organization	Search and Rescue Supervisor	Annual
ID/Implement Changes to Pre-Incident Plan	1.00	1.00	1.00	1.00	1.00	2.00	Organization	Search and Rescue Supervisor	Annual
Program Evaluation									
ERP Program Evaluation	20.00	24.00	24.00	30.00	40.00	60.00	Organization	Search and Rescue Supervisor	Annual
ID and Implement Changes to ERP	1.00	1.00	1.00	1.00	1.00	2.00	Organization	Search and Rescue Supervisor	Annual
More Frequent ID and Implement Changes to ERP	1.00	1.00	1.00	1.00	1.00	2.00	Organization	Search and Rescue Supervisor	Annual

Source: OSHA.

[a] These estimates are calculated using the expected number of events/incidents for a given responder group type and employee class size. The expected number of events/incidents does not always follow the expected pattern of smaller employment class sizes incurring lower numbers of events/incidents. This is why some unit labor hour estimates do not go in order from smallest to largest by employee class size.

Table VII-C-13. Labor-Based Unit Costs by Employment Size Class - Wilderness and Urban Search and Rescue Groups and Responders

	Employment Size Class						Basis	Labor Category	Frequency
	<25	25-49	50-99	100-249	250-499	500+			
Rule Familiarization									
Rule Familiarization	$150	$150	$150	$150	$150	$150	Organization	Search and Rescue Supervisor	One-time
ESO Establishment of ERP and Emergency Service(s) Capability									
ESO Develop ERP	$1,499	$1,799	$1,799	$2,249	$2,998	$4,498	Organization	Search and Rescue Supervisor	One-time
ESO Update and Revise ERP	$300	$375	$375	$450	$600	$900	Organization	Search and Rescue Supervisor	Annual
ESO Establishment of Service(s) Capability	$900	$1,049	$1,049	$1,349	$1,799	$2,699	Organization	Search and Rescue Supervisor	One-time
ESO Community or Facility Vulnerability and Risk Assessment	$2,998	$3,598	$3,598	$4,498	$5,997	$8,995	Organization	Search and Rescue Supervisor	One-time
ESO Develop Mutual Aid Agreements	$75	$75	$75	$75	$75	$150	Organization	Search and Rescue Supervisor	One-time
Team Member and Responder Participation									
Responder Participation-Meetings	$275	$344	$344	$413	$550	$826	Organization	Search and Rescue Worker	Annual
Responder Participation-Post Sign	$4	$4	$4	$4	$4	$4	Organization	Search and Rescue Supervisor	Annual
WERT and ESO Risk Management Plan									
Prepare Written RMP	$900	$1,049	$1,049	$1,349	$1,799	$2,699	Organization	Search and Rescue Supervisor	One-time
Update Written RMP	$375	$450	$450	$600	$750	$1,124	Organization	Search and Rescue Supervisor	Annual
Medical and Physical Requirements									
Minimum Medical Requirement - Statement	$600	$750	$750	$900	$1,199	$1,799	Organization	Search and Rescue Supervisor	One-time
Confidential Records System	$6	$6	$6	$6	$6	$6	Responder	Search and Rescue Supervisor	One-time
Establish Health and Fitness Program - Written Plan	$600	$750	$750	$900	$1,199	$1,799	Organization	Search and Rescue Supervisor	One-time
Minimum Medical Surveillance [a]	$86	$86	$86	$86	$86	$86	Responder	Search and Rescue Worker	Varies

	Employment Size Class						Basis	Labor Category	Frequency
	<25	25-49	50-99	100-249	250-499	500+			
Additional Heart Screening [a]	$43	$43	$43	$43	$43	$43	Responder	Search and Rescue Worker	Varies
Additional ESO Surveillance (Full NFPA Medical Exam) [a]	$86	$86	$86	$86	$86	$86	Responder	Search and Rescue Worker	Varies
Implement Fitness Assessment	$75	$75	$75	$75	$75	$75	Responder	Search and Rescue Supervisor	Varies
Undergo Fitness Assessment	$34	$34	$34	$34	$34	$34	Responder	Search and Rescue Worker	Varies
Behavioral Health & Wellness Program	$75	$75	$75	$150	$150	$225	Organization	Search and Rescue Supervisor	Annual
Training									
Establish Minimum Knowledge and Skills	$600	$750	$750	$900	$1,199	$1,799	Organization	Search and Rescue Supervisor	One-time
Initial New Responder Training	$6,880	$6,880	$6,880	$6,880	$6,880	$6,880	Responder	Search and Rescue Worker	Annual
Ongoing Responder Training	$826	$998	$998	$1,238	$1,651	$2,477	Responder	Search and Rescue Worker	Annual
Refresher Responder Training	$69	$69	$69	$69	$103	$172	Responder	Search and Rescue Worker	Annual
Professional Development	$688	$826	$826	$1,032	$1,376	$2,064	Responder	Search and Rescue Worker	Annual
Document Professional Qualifications	$1,499	$1,799	$1,799	$2,249	$2,998	$4,498	Organization	Search and Rescue Supervisor	Annual
ESO Facility Preparedness									
ESO Facility Preparedness	$600	$750	$750	$900	$1,199	$1,799	Organization	Search and Rescue Supervisor	Annual
Equipment and PPE									
Equipment Preparedness	$2,998	$3,598	$3,598	$4,498	$5,997	$8,995	Organization	Search and Rescue Supervisor	Annual
Inspect, Maintain, and Test Equipment	$1,376	$1,651	$1,651	$2,064	$2,752	$4,128	Organization	Search and Rescue Worker	Annual
PPE Hazard Assessment	$150	$150	$150	$225	$300	$450	Organization	Search and Rescue Supervisor	One-time
PPE Provision	$75	$75	$75	$75	$120	$150	Organization	Search and Rescue Supervisor	One-time
PPE Maintenance	$138	$172	$172	$206	$275	$413	Organization	Search and Rescue Worker	Annual

	Employment Size Class						Basis	Labor Category	Frequency
	<25	25-49	50-99	100-249	250-499	500+			
Vehicle Preparedness and Operation									
Written SOPs - Vehicle Preparedness and Operation	$600	$750	$750	$900	$1,199	$1,799	Organization	Search and Rescue Supervisor	One-time
Vehicle Inspection and Maintenance	$2,998	$3,598	$3,598	$4,498	$5,997	$8,995	Organization	Search and Rescue Supervisor	Annual
ESO Pre-Incident Planning									
ESO Pre-Incident Planning	$1,499	$1,799	$1,799	$2,249	$2,998	$4,498	Organization	Search and Rescue Supervisor	One-time
ESO PIP Annual Review	$300	$375	$375	$450	$600	$900	Organization	Search and Rescue Supervisor	Annual
Incident Management System Development									
Incident Management System Development	$900	$1,049	$1,049	$1,349	$1,799	$2,699	Organization	Search and Rescue Supervisor	One-time
Emergency Incident Operations									
Emergency Incident Operations	$208	$126	$116	$124	$245	$187	Organization	Search and Rescue Supervisor	Annual
Standard Operating Procedures									
SOPs	$1,499	$1,799	$1,799	$2,249	$2,998	$4,498	Organization	Search and Rescue Supervisor	One-time
Post Incident Analysis									
Post Incident Analysis	$208	$126	$116	$124	$245	$187	Organization	Search and Rescue Supervisor	Annual
ID/Implement Changes to Pre-Incident Plan	$75	$75	$75	$75	$75	$150	Organization	Search and Rescue Supervisor	Annual
Program Evaluation									
ERP Program Evaluation	$1,499	$1,799	$1,799	$2,249	$2,998	$4,498	Organization	Search and Rescue Supervisor	Annual
ID and Implement Changes to ERP	$75	$75	$75	$75	$75	$150	Organization	Search and Rescue Supervisor	Annual
More Frequent ID and Implement Changes to ERP	$7	$7	$7	$7	$7	$15	Organization	Search and Rescue Supervisor	Annual

Sources: OSHA based on BLS, 2023; BLS, 2023; EPA, 2002; Rice, 2002.

Note: All dollar figures are presented in 2022$. Unit costs are shown with zero decimal places, but unrounded figures are used in the underlying calculations.

[a] These costs to undergo medical exams are only inclusive of the labor costs. The cost of the medical exam components are presented in Table VII-C-7.

(ii) Additional Technical Water Rescue Entities

This additional group of technical search and rescue entities includes lifeguarding where specialty skills or equipment is employed during search and/or rescue. This group is in addition to technical water rescue activities undertaken by wilderness and urban search and rescue. These organizations would be required to comply with all provisions of the proposed rule, as described in section IV.I. Additional technical water rescue entities would incur the same labor hours and medical costs as wilderness and urban search and rescue groups, as described in section IV.A. Table VII–C–14 shows the estimated unit costs associated with the proposed rule for additional technical water rescue groups by employment size class. Note that while the unit labor hours are the same as for wilderness and urban search and rescue groups, unit costs vary due to the different wage rates for technical water rescue professionals compared to wilderness and urban search and rescue responders, as outlined in section III.

Table VII-C-14. Labor-Based Unit Costs by Employment Size Class - Additional Technical Water Rescue Groups and Employees

	Employment Size Class						Basis	Labor Category	Frequency
	<25	25-49	50-99	100-249	250-499	500+			
Rule Familiarization									
Rule Familiarization	$95	$95	$95	$95	$95	$95	Organization	Technical Water Rescue Supervisor	One-time
ESO Establishment of ERP and Emergency Service(s) Capability									
ESO Develop ERP	$950	$1,140	$1,140	$1,425	$1,900	$2,851	Organization	Technical Water Rescue Supervisor	One-time
ESO Update and Revise ERP	$190	$238	$238	$285	$380	$570	Organization	Technical Water Rescue Supervisor	Annual
ESO Establishment of Service(s) Capability	$570	$665	$665	$855	$1,140	$1,710	Organization	Technical Water Rescue Supervisor	One-time
ESO Community or Facility Vulnerability and Risk Assessment	$1,900	$2,281	$2,281	$2,851	$3,801	$5,701	Organization	Technical Water Rescue Supervisor	One-time
ESO Develop Mutual Aid Agreements	$48	$48	$48	$48	$48	$95	Organization	Technical Water Rescue Supervisor	One-time
Team Member and Responder Participation									
Responder Participation-Meetings	$170	$212	$212	$255	$340	$510	Organization	Technical Water Rescuer	Annual
Responder Participation-Post Sign	$2	$2	$2	$2	$2	$2	Organization	Technical Water Rescue Supervisor	Annual
WERT and ESO Risk Management Plan									
Prepare Written RMP	$570	$665	$665	$855	$1,140	$1,710	Organization	Technical Water Rescue Supervisor	One-time
Update Written RMP	$238	$285	$285	$380	$475	$713	Organization	Technical Water Rescue Supervisor	Annual
Medical and Physical Requirements									
Minimum Medical Requirement - Statement	$380	$475	$475	$570	$760	$1,140	Organization	Technical Water Rescue Supervisor	One-time
Confidential Records System	$4	$4	$4	$4	$4	$4	Responder	Technical Water Rescue Supervisor	One-time
Establish Health and Fitness Program - Written Plan	$380	$475	$475	$570	$760	$1,140	Organization	Technical Water Rescue Supervisor	One-time
Minimum Medical Surveillance [a]	$53	$53	$53	$53	$53	$53	Responder	Technical Water Rescuer	Varies

	Employment Size Class						Basis	Labor Category	Frequency
	<25	25-49	50-99	100-249	250-499	500+			
Additional Heart Screening [a]	$27	$27	$27	$27	$27	$27	Responder	Technical Water Rescuer	Varies
Additional ESO Surveillance (Full NFPA Medical Exam) [a]	$53	$53	$53	$53	$53	$53	Responder	Technical Water Rescuer	Varies
Implement Fitness Assessment	$48	$48	$48	$48	$48	$48	Responder	Technical Water Rescue Supervisor	Varies
Undergo Fitness Assessment	$21	$21	$21	$21	$21	$21	Responder	Technical Water Rescuer	Varies
Behavioral Health & Wellness Program	$48	$48	$48	$95	$95	$143	Organization	Technical Water Rescue Supervisor	Annual
Training									
Establish Minimum Knowledge and Skills	$380	$475	$475	$570	$760	$1,140	Organization	Technical Water Rescue Supervisor	One-time
Initial New Responder Training	$4,246	$4,246	$4,246	$4,246	$4,246	$4,246	Responder	Technical Water Rescuer	Annual
Ongoing Responder Training	$510	$616	$616	$764	$1,019	$1,529	Responder	Technical Water Rescuer	Annual
Refresher Responder Training	$42	$42	$42	$42	$64	$106	Responder	Technical Water Rescuer	Annual
Professional Development	$425	$510	$510	$637	$849	$1,274	Responder	Technical Water Rescuer	Annual
Document Professional Qualifications	$950	$1,140	$1,140	$1,425	$1,900	$2,851	Organization	Technical Water Rescue Supervisor	Annual
ESO Facility Preparedness									
ESO Facility Preparedness	$380	$475	$475	$570	$760	$1,140	Organization	Technical Water Rescue Supervisor	Annual
Equipment and PPE									
Equipment Preparedness	$1,900	$2,281	$2,281	$2,851	$3,801	$5,701	Organization	Technical Water Rescue Supervisor	Annual
Inspect, Maintain, and Test Equipment	$849	$1,019	$1,019	$1,274	$1,698	$2,548	Organization	Technical Water Rescuer	Annual
PPE Hazard Assessment	$95	$95	$95	$143	$190	$285	Organization	Technical Water Rescue Supervisor	One-time
PPE Provision	$48	$48	$48	$48	$76	$95	Organization	Technical Water Rescue Supervisor	One-time
PPE Maintenance	$85	$106	$106	$127	$170	$255	Organization	Technical Water Rescuer	Annual

	Employment Size Class						Basis	Labor Category	Frequency
	<25	25-49	50-99	100-249	250-499	500+			
Vehicle Preparedness and Operation									
Written SOPs - Vehicle Preparedness and Operation	$380	$475	$475	$570	$760	$1,140	Organization	Technical Water Rescue Supervisor	One-time
Vehicle Inspection and Maintenance	$1,900	$2,281	$2,281	$2,851	$3,801	$5,701	Organization	Technical Water Rescue Supervisor	Annual
ESO Pre-Incident Planning									
ESO Pre-Incident Planning	$950	$1,140	$1,140	$1,425	$1,900	$2,851	Organization	Technical Water Rescue Supervisor	One-time
ESO PIP Annual Review	$190	$238	$238	$285	$380	$570	Organization	Technical Water Rescue Supervisor	Annual
Incident Management System Development									
Incident Management System Development	$570	$665	$665	$855	$1,140	$1,710	Organization	Technical Water Rescue Supervisor	One-time
Emergency Incident Operations									
Emergency Incident Operations	$132	$80	$73	$79	$156	$119	Organization	Technical Water Rescue Supervisor	Annual
Standard Operating Procedures									
SOPs	$950	$1,140	$1,140	$1,425	$1,900	$2,851	Organization	Technical Water Rescue Supervisor	One-time
Post Incident Analysis									
Post Incident Analysis	$132	$80	$73	$79	$156	$119	Organization	Technical Water Rescue Supervisor	Annual
ID/Implement Changes to Pre-Incident Plan	$48	$48	$48	$48	$48	$95	Organization	Technical Water Rescue Supervisor	Annual
Program Evaluation									
ERP Program Evaluation	$950	$1,140	$1,140	$1,425	$1,900	$2,851	Organization	Technical Water Rescue Supervisor	Annual
ID and Implement Changes to ERP	$48	$48	$48	$48	$48	$95	Organization	Technical Water Rescue Supervisor	Annual
More Frequent ID and Implement Changes to ERP	$5	$5	$5	$5	$5	$10	Organization	Technical Water Rescue Supervisor	Annual

Sources: OSHA based on BLS, 2023; BLS, 2023; EPA, 2002; Ricc, 2002.

Note: All dollar figures are presented in 2022$. Unit costs are shown with zero decimal places, but unrounded figures are used in the underlying calculations.

[a] These costs to undergo medical exams are only inclusive of the labor costs. The cost of the medical exam components are presented in Table VII-C-7.

E. Total Costs

(i) Total Costs of the Proposed Rule

OSHA estimated the total cost of the proposed rule by multiplying the numbers of affected emergency services entities and responders estimated in the industry profile, as summarized in Table VII–B–12, by the unit labor costs shown in Table VII–C–6 (for fire departments), Table VII–C–11 (for emergency medical services), Table VII–C–13 (for technical search and rescue groups), and Table VII–C–14 (for additional technical water rescue entities), and adding the unit medical costs shown in Table VII–C–4 (structural fire departments and wildland fire services) and Table VII–C–7 (WEREs, emergency medical services, and technical search and rescue groups).

Table VII–C–15, Table VII–C–16, and Table VII–C–17 show the total costs (including labor and non-labor costs) for all organizations affected by the proposed rule at three, seven, and zero percent discount rates, respectively. Table VII–C–18 shows the costs for organizations considered small by either the RFA definition (for public ESOs) or SBA definition (for private organizations) using a three percent discount rate.

Table VII-C-15. Total Cost Summary by Provision - All Organizations, 3 Percent Discount Rate

	One-Time Annualized, 3%	Annual	Total Annualized, 3%
WEREs			
Rule Familiarization	$26,567	$0	$26,567
Organization of the WERT and Establishment of the ERP and Emergency Service(s) Capability	$951,248	$456,809	$1,408,057
Team Member and Responder Participation	$0	$86,698	$86,698
WERT and ESO Risk Management Plan	$154,630	$562,127	$716,757
Medical and Physical Requirements	$8,586,477	$140,416	$8,726,893
Training	$10,716	$12,139,003	$12,149,718
WERE Facility Preparedness	$0	$888,248	$888,248
Equipment and PPE	$85,223	$3,407,900	$3,493,123
Vehicle Preparedness and Operation	$32,006	$1,334,575	$1,366,581
WERE Pre-Incident Planning	$151,582	$234,684	$386,266
Incident Management System Development	$46,220	$0	$46,220
Emergency Incident Operations	$0	$17,927	$17,927
Standard Operating Procedures	$303,164	$0	$303,164
Post Incident Analysis	$0	$216,729	$216,729
Program Evaluation	$0	$2,756,023	$2,756,023
Total	**$10,347,833**	**$22,241,138**	**$32,588,971**
Fire Departments			
Career Fire Departments			
Rule Familiarization	$62,406	$0	$62,406
ESO Establishment of ERP and Emergency Service(s) Capability	$2,223,682	$1,069,936	$3,293,618
Team Member and Responder Participation	$0	$269,662	$269,662
WERT and ESO Risk Management Plan	$361,117	$1,310,079	$1,671,196
Medical and Physical Requirements	$17,367,275	$28,938,124	$46,305,399
Training	$25,295	$64,936,817	$64,962,112
ESO Facility Preparedness	$0	$4,155,983	$4,155,983
Equipment and PPE	$199,717	$9,250,059	$9,449,776
Vehicle Preparedness and Operation	$75,084	$3,125,171	$3,200,255
ESO Pre-Incident Planning	$715,138	$1,250,777	$1,965,915
Incident Management System Development	$108,099	$0	$108,099
Emergency Incident Operations	$0	$477,677	$477,677
Standard Operating Procedures	$715,138	$0	$715,138
Post Incident Analysis	$0	$3,041,219	$3,041,219
Program Evaluation	$0	$6,504,400	$6,504,400
Total	**$21,852,951**	**$124,329,905**	**$146,182,856**

	One-Time Annualized, 3%	Annual	Total Annualized, 3%
Volunteer Fire Departments			
Rule Familiarization	$83,003	$0	$83,003
ESO Establishment of ERP and Emergency Service(s) Capability	$2,950,132	$1,414,999	$4,365,132
Team Member and Responder Participation	$0	$356,996	$356,996
WERT and ESO Risk Management Plan	$479,587	$1,733,623	$2,213,209
Medical and Physical Requirements	$33,808,879	$2,106,398	$35,915,276
Training	$33,243	$39,699,661	$39,732,904
ESO Facility Preparedness	$0	$5,509,024	$5,509,024
Equipment and PPE	$264,082	$12,261,552	$12,525,634
Vehicle Preparedness and Operation	$99,267	$4,142,154	$4,241,421
ESO Pre-Incident Planning	$923,982	$1,612,539	$2,536,521
Incident Management System Development	$143,526	$0	$143,526
Emergency Incident Operations	$0	$55,489	$55,489
Standard Operating Procedures	$923,982	$0	$923,982
Post Incident Analysis	$0	$665,293	$665,293
Program Evaluation	$0	$8,318,364	$8,318,364
Total	**$39,709,683**	**$77,876,092**	**$117,585,775**
Mixed Fire Departments			
Rule Familiarization	$31,540	$0	$31,540
ESO Establishment of ERP and Emergency Service(s) Capability	$1,133,189	$548,752	$1,681,941
Team Member and Responder Participation	$0	$138,157	$138,157
WERT and ESO Risk Management Plan	$183,516	$669,134	$852,650
Medical and Physical Requirements	$13,435,208	$5,800,599	$19,235,807
Training	$13,091	$24,049,853	$24,062,944
ESO Facility Preparedness	$0	$2,120,425	$2,120,425
Equipment and PPE	$102,451	$4,719,475	$4,821,926
Vehicle Preparedness and Operation	$38,485	$1,593,169	$1,631,655
ESO Pre-Incident Planning	$372,351	$654,500	$1,026,850
Incident Management System Development	$54,899	$0	$54,899
Emergency Incident Operations	$0	$117,810	$117,810
Standard Operating Procedures	$372,351	$0	$372,351
Post Incident Analysis	$0	$835,516	$835,516
Program Evaluation	$0	$3,391,214	$3,391,214
Total	**$15,737,080**	**$44,638,604**	**$60,375,684**
Fire Departments Total			
Rule Familiarization	$176,949	$0	$176,949
ESO Establishment of ERP and Emergency Service(s) Capability	$6,307,003	$3,033,688	$9,340,691

	One-Time Annualized, 3%	Annual	Total Annualized, 3%
Team Member and Responder Participation	$0	$764,816	$764,816
WERT and ESO Risk Management Plan	$1,024,219	$3,712,836	$4,737,056
Medical and Physical Requirements	$64,611,361	$36,845,121	$101,456,482
Training	$71,629	$128,686,331	$128,757,961
ESO Facility Preparedness	$0	$11,785,432	$11,785,432
Equipment and PPE	$566,250	$26,231,085	$26,797,336
Vehicle Preparedness and Operation	$212,836	$8,860,495	$9,073,331
ESO Pre-Incident Planning	$2,011,471	$3,517,815	$5,529,286
Incident Management System Development	$306,524	$0	$306,524
Emergency Incident Operations	$0	$650,975	$650,975
Standard Operating Procedures	$2,011,471	$0	$2,011,471
Post Incident Analysis	$0	$4,542,029	$4,542,029
Program Evaluation	$0	$18,213,977	$18,213,977
Total	**$77,299,714**	**$246,844,602**	**$324,144,315**
Wildland Firefighting Services			
Career Wildland Firefighting ESOs			
Rule Familiarization	$7,615	$0	$7,615
ESO Establishment of ERP and Emergency Service(s) Capability	$260,466	$122,122	$382,588
Team Member and Responder Participation	$0	$30,889	$30,889
WERT and ESO Risk Management Plan	$42,768	$152,349	$195,117
Medical and Physical Requirements	$3,573,693	$6,393,251	$9,966,944
Training	$2,787	$14,122,292	$14,125,080
ESO Facility Preparedness	$0	$484,607	$484,607
Equipment and PPE	$22,782	$1,078,600	$1,101,382
Vehicle Preparedness and Operation	$8,611	$366,331	$374,942
ESO Pre-Incident Planning	$77,959	$133,370	$211,329
Incident Management System Development	$12,862	$0	$12,862
Emergency Incident Operations	$0	$7,261	$7,261
Standard Operating Procedures	$77,959	$0	$77,959
Post Incident Analysis	$0	$73,800	$73,800
Program Evaluation	$0	$706,928	$706,928
Total	**$4,087,501**	**$23,671,803**	**$27,759,304**
Volunteer Wildland Firefighting ESOs			
Rule Familiarization	$117	$0	$117
ESO Establishment of ERP and Emergency Service(s) Capability	$4,847	$2,276	$7,123
Team Member and Responder Participation	$0	$589	$589
WERT and ESO Risk Management Plan	$800	$2,845	$3,646

	One-Time Annualized, 3%	Annual	Total Annualized, 3%
Medical and Physical Requirements	$4,394,919	$525,146	$4,920,064
Training	$56	$12,165,646	$12,165,702
ESO Facility Preparedness	$0	$8,985	$8,985
Equipment and PPE	$421	$19,997	$20,418
Vehicle Preparedness and Operation	$154	$6,589	$6,743
ESO Pre-Incident Planning	$1,861	$3,175	$5,035
Incident Management System Development	$232	$0	$232
Emergency Incident Operations	$0	$1,025	$1,025
Standard Operating Procedures	$1,861	$0	$1,861
Post Incident Analysis	$0	$8,289	$8,289
Program Evaluation	$0	$21,112	$21,112
Total	**$4,405,269**	**$12,765,674**	**$17,170,943**
Wildland Firefighting Total			
Rule Familiarization	$7,732	$0	$7,732
ESO Establishment of ERP and Emergency Service(s) Capability	$265,313	$124,398	$389,712
Team Member and Responder Participation	$0	$31,479	$31,479
WERT and ESO Risk Management Plan	$43,568	$155,195	$198,763
Medical and Physical Requirements	$7,968,612	$6,918,397	$14,887,009
Training	$2,843	$26,287,939	$26,290,782
ESO Facility Preparedness	$0	$493,592	$493,592
Equipment and PPE	$23,204	$1,098,597	$1,121,801
Vehicle Preparedness and Operation	$8,765	$372,920	$381,685
ESO Pre-Incident Planning	$79,820	$136,545	$216,365
Incident Management System Development	$13,094	$0	$13,094
Emergency Incident Operations	$0	$8,287	$8,287
Standard Operating Procedures	$79,820	$0	$79,820
Post Incident Analysis	$0	$82,090	$82,090
Program Evaluation	$0	$728,040	$728,040
Total	**$8,492,770**	**$36,437,477**	**$44,930,247**
Emergency Medical Services			
Career Emergency Medical Services ESOs			
Rule Familiarization	$37,292	$0	$37,292
ESO Establishment of ERP and Emergency Service(s) Capability	$1,302,959	$618,063	$1,921,021
Team Member and Responder Participation	$0	$130,680	$130,680
WERT and ESO Risk Management Plan	$212,983	$765,870	$978,852
Medical and Physical Requirements	$16,822,891	$147,807	$16,970,698
Training	$14,363	$41,880,573	$41,894,936

	One-Time Annualized, 3%	Annual	Total Annualized, 3%
ESO Facility Preparedness	$0	$491,854	$491,854
Equipment and PPE	$20,073	$3,799,716	$3,819,790
Vehicle Preparedness and Operation	$43,468	$1,831,591	$1,875,059
ESO Pre-Incident Planning	$409,984	$708,379	$1,118,363
Incident Management System Development	$63,892	$0	$63,892
Emergency Incident Operations	$0	$5,769,083	$5,769,083
Standard Operating Procedures	$409,984	$0	$409,984
Post Incident Analysis	$0	$8,002,159	$8,002,159
Program Evaluation	$0	$3,774,436	$3,774,436
Total	**$19,337,888**	**$67,920,210**	**$87,258,098**
Volunteer Emergency Medical Services ESOs			
Rule Familiarization	$20,189	$0	$20,189
ESO Establishment of ERP and Emergency Service(s) Capability	$705,515	$334,679	$1,040,194
Team Member and Responder Participation	$0	$70,761	$70,761
WERT and ESO Risk Management Plan	$115,326	$414,764	$530,091
Medical and Physical Requirements	$9,387,879	$80,085	$9,467,965
Training	$7,780	$23,516,412	$23,524,193
ESO Facility Preparedness	$0	$266,336	$266,336
Equipment and PPE	$10,862	$2,057,491	$2,068,354
Vehicle Preparedness and Operation	$23,537	$991,776	$1,015,314
ESO Pre-Incident Planning	$222,442	$384,345	$606,787
Incident Management System Development	$34,596	$0	$34,596
Emergency Incident Operations	$0	$3,210,860	$3,210,860
Standard Operating Procedures	$222,442	$0	$222,442
Post Incident Analysis	$0	$4,468,519	$4,468,519
Program Evaluation	$0	$2,050,495	$2,050,495
Total	**$10,750,570**	**$37,846,526**	**$48,597,096**
Mixed Emergency Medical Services ESOs			
Rule Familiarization	$39,255	$0	$39,255
ESO Establishment of ERP and Emergency Service(s) Capability	$1,371,536	$650,592	$2,022,128
Team Member and Responder Participation	$0	$137,558	$137,558
WERT and ESO Risk Management Plan	$224,192	$806,179	$1,030,371
Medical and Physical Requirements	$16,581,615	$155,586	$16,737,201
Training	$15,119	$41,113,375	$41,128,494
ESO Facility Preparedness	$0	$517,741	$517,741
Equipment and PPE	$21,130	$3,999,701	$4,020,831
Vehicle Preparedness and Operation	$45,755	$1,927,991	$1,973,746

	One-Time Annualized, 3%	Annual	Total Annualized, 3%
ESO Pre-Incident Planning	$431,562	$745,662	$1,177,224
Incident Management System Development	$67,254	$0	$67,254
Emergency Incident Operations	$0	$6,072,719	$6,072,719
Standard Operating Procedures	$431,562	$0	$431,562
Post Incident Analysis	$0	$8,423,326	$8,423,326
Program Evaluation	$0	$3,973,090	$3,973,090
Total	**$19,228,981**	**$68,523,520**	**$87,752,501**
Emergency Medical Services Total			
Rule Familiarization	$96,736	$0	$96,736
ESO Establishment of ERP and Emergency Service(s) Capability	$3,380,010	$1,603,334	$4,983,344
Team Member and Responder Participation	$0	$338,999	$338,999
WERT and ESO Risk Management Plan	$552,501	$1,986,813	$2,539,314
Medical and Physical Requirements	$42,792,385	$383,479	$43,175,864
Training	$37,263	$106,510,361	$106,547,623
ESO Facility Preparedness	$0	$1,275,931	$1,275,931
Equipment and PPE	$52,066	$9,856,909	$9,908,975
Vehicle Preparedness and Operation	$112,760	$4,751,358	$4,864,118
ESO Pre-Incident Planning	$1,063,988	$1,838,386	$2,902,374
Incident Management System Development	$165,742	$0	$165,742
Emergency Incident Operations	$0	$15,052,662	$15,052,662
Standard Operating Procedures	$1,063,988	$0	$1,063,988
Post Incident Analysis	$0	$20,894,004	$20,894,004
Program Evaluation	$0	$9,798,021	$9,798,021
Total	**$49,317,439**	**$174,290,256**	**$223,607,695**
Technical Search and Rescue Groups			
Career Technical Search and Rescue ESOs			
Rule Familiarization	$2,002	$0	$2,002
ESO Establishment of ERP and Emergency Service(s) Capability	$72,491	$34,529	$107,020
Team Member and Responder Participation	$0	$6,426	$6,426
WERT and ESO Risk Management Plan	$11,860	$43,019	$54,879
Medical and Physical Requirements	$1,228,014	$8,489	$1,236,504
Training	$821	$2,453,601	$2,454,422
ESO Facility Preparedness	$0	$27,453	$27,453
Equipment and PPE	$1,063	$202,383	$203,447
Vehicle Preparedness and Operation	$2,416	$101,571	$103,986
ESO Pre-Incident Planning	$25,622	$44,308	$69,930
Incident Management System Development	$3,538	$0	$3,538

	One-Time Annualized, 3%	Annual	Total Annualized, 3%
Emergency Incident Operations	$0	$2,551	$2,551
Standard Operating Procedures	$25,622	$0	$25,622
Post Incident Analysis	$0	$25,023	$25,023
Program Evaluation	$0	$255,544	$255,544
Total	**$1,373,449**	**$3,204,897**	**$4,578,346**
Volunteer Technical Search and Rescue ESOs			
Rule Familiarization	$27,622	$0	$27,622
ESO Establishment of ERP and Emergency Service(s) Capability	$1,015,690	$483,501	$1,499,192
Team Member and Responder Participation	$0	$91,873	$91,873
WERT and ESO Risk Management Plan	$166,384	$603,946	$770,331
Medical and Physical Requirements	$5,441,734	$120,445	$5,562,179
Training	$11,549	$13,069,649	$13,081,198
ESO Facility Preparedness	$0	$384,229	$384,229
Equipment and PPE	$14,755	$2,854,651	$2,869,406
Vehicle Preparedness and Operation	$33,729	$1,419,793	$1,453,522
ESO Pre-Incident Planning	$369,978	$638,882	$1,008,860
Incident Management System Development	$49,493	$0	$49,493
Emergency Incident Operations	$0	$31,342	$31,342
Standard Operating Procedures	$369,978	$0	$369,978
Post Incident Analysis	$0	$334,470	$334,470
Program Evaluation	$0	$3,789,179	$3,789,179
Total	**$7,500,912**	**$23,821,962**	**$31,322,873**
Technical Search and Rescue Total			
Rule Familiarization	$29,625	$0	$29,625
ESO Establishment of ERP and Emergency Service(s) Capability	$1,088,181	$518,031	$1,606,211
Team Member and Responder Participation	$0	$98,299	$98,299
WERT and ESO Risk Management Plan	$178,244	$646,965	$825,210
Medical and Physical Requirements	$6,669,748	$128,935	$6,798,683
Training	$12,370	$15,523,250	$15,535,620
ESO Facility Preparedness	$0	$411,682	$411,682
Equipment and PPE	$15,818	$3,057,035	$3,072,853
Vehicle Preparedness and Operation	$36,145	$1,521,364	$1,557,508
ESO Pre-Incident Planning	$395,600	$683,190	$1,078,790
Incident Management System Development	$53,031	$0	$53,031
Emergency Incident Operations	$0	$33,893	$33,893
Standard Operating Procedures	$395,600	$0	$395,600
Post Incident Analysis	$0	$359,493	$359,493

	One-Time Annualized, 3%	Annual	Total Annualized, 3%
Program Evaluation	$0	$4,044,723	$4,044,723
Total	**$8,874,361**	**$27,026,859**	**$35,901,219**
Total for All Responder Groups			
Rule Familiarization	$337,609	$0	$337,609
Organization of the WERT and Establishment of the ERP and Emergency Service(s) Capability	$951,248	$456,809	$1,408,057
ESO Establishment of ERP and Emergency Service(s) Capability	$11,040,506	$5,279,451	$16,319,958
Team Member and Responder Participation	$0	$1,320,291	$1,320,291
WERT and ESO Risk Management Plan	$1,953,163	$7,063,936	$9,017,099
Medical and Physical Requirements	$130,628,583	$44,416,347	$175,044,930
Training	$134,821	$289,146,883	$289,281,704
WERE Facility Preparedness	$0	$888,248	$888,248
ESO Facility Preparedness	$0	$13,966,637	$13,966,637
Equipment and PPE	$742,560	$43,651,527	$44,394,087
Vehicle Preparedness and Operation	$402,512	$16,840,711	$17,243,223
WERE Pre-Incident Planning	$151,582	$234,684	$386,266
ESO Pre-Incident Planning	$3,550,878	$6,175,936	$9,726,814
Incident Management System Development	$584,610	$0	$584,610
Emergency Incident Operations	$0	$15,763,744	$15,763,744
Standard Operating Procedures	$3,854,042	$0	$3,854,042
Post Incident Analysis	$0	$26,094,344	$26,094,344
Program Evaluation	$0	$35,540,783	$35,540,783
Total	**$154,332,116**	**$506,840,331**	**$661,172,447**

Source: OSHA.

Note: Figures in rows may not add to totals due to rounding.

Table VII-C-16. Total Cost Summary by Provision - All Organizations, 7 Percent Discount Rate

	One-Time Annualized, 7%	Annual	Total Annualized, 7%
WEREs			
Rule Familiarization	$32,266	$0	$32,266
Organization of the WERT and Establishment of the ERP and Emergency Service(s) Capability	$1,155,299	$456,809	$1,612,108
Team Member and Responder Participation	$0	$86,698	$86,698
WERT and ESO Risk Management Plan	$187,800	$562,127	$749,926
Medical and Physical Requirements	$8,722,884	$140,416	$8,863,300
Training	$13,014	$12,139,003	$12,152,017
WERE Facility Preparedness	$0	$888,248	$888,248
Equipment and PPE	$103,504	$3,407,900	$3,511,404
Vehicle Preparedness and Operation	$38,872	$1,334,575	$1,373,447
WERE Pre-Incident Planning	$184,098	$234,684	$418,782
Incident Management System Development	$56,135	$0	$56,135
Emergency Incident Operations	$0	$17,927	$17,927
Standard Operating Procedures	$368,196	$0	$368,196
Post Incident Analysis	$0	$216,729	$216,729
Program Evaluation	$0	$2,756,023	$2,756,023
Total	**$10,862,067**	**$22,241,138**	**$33,103,205**
Fire Departments			
Career Fire Departments			
Rule Familiarization	$75,793	$0	$75,793
ESO Establishment of ERP and Emergency Service(s) Capability	$2,700,681	$1,069,936	$3,770,618
Team Member and Responder Participation	$0	$269,662	$269,662
WERT and ESO Risk Management Plan	$438,579	$1,310,079	$1,748,659
Medical and Physical Requirements	$17,716,105	$28,938,124	$46,654,229
Training	$30,721	$64,936,817	$64,967,538
ESO Facility Preparedness	$0	$4,155,983	$4,155,983
Equipment and PPE	$242,559	$9,250,059	$9,492,618
Vehicle Preparedness and Operation	$91,190	$3,125,171	$3,216,361
ESO Pre-Incident Planning	$868,542	$1,250,777	$2,119,318
Incident Management System Development	$131,287	$0	$131,287
Emergency Incident Operations	$0	$477,677	$477,677
Standard Operating Procedures	$868,542	$0	$868,542
Post Incident Analysis	$0	$3,041,219	$3,041,219
Program Evaluation	$0	$6,504,400	$6,504,400
Total	**$23,163,999**	**$124,329,905**	**$147,493,904**

	One-Time Annualized, 7%	Annual	Total Annualized, 7%
Volunteer Fire Departments			
Rule Familiarization	$100,808	$0	$100,808
ESO Establishment of ERP and Emergency Service(s) Capability	$3,582,962	$1,414,999	$4,997,962
Team Member and Responder Participation	$0	$356,996	$356,996
WERT and ESO Risk Management Plan	$582,462	$1,733,623	$2,316,085
Medical and Physical Requirements	$34,394,053	$2,106,398	$36,500,451
Training	$40,374	$39,699,661	$39,740,035
ESO Facility Preparedness	$0	$5,509,024	$5,509,024
Equipment and PPE	$320,730	$12,261,552	$12,582,282
Vehicle Preparedness and Operation	$120,561	$4,142,154	$4,262,715
ESO Pre-Incident Planning	$1,122,184	$1,612,539	$2,734,723
Incident Management System Development	$174,314	$0	$174,314
Emergency Incident Operations	$0	$55,489	$55,489
Standard Operating Procedures	$1,122,184	$0	$1,122,184
Post Incident Analysis	$0	$665,293	$665,293
Program Evaluation	$0	$8,318,364	$8,318,364
Total	**$41,560,633**	**$77,876,092**	**$119,436,725**
Mixed Fire Departments			
Rule Familiarization	$38,305	$0	$38,305
ESO Establishment of ERP and Emergency Service(s) Capability	$1,376,268	$548,752	$1,925,020
Team Member and Responder Participation	$0	$138,157	$138,157
WERT and ESO Risk Management Plan	$222,882	$669,134	$892,016
Medical and Physical Requirements	$13,668,041	$5,800,599	$19,468,640
Training	$15,900	$24,049,853	$24,065,753
ESO Facility Preparedness	$0	$2,120,425	$2,120,425
Equipment and PPE	$124,428	$4,719,475	$4,843,902
Vehicle Preparedness and Operation	$46,741	$1,593,169	$1,639,910
ESO Pre-Incident Planning	$452,223	$654,500	$1,106,723
Incident Management System Development	$66,675	$0	$66,675
Emergency Incident Operations	$0	$117,810	$117,810
Standard Operating Procedures	$452,223	$0	$452,223
Post Incident Analysis	$0	$835,516	$835,516
Program Evaluation	$0	$3,391,214	$3,391,214
Total	**$16,463,685**	**$44,638,604**	**$61,102,290**
Fire Departments Total			
Rule Familiarization	$214,906	$0	$214,906
ESO Establishment of ERP and Emergency Service(s) Capability	$7,659,911	$3,033,688	$10,693,600

	One-Time Annualized, 7%	Annual	Total Annualized, 7%
Team Member and Responder Participation	$0	$764,816	$764,816
WERT and ESO Risk Management Plan	$1,243,924	$3,712,836	$4,956,760
Medical and Physical Requirements	$65,778,199	$36,845,121	$102,623,320
Training	$86,995	$128,686,331	$128,773,326
ESO Facility Preparedness	$0	$11,785,432	$11,785,432
Equipment and PPE	$687,716	$26,231,085	$26,918,801
Vehicle Preparedness and Operation	$258,491	$8,860,495	$9,118,986
ESO Pre-Incident Planning	$2,442,949	$3,517,815	$5,960,764
Incident Management System Development	$372,277	$0	$372,277
Emergency Incident Operations	$0	$650,975	$650,975
Standard Operating Procedures	$2,442,949	$0	$2,442,949
Post Incident Analysis	$0	$4,542,029	$4,542,029
Program Evaluation	$0	$18,213,977	$18,213,977
Total	**$81,188,318**	**$246,844,602**	**$328,032,919**
Wildland Firefighting Services			
Career Wildland Firefighting ESOs			
Rule Familiarization	$9,249	$0	$9,249
ESO Establishment of ERP and Emergency Service(s) Capability	$316,338	$122,122	$438,460
Team Member and Responder Participation	$0	$30,889	$30,889
WERT and ESO Risk Management Plan	$51,942	$152,349	$204,291
Medical and Physical Requirements	$3,636,332	$6,393,251	$10,029,584
Training	$3,385	$14,122,292	$14,125,678
ESO Facility Preparedness	$0	$484,607	$484,607
Equipment and PPE	$27,669	$1,078,600	$1,106,269
Vehicle Preparedness and Operation	$10,458	$366,331	$376,789
ESO Pre-Incident Planning	$94,682	$133,370	$228,052
Incident Management System Development	$15,621	$0	$15,621
Emergency Incident Operations	$0	$7,261	$7,261
Standard Operating Procedures	$94,682	$0	$94,682
Post Incident Analysis	$0	$73,800	$73,800
Program Evaluation	$0	$706,928	$706,928
Total	**$4,260,357**	**$23,671,803**	**$27,932,160**
Volunteer Wildland Firefighting ESOs			
Rule Familiarization	$142	$0	$142
ESO Establishment of ERP and Emergency Service(s) Capability	$5,887	$2,276	$8,163
Team Member and Responder Participation	$0	$589	$589
WERT and ESO Risk Management Plan	$972	$2,845	$3,817

	One-Time Annualized, 7%	Annual	Total Annualized, 7%
Medical and Physical Requirements	$4,453,858	$525,146	$4,979,004
Training	$68	$12,165,646	$12,165,714
ESO Facility Preparedness	$0	$8,985	$8,985
Equipment and PPE	$512	$19,997	$20,509
Vehicle Preparedness and Operation	$188	$6,589	$6,776
ESO Pre-Incident Planning	$2,260	$3,175	$5,434
Incident Management System Development	$281	$0	$281
Emergency Incident Operations	$0	$1,025	$1,025
Standard Operating Procedures	$2,260	$0	$2,260
Post Incident Analysis	$0	$8,289	$8,289
Program Evaluation	$0	$21,112	$21,112
Total	**$4,466,428**	**$12,765,674**	**$17,232,102**
Wildland Firefighting Total			
Rule Familiarization	$9,391	$0	$9,391
ESO Establishment of ERP and Emergency Service(s) Capability	$322,225	$124,398	$446,624
Team Member and Responder Participation	$0	$31,479	$31,479
WERT and ESO Risk Management Plan	$52,914	$155,195	$208,109
Medical and Physical Requirements	$8,090,190	$6,918,397	$15,008,587
Training	$3,453	$26,287,939	$26,291,392
ESO Facility Preparedness	$0	$493,592	$493,592
Equipment and PPE	$28,181	$1,098,597	$1,126,778
Vehicle Preparedness and Operation	$10,645	$372,920	$383,565
ESO Pre-Incident Planning	$96,942	$136,545	$233,487
Incident Management System Development	$15,902	$0	$15,902
Emergency Incident Operations	$0	$8,287	$8,287
Standard Operating Procedures	$96,942	$0	$96,942
Post Incident Analysis	$0	$82,090	$82,090
Program Evaluation	$0	$728,040	$728,040
Total	**$8,726,785**	**$36,437,477**	**$45,164,262**
Emergency Medical Services			
Career Emergency Medical Services ESOs			
Rule Familiarization	$45,292	$0	$45,292
ESO Establishment of ERP and Emergency Service(s) Capability	$1,582,455	$618,063	$2,200,518
Team Member and Responder Participation	$0	$130,680	$130,680
WERT and ESO Risk Management Plan	$258,670	$765,870	$1,024,539
Medical and Physical Requirements	$17,103,833	$147,807	$17,251,640
Training	$17,444	$41,880,573	$41,898,017

	One-Time Annualized, 7%	Annual	Total Annualized, 7%
ESO Facility Preparedness	$0	$491,854	$491,854
Equipment and PPE	$24,379	$3,799,716	$3,824,096
Vehicle Preparedness and Operation	$52,792	$1,831,591	$1,884,383
ESO Pre-Incident Planning	$497,929	$708,379	$1,206,308
Incident Management System Development	$77,597	$0	$77,597
Emergency Incident Operations	$0	$5,769,083	$5,769,083
Standard Operating Procedures	$497,929	$0	$497,929
Post Incident Analysis	$0	$8,002,159	$8,002,159
Program Evaluation	$0	$3,774,436	$3,774,436
Total	**$20,158,320**	**$67,920,210**	**$88,078,531**
Volunteer Emergency Medical Services ESOs			
Rule Familiarization	$24,520	$0	$24,520
ESO Establishment of ERP and Emergency Service(s) Capability	$856,854	$334,679	$1,191,534
Team Member and Responder Participation	$0	$70,761	$70,761
WERT and ESO Risk Management Plan	$140,065	$414,764	$554,829
Medical and Physical Requirements	$9,543,692	$80,085	$9,623,778
Training	$9,449	$23,516,412	$23,525,862
ESO Facility Preparedness	$0	$266,336	$266,336
Equipment and PPE	$13,192	$2,057,491	$2,070,684
Vehicle Preparedness and Operation	$28,586	$991,776	$1,020,363
ESO Pre-Incident Planning	$270,158	$384,345	$654,503
Incident Management System Development	$42,017	$0	$42,017
Emergency Incident Operations	$0	$3,210,860	$3,210,860
Standard Operating Procedures	$270,158	$0	$270,158
Post Incident Analysis	$0	$4,468,519	$4,468,519
Program Evaluation	$0	$2,050,495	$2,050,495
Total	**$11,198,692**	**$37,846,526**	**$49,045,218**
Mixed Emergency Medical Services ESOs			
Rule Familiarization	$47,676	$0	$47,676
ESO Establishment of ERP and Emergency Service(s) Capability	$1,665,742	$650,592	$2,316,335
Team Member and Responder Participation	$0	$137,558	$137,558
WERT and ESO Risk Management Plan	$272,284	$806,179	$1,078,462
Medical and Physical Requirements	$16,862,435	$155,586	$17,018,022
Training	$18,362	$41,113,375	$41,131,738
ESO Facility Preparedness	$0	$517,741	$517,741
Equipment and PPE	$25,663	$3,999,701	$4,025,364
Vehicle Preparedness and Operation	$55,570	$1,927,991	$1,983,561

	One-Time Annualized, 7%	Annual	Total Annualized, 7%
ESO Pre-Incident Planning	$524,136	$745,662	$1,269,798
Incident Management System Development	$81,681	$0	$81,681
Emergency Incident Operations	$0	$6,072,719	$6,072,719
Standard Operating Procedures	$524,136	$0	$524,136
Post Incident Analysis	$0	$8,423,326	$8,423,326
Program Evaluation	$0	$3,973,090	$3,973,090
Total	**$20,077,685**	**$68,523,520**	**$88,601,204**
Emergency Medical Services Total			
Rule Familiarization	$117,487	$0	$117,487
ESO Establishment of ERP and Emergency Service(s) Capability	$4,105,052	$1,603,334	$5,708,386
Team Member and Responder Participation	$0	$338,999	$338,999
WERT and ESO Risk Management Plan	$671,018	$1,986,813	$2,657,831
Medical and Physical Requirements	$43,509,961	$383,479	$43,893,440
Training	$45,256	$106,510,361	$106,555,617
ESO Facility Preparedness	$0	$1,275,931	$1,275,931
Equipment and PPE	$63,234	$9,856,909	$9,920,144
Vehicle Preparedness and Operation	$136,949	$4,751,358	$4,888,307
ESO Pre-Incident Planning	$1,292,223	$1,838,386	$3,130,608
Incident Management System Development	$201,295	$0	$201,295
Emergency Incident Operations	$0	$15,052,662	$15,052,662
Standard Operating Procedures	$1,292,223	$0	$1,292,223
Post Incident Analysis	$0	$20,894,004	$20,894,004
Program Evaluation	$0	$9,798,021	$9,798,021
Total	**$51,434,697**	**$174,290,256**	**$225,724,953**
Technical Search and Rescue Groups			
Career Technical Search and Rescue ESOs			
Rule Familiarization	$2,432	$0	$2,432
ESO Establishment of ERP and Emergency Service(s) Capability	$88,040	$34,529	$122,570
Team Member and Responder Participation	$0	$6,426	$6,426
WERT and ESO Risk Management Plan	$14,404	$43,019	$57,423
Medical and Physical Requirements	$1,247,713	$8,489	$1,256,202
Training	$997	$2,453,601	$2,454,598
ESO Facility Preparedness	$0	$27,453	$27,453
Equipment and PPE	$1,291	$202,383	$203,675
Vehicle Preparedness and Operation	$2,934	$101,571	$104,505
ESO Pre-Incident Planning	$31,118	$44,308	$75,427
Incident Management System Development	$4,297	$0	$4,297

	One-Time Annualized, 7%	Annual	Total Annualized, 7%
Emergency Incident Operations	$0	$2,551	$2,551
Standard Operating Procedures	$31,118	$0	$31,118
Post Incident Analysis	$0	$25,023	$25,023
Program Evaluation	$0	$255,544	$255,544
Total	**$1,424,345**	**$3,204,897**	**$4,629,242**
Volunteer Technical Search and Rescue ESOs			
Rule Familiarization	$33,547	$0	$33,547
ESO Establishment of ERP and Emergency Service(s) Capability	$1,233,565	$483,501	$1,717,066
Team Member and Responder Participation	$0	$91,873	$91,873
WERT and ESO Risk Management Plan	$202,075	$603,946	$806,022
Medical and Physical Requirements	$5,560,787	$120,445	$5,681,232
Training	$14,027	$13,069,649	$13,083,676
ESO Facility Preparedness	$0	$384,229	$384,229
Equipment and PPE	$17,920	$2,854,651	$2,872,571
Vehicle Preparedness and Operation	$40,964	$1,419,793	$1,460,757
ESO Pre-Incident Planning	$449,341	$638,882	$1,088,223
Incident Management System Development	$60,109	$0	$60,109
Emergency Incident Operations	$0	$31,342	$31,342
Standard Operating Procedures	$449,341	$0	$449,341
Post Incident Analysis	$0	$334,470	$334,470
Program Evaluation	$0	$3,789,179	$3,789,179
Total	**$8,061,677**	**$23,821,962**	**$31,883,638**
Technical Search and Rescue Total			
Rule Familiarization	$35,979	$0	$35,979
ESO Establishment of ERP and Emergency Service(s) Capability	$1,321,605	$518,031	$1,839,636
Team Member and Responder Participation	$0	$98,299	$98,299
WERT and ESO Risk Management Plan	$216,479	$646,965	$863,445
Medical and Physical Requirements	$6,808,500	$128,935	$6,937,434
Training	$15,023	$15,523,250	$15,538,274
ESO Facility Preparedness	$0	$411,682	$411,682
Equipment and PPE	$19,211	$3,057,035	$3,076,246
Vehicle Preparedness and Operation	$43,898	$1,521,364	$1,565,261
ESO Pre-Incident Planning	$480,460	$683,190	$1,163,650
Incident Management System Development	$64,406	$0	$64,406
Emergency Incident Operations	$0	$33,893	$33,893
Standard Operating Procedures	$480,460	$0	$480,460
Post Incident Analysis	$0	$359,493	$359,493

	One-Time Annualized, 7%	Annual	Total Annualized, 7%
Program Evaluation	$0	$4,044,723	$4,044,723
Total	**$9,486,022**	**$27,026,859**	**$36,512,880**
Total for All Responder Groups			
Rule Familiarization	$410,030	$0	$410,030
Organization of the WERT and Establishment of the ERP and Emergency Service(s) Capability	$1,155,299	$456,809	$1,612,108
ESO Establishment of ERP and Emergency Service(s) Capability	$13,408,794	$5,279,451	$18,688,245
Team Member and Responder Participation	$0	$1,320,291	$1,320,291
WERT and ESO Risk Management Plan	$2,372,134	$7,063,936	$9,436,070
Medical and Physical Requirements	$132,909,734	$44,416,347	$177,326,081
Training	$163,741	$289,146,883	$289,310,625
WERE Facility Preparedness	$0	$888,248	$888,248
ESO Facility Preparedness	$0	$13,966,637	$13,966,637
Equipment and PPE	$901,846	$43,651,527	$44,553,373
Vehicle Preparedness and Operation	$488,855	$16,840,711	$17,329,566
WERE Pre-Incident Planning	$184,098	$234,684	$418,782
ESO Pre-Incident Planning	$4,312,573	$6,175,936	$10,488,509
Incident Management System Development	$710,014	$0	$710,014
Emergency Incident Operations	$0	$15,763,744	$15,763,744
Standard Operating Procedures	$4,680,769	$0	$4,680,769
Post Incident Analysis	$0	$26,094,344	$26,094,344
Program Evaluation	$0	$35,540,783	$35,540,783
Total	**$161,697,888**	**$506,840,331**	**$668,538,219**

Source: OSHA.

Note: Figures in rows may not add to totals due to rounding.

Table VII-C-17. Total Cost Summary by Provision - All Organizations, 0 Percent Discount Rate

	One-Time Annualized, 0%	Annual	Total Annualized, 0%
WEREs			
Rule Familiarization	$22,663	$0	$22,663
Organization of the WERT and Establishment of the ERP and Emergency Service(s) Capability	$811,434	$456,809	$1,268,243
Team Member and Responder Participation	$0	$86,698	$86,698
WERT and ESO Risk Management Plan	$131,903	$562,127	$694,029
Medical and Physical Requirements	$8,487,315	$140,416	$8,627,731
Training	$9,141	$12,139,003	$12,148,143
WERE Facility Preparedness	$0	$888,248	$888,248
Equipment and PPE	$72,697	$3,407,900	$3,480,597
Vehicle Preparedness and Operation	$27,302	$1,334,575	$1,361,877
WERE Pre-Incident Planning	$129,303	$234,684	$363,986
Incident Management System Development	$39,427	$0	$39,427
Emergency Incident Operations	$0	$17,927	$17,927
Standard Operating Procedures	$258,605	$0	$258,605
Post Incident Analysis	$0	$216,729	$216,729
Program Evaluation	$0	$2,756,023	$2,756,023
Total	**$9,989,788**	**$22,241,138**	**$32,230,926**
Fire Departments			
Career Fire Departments			
Rule Familiarization	$53,234	$0	$53,234
ESO Establishment of ERP and Emergency Service(s) Capability	$1,896,846	$1,069,936	$2,966,782
Team Member and Responder Participation	$0	$269,662	$269,662
WERT and ESO Risk Management Plan	$308,040	$1,310,079	$1,618,119
Medical and Physical Requirements	$17,125,735	$28,938,124	$46,063,859
Training	$21,577	$64,936,817	$64,958,395
ESO Facility Preparedness	$0	$4,155,983	$4,155,983
Equipment and PPE	$170,363	$9,250,059	$9,420,422
Vehicle Preparedness and Operation	$64,048	$3,125,171	$3,189,219
ESO Pre-Incident Planning	$610,027	$1,250,777	$1,860,804
Incident Management System Development	$92,211	$0	$92,211
Emergency Incident Operations	$0	$477,677	$477,677
Standard Operating Procedures	$610,027	$0	$610,027
Post Incident Analysis	$0	$3,041,219	$3,041,219
Program Evaluation	$0	$6,504,400	$6,504,400
Total	**$20,952,108**	**$124,329,905**	**$145,282,013**

	One-Time Annualized, 0%	Annual	Total Annualized, 0%
Volunteer Fire Departments			
Rule Familiarization	$70,804	$0	$70,804
ESO Establishment of ERP and Emergency Service(s) Capability	$2,516,523	$1,414,999	$3,931,522
Team Member and Responder Participation	$0	$356,996	$356,996
WERT and ESO Risk Management Plan	$409,097	$1,733,623	$2,142,720
Medical and Physical Requirements	$33,393,743	$2,106,398	$35,500,141
Training	$28,357	$39,699,661	$39,728,018
ESO Facility Preparedness	$0	$5,509,024	$5,509,024
Equipment and PPE	$225,267	$12,261,552	$12,486,819
Vehicle Preparedness and Operation	$84,677	$4,142,154	$4,226,831
ESO Pre-Incident Planning	$788,175	$1,612,539	$2,400,714
Incident Management System Development	$122,431	$0	$122,431
Emergency Incident Operations	$0	$55,489	$55,489
Standard Operating Procedures	$788,175	$0	$788,175
Post Incident Analysis	$0	$665,293	$665,293
Program Evaluation	$0	$8,318,364	$8,318,364
Total	**$38,427,249**	**$77,876,092**	**$116,303,341**
Mixed Fire Departments			
Rule Familiarization	$26,904	$0	$26,904
ESO Establishment of ERP and Emergency Service(s) Capability	$966,633	$548,752	$1,515,385
Team Member and Responder Participation	$0	$138,157	$138,157
WERT and ESO Risk Management Plan	$156,543	$669,134	$825,677
Medical and Physical Requirements	$13,270,499	$5,800,599	$19,071,098
Training	$11,167	$24,049,853	$24,061,020
ESO Facility Preparedness	$0	$2,120,425	$2,120,425
Equipment and PPE	$87,393	$4,719,475	$4,806,867
Vehicle Preparedness and Operation	$32,829	$1,593,169	$1,625,998
ESO Pre-Incident Planning	$317,623	$654,500	$972,122
Incident Management System Development	$46,830	$0	$46,830
Emergency Incident Operations	$0	$117,810	$117,810
Standard Operating Procedures	$317,623	$0	$317,623
Post Incident Analysis	$0	$835,516	$835,516
Program Evaluation	$0	$3,391,214	$3,391,214
Total	**$15,234,043**	**$44,638,604**	**$59,872,647**
Fire Departments Total			
Rule Familiarization	$150,941	$0	$150,941
ESO Establishment of ERP and Emergency Service(s) Capability	$5,380,001	$3,033,688	$8,413,690

	One-Time Annualized, 0%	Annual	Total Annualized, 0%
Team Member and Responder Participation	$0	$764,816	$764,816
WERT and ESO Risk Management Plan	$873,680	$3,712,836	$4,586,516
Medical and Physical Requirements	$63,789,977	$36,845,121	$100,635,098
Training	$61,101	$128,686,331	$128,747,433
ESO Facility Preparedness	$0	$11,785,432	$11,785,432
Equipment and PPE	$483,023	$26,231,085	$26,714,108
Vehicle Preparedness and Operation	$181,553	$8,860,495	$9,042,048
ESO Pre-Incident Planning	$1,715,825	$3,517,815	$5,233,641
Incident Management System Development	$261,471	$0	$261,471
Emergency Incident Operations	$0	$650,975	$650,975
Standard Operating Procedures	$1,715,825	$0	$1,715,825
Post Incident Analysis	$0	$4,542,029	$4,542,029
Program Evaluation	$0	$18,213,977	$18,213,977
Total	**$74,613,399**	**$246,844,602**	**$321,458,001**
Wildland Firefighting Services			
Career Wildland Firefighting ESOs			
Rule Familiarization	$6,496	$0	$6,496
ESO Establishment of ERP and Emergency Service(s) Capability	$222,183	$122,122	$344,305
Team Member and Responder Participation	$0	$30,889	$30,889
WERT and ESO Risk Management Plan	$36,482	$152,349	$188,831
Medical and Physical Requirements	$3,530,266	$6,393,251	$9,923,517
Training	$2,378	$14,122,292	$14,124,670
ESO Facility Preparedness	$0	$484,607	$484,607
Equipment and PPE	$19,434	$1,078,600	$1,098,034
Vehicle Preparedness and Operation	$7,345	$366,331	$373,676
ESO Pre-Incident Planning	$66,500	$133,370	$199,871
Incident Management System Development	$10,971	$0	$10,971
Emergency Incident Operations	$0	$7,261	$7,261
Standard Operating Procedures	$66,500	$0	$66,500
Post Incident Analysis	$0	$73,800	$73,800
Program Evaluation	$0	$706,928	$706,928
Total	**$3,968,554**	**$23,671,803**	**$27,640,357**
Volunteer Wildland Firefighting ESOs			
Rule Familiarization	$100	$0	$100
ESO Establishment of ERP and Emergency Service(s) Capability	$4,135	$2,276	$6,411
Team Member and Responder Participation	$0	$589	$589
WERT and ESO Risk Management Plan	$683	$2,845	$3,528

	One-Time Annualized, 0%	Annual	Total Annualized, 0%
Medical and Physical Requirements	$4,352,656	$525,146	$4,877,802
Training	$48	$12,165,646	$12,165,694
ESO Facility Preparedness	$0	$8,985	$8,985
Equipment and PPE	$359	$19,997	$20,357
Vehicle Preparedness and Operation	$132	$6,589	$6,720
ESO Pre-Incident Planning	$1,587	$3,175	$4,762
Incident Management System Development	$198	$0	$198
Emergency Incident Operations	$0	$1,025	$1,025
Standard Operating Procedures	$1,587	$0	$1,587
Post Incident Analysis	$0	$8,289	$8,289
Program Evaluation	$0	$21,112	$21,112
Total	**$4,361,485**	**$12,765,674**	**$17,127,159**
Wildland Firefighting Total			
Rule Familiarization	$6,596	$0	$6,596
ESO Establishment of ERP and Emergency Service(s) Capability	$226,317	$124,398	$350,716
Team Member and Responder Participation	$0	$31,479	$31,479
WERT and ESO Risk Management Plan	$37,165	$155,195	$192,359
Medical and Physical Requirements	$7,882,922	$6,918,397	$14,801,319
Training	$2,426	$26,287,939	$26,290,364
ESO Facility Preparedness	$0	$493,592	$493,592
Equipment and PPE	$19,793	$1,098,597	$1,118,390
Vehicle Preparedness and Operation	$7,477	$372,920	$380,397
ESO Pre-Incident Planning	$68,088	$136,545	$204,633
Incident Management System Development	$11,169	$0	$11,169
Emergency Incident Operations	$0	$8,287	$8,287
Standard Operating Procedures	$68,088	$0	$68,088
Post Incident Analysis	$0	$82,090	$82,090
Program Evaluation	$0	$728,040	$728,040
Total	**$8,330,040**	**$36,437,477**	**$44,767,517**
Emergency Medical Services			
Career Emergency Medical Services ESOs			
Rule Familiarization	$31,811	$0	$31,811
ESO Establishment of ERP and Emergency Service(s) Capability	$1,111,450	$618,063	$1,729,513
Team Member and Responder Participation	$0	$130,680	$130,680
WERT and ESO Risk Management Plan	$181,679	$765,870	$947,548
Medical and Physical Requirements	$16,623,534	$147,807	$16,771,341
Training	$12,252	$41,880,573	$41,892,825

	One-Time Annualized, 0%	Annual	Total Annualized, 0%
ESO Facility Preparedness	$0	$491,854	$491,854
Equipment and PPE	$17,123	$3,799,716	$3,816,839
Vehicle Preparedness and Operation	$37,079	$1,831,591	$1,868,670
ESO Pre-Incident Planning	$349,724	$708,379	$1,058,103
Incident Management System Development	$54,501	$0	$54,501
Emergency Incident Operations	$0	$5,769,083	$5,769,083
Standard Operating Procedures	$349,724	$0	$349,724
Post Incident Analysis	$0	$8,002,159	$8,002,159
Program Evaluation	$0	$3,774,436	$3,774,436
Total	**$18,768,878**	**$67,920,210**	**$86,689,088**
Volunteer Emergency Medical Services ESOs			
Rule Familiarization	$17,222	$0	$17,222
ESO Establishment of ERP and Emergency Service(s) Capability	$601,819	$334,679	$936,498
Team Member and Responder Participation	$0	$70,761	$70,761
WERT and ESO Risk Management Plan	$98,376	$414,764	$513,140
Medical and Physical Requirements	$9,277,290	$80,085	$9,357,375
Training	$6,637	$23,516,412	$23,523,049
ESO Facility Preparedness	$0	$266,336	$266,336
Equipment and PPE	$9,266	$2,057,491	$2,066,757
Vehicle Preparedness and Operation	$20,078	$991,776	$1,011,854
ESO Pre-Incident Planning	$189,748	$384,345	$574,092
Incident Management System Development	$29,511	$0	$29,511
Emergency Incident Operations	$0	$3,210,860	$3,210,860
Standard Operating Procedures	$189,748	$0	$189,748
Post Incident Analysis	$0	$4,468,519	$4,468,519
Program Evaluation	$0	$2,050,495	$2,050,495
Total	**$10,439,692**	**$37,846,526**	**$48,286,218**
Mixed Emergency Medical Services ESOs			
Rule Familiarization	$33,485	$0	$33,485
ESO Establishment of ERP and Emergency Service(s) Capability	$1,169,948	$650,592	$1,820,540
Team Member and Responder Participation	$0	$137,558	$137,558
WERT and ESO Risk Management Plan	$191,241	$806,179	$997,419
Medical and Physical Requirements	$16,382,449	$155,586	$16,538,035
Training	$12,897	$41,113,375	$41,126,272
ESO Facility Preparedness	$0	$517,741	$517,741
Equipment and PPE	$18,024	$3,999,701	$4,017,726
Vehicle Preparedness and Operation	$39,030	$1,927,991	$1,967,021

	One-Time Annualized, 0%	Annual	Total Annualized, 0%
ESO Pre-Incident Planning	$368,131	$745,662	$1,113,793
Incident Management System Development	$57,369	$0	$57,369
Emergency Incident Operations	$0	$6,072,719	$6,072,719
Standard Operating Procedures	$368,131	$0	$368,131
Post Incident Analysis	$0	$8,423,326	$8,423,326
Program Evaluation	$0	$3,973,090	$3,973,090
Total	**$18,640,705**	**$68,523,520**	**$87,164,225**
Emergency Medical Services Total			
Rule Familiarization	$82,518	$0	$82,518
ESO Establishment of ERP and Emergency Service(s) Capability	$2,883,217	$1,603,334	$4,486,551
Team Member and Responder Participation	$0	$338,999	$338,999
WERT and ESO Risk Management Plan	$471,295	$1,986,813	$2,458,108
Medical and Physical Requirements	$42,283,272	$383,479	$42,666,751
Training	$31,786	$106,510,361	$106,542,147
ESO Facility Preparedness	$0	$1,275,931	$1,275,931
Equipment and PPE	$44,413	$9,856,909	$9,901,322
Vehicle Preparedness and Operation	$96,187	$4,751,358	$4,847,545
ESO Pre-Incident Planning	$907,603	$1,838,386	$2,745,989
Incident Management System Development	$141,381	$0	$141,381
Emergency Incident Operations	$0	$15,052,662	$15,052,662
Standard Operating Procedures	$907,603	$0	$907,603
Post Incident Analysis	$0	$20,894,004	$20,894,004
Program Evaluation	$0	$9,798,021	$9,798,021
Total	**$47,849,276**	**$174,290,256**	**$222,139,532**
Technical Search and Rescue Groups			
Career Technical Search and Rescue ESOs			
Rule Familiarization	$1,708	$0	$1,708
ESO Establishment of ERP and Emergency Service(s) Capability	$61,836	$34,529	$96,365
Team Member and Responder Participation	$0	$6,426	$6,426
WERT and ESO Risk Management Plan	$10,117	$43,019	$53,136
Medical and Physical Requirements	$1,213,988	$8,489	$1,222,478
Training	$700	$2,453,601	$2,454,301
ESO Facility Preparedness	$0	$27,453	$27,453
Equipment and PPE	$907	$202,383	$203,290
Vehicle Preparedness and Operation	$2,061	$101,571	$103,631
ESO Pre-Incident Planning	$21,856	$44,308	$66,164
Incident Management System Development	$3,018	$0	$3,018

	One-Time Annualized, 0%	Annual	Total Annualized, 0%
Emergency Incident Operations	$0	$2,551	$2,551
Standard Operating Procedures	$21,856	$0	$21,856
Post Incident Analysis	$0	$25,023	$25,023
Program Evaluation	$0	$255,544	$255,544
Total	**$1,338,047**	**$3,204,897**	**$4,542,944**
Volunteer Technical Search and Rescue ESOs			
Rule Familiarization	$23,562	$0	$23,562
ESO Establishment of ERP and Emergency Service(s) Capability	$866,404	$483,501	$1,349,906
Team Member and Responder Participation	$0	$91,873	$91,873
WERT and ESO Risk Management Plan	$141,929	$603,946	$745,876
Medical and Physical Requirements	$5,358,052	$120,445	$5,478,497
Training	$9,852	$13,069,649	$13,079,501
ESO Facility Preparedness	$0	$384,229	$384,229
Equipment and PPE	$12,586	$2,854,651	$2,867,238
Vehicle Preparedness and Operation	$28,771	$1,419,793	$1,448,564
ESO Pre-Incident Planning	$315,599	$638,882	$954,481
Incident Management System Development	$42,218	$0	$42,218
Emergency Incident Operations	$0	$31,342	$31,342
Standard Operating Procedures	$315,599	$0	$315,599
Post Incident Analysis	$0	$334,470	$334,470
Program Evaluation	$0	$3,789,179	$3,789,179
Total	**$7,114,572**	**$23,821,962**	**$30,936,534**
Technical Search and Rescue Total			
Rule Familiarization	$25,270	$0	$25,270
ESO Establishment of ERP and Emergency Service(s) Capability	$928,240	$518,031	$1,446,271
Team Member and Responder Participation	$0	$98,299	$98,299
WERT and ESO Risk Management Plan	$152,046	$646,965	$799,011
Medical and Physical Requirements	$6,572,040	$128,935	$6,700,975
Training	$10,552	$15,523,250	$15,533,802
ESO Facility Preparedness	$0	$411,682	$411,682
Equipment and PPE	$13,493	$3,057,035	$3,070,528
Vehicle Preparedness and Operation	$30,832	$1,521,364	$1,552,196
ESO Pre-Incident Planning	$337,455	$683,190	$1,020,645
Incident Management System Development	$45,236	$0	$45,236
Emergency Incident Operations	$0	$33,893	$33,893
Standard Operating Procedures	$337,455	$0	$337,455
Post Incident Analysis	$0	$359,493	$359,493

	One-Time Annualized, 0%	Annual	Total Annualized, 0%
Program Evaluation	$0	$4,044,723	$4,044,723
Total	**$8,452,619**	**$27,026,859**	**$35,479,478**
Total for All Responder Groups			
Rule Familiarization	$287,988	$0	$287,988
Organization of the WERT and Establishment of the ERP and Emergency Service(s) Capability	$811,434	$456,809	$1,268,243
ESO Establishment of ERP and Emergency Service(s) Capability	$9,417,776	$5,279,451	$14,697,227
Team Member and Responder Participation	$0	$1,320,291	$1,320,291
WERT and ESO Risk Management Plan	$1,666,088	$7,063,936	$8,730,024
Medical and Physical Requirements	$129,015,527	$44,416,347	$173,431,875
Training	$115,005	$289,146,883	$289,261,889
WERE Facility Preparedness	$0	$888,248	$888,248
ESO Facility Preparedness	$0	$13,966,637	$13,966,637
Equipment and PPE	$633,419	$43,651,527	$44,284,946
Vehicle Preparedness and Operation	$343,351	$16,840,711	$17,184,062
WERE Pre-Incident Planning	$129,303	$234,684	$363,986
ESO Pre-Incident Planning	$3,028,971	$6,175,936	$9,204,907
Incident Management System Development	$498,684	$0	$498,684
Emergency Incident Operations	$0	$15,763,744	$15,763,744
Standard Operating Procedures	$3,287,576	$0	$3,287,576
Post Incident Analysis	$0	$26,094,344	$26,094,344
Program Evaluation	$0	$35,540,783	$35,540,783
Total	**$149,235,122**	**$506,840,331**	**$656,075,453**

Source: OSHA.
Note: Figures in rows may not add to totals due to rounding.

Table VII-C-18. Total Cost Summary by Provision - Organizations Considered Small by SBA/RFA Definitions, 3 Percent Discount Rate

	One-Time Annualized, 3%	Annual	Total Annualized, 3%
WEREs			
Rule Familiarization	$26,567	$0	$26,567
Organization of the WERT and Establishment of the ERP and Emergency Service(s) Capability	$951,248	$456,809	$1,408,057
Team Member and Responder Participation	$0	$86,698	$86,698
WERT and ESO Risk Management Plan	$154,630	$562,127	$716,757
Medical and Physical Requirements	$142,874	$8,689,778	$8,832,652
Training	$10,716	$12,139,003	$12,149,718
WERE Facility Preparedness	$0	$888,248	$888,248
Equipment and PPE	$85,223	$3,407,900	$3,493,123
Vehicle Preparedness and Operation	$32,006	$1,334,575	$1,366,581
WERE Pre-Incident Planning	$151,582	$234,684	$386,266
Incident Management System Development	$46,220	$0	$46,220
Emergency Incident Operations	$0	$17,927	$17,927
Standard Operating Procedures	$303,164	$0	$303,164
Post Incident Analysis	$0	$216,729	$216,729
Program Evaluation	$0	$2,756,023	$2,756,023
Total	**$1,904,231**	**$30,790,499**	**$32,694,730**
Fire Departments			
Career Fire Departments			
Rule Familiarization	$51,420	$0	$51,420
ESO Establishment of ERP and Emergency Service(s) Capability	$1,842,835	$887,593	$2,730,428
Team Member and Responder Participation	$0	$223,829	$223,829
WERT and ESO Risk Management Plan	$298,958	$1,081,496	$1,380,454
Medical and Physical Requirements	$470,617	$21,865,052	$22,335,669
Training	$20,973	$30,810,465	$30,831,438
ESO Facility Preparedness	$0	$3,443,293	$3,443,293
Equipment and PPE	$165,668	$7,663,810	$7,829,479
Vehicle Preparedness and Operation	$62,189	$2,585,395	$2,647,583
ESO Pre-Incident Planning	$576,629	$1,010,170	$1,586,799
Incident Management System Development	$89,355	$0	$89,355
Emergency Incident Operations	$0	$395,891	$395,891
Standard Operating Procedures	$576,629	$0	$576,629
Post Incident Analysis	$0	$2,427,977	$2,427,977
Program Evaluation	$0	$5,162,786	$5,162,786

	One-Time Annualized, 3%	Annual	Total Annualized, 3%
Total	**$4,155,273**	**$77,557,756**	**$81,713,029**
Volunteer Fire Departments			
Rule Familiarization	$82,638	$0	$82,638
ESO Establishment of ERP and Emergency Service(s) Capability	$2,936,930	$1,408,788	$4,345,718
Team Member and Responder Participation	$0	$355,446	$355,446
WERT and ESO Risk Management Plan	$477,408	$1,725,872	$2,203,280
Medical and Physical Requirements	$748,927	$34,900,661	$35,649,588
Training	$33,097	$38,490,404	$38,523,501
ESO Facility Preparedness	$0	$5,484,292	$5,484,292
Equipment and PPE	$262,920	$12,206,504	$12,469,424
Vehicle Preparedness and Operation	$98,831	$4,123,606	$4,222,437
ESO Pre-Incident Planning	$919,245	$1,604,445	$2,523,690
Incident Management System Development	$142,875	$0	$142,875
Emergency Incident Operations	$0	$55,242	$55,242
Standard Operating Procedures	$919,245	$0	$919,245
Post Incident Analysis	$0	$662,140	$662,140
Program Evaluation	$0	$8,267,686	$8,267,686
Total	**$6,622,117**	**$109,285,085**	**$115,907,202**
Mixed Fire Departments			
Rule Familiarization	$28,628	$0	$28,628
ESO Establishment of ERP and Emergency Service(s) Capability	$1,030,014	$500,259	$1,530,272
Team Member and Responder Participation	$0	$125,850	$125,850
WERT and ESO Risk Management Plan	$166,480	$605,805	$772,284
Medical and Physical Requirements	$264,085	$12,727,473	$12,991,558
Training	$11,983	$15,127,510	$15,139,494
ESO Facility Preparedness	$0	$1,927,980	$1,927,980
Equipment and PPE	$93,421	$4,291,146	$4,384,567
Vehicle Preparedness and Operation	$35,077	$1,447,919	$1,482,996
ESO Pre-Incident Planning	$332,885	$587,133	$920,018
Incident Management System Development	$49,793	$0	$49,793
Emergency Incident Operations	$0	$106,980	$106,980
Standard Operating Procedures	$332,885	$0	$332,885
Post Incident Analysis	$0	$740,343	$740,343
Program Evaluation	$0	$2,981,304	$2,981,304
Total	**$2,345,252**	**$41,169,701**	**$43,514,953**
Fire Departments Total			
Rule Familiarization	$162,686	$0	$162,686

	One-Time Annualized, 3%	Annual	Total Annualized, 3%
ESO Establishment of ERP and Emergency Service(s) Capability	$5,809,779	$2,796,639	$8,606,419
Team Member and Responder Participation	$0	$705,125	$705,125
WERT and ESO Risk Management Plan	$942,846	$3,413,172	$4,356,018
Medical and Physical Requirements	$1,483,629	$69,493,186	$70,976,815
Training	$66,053	$84,428,379	$84,494,433
ESO Facility Preparedness	$0	$10,855,565	$10,855,565
Equipment and PPE	$522,010	$24,161,460	$24,683,470
Vehicle Preparedness and Operation	$196,098	$8,156,919	$8,353,017
ESO Pre-Incident Planning	$1,828,759	$3,201,747	$5,030,507
Incident Management System Development	$282,022	$0	$282,022
Emergency Incident Operations	$0	$558,114	$558,114
Standard Operating Procedures	$1,828,759	$0	$1,828,759
Post Incident Analysis	$0	$3,830,459	$3,830,459
Program Evaluation	$0	$16,411,776	$16,411,776
Total	**$13,122,642**	**$228,012,542**	**$241,135,184**
Wildland Firefighting Services			
Career Wildland Firefighting ESOs			
Rule Familiarization	$7,417	$0	$7,417
ESO Establishment of ERP and Emergency Service(s) Capability	$252,859	$118,549	$371,409
Team Member and Responder Participation	$0	$29,975	$29,975
WERT and ESO Risk Management Plan	$41,511	$147,799	$189,311
Medical and Physical Requirements	$68,854	$5,069,710	$5,138,564
Training	$2,702	$7,058,410	$7,061,113
ESO Facility Preparedness	$0	$470,454	$470,454
Equipment and PPE	$22,119	$1,047,100	$1,069,219
Vehicle Preparedness and Operation	$8,364	$355,810	$364,174
ESO Pre-Incident Planning	$75,035	$128,382	$203,417
Incident Management System Development	$12,492	$0	$12,492
Emergency Incident Operations	$0	$6,009	$6,009
Standard Operating Procedures	$75,035	$0	$75,035
Post Incident Analysis	$0	$63,361	$63,361
Program Evaluation	$0	$674,860	$674,860
Total	**$566,387**	**$15,170,422**	**$15,736,809**
Wildland Firefighting Total			
Rule Familiarization	$7,417	$0	$7,417
ESO Establishment of ERP and Emergency Service(s) Capability	$252,859	$118,549	$371,409
Team Member and Responder Participation	$0	$29,975	$29,975

	One-Time Annualized, 3%	Annual	Total Annualized, 3%
WERT and ESO Risk Management Plan	$41,511	$147,799	$189,311
Medical and Physical Requirements	$68,854	$5,069,710	$5,138,564
Training	$2,702	$7,058,410	$7,061,113
ESO Facility Preparedness	$0	$470,454	$470,454
Equipment and PPE	$22,119	$1,047,100	$1,069,219
Vehicle Preparedness and Operation	$8,364	$355,810	$364,174
ESO Pre-Incident Planning	$75,035	$128,382	$203,417
Incident Management System Development	$12,492	$0	$12,492
Emergency Incident Operations	$0	$6,009	$6,009
Standard Operating Procedures	$75,035	$0	$75,035
Post Incident Analysis	$0	$63,361	$63,361
Program Evaluation	$0	$674,860	$674,860
Total	**$566,387**	**$15,170,422**	**$15,736,809**
Emergency Medical Services			
Career Emergency Medical Services ESOs			
Rule Familiarization	$36,062	$0	$36,062
ESO Establishment of ERP and Emergency Service(s) Capability	$1,254,284	$595,148	$1,849,433
Team Member and Responder Participation	$0	$125,748	$125,748
WERT and ESO Risk Management Plan	$204,965	$737,290	$942,256
Medical and Physical Requirements	$330,454	$18,428,377	$18,758,831
Training	$13,806	$41,735,056	$41,748,862
ESO Facility Preparedness	$0	$473,727	$473,727
Equipment and PPE	$19,357	$3,658,444	$3,677,801
Vehicle Preparedness and Operation	$41,898	$1,764,860	$1,806,758
ESO Pre-Incident Planning	$392,149	$677,868	$1,070,017
Incident Management System Development	$61,550	$0	$61,550
Emergency Incident Operations	$0	$4,821,121	$4,821,121
Standard Operating Procedures	$392,149	$0	$392,149
Post Incident Analysis	$0	$6,581,871	$6,581,871
Program Evaluation	$0	$3,580,357	$3,580,357
Total	**$2,746,675**	**$83,179,868**	**$85,926,543**
Volunteer Emergency Medical Services ESOs			
Rule Familiarization	$19,539	$0	$19,539
ESO Establishment of ERP and Emergency Service(s) Capability	$679,494	$322,436	$1,001,930
Team Member and Responder Participation	$0	$68,123	$68,123
WERT and ESO Risk Management Plan	$111,037	$399,484	$510,522
Medical and Physical Requirements	$180,017	$10,334,860	$10,514,877

	One-Time Annualized, 3%	Annual	Total Annualized, 3%
Training	$7,481	$23,464,448	$23,471,929
ESO Facility Preparedness	$0	$256,656	$256,656
Equipment and PPE	$10,481	$1,981,995	$1,992,476
Vehicle Preparedness and Operation	$22,701	$956,176	$978,877
ESO Pre-Incident Planning	$212,776	$367,820	$580,596
Incident Management System Development	$33,346	$0	$33,346
Emergency Incident Operations	$0	$2,667,749	$2,667,749
Standard Operating Procedures	$212,776	$0	$212,776
Post Incident Analysis	$0	$3,653,511	$3,653,511
Program Evaluation	$0	$1,944,088	$1,944,088
Total	**$1,489,648**	**$46,417,347**	**$47,906,995**
Mixed Emergency Medical Services ESOs			
Rule Familiarization	$37,960	$0	$37,960
ESO Establishment of ERP and Emergency Service(s) Capability	$1,320,299	$626,472	$1,946,771
Team Member and Responder Participation	$0	$132,366	$132,366
WERT and ESO Risk Management Plan	$215,753	$776,095	$991,848
Medical and Physical Requirements	$344,791	$18,310,870	$18,655,661
Training	$14,533	$41,091,560	$41,106,093
ESO Facility Preparedness	$0	$498,660	$498,660
Equipment and PPE	$20,376	$3,850,994	$3,871,370
Vehicle Preparedness and Operation	$44,103	$1,857,748	$1,901,851
ESO Pre-Incident Planning	$412,789	$713,546	$1,126,334
Incident Management System Development	$64,789	$0	$64,789
Emergency Incident Operations	$0	$5,074,864	$5,074,864
Standard Operating Procedures	$412,789	$0	$412,789
Post Incident Analysis	$0	$6,928,285	$6,928,285
Program Evaluation	$0	$3,768,797	$3,768,797
Total	**$2,888,181**	**$83,630,257**	**$86,518,438**
Emergency Medical Services Total			
Rule Familiarization	$93,561	$0	$93,561
ESO Establishment of ERP and Emergency Service(s) Capability	$3,254,077	$1,544,057	$4,798,134
Team Member and Responder Participation	$0	$326,237	$326,237
WERT and ESO Risk Management Plan	$531,756	$1,912,869	$2,444,625
Medical and Physical Requirements	$855,261	$47,074,108	$47,929,369
Training	$35,820	$106,291,065	$106,326,885
ESO Facility Preparedness	$0	$1,229,043	$1,229,043
Equipment and PPE	$50,214	$9,491,433	$9,541,647

	One-Time Annualized, 3%	Annual	Total Annualized, 3%
Vehicle Preparedness and Operation	$108,702	$4,578,784	$4,687,487
ESO Pre-Incident Planning	$1,017,714	$1,759,234	$2,776,948
Incident Management System Development	$159,685	$0	$159,685
Emergency Incident Operations	$0	$12,563,733	$12,563,733
Standard Operating Procedures	$1,017,714	$0	$1,017,714
Post Incident Analysis	$0	$17,163,667	$17,163,667
Program Evaluation	$0	$9,293,242	$9,293,242
Total	**$7,124,505**	**$213,227,471**	**$220,351,976**
Technical Search and Rescue Groups			
Career Technical Search and Rescue ESOs			
Rule Familiarization	$1,855	$0	$1,855
ESO Establishment of ERP and Emergency Service(s) Capability	$67,132	$32,000	$99,131
Team Member and Responder Participation	$0	$5,948	$5,948
WERT and ESO Risk Management Plan	$10,978	$39,775	$50,753
Medical and Physical Requirements	$16,908	$721,621	$738,528
Training	$762	$1,210,381	$1,211,143
ESO Facility Preparedness	$0	$25,446	$25,446
Equipment and PPE	$985	$187,422	$188,407
Vehicle Preparedness and Operation	$2,239	$94,080	$96,319
ESO Pre-Incident Planning	$23,615	$40,868	$64,483
Incident Management System Development	$3,275	$0	$3,275
Emergency Incident Operations	$0	$2,400	$2,400
Standard Operating Procedures	$23,615	$0	$23,615
Post Incident Analysis	$0	$23,291	$23,291
Program Evaluation	$0	$234,741	$234,741
Total	**$151,364**	**$2,617,974**	**$2,769,337**
Volunteer Technical Search and Rescue ESOs			
Rule Familiarization	$26,401	$0	$26,401
ESO Establishment of ERP and Emergency Service(s) Capability	$970,789	$462,127	$1,432,916
Team Member and Responder Participation	$0	$87,811	$87,811
WERT and ESO Risk Management Plan	$159,029	$577,247	$736,276
Medical and Physical Requirements	$233,081	$5,146,998	$5,380,079
Training	$11,039	$12,491,867	$12,502,906
ESO Facility Preparedness	$0	$367,243	$367,243
Equipment and PPE	$14,102	$2,728,453	$2,742,556
Vehicle Preparedness and Operation	$32,238	$1,357,027	$1,389,265
ESO Pre-Incident Planning	$353,622	$610,638	$964,260

	One-Time Annualized, 3%	Annual	Total Annualized, 3%
Incident Management System Development	$47,305	$0	$47,305
Emergency Incident Operations	$0	$29,957	$29,957
Standard Operating Procedures	$353,622	$0	$353,622
Post Incident Analysis	$0	$319,684	$319,684
Program Evaluation	$0	$3,621,667	$3,621,667
Total	**$2,201,227**	**$27,800,721**	**$30,001,947**
Technical Search and Rescue Total			
Rule Familiarization	$28,256	$0	$28,256
ESO Establishment of ERP and Emergency Service(s) Capability	$1,037,920	$494,127	$1,532,047
Team Member and Responder Participation	$0	$93,759	$93,759
WERT and ESO Risk Management Plan	$170,007	$617,022	$787,029
Medical and Physical Requirements	$249,989	$5,868,619	$6,118,607
Training	$11,800	$13,702,249	$13,714,049
ESO Facility Preparedness	$0	$392,690	$392,690
Equipment and PPE	$15,088	$2,915,875	$2,930,963
Vehicle Preparedness and Operation	$34,477	$1,451,107	$1,485,584
ESO Pre-Incident Planning	$377,237	$651,506	$1,028,743
Incident Management System Development	$50,580	$0	$50,580
Emergency Incident Operations	$0	$32,357	$32,357
Standard Operating Procedures	$377,237	$0	$377,237
Post Incident Analysis	$0	$342,975	$342,975
Program Evaluation	$0	$3,856,409	$3,856,409
Total	**$2,352,590**	**$30,418,694**	**$32,771,285**
Total for All Responder Groups			
Rule Familiarization	$318,488	$0	$318,488
Organization of the WERT and Establishment of the ERP and Emergency Service(s) Capability	$951,248	$456,809	$1,408,057
ESO Establishment of ERP and Emergency Service(s) Capability	$10,354,636	$4,953,372	$15,308,008
Team Member and Responder Participation	$0	$1,241,795	$1,241,795
WERT and ESO Risk Management Plan	$1,840,749	$6,652,990	$8,493,739
Medical and Physical Requirements	$2,800,607	$136,195,401	$138,996,007
Training	$127,092	$223,619,106	$223,746,197
WERE Facility Preparedness	$0	$888,248	$888,248
ESO Facility Preparedness	$0	$12,947,752	$12,947,752
Equipment and PPE	$694,652	$41,023,768	$41,718,421
Vehicle Preparedness and Operation	$379,647	$15,877,195	$16,256,842
WERE Pre-Incident Planning	$151,582	$234,684	$386,266

	One-Time Annualized, 3%	Annual	Total Annualized, 3%
ESO Pre-Incident Planning	$3,298,745	$5,740,870	$9,039,615
Incident Management System Development	$550,999	$0	$550,999
Emergency Incident Operations	$0	$13,178,140	$13,178,140
Standard Operating Procedures	$3,601,910	$0	$3,601,910
Post Incident Analysis	$0	$21,617,192	$21,617,192
Program Evaluation	$0	$32,992,309	$32,992,309
Total	**$25,070,355**	**$517,619,629**	**$542,689,984**

Source: OSHA.
Note: Figures in rows may not add to totals due to rounding.

(ii) Insurance Adjustments for Medical Exam Costs

OSHA acknowledges that insurance companies likely cover a portion of the medical costs required by the proposed rule. For this analysis, OSHA assumed that all career responders would be covered under an employer-sponsored medical insurance plan. To determine the percentage of responders at volunteer and mixed departments with medical insurance coverage, OSHA used data from BLS's (2023) National Compensation Survey—Benefits program, which suggests that 66 percent of private industry workers with access to employer-sponsored medical insurance plans choose to participate. Costs were adjusted for minimum medical exams (for both WERT members and ESO responders), additional heart screenings (for both WERT members and ESO responders) and expanded medical exams (only required for ESO responders). These costs are used in Chapter VI: Economic Feasibility Analysis to better reflect the costs that will actually be borne directly by affected entities. Insurance-adjusted costs for the medical and physical requirements provision are presented in Table VII–C–19. Total costs with the insurance-adjusted medical and physical requirements costs are shown in Table VII–C–20.

Table VII-C-19. Insurance-Adjusted Medical and Physical Requirements Costs - All Organizations, 3 Percent Discount Rate

Emergency Response Service Sector	One-Time Annualized, 3%	Annual	Total Annualized, 3%
WEREs	**$142,874**	**$140,416**	**$283,290**
Career Fire Departments	$7,707,602	$1,177,334	$8,884,936
Volunteer Fire Departments	$16,327,508	$998,272	$17,325,780
Mixed Fire Departments	$6,734,327	$2,204,320	$8,938,647
Total Fire Departments	**$30,769,437**	**$4,379,926**	**$35,149,363**
Career Wildland Fire Services	$1,575,064	$44,402	$1,619,466
Volunteer Wildland Fire Services	$2,078,413	$180,211	$2,258,624
Total Wildland Fire Services	**$3,653,477**	**$224,613**	**$3,878,090**
Career Emergency Medical Services	$3,562,892	$147,807	$3,710,699
Volunteer Emergency Medical Services	$4,501,581	$80,085	$4,581,667
Mixed Emergency Medical Services	$7,965,807	$155,586	$8,121,393
Total Emergency Medical Services	**$16,030,280**	**$383,479**	**$16,413,759**
Career Technical Search and Rescue Groups	$251,438	$8,489	$259,928
Volunteer Technical Search and Rescue Groups	$2,757,816	$120,445	$2,878,261
Total Technical Search and Rescue Groups	**$3,009,254**	**$128,935**	**$3,138,189**
All Responder Groups	**$53,605,322**	**$5,257,368**	**$58,862,690**

Sources: OSHA based on BLS, 2023.
Note: Figures in rows may not add to totals due to rounding.

Table VII-C-20. Total Costs with Insurance-Adjusted Medical and Physical Requirements Costs - All Organizations, 3 Percent Discount Rate

Emergency Response Service Sector	One-Time Annualized, 3%	Annual	Total Annualized, 3%
WEREs	**$1,904,231**	**$22,241,138**	**$24,145,368**
Career Fire Departments	$12,193,278	$96,569,115	$108,762,393
Volunteer Fire Departments	$22,228,312	$76,767,966	$98,996,278
Mixed Fire Departments	$9,036,199	$41,042,325	$50,078,524
Total Fire Departments	**$43,457,789**	**$214,379,407**	**$257,837,196**
Career Wildland Fire Services	$2,088,872	$17,322,954	$19,411,826
Volunteer Wildland Fire Services	$2,088,763	$12,420,739	$14,509,502
Total Wildland Fire Services	**$4,177,635**	**$29,743,693**	**$33,921,328**
Career Emergency Medical Services	$6,077,889	$67,920,210	$73,998,100
Volunteer Emergency Medical Services	$5,864,272	$37,846,526	$43,710,798
Mixed Emergency Medical Services	$10,613,173	$68,523,520	$79,136,692
Total Emergency Medical Services	**$22,555,334**	**$174,290,256**	**$196,845,590**
Career Technical Search and Rescue Groups	$396,873	$3,204,897	$3,601,770
Volunteer Technical Search and Rescue Groups	$4,816,994	$23,821,962	$28,638,955
Total Technical Search and Rescue Groups	**$5,213,867**	**$27,026,859**	**$32,240,725**
All Responder Groups	**$77,308,855**	**$467,681,352**	**$544,990,208**

Sources: OSHA based on BLS, 2023.
Note: Figures in rows may not add to totals due to rounding.

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D. Benefits

I. Introduction

Benefits from OSHA's proposed Emergency Response standard would

stem from reductions in the number of fatal and nonfatal injuries and incidents that occur on duty, work-related suicides that would be prevented by the standard, and reductions in the incidence of illnesses and subsequent mortality among affected employees. In this benefits analysis, OSHA estimated and quantified the benefits associated with the avoidance of certain fatal and nonfatal incidents involving emergency responders if the safety requirements of this standard were to be implemented. OSHA also estimated and quantified the benefits of reducing the number of deaths by suicide among responders when the behavioral health and wellness components of the proposed standard are applied. In addition, OSHA estimated and quantified the benefits from the reduction in deaths from certain cancers due to increased screening for lung, colorectal, and breast cancers. Although incidence and death for other types of cancer may be reduced due to the more general medical evaluation and surveillance provisions of this standard, OSHA was unable find data to support a specific quantitative impact on the incidence or mortality of these other types of cancer for responders.

As discussed below, OSHA estimates that the proposed Emergency Response standard would reduce fatal and non-fatal work-related injuries to emergency responders, (*e.g.,* burns, struck by objects and equipment, vehicle collisions) by 50 percent. OSHA also estimates that the proposed Emergency Response standard would reduce firefighter deaths due to prostate, testicular, buccal cavity/pharynx, thyroid, and melanoma cancers by at least 20 percent. As explained in further detail below, OSHA estimates that this proposed rule would prevent an average of approximately 54 fatalities and 11,015 nonfatal injuries per year, with an associated value of $1,864.9 million in Year 1 (using 2022 dollars, the most recent year of data available). Assuming these annual benefits would continue for 50 years, the average annualized value of the benefits would be $2,628.5 million using a 3 percent discount rate and $2,262.3 million using a 7 percent discount rate in 2022 dollars. A discussion of expected benefits that could not be quantified is presented in the final section of the chapter.

II. Benefits From Reducing Responder Fatalities

OSHA gathered data from its OIS to characterize fatal incidents among emergency responders.[52] OIS is the primary repository of OSHA's data. This database contains information about work-related incidents collected through OSHA's Fatality and Investigation Summaries (OSHA Form 170), which OSHA prepares after conducting an inspection in response to a fatality or catastrophe. As explained further below, the OIS database does not capture the full number of emergency responder fatalities that occur, but the details contained within the summary descriptions of the incidents in the database provides useful information that OSHA used to estimate how the proposed rule would help prevent fatalities.

[52] U.S. Department of Labor, Occupational Safety and Health Administration. Fatality and Catastrophe Investigation Summaries. Available at: *https://www.osha.gov/ords/imis/accidentsearch.html.*

Each Fatality and Investigation Summary provides a narrative of the fatal incident and includes information such as the characteristics of the worksite; the employee task or activity performed at the time of the incident; the equipment used; a brief description of the injuries sustained by those involved in the accident; and other pertinent information surrounding the incident, including any worksite hazards present at the time of an individual's death. OSHA used these data to develop an informed understanding of the workplace fatalities frequently occurring among the emergency response professions, to identify common hazards present in worksites at which an emergency responder fatality has occurred, and to develop an estimate of the number of fatalities that would be addressed by at least one provision of the proposed Emergency Response standard.

To identify those fatalities that would be within the scope of the proposed rule, OSHA performed a query of the OIS database over a 15-year period (2007 through 2021), using keywords associated with emergency response activities (examples of relevant keywords include ''fire,'' ''emergency,'' ''respond''). From this initial dataset of several thousand fatalities, the summary abstracts of each accident were individually reviewed to determine if the death could be classified as relevant to the scope of the proposed rule. For each fatality determined to fall within the scope of the proposed rule, OSHA collected descriptive information relating to the manner of death, the assigned task at the time of death, the cause of death, and any workplace hazards present at the time of death, as identified by OSHA inspectors during the fatality investigation. OSHA identified 273 fatal incidents in the OIS database that involved responders or team members as defined in the proposed standard and emergency response activities that are within the scope of the proposed rule.

As shown in Table VII–1, the leading cause of death among emergency responders was attributed to struck by/crushing/collision injuries, 26 percent of all fatalities in the OIS database. Sixty-one percent of all struck by, crushing, and collision incidents were due to vehicle accidents. The most common contributory factor of these accidents was the unsafe operation of emergency response vehicles and equipment. Heart attacks accounted for an additional 20 percent of all fatalities in the OIS database, followed by burns, asphyxiations, and falls. Fatal accidents related to burns, falls and asphyxiations mainly occurred at the scene of an emergency during participation in response activities.

OSHA did a further analysis of the 273 emergency response-related fatalities in the OIS database to develop an estimate of how many might have been prevented if at least one of the provisions of the proposed standard had been followed. The details surrounding the fatalities were carefully examined and compared with the requirements of each provision of the proposed standard. Contributory hazards, as identified by the investigating OSHA inspector in both an accident's descriptive summary abstract and cited safety standards, were reviewed to determine the number and frequency of workplace hazards present at emergency response-related fatalities. If the identified workplace hazards present at the time of a fatality were determined to be addressed by the safety requirements of one or more of the emergency response provisions, then that fatality was classified as preventable. On the other hand, if the circumstances surrounding a fatality could not be matched with any requirements of the proposed standard, then that incident was categorized as not preventable by the standard. Of the 273 emergency-response-related fatalities in the OIS database, 77.7 percent or 212 were identified as being preventable if at least one of the provisions of the proposed standard had been followed. See example below.

Example:

Inspection Nr: 310966023

Event: 06/18/2007

Fire Department Employees Die of Smoke Inhalation

On June 18, 2007, nine employees of the City of Charleston Fire Department were engaged in interior structural firefighting in a furniture store at Sofa Super Store, 1807 Savannah Highway, Charleston, SC. The store had been converted from a 1960s era grocery store with a metal truss roof system. The fire and smoke spread rapidly, and they became lost and separated from their hoses. With air in air-packing running out, they could not find their way out. They died of smoke inhalation.

From the investigation report, OSHA inspectors identified four hazards present at the workplace, including inadequate inspection or maintenance of the workplace or equipment, inadequate training, and inadequate or incorrect use of personal protective equipment (PPE). OSHA determined that the requirements in proposed paragraphs (c), (d), (h), and (k) could have prevented this fatal incident.

Next, OSHA further developed estimates to determine what percentage of preventable incidents related to emergency response activities (for example, the 77.7 percent or 212 out of 273 identified in the OIS database) would actually be *avoided* by the standard, treating non-heart attacks and heart attacks differently. Table VII–2 shows the number of fatalities in the OIS database the agency estimates could have been addressed by each major provision category (a fatal incident may be covered by more than one safety provision of the proposed standard). Because emergency response operations are highly unpredictable and dangerous

in ways that cannot be mitigated, OSHA does not believe this standard will prevent every fatality among responders. However, the process of developing plans will help to clarify procedures, roles, training needs, and other factors that will allow responders to operate more efficiently and safely at response scenes. The requirements for equipment, vehicles, and other preparedness measures would, if followed, protect responders during response operations. Improved and enhanced training is always a critical step in improving safety in all sorts of workplaces. OSHA assumes that a reasonable estimate of non-heart attack fatal incidents related to emergency response activities that are classified as preventable is that 50 percent would be avoided by following the requirements of this proposed standard.

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Table VII-1. Estimated Number of Fatal Incidents in OIS Database by Nature of Fatality, 2007-2021

Nature of Fatality	Number of Fatalities	Percent of Total Fatalities	Average Annual Fatalities
Asphyxia	28	10.3	1.9
Burn/Scald (Heat)	39	14.3	2.6
Cancer	1	0.4	0.1
Chemical Exposure	1	0.4	0.1
Cut/Laceration	1	0.4	0.1
Drowning	12	4.4	0.8
Explosion	9	3.3	0.6
Fall	28	10.3	1.9
Heart Attack	55	20.1	3.7
Heat Exhaustion	7	2.6	0.5
Natural Causes[53]	2	0.7	0.1
Smoke Exposure	1	0.4	0.1
Struck By/Crushing/Collision	72	26.4	4.8
Stroke	1	0.4	0.1
Suicide	1	0.4	0.1
Unknown/Unspecified[54]	13	4.8	0.9
Violence	2	0.7	0.1
Total Fatalities	**273**	**100**	**18.2**

Source: OSHA's Occupational Safety and Health Information System (OIS). Note: Totals may not equal sums due to rounding.

[53] Natural causes is defined as an internal factor, such as a disease, that caused the body to shut down; no external reason contributing to death such as a traumatic injury.

[54] Deaths for which a descriptive sequence of causes could not be determined.

Table VII-2: Fatalities in OIS Database Addressed by Provisions of the Proposed Rule (Excluding Heart Attacks)

Emergency Response Provision	Provision Description	Number of Fatalities
1910.156 (c/d)	Establishment of the ERP and Emergency Services Capability	56
1910.156 (e)	Team Member and Responder Participation	-
1910.156 (f)	Risk Management Plan	43
1910.156 (h)	Training	41
1910.156 (i/j)	Facility Preparedness	-
1910.156(k)	Equipment and PPE	59
1910.156 (l)	Vehicle Preparedness and Operation	29
1910.156(m)/(n)	Pre-Incident Planning	1
1910.156 (o)	Incident Management System Development	-
1910.156(p)	Emergency Incident Operations	11
1910.156(q)	Standard Operating Procedures	47
Total Number of Instances a Provision was Applicable		287
Total Number of Fatalities: 2007 to 2021		273
Total Number of Fatalities with at Least One Provision Applied (77.7%)		**212**

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OSHA treats heart attack prevention differently. As mentioned earlier, heart attacks made up 20 percent or 55 of the 273 emergency response-related fatalities in the OIS database. Thirty-one percent of the 55 heart attack fatalities occurred on worksites of an emergency (See Table VII–3). Twenty-seven percent occurred onsite while participating in training exercises. Another 15 percent occurred on-site during non-emergency activities such as maintenance work, and 15 percent of heart attacks happened less than 24 hours after participating in a work-related activity. The remainder were unspecified.

Table VII-3. Estimated Number of Fatal Heart Attacks in OIS Database by Activity, 2007-2021

Activity	Number of Fatalities
Accident Response, Onsite of an Emergency	1
Emergency Response, Onsite of an Emergency	2
Fire Fighting, Onsite of an Emergency	14
Fire Fighting, Onsite, Non-Emergency	1
Maintenance Work – Onsite, Non-Emergency	2
Off Duty, Less than 24 Hours of Work-Related Activities	8
On Duty, Onsite, Non-Emergency	5
Training Exercise, Onsite, Non-Emergency	15
Unspecified	7
Total Fatal Heart Attacks	**55**

Source: OSHA, OIS

Many studies show that following a healthy lifestyle including getting regular physical activity, maintaining a healthy weight, and healthy sleep habits may prevent many cases of sudden cardiac death.[55] A number of provisions in the proposed rule—the medical and physical, fitness for duty, and health and fitness program requirements—focus on components of a healthy lifestyle for emergency responders as well as fitness for duty requirements and medical monitoring that would be expected to prevent some fatal heart attacks. While the proposed standard would not prevent all fatal heart attacks, based on a review of the circumstances surrounding the deaths caused by heart

[55] See *https://www.hsph.harvard.edu/nutritionsource/disease-prevention/cardiovascular-disease/preventing-cvd/* based on Chiuve, SE, Rexrode, K.M., D.S, Logroscino, G., Manson, J.E., Rimm, E.B. (2008). Primary prevention of stroke by healthy lifestyle. *Circulation.* 118:947–54 and Chiuve, SE, Fung, T.T., Rexrode, K.M., et al. (2011). Adherence to a low-risk, healthy lifestyle and risk of sudden cardiac death among women. *JAMA.* 306:62–9. The Centers for Disease Control and Prevention's ''Prevent Heart Disease.'' Available at *https://www.cdc.gov/heartdisease/prevention.htm.*

attack in the OIS dataset, OSHA believes a reasonable estimate is that the rule would prevent 20 percent of work-related fatal heart attacks among emergency responders. OSHA welcomes comment on this estimate and encourages the public to submit any additional data or data sources that the agency might use to better estimate this parameter of the analysis.

As mentioned above and explained in section II.A., *Need for the Standard,* OSHA recognizes that the number of fatalities occurring among emergency responders contained in the OIS is incomplete. This is in large part because so many emergency responders are volunteers and/or work for state or local governments in States without OSHA-approved State Plans; OSHA inspectors typically would not investigate fatalities in these groups. Other data sources, such as the NFPA, help provide a more complete picture, even if they may not contain the same level of detail about individual incidents that OIS does. From 2007 to 2021, the NFPA reported a total of 1,086 firefighter fatalities,[56] compared to the 273 in the OIS database. Of those 1,086 fatalities, 464 or 42.7 percent were from heart attacks. Applying the assumptions developed from the OIS data, OSHA first excluded the 464 NPFA fatalities attributable to heart attacks to produce a total of 622 emergency response-related fatalities. From this estimate, OSHA applied its assumption that 77.7 percent of total fatalities would be preventable by the provisions of the Emergency Response standard, to develop an estimate of 483.3 fatalities; an average of 32.2 fatalities per year. OSHA then applied the assumption that only 50 percent of NFPA's preventable firefighter fatalities would be actually prevented, giving an estimate of 241.8 prevented firefighter fatalities; an annual average of 16.1 fatalities.

It should be noted that while the data can provide broad characterization in terms of cause of death, there is frequently insufficient information to isolate the effect on very specific causes of injury. Injuries to emergency responders take many forms, and the proposed standard is designed to reduce them on many fronts. For example, the proposal includes provisions for the safer use of fire poles. While not the leading cause of firefighter injury and fatalities, use of fire poles continues to present needless hazards to responders. While the use of fire poles has become less common due to use of slides, chutes and stairs, fatalities and serious injuries still occur, including the recent death of a North Carolina firefighter in 2021 (*https://www.firefighterclosecalls.com/north-carolina-firefighter-dies-after-falling-down-pole-hole-in-firehouse/*). In 2013 a Seattle firefighter was awarded $12.75 million due to disabling injuries related to a fall down a fire pole shaft. (*https://www.seattletimes.com/news/high-court-upholds-1275m-award-to-ex-seattle-firefighter/*). For these reasons, many fire departments are already moving away from installing fire poles in new firehouses. The agency supports the trend away from the use of fire poles, and has included questions seeking input and data from stakeholders about whether the agency should consider prohibiting the installation of fire poles in new facilities in the final rule. On the whole, the agency believes the multifaceted approach of the emergency response program standard should prevent approximately half of most safety-related fatalities and injuries to firefighters.

Because the NFPA data is based on firefighter fatalities only, OSHA relied on data from BLS, Census of Fatal Occupational Injuries, to develop estimates for non-firefighting emergency responders (paramedics, EMTs) and applied the same assumptions. From 2007 to 2021, BLS reported a total of 169 fatalities to emergency responders,[57] not including firefighters. Applying the assumption that 77.7 percent would fall under the provisions of the Emergency Response standard (131.3 fatalities, an average of 8.8 fatalities per year), and 50 percent would be preventable (65.7 fatalities), OSHA estimates an additional 4.4 preventable fatalities per year. OSHA did not apply its assumption for heart attacks to this estimate because BLS considers heart attacks to be an illness and excludes them from its Census of Fatal Occupational Injuries unless a traumatic injury contributed to the death. According to a study, ''Prevalence of risk factors for cardiovascular disease in paramedics,'' printed in the 2015 publication of the *International Archives of Occupational and Environmental Health,* nine out of ten paramedics are at risk of developing cardiovascular disease as a result of the cardiovascular risk factors of occupational stress, obesity, and tobacco consumption.[58] OSHA is aware that heart attacks among non-firefighting emergency responders are prevalent and therefore welcomes comment on this estimate and encourages the public to submit any additional data or data sources that the agency might use to better estimate this parameter of the analysis.

Using the 2022 estimate of the value of a statistical life (VSL) developed by the U.S. Department of Transportation (DOT), $12.5 million, OSHA estimates the benefit from avoiding 20.5 fatal incidents (16.1 firefighter and 4.4 non-firefighter responders) other than heart attacks in Year 1 would produce benefits of $256.2 million in 2022 dollars.[59] As stated above, 464 of NFPA's total firefighter fatalities were heart attacks; an average of 30.9 fatalities per year. Applying the assumption that 20 percent of heart attacks would be prevented by the standard, yields another 92.8 fatalities; an annual average of 6.2 fatalities. The annual value of these avoided cases is $77.3 million in 2022 dollars. Combining the benefits from avoided non-heart attack safety-related fatalities and heart attack fatalities yields estimated annual benefits of $333.5 million in 2022 dollars.

III. Benefits From Reducing Non-Fatal Injuries for Responders

NFPA reported a total of 1,012,250 non-fatal firefighter injuries between 2007 and 2021 of which 215,022 resulted in lost time from work; an average of 14,335 lost time injuries per year. Non-fatal injuries occurring during fireground operations (structure fires, vehicle fires, brush fires, etc.) accounted for 41.7 percent of total injuries, followed by non-fire emergencies (rescue calls, hazardous calls, and natural disaster calls) at 20.5 percent, other duties (*e.g.,* inspection or maintenance duties) at 19.4 percent, training at 11.7 percent, and responding to or returning from an emergency at 6.7 percent. As shown in Table VII–4, overexertion and strains were the leading cause of injuries amongst firefighters, accounting for an average of 27 percent of total injuries during the 2007 thru 2021 period. Falls, jumps, and slips accounted for an additional 22.8 percent, with another 20.7 percent of injuries attributed to exposures to fire products, chemicals or radiation.

[56] *https://www.nfpa.org/News-and-Research/Data-research-and-tools/Emergency-Responders/Firefighter-fatalities-in-the-United-States.*

[57] *https://data.bls.gov/gqt/ProfileData.*

[58] Hegg-Deloye, S., Brassard, P., Prairie, J., Larouche, D., Jauvin, N., Poirier, P., Tremblay, A., Corbeil, P. (2015). Prevalence of risk factors for cardiovascular disease in paramedics. *International archives of occupational and environmental health,* 88(7), 973–980. *https://doi.org/10.1007/s00420-015-1028-z.*

[59] As elsewhere in the PEA, these calculations were performed on an Excel spreadsheet, so the rounded numbers may appear not to add precisely. The spreadsheet appears in the docket at (Document ID 0394).

Table VII-4. Leading Causes of Non-Fatal Injuries to Firefighters with Lost Time from Work, 2007-2021

Cause of Injury	Average Percent of Total Lost Time Injuries	Estimated Injuries by Average Percent of Lost Time Injuries	Estimated Injuries, Annual Average
Falls, jumps, slips	22.8	49,025	3,268
Overexertion, strains	27.0	58,056	3,870
Contact with object	10.8	23,222	1,548
Struck by an object	6.0	12,901	860
Extreme weather	3.1	6,451	430
Exposure to fire products	11.5	24,728	1,649
Exposure to chemicals or radiation	9.2	19,782	1,319
Other	16.3	35,049	2,337
Total Lost Time from Work Injuries			**215,022**
Average Annual Non-Fatal Injuries			**14,335**

Source: NFPA.
Note: Number of injuries by cause is an estimation derived from published injuries percentages by year. Totals may not equal sums due to rounding and using averages of yearly percentages.

From 2007 to 2020, BLS reported a total of 107,720 non-fatal injuries requiring days away from work to emergency medical technicians (EMTs) and paramedics; an average of 7,694 injuries per year. As shown below in Table VII–5, the leading cause of injuries to these responders were overexertion and bodily reactions, commonly resulting from worker activities such as lifting, pushing, pulling, carrying, holding, etc. Falls, slips and trips accounted for nearly 14 percent of all injuries to EMTs and paramedics, with an average of 1,050 injuries per year, followed by contacts with objects or equipment, and transportation incidents, at 10 percent and 7 percent, respectively.

Table VII-5. Non-Fatal Injuries to EMTs and Paramedics, All Ownerships, 2007-2020

Event or Exposure	Number of Injuries	Percent of Total Injuries	Average Annual Injuries
Contact with objects	10,570	9.8	755
Falls, slips, trips	14,700	13.6	1,050
Overexertion and bodily reaction	57,790	53.6	4,128
Exposure to harmful substance or environment	7,010	6.5	501
Transportation incidents	7,540	7.0	539
Fires and explosions	260	0.2	19
Violence and other injuries by persons or animals	4,720	4.4	337
Other	4,640	4.3	331
Total Injuries	**107,720**	**100.0**	**7,694**

Source: Bureau of Labor Statistics, U.S. Department of Labor, Survey of Occupational Injuries and Illnesses in cooperation with participating State agencies. *https://data.bls.gov/gqt/ProfileData.*
Number of nonfatal occupational injuries and illnesses involving days away from work (1) by selected worker and case characteristics and occupation, All U.S., private industry, 2007 – 2020.
NOTE: Because of rounding and data exclusion of nonclassifiable responses, data may not sum to the totals.

OSHA expects that the proposed standard would reduce the number of non-fatal emergency responder injuries. Further, given the provisions of the proposal address the contributory causes of over 75 percent of the estimated fatalities to emergency responders, OSHA believes it is reasonable that the proposed standard would reduce these occurrences by at least 50 percent for all responders. OSHA monetized the benefit of preventing injuries using the midpoint of the range cited in Viscusi and Gentry (2015), converted to 2022 dollars using the GDP deflator.[60] The total Year 1 benefit of reducing firefighter injuries by 7,168 (50%) would be $777.5 million and reducing EMT and paramedic injuries by 3,847 (50%) would be $417.3 million (Table VII–11) for a total of approximately $1,194.8 million.

IV. Benefits From Preventing Some Firefighter and EMT Suicides

OSHA preliminarily finds that the behavioral health and wellness resources provisions in the proposed standard would benefit responders by reducing the number of deaths by suicide. Based on Firefighter Behavioral Health Alliance (FBHA) data, 1,348 firefighters and EMTs died by suicide between 2007 and 2020, which is an average of 96 deaths per year.[61] FBHA estimates that about 17 percent of these deaths occurred during retirement, so 83 percent, or approximately 77, of the annual deaths by suicide occurred among active duty responders (64 firefighters and 13 EMTs).[62] [63] This estimate is adjusted to account only for the proportion of firefighters and EMTs covered by the proposed rule, yielding an estimated 43 annual deaths among covered responders (31 firefighters and 12 EMTs). OSHA was unable to find definitive evidence to support a specific reduction to these figures resulting from the implementation of the provisions of this proposed standard; however, based on available evidence the agency estimates that a 20 percent reduction is a realistic, even arguably low estimate.[64] The expected number of avoided deaths by suicide is therefore estimated to be 8.5 per year. Based on the value of a statistical life (VSL) developed by DOT,[65] the VSL estimate for 2022 is $12.5 million, which translates to an annual benefit from the reduction in deaths by suicide in Year 1 of $106.8 million. OSHA expects, but could not quantify, additional benefits from the reduction in adverse behavioral health outcomes identified in health effects (stress, depression, PTSD, anxiety, etc.).

V. Cancer Cases in Firefighters

Several studies have found evidence that firefighters are more likely to develop certain types of cancer compared to the general population. OSHA did not estimate benefits related to avoided cancer cases or fatalities among other types of responders due to insufficient data for other types of emergency responders. To the extent that medical evaluations and physical fitness requirements prevent cancer cases or fatalities in other types of responders, the estimated benefits of this proposed standard may be underestimated. Researchers have investigated whether firefighters have higher or lower rates of incidences or mortality for various types of cancer compared to the general population. Commonly considered cancers are those for which firefighters may have greater risks due to occupational exposures to carcinogenic substances. In order to estimate the benefits of reduced cancer fatalities other than those being screened for and discussed previously, OSHA primarily used the estimates of the incidence rates of cancer for firefighters relative to the general population from Lee et al. (2020).[66] Lee et al. provided estimates for firefighters for melanoma, thyroid, prostate, and testicular cancers. OSHA estimated cases of buccal cavity and pharynx cancer based on Daniels et al. (2014, Document ID 0187) estimates of incidence.[67]

For these cancers, estimates of the incidence rates for the general population were from the Centers for Disease Control and Prevention (CDC) or the American Cancer Society (ACS).[68] To estimate the rates for firefighters, OSHA made adjustments based on the relevant findings in the literature. For example, the risk of a firefighter getting prostate cancer is 1.36 times that of the general population. Therefore, the annual incidence rate for the general population of 0.11 percent was multiplied by 1.36, which yields a firefighter annual incidence rate of prostate cancer of 0.15 percent. Multiplying each incidence rate by the applicable number of firefighters, Table VII–6 shows the estimated annual number of incidents of cancer, by cancer type and firefighter type.

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[60] Viscusi, K. and E.P Gentry. (2015). ''The value of a statistical life for transportation regulations: A test of the benefits transfer methodology.'' Journal of Risk and Uncertainty. 51:53–77. *https://doi.org/10.1007/s11166-015-9219-2.* OSHA used the midpoint of the range listed of $77,000 and $84,000 in 2008 dollars converted to 2022 dollars using the GDP deflator.

[61] Available at: *https://www.ffbha.org/ff-ems-suicide-deaths-by-year-type/.* Validated and verified by Firefighter Behavioral Health Alliance.

[62] OSHA communication with an FBHA representative on May 1, 2023.

[63] OSHA was unable to determine whether deaths by suicide of retired responders are considered occupational. If those deaths are considered occupational, the limitation to active-duty deaths by suicide in this analysis would likely underestimate the impact of the proposed standard.

[64] A review of 13 studies found that the suicide prevention programs for protective and emergency services employees were associated with an approximate 50 percent reduction on average in suicide rates. See Witt, K., et al. (2017). ''Effectiveness of suicide prevention programs for emergency and protective services employees: A systematic review and meta-analysis. American Journal of Industrial Medicine 60(4): 394–407. *https://doi.org/10.1002/ajim.22676.*

[65] U.S. Department of Transportation. (2022). ''Departmental Guidance of Valuation of a Statistical Life in Economic Analysis.'' Available at *https://www.transportation.gov/office-policy/transportation-policy/revised-departmental-guidance-on-valuation-of-a-statistical-life-in-economic-analysis.*

[66] Lee, D.J., Koru-Sengul, T., Hernandez, M.N., Caban-Martinez, A.J., McClure, L.A., Mackinnon, J.A., Kobetz, E.N. (2020). Cancer risk among career male and female Florida firefighters: Evidence from the Florida Firefighter Cancer Registry (1981–2014). American Journal of Industrial Medicine, 63(4):285–299. *doi.org/10.1002/ajim.23086.* These researchers compared firefighters to the general population over the most recent time period and generally had estimates that were similar or between other estimates.

[67] Daniels, R.D., Kubale, T.L., Yiin, J.H., Dahm, M.M., Hales, T.R., Baris, D., Zahm, S.H., Beaumont, J.J., Waters, K.M., Pinkerton. L.E. (2014). Mortality and cancer incidence in a pooled cohort of US firefighters from San Francisco, Chicago, and Philadelphia (1950–2009). Occupational and Environmental Medicine, 71:388–397. *doi.org/10.1136/oemed-2013-101662.*

[68] Data for incidence and mortality rates for prostate cancer from the CDC: *https://www.cdc.gov/cancer/prostate/basic_info/risk_factors.htm#:~:text=Out%20of%20every%20100%20American,increased%20risk%20for%20prostate%20cancer.* Data from ACS for testicular, buccal cavity and pharynx, thyroid, and melanoma cancers. For example, see *https://www.cancer.org/cancer/testicular-cancer/about/key-statistics.html#:~:text=Testicular%20cancer%20is%20not%20common,testicular%20cancer%20is%20about%2033* (Accessed March 26, 2023).

Table VII-6. Estimated Annual Incidents of Cancer in Firefighters, by Type of Cancer

Cancer Type	Public, State Plan, and Private Fire Departments [a]			
	Career	Paid per Call	Volunteer	Total
Breast [b]	6.4	2.4	0.2	8.9
Colorectal [c]	26.2	9.8	0.6	36.7
Lung (using ACS w/adjustment) [d]	27.7	10.4	0.7	38.7
Prostate [e]	80.4	30.1	84.8	195.3
Testicular [f]	19.0	7.1	20.1	46.2
Buccal cavity and pharynx [g]	52.6	19.7	55.5	127.8
Thyroid [h]	40.7	15.3	43.0	98.9
Melanoma [i]	97.0	36.4	102.4	235.8
Total	**351.3**	**131.7**	**308.7**	**791.7**

[a] Number of non-inmate firefighters from the U.S. Fire Administration (USFA) National Fire Department Registry: National Data. (2020). Available at *https://apps.usfa.fema.gov/registry/download*. Also included are the estimated number of inmate firefighters compiled from internet searches primarily of states' websites.

[b] Incidence rate based on the American Cancer Society's Cancer Statistics Center (CSC). 2015-2019 average annual incidence rate. *https://cancerstatisticscenter.cancer.org/#!/cancer-site/Breast*

[c] Incidence rate based on CSC 2015-2019 average annual incidence rate (*https://cancerstatisticscenter.cancer.org/#!/cancer-site/Colorectum*) and Jalilian et al. (2019) "Cancer

incidence and mortality among firefighters." *International Journal of Cancer*. 145:2639–2646. *http://dx.doi.org/10.1002/ijc.32199*.
[d] Incidence rate based on CSC 2015-2019 average annual incidence rate (*https://cancerstatisticscenter.cancer.org/#!/cancer-site/Lung%20and%20bronchus*) and Daniels, R.D., Kubale,T.L., Yiin, J.H., et al. (2014). *Occup Environ Med*. 71:388–397. *http://dx.doi.org/10.1136/oemed-2013-101803*
[e] Incidence rate based on CSC 2015-2019 average annual incidence rate (*https://cancerstatisticscenter.cancer.org/#!/cancer-site/Prostate*) and Lee, D.J., Koru-Sengul, T., Hernandez, M.N., et al. (2020). "Cancer risk among career male and female Florida firefighters: Evidence from the Florida Firefighter Cancer Registry (1981-2014)." *Am J Ind Med*. 63:285–299. *https://doi.org/10.1002/ajim.23086*
[f] Incidence rate based on CSC 2015-2019 average annual incidence rate (*https://cancerstatisticscenter.cancer.org/#!/cancer-site/Testis*) and Lee, D.J., Koru-Sengul, T., Hernandez, M.N., et al. (2020). "Cancer risk among career male and female Florida firefighters: Evidence from the Florida Firefighter Cancer Registry (1981-2014)." Am J Ind Med. 63:285–299. *https://doi.org/10.1002/ajim.23086*
[g] Incidence rate based on CSC 2015-2019 average annual incidence rate (*https://cancerstatisticscenter.cancer.org/#!/cancer-site/Oral%20cavity%20and%20pharynx*) and Daniels, R.D., Kubale, T.L., Yiin, J.H., et al. (2014). Occup Environ Med. 71:388–397. *http://dx.doi.org/10.1136/oemed-2013-101803*
[h] Incidence rate based on CSC 2015-2019 average annual incidence rate (*https://cancerstatisticscenter.cancer.org/#!/cancer-site/Thyroid*) and Lee, D.J., Koru-Sengul, T., Hernandez, M.N., et al. (2020). "Cancer risk among career male and female Florida firefighters: Evidence from the Florida Firefighter Cancer Registry (1981-2014)." Am J Ind Med. 63:285–299. *https://doi.org/10.1002/ajim.23086*
[i] Incidence rate based on CSC 2015-2019 average annual incidence rate (*https://cancerstatisticscenter.cancer.org/#!/cancer-site/Melanoma%20of%20the%20skin*) and Lee, D.J., Koru-Sengul, T., Hernandez, M.N., et al. (2020). "Cancer risk among career male and female Florida firefighters: Evidence from the Florida Firefighter Cancer Registry (1981-2014)." Am J Ind Med. 63:285–299. *https://doi.org/10.1002/ajim.23086*

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VI. Benefits From Reducing Cancer Fatalities of Firefighters Through Screening

OSHA preliminarily finds that the proposed rule would result in benefits in the form of avoided firefighter fatalities due to increased screening for lung, colorectal, and breast cancers. Three recent articles provided estimates of the effects of screening on fatalities due to certain types of cancer. Nishihara et al. (2013) followed almost 89,000 participants over 22 years and measured a 53 percent reduction in mortality from proximal colon cancer with regular colonoscopies.[69] Among men, de Koning et al. (2020) found that lung-cancer mortality was 0.8 deaths per 1,000 person-years lower over 10 years for patients getting CT screening than those not getting screened for lung cancer.[70] Finally, Seely and Alhassan (2018) conducted a meta-analysis of breast cancer studies and concluded that women 40–74 years of age experience a 40 percent reduction in breast cancer mortality with regular screenings.[71] The results of these studies are discussed below.

The benefits of increased screening are expected to occur for firefighters in the age ranges designated for screening for each type of cancer by NFPA 1582. Under the proposed standard, increased screening would be required for firefighters with at least 15 exposures to combustion products per year or who have a medically-indicated need for ongoing surveillance. Based on data from NFPA on the number of fire calls responded to, 98 percent of career firefighters and 2.2 percent of volunteer firefighters meet one of these criteria.[72] The number of potentially affected firefighters was taken from the U.S Fire Administration (USFA, 2020) registry data and OSHA's estimate of the number of inmate firefighters (see Section VII.B., *Industry Profile,* for more details).[73] The age distribution based on NFPA (2017) estimates was then applied.[74] The appropriate populations of firefighters potentially affected by the

[69] Nishihara, R., Wu, K., Lochhead, P., Morikawa, T., Liao, X., Qian, Z.R., et al. Long-term colorectal-cancer incidence and mortality after lower endoscopy. N Engl J Med 2013; 369:1095–105.

[70] de Koning, H.J., et al. Reduced Lung-Cancer Mortality with Volume CT Screening in a Randomized Trial. N. Engl. J. Med. 382, 503–513 (2020). The difference for women in the study was not statistically significant.

[71] Seely, J.M., Alhassan, T. Screening for breast cancer in 2018—what should we be doing today? Curr Oncol. 2018 Jun; 25(Suppl 1): S115–S124. *doi:10.3747/co.25.3770.*

[72] See section VI.2.2.1 for more detail.

[73] Inmate firefighters were included only in state plan states that cover volunteer firefighters. Due to lack of more appropriate data, OSHA assumed the same demographic distribution as the firefighters for the inmate firefighters. In the benefits estimations, OSHA used the lower estimate of inmate firefighters when numbers varied by source.

[74] U.S. Fire Administration (USFA). (2020). U.S. Fire Administration (USFA) National Fire Department Registry: National Data. Available at *https://apps.usfa.fema.gov/registry/download* (Accessed January 13, 2020).
NFPA (2017). U.S. Fire Department Profile—2015. April 2017. Available at *https://www.nfpa.org/News-and-Research/Fire-statistics-and-reports/Fire-statistics/The-fire-service/Administration/US-fire-department-profile* (Accessed September 13, 2018).

rule would be: women ages 50 and older for breast cancer; individuals ages 50–75 for colorectal cancer; and individuals ages 55+ for lung cancer.

OSHA applied the findings from the respective studies to the subset of the firefighter population who would be required to get each of the screenings to estimate the reduction in annual fatalities that the proposed rule would yield. For colorectal cancer, a 53 percent reduction in mortality from proximal colon cancer over a 22-year period for individuals getting colonoscopy screenings corresponds to a 2.4 percent reduction per year in the probability of a colorectal cancer fatality (0.53/22 years = .024) (Nishihara (2013), Docket No. 0384).[75] Applying this reduction to the current number of colorectal cancer fatalities (15.8) results in a reduction of 0.4 fatalities per year due to colorectal cancer (Table VII–9). OSHA assumes this annual benefit begins in Year 10 but welcomes comments on the most appropriate lag time for benefits.[76]

For lung cancer, OSHA additionally restricted the subpopulation of firefighters to males due to the lack of a statistically significant difference found in de Koning et al. (2020) for females (de Koning 2020, Docket No. 0377). Because the results were expressed in terms of deaths per 1,000 person-years, OSHA could directly apply the difference in the findings of 0.8, the difference between 2.5 deaths per 1,000 person-years for patients who get CT scans and 3.3 deaths per 1,000 person-years for patients who do not get screenings, to the current number of cases, 22.9 (Table VII–9). Thus, OSHA estimates that 9.7 fatalities from lung cancer would be avoided annually starting in Year 10 by the proposed rule.

For breast cancer, in addition to restricting the subpopulation of firefighters to females ages 50 and older, OSHA also assumed that these women would already be getting mammograms at the same rate as the general population. According to the National Cancer Institute, about 76 percent of women aged 50–74 years had a mammogram within the past 2 years.[77] The high rates of screening already being performed likely contributed to the reduced benefits observed for this screening activity. Seely and Alhasan (2018) conclude that breast cancer mortality is reduced by 40 percent in women 40–74 years of age who get screened (Seely (2018), Docket No. 0379). This result seems to be strongly driven by a study that followed women from 1990 to 2009, so OSHA approximated an annual reduction in deaths of 2.1 percent (0.40/19 years). Table VII–9 also contains the value of these avoided fatalities expected to begin in Year 10.

The value of the benefits in Year 1 along with the average annualized benefits using a 3 percent and a 7 percent discount rate are shown in Table VII–9.

Table VII-9. Benefits of Firefighter Cancer Fatalities Prevented by Screening, Millions 2022$

Source	Current Cases	Cases Prevented	Current Annual Cases	Annual Cases Prevented	Value of Annual Cases Prevented
	50 Year Period		Year 10 and later [a]		
Cancer fatalities-firefighters					
Colorectal	792	19	15.8	0.4	$4.8
Lung	1,143	487	22.9	9.7	$121.8
Breast	16	0.3	0.3	0.0	$0.1
Total Fatalities	**1,952**	**507**	**39.0**	**10.1**	**$126.7**
Average annualized value over 50 years					
3 percent discount rate					**$138.98**
7 percent discount rate					**$97.04**

[a] Estimated cases avoided are per year from Year 10 to Year 50 in this analysis. OSHA applied the 2022 VSL value from U.S. Department of Transportation. (2022).

[75] While the probability of death is likely not uniformly distributed over the time period, this simplifying assumption should reasonably provide a way to approximate the benefits.

[76] See Lee S J, Boscardin W J, Stijacic-Cenzer I, Conell-Price J, O'Brien S, Walter L C et al. Time lag to benefit after screening for breast and colorectal cancer: meta-analysis of survival data from the United States, Sweden, United Kingdom, and Denmark BMJ 2013; 346:e8441 *doi:10.1136/bmj.e8441* as an example of research findings that may be applicable.

[77] National Cancer Institute. August 2023. Breast Cancer Screening. Available at *https://progressreport.cancer.gov/detection/breast_cancer.* Accessed October 19, 2023.

VII. Benefits From Reducing Cancer Fatalities of Firefighters Through General Medical Evaluation and Other Provisions of the Proposed Standard

As noted previously, many researchers have found that firefighters have higher rates of incidents and/or mortality for various types of cancer compared to the general population. In order to estimate the benefits of reduced cancer fatalities other than those being screened for and discussed previously, OSHA included a range of potential benefits from a reduction in buccal cavity and pharynx cancer based on Muegge et al. (2018) estimates of mortality.[78] For the other types of cancer checked for in a general medical evaluation (prostate, testicular, thyroid, melanoma), OSHA applied Pinkerton et al.'s (2020) estimates of the relative mortality rates of firefighters for cancer in general.[79]

For these five cancers, estimates of the mortality rates for the general population were from the Centers for Disease Control and Prevention (CDC) or the American Cancer Society (ACS).[80] To estimate the rates for firefighters, OSHA made adjustments based on the relevant findings in the literature of statistically significant mortality rates of firefighters relative to the general population by type of cancer.

Multiplying the calculated mortality rates for firefighters by the applicable population of firefighters yielded an estimate of the expected number of firefighter deaths from each type of cancer in Year 1.[81] Although OSHA was unable to find current research directly quantifying the likely reduction in these fatalities from programs similar to this proposed standard, the agency believes, for reasons discussed in the *Health Effects of Emergency Response Activities* and the *Summary and Explanation of the Proposed Rule* sections, that a combined effect of improved medical surveillance and more consistent and hygienic use of PPE would provide a meaningful reduction in cancer mortality among firefighters. In addition, the agency believes the enhanced medical surveillance and tracking of worker exposure to combustion products will enhance research in this area to optimize future cancer reduction. OSHA estimates the proposed standard would prevent 20 percent of these cancer fatalities (Table VII–10). OSHA also expects a lag in achieving benefits and assumes they will begin in Year 20. However, this is an area of ongoing research and the agency invites comment on this estimate.

To quantify the benefits of reduced fatalities, OSHA used the value of a statistical life (VSL) originally developed by the DOT.[82] The total value of prevented cancer fatalities in Year 20 is $210.6 million. Table VII–10 also contains the average annualized benefits over 50 years using a 3 percent discount rate ($163.6 million) and a 7 percent discount rate ($88.3 million).

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[78] Muegge, C.M., Zollinger, T.W., Song, Y., Wessel, J., Monahan, P.O., Moffatt, S.M. (2018). Excess mortality among Indiana firefighters, 1985–2013. American Journal of Industrial Medicine, 61(12):961–967. *Doi.org/10.1002/ajim.22918.*

[79] Pinkerton, L., Bertke, S.J., Yiin, J., Dahm, M., Kubale, T., Hales, T., Purdue, M., Beaumont, J.J., Daniels, R. (2020). Mortality in a cohort of US firefighters from San Francisco, Chicago, and Philadelphia: an update. Occupational and Environmental Medicine 77(2):84–93. *http://dx.doi.org/10.1136/oemed-2019-105962.*

[80] Data for incidence and mortality rates for prostate cancer from the CDC: *https://www.cdc.gov/cancer/prostate/basic_info/risk_factors.htm#:~:text=Out%20of%20every%20100%20American,increased%20risk%20for%20prostate%20cancer.* Data from ACS for testicular, buccal cavity and pharynx, thyroid, and melanoma cancers. For example, see *https://www.cancer.org/cancer/testicular-cancer/about/key-statistics.html#:~:text=Testicular%20cancer%20is%20not%20common,testicular%20cancer%20is%20about%2033* (Accessed March 26, 2023).

[81] U.S. Fire Administration (USFA). (2020). U.S. Fire Administration (USFA) National Fire Department Registry: National Data. Available at *https://apps.usfa.fema.gov/registry/download* (Accessed January 13, 2020). The distributions by age and sex were based on:

NFPA (2017). U.S. Fire Department Profile—2015. April 2017. Available at *https://www.nfpa.org/News-and-Research/Fire-statistics-and-reports/Fire-statistics/The-fire-service/Administration/US-fire-department-profile* (Accessed September 13, 2018).

[82] U.S. Department of Transportation. (2022). ''Departmental Guidance of Valuation of a Statistical Life in Economic Analysis.'' Available at *https://www.transportation.gov/office-policy/transportation-policy/revised-departmental-guidance-on-valuation-of-a-statistical-life-in-economic-analysis.*

Table VII-10. Benefits of Prevented Cancer Fatalities by General Medical Evaluation

Type of Cancer/ Discount Rate	Public, State Plan, and Private Fire Departments			
	Career	Paid per Call	Volunteers	Total
Year 20				
Prostate				
Fatalities prevented	2.3	0.8	2.4	5.5
Value (millions $2022)	$28.3	$10.6	$29.9	$68.8
Testicular				
Fatalities prevented	0.1	0.1	0.1	0.3
Value (millions $2022)	$1.7	$0.6	$1.8	$4.1
Buccal cavity and pharynx				
Fatalities prevented	2.8	1.1	3.0	6.9
Value (millions $2022)	$35.5	$13.3	$37.4	$86.2
Thyroid				
Fatalities prevented	0.2	0.1	0.3	0.6
Value (millions $2022)	$3.1	$1.2	$3.3	$7.5
Melanoma				
Fatalities prevented	1.5	0.5	1.5	3.5
Value (millions $2022)	$18.1	$6.8	$19.1	$44.1
Total				
Fatalities prevented	**6.9**	**2.6**	**7.3**	**16.9**
Value (millions $2022)	**$86.7**	**$32.5**	**$91.5**	**$210.6**
Average Annualized Over 50 Years (Millions $2022)				
3 percent discount rate	**$67.3**	**$25.2**	**$71.1**	**$163.6**
7 percent discount rate	**$36.3**	**$13.6**	**$38.3**	**$88.3**

Note: Totals may not match the sums due to rounding.

VIII. Summary of Quantified Benefits

Table VII–11 presents a summary of the quantified benefits of the proposed standard in reducing emergency responder fatalities on the job, firefighter and EMT suicides, and firefighter fatalities from certain types of cancer. The monetization of the reduction in these fatalities is based on the VSL developed by DOT. OSHA applied the estimates of the cost of injuries from the Viscusi and Gentry (2015).[83] In total, OSHA estimated that the proposed standard would prevent an average of approximately 54 fatalities and 11,015 nonfatal injuries per year, with an associated value of $1,864.9 million in 2022 dollars. Assuming these annual benefits would continue for 50 years, the average annualized value of the benefits would be $2,628.5 million using a 3 percent discount rate and $2,262.3 million using a 7 percent discount rate.

As a sensitivity analysis, OSHA estimated the benefits based on assuming a large reduction of certain fatalities and injuries. Table B–1 in Appendix B shows the estimated benefits for 20, 35, and 50 percent reductions of fatalities and injuries. OSHA assumed a 20 percent reduction in heart attacks, suicides, and cancer fatalities prevented by the general medical evaluation (prostate, testicular, buccal cavity and pharynx, thyroid, and melanoma cancers). OSHA also assumed a 50 percent reduction for safety-related fatalities and nonfatal injuries. Based on a 50 percent reduction, average annualized benefits would be $3.4 billion using a 3 percent discount rate, and $2.8 billion using a 7 percent discount rate.

[83] Viscusi, K. and E.P Gentry. (2015). ''The value of a statistical life for transportation regulations: A test of the benefits transfer methodology.'' Journal of Risk and Uncertainty. 51:53–77. *https://doi.org/10.1007/s11166-015-9219-2.*

Table VII-11. Summary of Benefits, Millions 2022$

Source	Current Cases	Cases Prevented	Average Annualized Value, 3 Percent Discount Rate
	50 Year Period		
Suicides-firefighters and EMTs	2,179	436	$154.8
Safety-Related fatal injuries-firefighters and EMTs	2,049	1,025	$363.9
Health-Related fatal injuries-firefighters	1,546	309	$109.8
Cancer fatalities-firefighters			
Colorectal	792	15	$5.2
Lung	1,143	390	$133.7
Breast	16	0.277	$0.1
Prostate	1,376	165	$53.4
Testicular	82	10	$3.2
Buccal cavity and pharynx	1,724	207	$67.0
Thyroid	150	18	$5.8
Melanoma	882	106	$34.3
Total Fatalities	**11,939**	**2,681**	**$931.2**
Nonfatal injuries-EMTs and paramedics [a]	**384,700**	**192,350**	**$592.8**
Nonfatal injuries-firefighters [a]	**716,750**	**358,375**	**$1,104.5**
Average annualized value over 50 years			
3 percent discount rate			**$2,628.5**
7 percent discount rate			**$2,262.3**

Note: Totals may not match the sums due to rounding.

[a] The value assigned to a non-fatal injury is the midpoint of the range ($77,000 to $84,000) cited by Viscusi, W.K., Gentry, E.P. The value of a statistical life for transportation regulations: A test of the benefits transfer methodology. J Risk Uncertain 51, 53–77 (2015). https://doi.org/10.1007/s11166-015-9219-2, inflated to 2022 dollars using the GDP deflator.

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IX. Non-Quantified Benefits for Emergency Responders

(i) Reduction in the Incidence of Cancer

OSHA believes that the proposed standard would reduce both the number of fatalities due to cancer and the incidence of cancer among firefighters. As previously explained, OSHA believes that research exists that can be used to estimate the reduction in fatalities but an estimate of the reduction in the number of total cancer cases would be more speculative. Additionally, OSHA was unable to develop a monetary value of avoided cases of non-fatal cancer as empirically validated as that for the fatal cases. Nonetheless, the agency welcomes comment on this issue for potential inclusion of these benefits in the Final Economic Analysis.

As previously noted, several studies have found evidence that firefighters are more likely to develop certain types of cancer compared to the general population. Based on general population incidence rates from the ACS with adjustments as determined in the studies referenced above, OSHA estimated the number of cancer cases in firefighters. (Table VII–6).[84] OSHA

[84] The ACS general population estimates, see for example *https://www.cancer.org/cancer/testicular-cancer/about/key-statistics.html#:~:text=Testicular%20cancer%20is%20not%20common,testicular%20cancer%20is%20about%2033*. OSHA primarily used the estimates of the incidence rates of cancer for firefighters relative to the general population from Lee et al. (2020). Lee et al. provided estimates for firefighters for melanoma, thyroid, prostate, and testicular cancers. Daniels et al. (2014) found differences in incidence rates for buccal cavity and pharynx cancer. Lee, D.J., Koru-Sengul, T., Hernandez, M.N., Caban-Martinez, A.J., McClure, L.A., Mackinnon, J.A., Kobetz, E.N. (2020). Cancer risk among career male and female Florida firefighters: Evidence from the Florida Firefighter Cancer Registry (1981–2014). Daniels, R.D., Kubale,

believes the proposed standard would prevent some of the 765.4 estimated cases of cancer diagnosed per year in firefighters but was not able to calculate a robust estimate of how many of these cases would be prevented.

X. Other Non-Quantified Benefits to Society

While OSHA is estimating the potential costs of vocational training and has occupational safety-related benefits included in the analysis, it has *not* quantified the potential spillover value to society from the vocational training involved. For example, the NFPA Research Foundation estimated the total cost to society of fire and fire protections in the U.S. to be over $300 billion, more than $50 billion of which was the cost to society of the fires themselves (NFPA, 2017). If the enhanced vocational training of firefighting estimated in this analysis resulted in even a 1 percent increase in the proficiency of firefighting, that would represent a savings to society of over $500 million. The health value to society from EMT vocational training is potentially of a similar or greater magnitude.

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Appendix A. NIOSH Firefighter Fatalities

While OSHA is relying on data from the OIS and from NFPA to estimate the safety benefits of the rule, NIOSH has also conducted extensive analyses of firefighter injuries that parallel OSHA's analysis and OSHA believes these merit summarizing here. The agency finds these largely parallel the analysis of the OIS and NFPA data in terms of the distribution of the cause and nature of the fatal injuries. However, OSHA decided against using the NIOSH data to estimate the number of firefighter fatalities

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T.L., Yiin, J.H., Dahm, M.M., Hales, T.R., Baris, D., Zahm, S.H., Beaumont, J.J., Waters, K.M., Pinkerton, L.E. (2014). Mortality and cancer incidence in a pooled cohort of US firefighters from San Francisco, Chicago, and Philadelphia (1950–2009). Occupational and Environmental Medicine, 71:388–397. *doi.org/10.1136/oemed-2013–101662.* The number of in-scope firefighters are from U.S. Fire Administration (USFA). (2020). U.S. Fire Administration (USFA) National Fire Department Registry: National Data. Available at *https://apps.usfa.fema.gov/registry/download* (Accessed January 13, 2020). The distributions by age and sex were based on:

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due to issues in identifying volunteers and which fatalities occurred in States with OSHA-approved State Plans.

Between 2007 and 2021, NIOSH reported a total of 1,490 firefighter on-duty fatalities, an average of 99.33 firefighter fatalities per year.[85] The definition used by NIOSH to categorize a fatality as ''on-duty'' was provided by the USFA. The USFA defines ''on duty'' as ''being at the scene of an alarm, whether a fire or non-fire incident; being enroute while responding to or returning from an alarm; performing other assigned duties such as training, maintenance, public education, inspection, investigations, court testimony and fundraising; and being on call, under orders or on standby duty other than at home or at the individual's place of business.'' The USFA also states that ''fatalities that occur at a firefighter's home may be counted if the actions of the firefighter at the time of injury involved firefighting or rescue'' (USFA 2022).

During this 15-year period, the leading cause of injury was stress/over-exertion, making up nearly 50 percent of total fatalities. The USFA places all firefighter fatalities that are cardiac or cerebrovascular in nature in this category due to the strenuous and physical demands of the work. Of the 741 stress and over-exertion fatalities, 665 were heart attacks. NIOSH cites undiagnosed medical conditions such as cardiovascular diseases, hypertension, and obesity as contributing factors to these fatalities.

Vehicle accidents were the second leading cause of firefighter deaths in the NIOSH data, accounting for 14 percent of total fatalities. More than 50 percent of the 209 vehicle accident fatalities reported occurred when firefighters were responding to an emergency. In many of these cases, firefighters were fatally injured when fire apparatus collided with roadway objects or overturned from traveling at speeds unsafe for vehicle maneuvering, especially during unfavorable weather and road conditions. In addition, firefighters' failure to wear seatbelts and lack of experience operating fire apparatus were also frequently contributors to these fatal incidents.

The leading nature of these fatal injuries or the primary physical characteristic that resulted in the death of these firefighters was heart attacks, accounting for 45 percent of total fatalities, followed by bodily trauma and asphyxiation, at 24 and 7 percent, respectively.

Appendix B

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[85] *https://wwwn.cdc.gov/wisards/fffmap/.* This estimate includes 99 Covid-19 related fatalities reported by the USFA for years 2020 and 2021; *https://apps.usfa.fema.gov/firefighter-fatalities/.*

Table B-1. Summary of Benefits Sensitivity Analysis, Millions $2022

Source	Current Annual Cases	20 Percent Reduction		35 Percent Reduction		50 Percent Reduction	
		Average Annual Cases Prevented	Value of Average Annual Cases Prevented	Average Annual Cases Prevented	Value of Average Annual Cases Prevented	Average Annual Cases Prevented	Value of Average Annual Cases Prevented
Year 1							
Suicides-firefighters and EMTs	43.6	8.7	$109.0	15.3	$190.7	21.8	$272.4
Safety-Related fatal incidents-firefighters and EMTs	41.0	8.2	$102.5	14.3	$179.3	20.5	$256.2
Health-Related fatal incidents-firefighters	30.9	6.2	$77.3	10.8	$135.3	15.5	$193.2
Cancer fatalities-firefighters							
Colorectal	15.8	2.5	$31.7	4.4	$55.5	6.3	$79.2
Lung	22.9	3.7	$45.7	6.4	$80.0	9.1	$114.3
Breast	0.3	0.1	$0.7	0.1	$1.2	0.1	$1.6
Prostate	27.5	3.3	$41.3	5.8	$72.2	8.3	$103.2
Testicular	1.6	0.2	$2.5	0.3	$4.3	0.5	$6.2
Buccal cavity and pharynx	34.5	4.1	$51.7	7.2	$90.5	10.3	$129.3
Thyroid	3.0	0.4	$4.5	0.6	$7.9	0.9	$11.2
Melanoma	17.6	2.1	$26.5	3.7	$46.3	5.3	$66.1
Total Fatalities	**238.8**	**39.5**	**$493.2**	**69.0**	**$863.0**	**98.6**	**$1,232.9**
Nonfatal incidents-EMTs and paramedics	**7,694**	**1,539**	**$166.9**	**2,693**	**$292.1**	**3,847**	**$417.3**
Nonfatal incidents-firefighters	**14,335**	**2,867**	**$311.0**	**5,017**	**$544.2**	**7,168**	**$777.5**
Average annualized value over 50 years							
3 percent discount rate			**$1,359.8**		**$2,379.7**		**$3,399.6**
7 percent discount rate			**$1,138.3**		**$1,992.0**		**$2,845.7**

Note: Totals may not match the sums due to rounding.

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E. Economic Feasibility Analysis

I. Introduction

This section estimates the economic impacts of the proposed rule on affected employers in the three emergency response service sectors: firefighting, emergency medical service, and technical search and rescue. The purpose of this analysis is twofold. First, it is used to determine whether the proposed rule is economically feasible for all entities in the affected emergency response service sectors, and second, OSHA will use the results to determine whether the agency can certify that the proposed rule will not have a significant economic impact on a substantial number of small entities.

II. Analytical Approach

To determine whether a rule is economically feasible, OSHA typically begins by using two screening tests to determine whether the costs of the rule are beneath the threshold level at which the economic viability of an affected industry might be threatened. As noted in the Industry Profile, the proposed rule will impact private entities in all states and state and local government entities in States with OSHA-approved State Plans.[86] Because a significant proportion of affected entities are expected to be state and local government ESOs, the determination of economic feasibility discussed in this chapter is expanded to include both private and public (state and local government) entities.

The first screening test is a revenue test. In the context of public entities, for the screening test, existing emergency organization budgets are used as a measure of revenues. While there is no hard and fast rule on which to base the threshold, OSHA generally considers a rule to be economically feasible for an affected industry when the annualized costs of compliance are less than one percent of annual revenues for an average firm in that industry. The one-percent revenue threshold is intentionally set at a low level so that OSHA can confidently assert that the rule is economically feasible for industries where the average firm is below the threshold (*i.e.,* industries for which the costs of compliance are less than one percent of annual revenues). As discussed further later, ultimately the larger pool of locality revenue is more analogous to the revenues afforded private firms; however, impact screening based on the more limited pre-assigned budget of the emergency organization will readily expose potential constraints facing the organization.

One complexity to note in the economic impact of the rule is that the agency anticipates that part of the cost of the rule will not be borne directly by affected emergency response entities but will be dispersed widely in the economy because the cost of medical examinations will be borne in part by insurance companies and other third parties. While these represent costs to society and are reflected in the estimated total costs of the rule, they do not pose issues for the economic feasibility of the rule to emergency response organizations. Details of this are discussed in the Costs chapter.

The second screening test that OSHA traditionally uses for private entities to consider whether a rule is economically feasible for an affected industry is if the costs of compliance are less than ten percent of annual profits for the average firm in an industry (see, *e.g.,* OSHA's economic analysis of its Silica rule, 81 FR 16286, 16533 (March 25, 2016); upheld in *N. Am. Bldg. Trades Unions* v. *OSHA,* 878 F.3d 271, 300 (D.C. Cir. 2017)). The ten-percent profit test is also intended to be at a sufficiently low level to allow OSHA to identify industries that might require further examination. For public entities, OSHA considers the costs of compliance compared to the revenue for the entire locality as an alternative revenue measure to assess regulatory impacts. To the extent that a city or town's budget can be reallocated to different functions, this approach may result in a better representation of how the costs of the proposed rule might impact a given government entity. There has been no threshold established for public entities equivalent to the ten-percent profits threshold for private entities, but the agency invites comment on what would reasonably apply to the public sector.

When an industry ''passes'' both the ''cost-to-revenue'' and ''cost-to-profit'' screening tests, OSHA is assured that the costs of compliance with the rule are economically feasible for firms in that industry. A rule is not necessarily economically infeasible, however, for firms in industries where the average firm does not pass the initial revenue screening test (*i.e.,* those for which the costs of compliance with the rule are one percent or more of annual revenues), the initial profit screening test (*i.e.,* those for which the costs of compliance are ten percent or more of annual profits), or both. Instead, OSHA normally views those industries as requiring additional examination as to whether the rule would be economically feasible (see *N. Am. Bldg. Trades Unions* v. *OSHA,* 878 F.3d at 291).

III. Impacts

A. Impacts and Economic Feasibility Screening Analysis—All Establishments

Previous chapters of this PEA present summary profile information of the number of potentially affected ESOs, WEREs, responders, and team members as well as the costs of the proposed rule by provision and responder or team member type. As shown in the Costs chapter, the training and medical requirements provisions contribute the most to the overall cost of the proposed rule.

To determine whether the proposed rule's projected costs of compliance would threaten the economic viability of affected emergency response service sectors, OSHA first compared, for the average firm in each sector, annualized compliance costs to annual revenues and profits for private organizations and annualized compliance costs to annual revenues (represented by ESO budgets) and locality revenues per (average) affected public organization. Table VII–E–2 and Table VII–E–3 show economic impacts for all public and private organizations, respectively, where total costs include one-time and annual costs annualized using a 3 percent discount rate. The estimated average annualized cost per public organization is $17,012, while the estimated average annualized cost per private organization is $22,464.

OSHA estimated revenues as follows:

Firefighting Services: To estimate public fire department revenue by department type (career, volunteer, and mixed), OSHA used data from Firehouse Magazine's (2022) 2021 National Run Survey, 2021 Volunteer Fire Department Run Survey, and 2021 Combination Fire Department Run Survey, respectively. Each of these surveys presents statistics on funding and staffing.[87] In order to extrapolate from these fire departments to the entire universe of public fire departments in the U.S., OSHA calculated the median budget per employee for each department type and multiplied that estimate by the number

[86] As explained in section VII, Additional Requirements, States that have elected voluntarily to adopt a State Plan approved by the agency pursuant to section 18 of the Act must adopt a standard at least as effective as the Federal standard, which must apply to State and local government agencies (29 U.S.C. 667(b), (c)(2) and (6)).

[87] The National Run Survey includes 229 fire departments; the Volunteer Fire Department Run Survey includes 259 fire departments; and the Combination Fire Department Run Survey includes 94 fire departments.

of firefighters in each size class as reported in the fire department profile.

For private fire departments, OSHA conducted an internet search for NAICS codes linked to a randomly designated subset of the entities recorded as either a ''contract fire department'' or ''private or industrial fire brigade'' in the National Fire Registry database (USFA, 2022).[88] OSHA compared revenue per firm estimates from the 2017 SUSB dataset for these NAICS codes and used the 25th percentile revenue per firm estimate ($16,664,010 in 2022 dollars) as representative of revenues for all private entities in the National Fire Registry.

To estimate revenues for private wildland fire service organizations, OSHA used revenue and employment data from the U.S. Census Bureau's (2021) 2017 SUSB for NAICS 115310 Support Activities for Forestry, dividing the total revenue figure by total employment to estimate revenue per employee ($154,471). This estimate was then multiplied by the number of wildland firefighters in each employee class size from section V (Industry Profile) to determine revenues in each employee class size. These estimates are then inflated to 2022 dollars using the Bureau of Economic Analysis' (BEA, 2023) implicit price deflators for gross domestic product. OSHA used state-level revenue data from the Survey of State and Local Government Finances (2022) and inflated to 2022 dollars using the Bureau of Economic Analysis' (BEA, 2023) implicit price deflators for gross domestic product for state governments that utilize inmate firefighters.

[88] The National Fire Registry does not list NAICS codes associated with each organization in the database. Since there are 435 organizations listed as ''contract fire department'' or ''private or industrial fire brigade'' in the Registry, OSHA determined that a subset of organizations could be taken as representative. OSHA used the 25th percentile revenue estimate as representative.

Emergency Medical Services (EMS): Emergency medical service revenue were estimated using revenue data from the U.S. Census Bureau's (2021) 2017 Statistics of U.S. Businesses (SUSB) for detailed employment size classes in NAICS 621910 Ambulance Services, inflating those data to 2022 dollars using the Bureau of Economic Analysis' (BEA, 2023) implicit price deflators for gross domestic product.

Technical Search and Rescue: Derivation of technical search and rescue revenues involves characterization of wilderness and urban search and rescue entities as well as additional technical water rescue entities. For the former, OSHA used police department expenditures data from the U.S. Census Bureau's (2022) 2017 Annual Survey of State and Local Government Finances, as well as employment data from the Bureau of Justice Statistics (2022) Census of State and Local Law Enforcement Agencies for 2018. Using these two sources, OSHA calculated the average expenditure per employee and multiplied this estimate by the number of public wilderness and urban search and rescue group members derived in section V (Industry Profile) for each employee class size. These estimates are then inflated to 2022 dollars using the Bureau of Economic Analysis' (BEA, 2023) implicit price deflators for gross domestic product. OSHA also estimated revenues for private wilderness and urban search and rescue groups by identifying a subset of these entities and obtaining annual sales for them in DemographicsNow. OSHA then extrapolated the revenues of this subset of entities to the full profile of private wilderness and urban search and groups identified in section V.

To estimate technical water rescue entity revenue, OSHA used the median budget of all career fire departments from the Firehouse Magazine's (2022) 2021 National Run Survey, inflated to 2022 dollars using the Bureau of Economic Analysis's (BEA, 2023) implicit price deflators for gross domestic product. OSHA's rationale for using career fire departments budgets to estimate technical water rescue entity revenue is explained in the Industry Profile. This estimate was multiplied by the number of employees within each employee class size as shown in section V (Industry Profile).

OSHA estimated profits and locality revenues for these emergency response service sectors as follows:

OSHA estimated before-tax profit rates using corporate balance sheet data from the Internal Revenue Service's Corporation Source Book (IRS, 2016).[89] For each of the years 2000 through 2013, OSHA calculated profit rates as the ratio of total receipts to net income by NAICS code and averaged profit rates across the fourteen-year (2000–2013) period. Since some data provided by the IRS were not available at disaggregated levels for all industries and profit rates, data at more highly aggregated levels were used as proxy for such industries—that is, where data were not available for each six-digit NAICS code, corresponding 4- and 5-digit NAICS codes were used as appropriate. Table VII–E–1 presents the NAICS codes and profit rates used for each emergency response service sector.

To estimate locality revenues, the agency used U.S. Census Bureau (2022) data on local government finances, which breaks down expenditures for various functions for local governments in the U.S. and by state. OSHA used the ratio of expenditures for current operations ($1.5 trillion) to expenditures for fire protection ($50 billion), a multiplier of approximately 30, to inflate estimated revenue per public ESO to estimated total expenditures.

[89] At the time of this analysis, this source was the most recent publicly available dataset on industry-wide profit rates at the NAICS level.

Table VII-E-1. Private Sector Profit Rates Used in the Economic Feasibility Analysis

Emergency Response Service Sector	NAICS	Profit Rate
WEREs [a]	562210	3.5%
Private Fire Departments [a]	562210	3.5%
Wildland Fire Services	115310	2.0%
Emergency Medical Services	621910	4.4%
Technical Search and Rescue Groups	541618	5.0%

Sources: IRS, 2016.

[a] OSHA conducted an internet search for NAICS codes linked to a randomly designated subset of the entities recorded as either a "contract fire department" or "private or industrial fire brigade" in the National Fire Registry database (USFA, 2022). OSHA compared revenue per firm estimates from the 2017 SUSB dataset for these NAICS codes and used the 25th percentile revenue per firm estimate as representative of revenues for all private entities in the National Fire Registry. OSHA also used the profit rate for the same NAICS code when calculating profits for these private entities.

As previously discussed, OSHA has established a minimum threshold level of annualized costs equal to one percent of annual revenues—and, secondarily, annualized costs equal to ten percent of annual profits—below which the agency has concluded that costs are unlikely to threaten the economic viability of an affected sector. Table VII–E–2 shows that costs as a percent of locality revenues for public organizations generally range from less than 0.01 percent to 0.16 percent. Public volunteer fire departments are the only emergency response service group with costs as a percent of revenues estimated to exceed the one percent revenue test, at an estimated 4.99% of revenues. In most situations, OSHA expects that the affected community would be able to allocate the very small additional share of the locality revenues necessary to permit the fire department to comply with the standard. However, the agency welcomes comments, information, and data on the feasibility of compliance for these entities.

Table VII–E–3 shows that all private emergency response service sectors have costs that are less than one percent of revenues and ten percent of profits.

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Table VII-E-2. Economic Impacts Experienced by Organizations Affected by the Proposed Rule with Costs Calculated Using a 3 Percent Discount Rate - All Public State-Plan State Organizations

Sources: OSHA derived from USFA, 2022; BLS, 2023; BLS, 2023; EPA, 2002; Rice, 2002; U.S. Census, 2021.
Note: Figures may not add to totals due to rounding.

	Organizations	Total Annualized Costs [a]	Average Annualized Cost per Organization	Average Revenue per Organization	Costs as % of Revenue	Average Revenue per Locality	Costs as % of Locality Revenue
Fire Departments							
Career	3,807	$76,468,238	$20,086	$8,539,522	0.24%	$258,221,245	0.01%
Volunteer	5,216	$75,896,161	$14,551	$291,703	4.99%	$8,820,610	0.16%
Mixed	2,032	$38,308,712	$18,853	$3,290,935	0.57%	$99,512,530	0.02%
Total	**11,055**	**$190,673,112**	**$17,248**	**$3,054,294**	**0.56%**	**$92,356,876**	**0.02%**
Wildland Fire Services							
Volunteer [b]	7	$784,787	$112,112	$98,229,775,991	0.00%	$98,229,775,991	0.00%
Total	**7**	**$784,787**	**$112,112**	**$98,229,775,991**	**0.00%**	**$98,229,775,991**	**0.00%**
Emergency Medical Services							
Career	548	$13,427,932	$24,488	$6,070,423	0.40%	$183,559,703	0.01%
Volunteer	221	$6,751,172	$30,616	$6,070,423	0.50%	$183,559,703	0.02%
Mixed	577	$12,335,922	$21,371	$6,070,423	0.35%	$183,559,703	0.01%
Total	**1,346**	**$32,515,027**	**$24,155**	**$6,070,423**	**0.40%**	**$183,559,703**	**0.01%**
Technical Search and Rescue Groups							
Career	123	$1,755,945	$14,255	$15,079,160	0.09%	$455,969,256	0.00%
Volunteer	1,572	$14,184,107	$9,025	$4,229,050	0.21%	$127,879,578	0.01%
Total	**1,695**	**$15,940,052**	**$9,405**	**$4,834,888**	**0.19%**	**$146,199,132**	**0.01%**
Total							
Career	4,479	$91,652,116	$20,465	$8,417,071	0.24%	$254,518,540	0.01%
Volunteer	7,015	$97,616,228	$13,915	$117,467,842	0.01%	$154,908,438	0.01%
Mixed	2,609	$50,644,634	$19,410	$3,905,818	0.50%	$118,105,566	0.02%
Total	**14,103**	**$239,912,978**	**$17,012**	**$72,552,496**	**0.02%**	**$193,938,058**	**0.01%**

[a] These annualized costs reflect lower costs than presented in the Costs chapter because they are adjusted to reflect the percentage of medical exam costs that will be covered by insurance companies.
[b] The volunteer wildland fire service organizations represented here are the State Plan state governments that use prison labor to fight wildfires. The revenues shown here represent the average revenues of the applicable State Plan states.

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Table VII-E-3. Economic Impacts Experienced by Organizations Affected by the Proposed Rule with Costs Calculated Using a 3 Percent Discount Rate - All Private Organizations

	Organizations	Total Annualized Costs [a]	Average Annualized Cost per Organization	Average Revenue per Organization	Costs as % of Revenue	Average Profit per Organization	Costs as % of Profit
WEREs							
Career	1,500	$24,145,368	$16,097	$16,664,010	0.10%	$578,873	2.78%
Total	**1,500**	**$24,145,368**	**$16,097**	**$16,664,010**	**0.10%**	**$578,873**	**2.78%**
Fire Departments							
Career	220	$3,767,753	$17,126	$16,664,010	0.10%	$578,873	2.96%
Volunteer	450	$6,153,007	$13,673	$16,664,010	0.08%	$578,873	2.36%
Mixed	118	$2,198,398	$18,630	$16,664,010	0.11%	$578,873	3.22%
Total	**788**	**$12,119,158**	**$15,380**	**$16,664,010**	**0.09%**	**$578,873**	**2.66%**
Wildland Fire Services							
Career	516	$10,869,070	$21,082	$12,575,542	0.17%	$252,124	8.36%
Total	**516**	**$10,869,070**	**$21,082**	**$12,575,542**	**0.17%**	**$252,124**	**8.36%**
Emergency Medical Services							
Career	2,032	$49,800,769	$24,512	$6,092,267	0.40%	$266,673	9.19%
Volunteer	1,176	$30,745,950	$26,139	$6,092,267	0.43%	$266,673	9.80%
Mixed	2,139	$55,901,728	$26,139	$6,092,267	0.43%	$266,673	9.80%
Total	**5,347**	**$136,448,447**	**$25,521**	**$6,092,267**	**0.42%**	**$266,673**	**9.57%**
Technical Search and Rescue Groups							
Career	39	$371,702	$9,573	$10,915,200	0.09%	$546,972	1.75%
Total	**39**	**$371,702**	**$9,573**	**$10,915,200**	**0.09%**	**$546,972**	**1.75%**
Total							
Career	4,306	$88,954,662	$20,658	$11,134,694	0.19%	$392,162	5.27%
Volunteer	1,626	$36,898,957	$22,690	$9,017,573	0.25%	$353,062	6.43%
Mixed	2,257	$58,100,126	$25,746	$6,645,065	0.39%	$282,998	9.10%
Total	**8,189**	**$183,953,745**	**$22,464**	**$9,528,799**	**0.24%**	**$356,908**	**6.29%**

Sources: OSHA derived from USFA, 2022; BLS, 2023; BLS, 2023; EPA, 2002; Rice, 2002; U.S. Census, 2021.
Note: Figures may not add to totals due to rounding.
[a] These annualized costs reflect lower costs than presented in the costs chapter because they are adjusted to reflect the percentage of medical exam costs that will be covered by insurance companies

B. Impacts and Regulatory Flexibility Screening Analysis—Small Entities

The discussion in the preceding section focused on the economic viability of each sector overall. This section considers the potential impact of the proposed rule specifically on small organizations. The RFA requires Federal agencies to consider the economic

impact that a proposed rulemaking will have on small entities. The RFA states that whenever a Federal agency is required to publish a general notice of proposed rulemaking for any proposed rule, the agency must prepare and make available for public comment an initial regulatory flexibility analysis (IRFA). 5 U.S.C. 603(a). Pursuant to section 605(b), in lieu of an IRFA, the head of an agency may certify that the proposed rule will not have a significant economic impact on a substantial number of small entities. The agency performed the following screening analysis to determine whether it can certify that the proposed rule will not have a significant economic impact on a substantial number of small entities.

Again, OSHA used a minimum threshold level of annualized costs equal to one percent of annual revenues—and, secondarily, annualized costs equal to ten percent of annual profits—below which the agency has concluded that the costs are unlikely to threaten the survival of small organizations. Compliance costs for organizations meeting the RFA or SBA definition of a small entity were calculated using compliance cost estimates for each provision of the proposed rule for each emergency response service sector.

Table VII–E–4 and Table VII–E–5 show economic impacts for organizations considered small by RFA (public organizations) and SBA (private organizations) definitions, respectively, where total costs include one-time and annual costs annualized using a 3 percent discount rate. The estimated average annualized cost per small public organization is $15,027, while the estimated average annualized cost per small private organization is $22,073. These average costs vary by emergency sector and organization type (career, volunteer, and mixed). For small public organizations, the estimated average cost ranges from $9,040 for volunteer technical search and rescue groups to $30,660 for volunteer emergency medical services. Small volunteer and mixed public fire departments are estimated to experience costs that exceed one percent of revenues. Costs as a percentage of locality revenues are estimated to vary from 0.01 percent or less for several public emergency response organizations to 0.17 percent for volunteer public fire departments. For private organizations, the estimated average cost per organization varies from $7,956 for technical search and rescue groups to $26,090 for both volunteer and mixed responder emergency medical services. All groups are estimated to incur costs that are less than one percent of revenues. Small private emergency medical services are estimated to experience costs that exceed ten percent of profits.

Based on these findings, OSHA is unable to certify that the proposed rule will not have a significant economic impact on a substantial number of small entities and has therefore prepared an IRFA, to further examine issues related to small entities and the proposed rule. The IRFA is presented in Chapter F of this PEA.

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Table VII-E-4. Economic Impacts Experienced by Organizations Affected by the Proposed Rule with Costs Calculated Using a 3 Percent Discount Rate - RFA Small Organizations

	Organizations	Total Annualized Costs [a]	Average Annualized Cost per Organization	Average Revenue per Organization	Costs as % of Revenue	Average Revenue per Locality	Costs as % of Locality Revenue
Fire Departments							
Career	3,297	$49,459,098	$15,001	$4,353,689	0.34%	$131,648,474	0.01%
Volunteer	5,199	$74,848,077	$14,397	$278,588	5.17%	$8,424,035	0.17%
Mixed	1,839	$28,300,040	$15,389	$1,476,936	1.04%	$44,660,155	0.03%
Total	**10,335**	**$152,607,215**	**$14,766**	**$1,495,659**	**0.99%**	**$45,226,308**	**0.03%**
Wildland Fire Services							
Emergency Medical Services							
Career	524	$12,842,892	$24,504	$6,070,423	0.40%	$183,559,703	0.01%
Volunteer	211	$6,461,895	$30,660	$6,070,423	0.51%	$183,559,703	0.02%
Mixed	552	$11,804,516	$21,397	$6,070,423	0.35%	$183,559,703	0.01%
Total	**1,287**	**$31,109,302**	**$24,180**	**$6,070,423**	**0.40%**	**$183,559,703**	**0.01%**
Technical Search and Rescue Groups							
Career	118	$1,679,532	$14,266	$15,079,160	0.09%	$455,969,256	0.00%
Volunteer	1,502	$13,579,128	$9,040	$4,229,050	0.21%	$127,879,578	0.01%
Total	**1,620**	**$15,258,660**	**$9,419**	**$4,834,888**	**0.19%**	**$146,199,132**	**0.01%**
Total							
Career	3,939	$63,981,521	$16,244	$4,902,708	0.33%	$148,249,901	0.01%
Volunteer	6,912	$94,889,100	$13,728	$1,795,450	0.76%	$54,291,487	0.03%
Mixed	2,391	$40,104,555	$16,775	$2,536,967	0.66%	$76,713,748	0.02%
Total	**13,241**	**$198,975,177**	**$15,027**	**$2,936,793**	**0.51%**	**$88,803,830**	**0.02%**

Sources: OSHA derived from USFA, 2022; BLS, 2023; BLS, 2023; EPA, 2002; Rice, 2002; U.S. Census, 2021.

Note: Figures may not add to totals due to rounding.

[a] These annualized costs reflect lower costs than presented in the Costs chapter because they are adjusted to reflect the percentage of medical exam costs that will be covered by insurance companies.

Table VII-E-5. Economic Impacts Experienced by Organizations Affected by the Proposed Rule with Costs Calculated Using a 3 Percent Discount Rate - SBA Small Organizations

	Organizations	Total Annualized Costs [a]	Average Annualized Cost per Organization	Average Revenue per Organization	Costs as % of Revenue	Average Profit per Organization	Costs as % of Profit
WEREs							
Career	1,500	$24,145,368	$16,097	$16,664,010	0.10%	$578,873	2.78%
Total	**1,500**	**$24,145,368**	**$16,097**	**$16,664,010**	**0.10%**	**$578,873**	**2.78%**
Fire Departments							
Career	218	$3,499,760	$16,054	$16,664,010	0.10%	$578,873	2.77%
Volunteer	450	$6,165,972	$13,702	$16,664,010	0.08%	$578,873	2.37%
Mixed	118	$2,203,011	$18,670	$16,664,010	0.11%	$578,873	3.23%
Total	**786**	**$11,868,743**	**$15,100**	**$16,664,010**	**0.09%**	**$578,873**	**2.61%**
Wildland Fire Services							
Career	507	$9,080,060	$17,909	$9,284,797	0.19%	$186,149	9.62%
Total	**507**	**$9,080,060**	**$17,909**	**$9,284,797**	**0.19%**	**$186,149**	**9.62%**
Emergency Medical Services							
Career	1,971	$47,628,769	$24,167	$2,863,241	0.84%	$125,331	19.28%
Volunteer	1,141	$29,769,590	$26,090	$2,863,241	0.91%	$125,331	20.82%
Mixed	2,075	$54,126,527	$26,090	$2,863,241	0.91%	$125,331	20.82%
Total	**5,186**	**$131,524,886**	**$25,359**	**$2,863,241**	**0.89%**	**$125,331**	**20.23%**
Technical Search and Rescue Groups							
Career	35	$275,941	$7,956	$10,113,051	0.08%	$506,775	1.57%
Total	**35**	**$275,941**	**$7,956**	**$10,113,051**	**0.08%**	**$506,775**	**1.57%**
Total							
Career	4,231	$84,629,898	$20,005	$9,296,695	0.22%	$319,928	6.25%
Volunteer	1,591	$35,935,562	$22,587	$6,766,629	0.33%	$253,610	8.91%
Mixed	2,193	$56,329,538	$25,691	$3,605,972	0.71%	$149,740	17.16%
Total	**8,014**	**$176,894,999**	**$22,073**	**$7,281,257**	**0.30%**	**$262,394**	**8.41%**

Sources: OSHA derived from USFA, 2022; BLS, 2023; BLS, 2023; EPA, 2002; Rice, 2002; U.S. Census, 2021.
Note: Figures may not add to totals due to rounding.
[a] These annualized costs reflect lower costs than presented in the Costs chapter because they are adjusted to reflect the percentage of medical exam costs that will be covered by insurance companies.

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F. Initial Regulatory Flexibility Analysis

I. Introduction

The RFA requires Federal agencies to consider the economic impact that a proposed rulemaking will have on small entities. The RFA states that whenever a Federal agency is required to publish a general notice of proposed rulemaking for any proposed rule, the agency must prepare and make available for public comment an initial regulatory flexibility analysis (IRFA). 5 U.S.C. 603(a). Pursuant to section 605(b), in lieu of an IRFA, the head of an agency may certify that the proposed rule will not have a significant economic impact on a substantial number of small entities. A certification must be supported by a factual basis. If the head of an agency makes a certification, the agency shall publish such certification in the **Federal Register** at the time of publication of a general notice of proposed rulemaking or at the time of publication of the final rule. 5 U.S.C. 605(b).

To determine whether OSHA can certify that the proposed emergency response rule will not have a significant economic impact on a substantial number of small entities, the agency has developed screening tests to consider minimum threshold effects of the proposed rule on small entities. These screening tests are similar in concept to the revenue and profit tests described in *Preliminary Economic Analysis and Initial Regulatory Flexibility Analysis,* section VII.E., to identify minimum threshold effects for purposes of demonstrating economic feasibility. For private entities, there are two differences. First, for each affected industry, the screening tests are applied, not to all establishments, but to small entities (called ''small business concerns'' by SBA). Second, although OSHA's regulatory flexibility screening test for revenues also uses a minimum threshold level of annualized costs equal to one percent of annual revenues, OSHA has established a minimum threshold level of annualized costs equal to five percent of annual profits for the average small entity. The agency has chosen a lower minimum threshold level for the profitability screening analysis and has applied its screening tests to small entities to ensure that certification will be made, and an IRFA will not be prepared, only if OSHA can be highly confident that a proposed rule will not have a significant economic impact on a substantial number of small entities in any affected industry.

As stated in Chapter VI, OSHA is not able to certify that the proposed rule will not result in a significant economic impact on a substantial number of small entities, thus triggering the need for an IRFA. Under the provisions of the RFA, as amended in 1996, each such analysis shall contain:

1. A description of the impact of the proposed rule on small entities;
2. A description of the reasons why action by the agency is being considered;
3. A succinct statement of the objectives of, and legal basis for, the proposed rule;
4. A description of and, where feasible, an estimate of the number of small entities to which the proposed rule will apply;
5. A description of the projected reporting, recordkeeping, and other compliance requirements of the proposed rule, including an estimate of the classes of small entities which will be subject to the requirements and the type of professional skills necessary for preparation of the report or record;
6. An identification, to the extent practicable, of all relevant Federal rules which may duplicate, overlap, or conflict with the proposed rule; and
7. A description and discussion of any significant alternatives to the proposed rule which accomplish the stated objectives of applicable statutes and which minimize any significant economic impact of the proposed rule on small entities, such as:

(a) The establishment of differing compliance or reporting requirements or timetables that take into account the resources available to small entities;

(b) The clarification, consolidation, or simplification of compliance and reporting requirements under the rule for such small entities;

(c) The use of performance rather than design standards; and

(d) An exemption from coverage of the rule, or any part thereof, for such small entities.

5 U.S.C. 603, 607. The RFA further states that the required elements of the IRFA may be performed in conjunction with or as part of any other agenda or analysis required by any other law if such other analysis satisfies the provisions of the IRFA. 5 U.S.C. 605. The remaining sections of this chapter address each of the components listed above.

II. Initial Regulatory Flexibility Analysis

A. Description of the Impact of the Proposed Rule on Small Entities

The potential small entity impacts of the proposed rule were derived and presented in Chapter VI. Table VII–E–4 of that chapter shows that small public volunteer and mixed fire departments are estimated to experience costs that exceed one percent of revenues. Costs as a percentage of locality revenues are estimated to vary from 0.01 percent or less for several types of public emergency response organizations to 0.17 percent for volunteer public fire departments. Additionally, Table VII–E–5 shows that small private wildland fire service and emergency medical service organizations, are estimated to experience costs that exceed five percent of profits. Note that the costs in these tables were annualized using a 3 percent discount rate.

B. Description of the Reasons Why Action by the Agency Is Being Considered

Emergency response workers in America face considerable occupational health and safety hazards in dynamic and often unpredictable work environments. Current OSHA emergency response and preparedness standards are outdated and incomplete. Specifically, the standards do not address the full range of hazards facing emergency responders, lag behind changes in protective equipment performance and industry practices, and conflict with current industry consensus standards. OSHA's current fire brigade standard, 29 CFR 1910.156, was promulgated in 1980 and has only had minor revisions since then.

Every day, the duties of an emergency responder may require making life and death decisions. A typical workday of an emergency responder could range from responding to a mild medical emergency to a more severe incident such as a multi-building fire. In doing their jobs of protecting the public, personal and real property, and the environment, emergency responders risk exposing themselves to safety and health hazards that may lead to injuries, illnesses, and death.

Some of the most common hazards emergency responders may face include:

- vehicle collisions while traveling to or from emergency incidents;
- falls from heights due to structural or building collapses;
- being struck by, caught in between, or crushed by falling objects and debris;
- burns and other injuries from flashovers and backdrafts;
- exposure to extreme temperatures, both hot and cold;
- excessive noise exposure;
- exposure to carbon monoxide and other toxic chemicals;
- oxygen depletion and inadequate fresh air to breathe; and
- over-exertion due to lifting heavy objects, wearing heavy protective

equipment, repetitive motion, and other similar activities.

Long-term exposure to the various hazards found at emergency incidents may lead not only to physical ailments among responders, but to mental health issues as well. Some longer-term adverse health effects may potentially be associated with the duties of emergency responders include:

- infectious diseases;
- cardiovascular diseases due to environmental stressors and exposures;
- cancer due to exposure to combustion products, asbestos, carcinogens, and other chemicals; and
- stress, PTSD, depression, anxiety, and suicidality resulting from exposure to traumatic events including workplace violence.

As described in the benefits analysis in Chapter VII (see Table VII–10), OSHA estimates that approximately 250 fatalities and approximately 22,000 non-fatal injuries among emergency responders occur annually.

C. Statement of the Objectives of and Legal Basis for the Proposed Rule

The objective of the proposed rule is to reduce the number of injuries, illnesses, and fatalities occurring among emergency responders in the course of their work. This objective will be achieved by requiring employers to establish risk management plans, provide training and medical surveillance, establish medical and physical requirements, develop standard operating procedures, and provide other protective measures enabling emergency responders to perform their duties safely. The legal basis for the rule is the responsibility delegated to the Secretary of Labor by the Occupational Safety and Health (OSH) Act of 1970 (29 U.S.C. 651 *et seq.*). The OSH Act was enacted ''to assure so far as possible every working man and woman in the Nation safe and healthful working conditions and to preserve our human resources.'' 29 U.S.C. 651(b). The legal authority for issuing safety and health standards is found in section 6(b) of the OSH Act (29 U.S.C. 655).

The OSH Act imposes a number of requirements OSHA must satisfy before adopting a safety standard. Among other things, the standard must be highly protective, materially reduce a significant risk to workers, be technologically feasible, and be economically feasible. See 58 FR 16612, 16614–16 (Mar. 30, 1993); *Int'l Union, United Auto., Aerospace & Agric. Implement Workers of Am.* v. *OSHA,* 37 F.3d 665, 668–69 (D.C. Cir. 1994). A standard is technologically feasible if the protective measures it requires already exist, can be brought into existence with available technology, or can be created with technology that can reasonably be expected to be developed. *United Steelworkers of Am.* v. *Marshall,* 647 F.2d 1189, 1272 (D.C. Cir. 1980). In determining economic feasibility, OSHA must consider the cost of compliance on an industry rather than on individual employers. In the preliminary and final economic analyses, OSHA follows the advice of the U.S. Court of Appeals for the D.C. Circuit to ''construct a reasonable estimate of compliance costs and demonstrate a reasonable likelihood that these costs will not threaten the existence or competitive structure of an industry.'' Id.

D. Description and Estimate of the Number of Small Entities to Which the Proposed Rule Will Apply

As described above, Chapter VI of this PEA presents OSHA's preliminary analysis of the impacts associated with this proposed rule, including an analysis of the type and number of small entities to which the proposed rule would apply. To estimate the number of small entities potentially affected by this rulemaking, OSHA used definitions developed by SBA for each emergency services sector as well as the definition of a small government according to the RFA. OSHA estimates that approximately 21,000 small entities would be affected by the proposed rule. Across these small entities, roughly 833,000 emergency responders would be protected by the proposed rule.

E. Description of the Projected Reporting, Recordkeeping, and Other Compliance Requirements of the Proposed Rule

Table VII–F–1 shows the average costs per small entity for each provision of the rule by organization type for public entities. Across all provisions of the proposed rule, the average public fire department is estimated to incur costs of $14,766 annually. The costs differ slightly across department type, ranging from $14,397 annually for all-volunteer departments to $15,389 annually for mixed fire departments. The average public emergency medical service organization is estimated to incur costs of $24,180 annually. Among emergency medical services ESO types, the average annual cost varies from $21,397 for mixed organizations to $30,660 for volunteer organizations. Technical search and rescue groups are estimated to incur costs of $9,419 on average annually, with career organizations incurring costs of $14,266 annually and volunteer organizations incurring costs of $9,040 annually. Training is the most expensive provision for fire departments and emergency medical services, accounting for 35 and 46 percent of costs overall, respectively. The program evaluation provision is the most expensive provision for technical search and rescue groups, accounting for 25 percent of their overall costs on average. The second most expensive provision for fire departments and technical search and rescue groups is the medical and physical requirements provision, which accounts for 16 and 14 percent of costs overall, respectively. For emergency medical services, the second most expensive provision is the post incident analysis provision, which accounts for 13 percent of their overall costs under the proposed rule.

Table VII–F–2 presents the average costs per small entity for each provision of the rule by organization type for private entities. WEREs are estimated to incur costs of $16,097 on average annually. Private fire departments are expected to spend $15,100 on average annually to comply with the proposed standard, with a range of $13,702 annually for volunteer fire departments to $18,670 annually for mixed departments. Private wildland fire services are estimated to incur compliance costs of $17,909 annually. Emergency medical service organizations are expected to spend $25,359 on average annually to comply with the proposed rule, with career EMS entities estimated to spend $24,167 on average and both volunteer and mixed emergency medical services entities expected to spend $26,090. The average technical search and rescue group would spend an estimated $7,956 annually. Training is the costliest provision of the proposed rule for all private emergency response service sector entities except for technical search and rescue groups, with costs ranging from 36 to 52 percent in total costs, depending on the ESO or WERE type and sector (excluding technical search and rescue; this group's training costs are estimated to account for 12 percent of their overall costs). For technical search and rescue groups, the most expensive provision of the proposed rule is the program evaluation provision, accounting for 21 percent of overall costs. The second most expensive provision for all private emergency response service sector entities except WEREs is the medical and physical requirements provision, accounting for 11 to 16 percent of costs overall, depending on the sector. For WEREs, the second most expensive provision is the equipment and PPE

provision, which accounts for 14 percent of the average WERE's costs.

OSHA welcomes comment on this analysis and these findings. While the RFA requires OSHA to show impacts on small entities and defines small government entities as those serving populations of less than 50,000, it is possible that, given the unique circumstances of volunteer fire departments, some other approach may be more useful for purposes of OSHA's analysis. Are there additional analyses that the agency should develop to demonstrate economic feasibility and illustrate economic impacts on small entities? If so, what analyses would be most useful for understanding the potential impacts on small entities? In addition, there appear to be limitations on the systematic data available to develop such analyses, particularly as they might focus on smaller governmental jurisdictions. The agency would welcome any suggestions in this area.

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Table VII-F-1. Average Costs for Small Public State-Plan State Entities Affected by the Proposed Emergency Response Rule by Emergency Response Service Sector and Organization Type

	Career	Volunteer	Mixed	Total
Fire Departments				
Rule Familiarization	$15	$15	$15	**$15**
Organization of the WERT and Establishment of the ERP and Emergency Service(s) Capability	$0	$0	$0	**$0**
ESO Establishment of ERP and Emergency Service(s) Capability	$778	$768	$783	**$774**
Team Member and Responder Participation	$43	$42	$44	**$43**
WERT and ESO Risk Management Plan	$393	$390	$395	**$392**
Medical and Physical Requirements	$1,405	$2,750	$2,825	**$2,335**
Training	$5,885	$4,671	$5,115	**$5,137**
WERE Facility Preparedness	$0	$0	$0	**$0**
ESO Facility Preparedness	$980	$970	$986	**$976**
Equipment and PPE	$1,837	$1,816	$1,848	**$1,828**
Vehicle Preparedness and Operation	$754	$747	$758	**$751**
WERE Pre-Incident Planning	$0	$0	$0	**$0**
ESO Pre-Incident Planning	$451	$447	$470	**$452**
Incident Management System Development	$25	$25	$25	**$25**
Emergency Incident Operations	$113	$10	$55	**$51**
Standard Operating Procedures	$164	$163	$170	**$164**
Post Incident Analysis	$690	$117	$378	**$346**
Program Evaluation	$1,468	$1,464	$1,522	**$1,476**
Total	**$15,001**	**$14,397**	**$15,389**	**$14,766**
Emergency Medical Services				
Rule Familiarization	$14	$14	$14	**$14**
Organization of the WERT and Establishment of the ERP and Emergency Service(s) Capability	$0	$0	$0	**$0**
ESO Establishment of ERP and Emergency Service(s) Capability	$745	$745	$745	**$745**
Team Member and Responder Participation	$38	$38	$38	**$38**
WERT and ESO Risk Management Plan	$379	$380	$379	**$379**
Medical and Physical Requirements	$1,351	$3,560	$2,137	**$2,050**
Training	$12,309	$15,202	$8,416	**$11,113**
WERE Facility Preparedness	$0	$0	$0	**$0**
ESO Facility Preparedness	$191	$191	$191	**$191**
Equipment and PPE	$1,351	$1,353	$1,351	**$1,351**

	Career	Volunteer	Mixed	Total
Vehicle Preparedness and Operation	$727	$728	$727	**$727**
WERE Pre-Incident Planning	$0	$0	$0	**$0**
ESO Pre-Incident Planning	$433	$439	$433	**$434**
Incident Management System Development	$25	$25	$25	**$25**
Emergency Incident Operations	$2,229	$2,624	$2,229	**$2,294**
Standard Operating Procedures	$159	$161	$159	**$159**
Post Incident Analysis	$3,090	$3,704	$3,090	**$3,191**
Program Evaluation	$1,462	$1,495	$1,462	**$1,468**
Total	**$24,504**	**$30,660**	**$21,397**	**$24,180**
Technical Search and Rescue Groups				
Rule Familiarization	$11	$18	N/A	**$17**
Organization of the WERT and Establishment of the ERP and Emergency Service(s) Capability	$0	$0	N/A	**$0**
ESO Establishment of ERP and Emergency Service(s) Capability	$602	$954	N/A	**$928**
Team Member and Responder Participation	$36	$1	N/A	**$4**
WERT and ESO Risk Management Plan	$309	$490	N/A	**$477**
Medical and Physical Requirements	$898	$1,362	N/A	**$1,328**
Training	$8,309	$269	N/A	**$853**
WERE Facility Preparedness	$0	$0	N/A	**$0**
ESO Facility Preparedness	$154	$244	N/A	**$238**
Equipment and PPE	$1,142	$1,224	N/A	**$1,218**
Vehicle Preparedness and Operation	$584	$925	N/A	**$900**
WERE Pre-Incident Planning	$0	$0	N/A	**$0**
ESO Pre-Incident Planning	$401	$642	N/A	**$624**
Incident Management System Development	$20	$31	N/A	**$31**
Emergency Incident Operations	$13	$20	N/A	**$19**
Standard Operating Procedures	$147	$235	N/A	**$229**
Post Incident Analysis	$137	$213	N/A	**$207**
Program Evaluation	$1,501	$2,411	N/A	**$2,345**
Total	**$14,266**	**$9,040**	**N/A**	**$9,419**

Sources: OSHA derived from USFA, 2022; BLS, 2023; BLS, 2023; EPA, 2002; Rice, 2002; U.S. Census, 2021.

Table VII-F-2. Average Costs for Small Private Entities Affected by the Proposed Emergency Response Rule by Emergency Response Service Sector and Organization Type

	Career	Volunteer	Mixed	Total
WEREs				
Rule Familiarization	$18	N/A	N/A	**$18**
Organization of the WERT and Establishment of the ERP and Emergency Service(s) Capability	$939	N/A	N/A	**$939**
ESO Establishment of ERP and Emergency Service(s) Capability	$0	N/A	N/A	**$0**
Team Member and Responder Participation	$58	N/A	N/A	**$58**
WERT and ESO Risk Management Plan	$478	N/A	N/A	**$478**
Medical and Physical Requirements	$189	N/A	N/A	**$189**
Training	$8,100	N/A	N/A	**$8,100**
WERE Facility Preparedness	$592	N/A	N/A	**$592**
ESO Facility Preparedness	$0	N/A	N/A	**$0**
Equipment and PPE	$2,329	N/A	N/A	**$2,329**
Vehicle Preparedness and Operation	$911	N/A	N/A	**$911**
WERE Pre-Incident Planning	$258	N/A	N/A	**$258**
ESO Pre-Incident Planning	$0	N/A	N/A	**$0**
Incident Management System Development	$31	N/A	N/A	**$31**
Emergency Incident Operations	$12	N/A	N/A	**$12**
Standard Operating Procedures	$202	N/A	N/A	**$202**
Post Incident Analysis	$144	N/A	N/A	**$144**
Program Evaluation	$1,837	N/A	N/A	**$1,837**
Total	**$16,097**	**N/A**	**N/A**	**$16,097**
Fire Departments				
Rule Familiarization	$15	$15	$15	**$15**
Organization of the WERT and Establishment of the ERP and Emergency Service(s) Capability	$0	$0	$0	**$0**
ESO Establishment of ERP and Emergency Service(s) Capability	$765	$779	$768	**$773**
Team Member and Responder Participation	$42	$43	$43	**$43**
WERT and ESO Risk Management Plan	$388	$394	$389	**$392**
Medical and Physical Requirements	$1,528	$2,513	$3,935	**$2,453**
Training	$6,864	$4,168	$7,349	**$5,393**
WERE Facility Preparedness	$0	$0	$0	**$0**
ESO Facility Preparedness	$966	$982	$968	**$976**
Equipment and PPE	$1,809	$1,840	$1,814	**$1,827**
Vehicle Preparedness and Operation	$745	$754	$748	**$751**
WERE Pre-Incident Planning	$0	$0	$0	**$0**
ESO Pre-Incident Planning	$452	$445	$472	**$451**
Incident Management System Development	$25	$26	$25	**$25**
Emergency Incident Operations	$111	$10	$54	**$44**

	Career	Volunteer	Mixed	Total
Standard Operating Procedures	$164	$162	$171	**$164**
Post Incident Analysis	$696	$117	$382	**$317**
Program Evaluation	$1,484	$1,454	$1,539	**$1,475**
Total	**$16,054**	**$13,702**	**$18,670**	**$15,100**
Wildland Fire Services				
Rule Familiarization	$15	N/A	N/A	**$15**
Organization of the WERT and Establishment of the ERP and Emergency Service(s) Capability	$0	N/A	N/A	**$0**
ESO Establishment of ERP and Emergency Service(s) Capability	$733	N/A	N/A	**$733**
Team Member and Responder Participation	$40	N/A	N/A	**$40**
WERT and ESO Risk Management Plan	$373	N/A	N/A	**$373**
Medical and Physical Requirements	$1,912	N/A	N/A	**$1,912**
Training	$9,412	N/A	N/A	**$9,412**
WERE Facility Preparedness	$0	N/A	N/A	**$0**
ESO Facility Preparedness	$928	N/A	N/A	**$928**
Equipment and PPE	$1,737	N/A	N/A	**$1,737**
Vehicle Preparedness and Operation	$718	N/A	N/A	**$718**
WERE Pre-Incident Planning	$0	N/A	N/A	**$0**
ESO Pre-Incident Planning	$401	N/A	N/A	**$401**
Incident Management System Development	$25	N/A	N/A	**$25**
Emergency Incident Operations	$12	N/A	N/A	**$12**
Standard Operating Procedures	$148	N/A	N/A	**$148**
Post Incident Analysis	$125	N/A	N/A	**$125**
Program Evaluation	$1,331	N/A	N/A	**$1,331**
Total	**$17,909**	**N/A**	**N/A**	**$17,909**
Emergency Medical Services				
Rule Familiarization	$14	$14	$14	**$14**
Organization of the WERT and Establishment of the ERP and Emergency Service(s) Capability	$0	$0	$0	**$0**
ESO Establishment of ERP and Emergency Service(s) Capability	$740	$740	$740	**$740**
Team Member and Responder Participation	$38	$38	$38	**$38**
WERT and ESO Risk Management Plan	$377	$377	$377	**$377**
Medical and Physical Requirements	$1,549	$3,473	$3,473	**$2,742**
Training	$12,783	$12,783	$12,783	**$12,783**
WERE Facility Preparedness	$0	$0	$0	**$0**
ESO Facility Preparedness	$190	$190	$190	**$190**
Equipment and PPE	$1,344	$1,344	$1,344	**$1,344**
Vehicle Preparedness and Operation	$723	$723	$723	**$723**
WERE Pre-Incident Planning	$0	$0	$0	**$0**
ESO Pre-Incident Planning	$428	$428	$428	**$428**

	Career	Volunteer	Mixed	Total
Incident Management System Development	$25	$25	$25	**$25**
Emergency Incident Operations	$1,853	$1,853	$1,853	**$1,853**
Standard Operating Procedures	$157	$157	$157	**$157**
Post Incident Analysis	$2,518	$2,518	$2,518	**$2,518**
Program Evaluation	$1,428	$1,428	$1,428	**$1,428**
Total	**$24,167**	**$26,090**	**$26,090**	**$25,359**
Technical Search and Rescue Groups				
Rule Familiarization	$16	N/A	N/A	**$16**
Organization of the WERT and Establishment of the ERP and Emergency Service(s) Capability	$0	N/A	N/A	**$0**
ESO Establishment of ERP and Emergency Service(s) Capability	$815	N/A	N/A	**$815**
Team Member and Responder Participation	$11	N/A	N/A	**$11**
WERT and ESO Risk Management Plan	$414	N/A	N/A	**$414**
Medical and Physical Requirements	$991	N/A	N/A	**$991**
Training	$944	N/A	N/A	**$944**
WERE Facility Preparedness	$0	N/A	N/A	**$0**
ESO Facility Preparedness	$211	N/A	N/A	**$211**
Equipment and PPE	$1,153	N/A	N/A	**$1,153**
Vehicle Preparedness and Operation	$795	N/A	N/A	**$795**
WERE Pre-Incident Planning	$0	N/A	N/A	**$0**
ESO Pre-Incident Planning	$497	N/A	N/A	**$497**
Incident Management System Development	$27	N/A	N/A	**$27**
Emergency Incident Operations	$24	N/A	N/A	**$24**
Standard Operating Procedures	$181	N/A	N/A	**$181**
Post Incident Analysis	$205	N/A	N/A	**$205**
Program Evaluation	$1,672	N/A	N/A	**$1,672**
Total	**$7,956**	**N/A**	**N/A**	**$7,956**

Sources: OSHA derived from USFA, 2022; BLS, 2023; BLS, 2023; EPA, 2002; Rice, 2002; U.S. Census, 2021.

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F. Federal Rules Which May Duplicate, Overlap, or Conflict With the Proposed Rule

OSHA has identified several Federal rules and guidelines that address emergency responders. Below, the agency discusses whether these rules and guidelines would duplicate, overlap, or conflict with the proposed regulatory language.

The first set of Federal rules or guidelines that OSHA identified are regulations promulgated by the Nuclear Regulatory Commission (NRC). NRC fire protection regulations specify requirements for fire brigades at nuclear reactor facilities. See 10 CFR 50.48 and appendix R.III(H) and (I).

OSHA and the NRC have a Memorandum of Understanding (MOU) pursuant to which the NRC has authority and responsibility for hazards related to radioactive materials, including facility conditions that could affect the safety of radioactive materials by, for example, causing a fire. Under the MOU, OSHA has authority and responsibility for industrial safety and health hazards not related to the use of radioactive materials. MOU (Sept. 6, 2013). Thus, pursuant to the MOU, the proposed standard would apply at nuclear reactor facilities to the extent it covers hazards not related to the use of radioactive materials.

The second set of Federal rules or guidelines that OSHA identified are regulations promulgated by the Federal Aviation Administration (FAA). The FAA establishes requirements for aircraft rescue and firefighting. (14 CFR 139.315, 139.317, 139.319)

Pursuant to section 4(b)(1) of the OSH Act, 29 U.S.C. 653(b)(1), and the Supreme Court's decision in *Chao* v. *Mallard Bay Drilling, Inc.,* 534 U.S. 235 (2002), OSHA's regulations are preempted if they conflict with an exercise of authority by another Federal agency to address working conditions under that agency's jurisdiction. Therefore, to the extent the FAA has exercised authority to regulate emergency response activities covered by the proposed standard that fall under FAA jurisdiction, the proposed standard would be preempted.

The third set of Federal rules or guidelines that OSHA identified are standards and a practice model put out by the National Highway Transportation Safety Administration (NHTSA), part of the Department of Transportation (DOT). NHTSA establishes standards for EMS providers and EMS training curriculums.

There would be no conflict between OSHA's proposed standard and the NHTSA standards and practice model because the NHTSA standards and practice model recommend practices but do not carry the force of law. Such non-mandatory guidelines do not constitute rules that would duplicate, overlap, or conflict with a rule as outlined in the proposed standard. *Cf. Ensign-Bickford Co.* v. *OSHRC,* 717 F.2d 1419, 1421 (D.C. Cir. 1983) (agency regulates working conditions only if it ''implements [a] regulatory apparatus''); *Marshall* v. *Northwest Orient Airlines, Inc.,* 574 F.2d 119, 122 (2d Cir. 1978) (''sister agency must actually be exercising a power to regulate safety conditions''). There would also be no conflict because OSHA's proposed standard would be performance-based and is intended to ensure that employers adopt and implement practices and training requirements that are consistent with the NHTSA standards.

The fourth set of Federal rules or guidelines that OSHA identified apply to the mining industry which is regulated by the Mine Safety and Health Administration (MSHA). MSHA regulations have extensive provisions for emergency incidents in mines including the enhanced emergency response and rescue requirements established by the Mine Improvement and New Emergency Response Act of 2006 (MINER Act).

Upon the creation of MSHA in 1977, OSHA and MSHA entered into an interagency agreement to delineate authority between them. The agreement stipulates that OSHA does not have jurisdiction where MSHA regulations apply. As such, there is no conflict between OSHA's proposed standard and MSHA's emergency response regulations.

The final set of Federal rules or guidelines that OSHA identified are existing OSHA standards that cover emergency response activities. OSHA has reviewed existing standards and determined that no standard conflicts or overlaps with the proposed Emergency Response standard. To the extent other standards are applicable, they are complementary of the proposed standard.

G. Alternatives to the Proposed Rule

This section first presents OSHA's responses to recommendations made by the SBREFA panel in response to comments made by SERs to potentially alleviate impacts on small entities. Next, the agency presents four regulatory alternatives to the proposed OSHA emergency response rule.

(i) SBREFA Panel Recommendations

Table VII–F–3 lists the SBAR Panel recommendations and OSHA's responses to these recommendations.

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Table VII-F-3. SBAR Panel Recommendations and OSHA Responses

Recommendation	OSHA's Response
The Panel recommends that OSHA thoroughly review and clearly present who is and who is not in the scope of this standard.	The Scope paragraph clearly identifies which employers would be covered by the rule. In the preamble, OSHA identifies that employers not under Federal jurisdiction could be covered by State Plan state requirements.
OSHA should conduct a thorough review to determine which states consider volunteers to be employees who would be covered by this standard and present this analysis as part of the proposed rule.	A thorough explanation is provided in the preamble. Related data are discussed in Industry Profile section of the PEA.
The Panel further recommends that OSHA thoroughly consider whether volunteers currently covered as employees would be negatively impacted by inclusion in all the provisions of this rule.	OSHA believes that volunteers could be negatively impacted by being *excluded* from parts of the proposal. However, to the extent possible, as discussed in the preamble, the agency has tailored the requirements to the specific needs of the affected responders.
The Panel recommends that OSHA consider the feasibility of implementation for small and volunteer ESOs and review whether exemption from some or all parts of the standard would be appropriate for some or all small or volunteer ESOs.	The agency has drafted a proposed standard that is designed to provide an appropriate level of protection for the hazards routinely encountered, has examined the economic impact on various types of departments, and has preliminarily determined that proposed standard is feasible. However, the agency is also seeking broad public comment on many issues and potential alternatives as well as its preliminary feasibility analysis.
The Panel recommends that OSHA continue working to identify additional areas where burdens could be reduced or eliminated for small and volunteer ESOs.	The agency drafted the proposal with this in mind. In addition, the proposed rule's preamble contains multiple solicitations for comment from the regulated community.

Recommendation	OSHA's Response
The Panel recognizes that OSHA must show that a standard is economically feasible as part of the agency's legal requirements but highlights here that it is especially important in this circumstance where infeasibility may affect public safety. There are also additional analytical challenges given that traditional government data sources may not adequately capture the financial situation of volunteer ESOs that rely entirely on donations to fund their operations and that typical methodologies and assumptions used to establish economic feasibility may not be applicable for all volunteer ESOs that lack a dedicated source of funding. The Panel recommends that OSHA thoroughly consider these unique situations, explain how the economic feasibility analysis took these situations into consideration, and what, if any, adjustments the agency made to the feasibility assessment, including to account for ESOs that are sustained wholly by donations from the community.	The agency has attempted to minimize feasibility issues in its proposed standard. It has also examined the potential economic impact of the proposal in the PEA and IRFA. Nonetheless, the agency welcomes comment on this issue.
The Panel recommends that OSHA not include skilled support employers in the scope of a proposed Emergency Response standard.	OSHA has not included skilled support employers in the scope of the proposed rule.
The Panel recommends that OSHA consider whether some minimum level of pre-incident familiarization, training, or coordination requirements for ESOs with respect to use of skilled support services would improve safety and should be included in the requirements of a proposed Emergency Response standard.	OSHA developed some requirements for WEREs and ESO to protect the health and safety of skilled support workers on emergency incident scenes.
The Panel recommends that OSHA evaluate whether the hazards encountered by workplace emergency response teams are adequately and appropriately addressed by the provisions of the draft standard.	OSHA drafted the proposed rule to clearly differentiate the requirements for WEREs and ESOs based on the differences in hazards encountered.
If OSHA finds they are not, the Panel further recommends that OSHA consider developing different requirements for workplace emergency response teams taking into consideration their unique characteristics relative to other ESOs.	OSHA drafted the proposed rule to clearly differentiate the requirements for WEREs and ESOs based on the differences in hazards encountered.

Recommendation	OSHA's Response
OSHA's draft regulatory text does not specify the number of hours of training that responders would need to complete. The Panel recommends that OSHA clarify that the draft standard does not require all responders to complete any set number of hours of training but rather that responders would be trained to a level appropriate for the complexity and requirements of their job duties or activities.	The proposed rule would require the WERE or ESO to determine the amount of training needed, based on the emergency services provided and duties performed.
The Panel recommends that OSHA closely evaluate the various planning requirements and eliminate or reduce those requirements where possible. OSHA should look closely at the labor costs associated with written planning requirements.	The agency believes the proposed standard includes only those planning requirements that are necessary and appropriate for emergency responder safety. The labor costs of those provisions are included in the PEA.
If OSHA's analysis determines that some planning requirements are unnecessary or infeasible, the Panel recommends that OSHA remove those entirely.	As indicated, OSHA believes unnecessary or infeasible planning requirements were not included in the proposal, but the agency welcomes comment on the issue.
Where the development and writing of a plan is found to be necessary to protect workers, the Panel recommends that OSHA simplify those requirements to the extent feasible and to make model plans, checklists, and other assistance available to small entities where possible.	Plan requirements would be based on individual circumstances for each WERE or ESO. Model plans, checklists, etc., could be provided with or subsequent to the final rule.
The Panel recommends that OSHA clarify, reduce, or eliminate the requirement for a health and fitness coordinator since the duties of this individual and the benefits they would provide are not clear.	The proposed rule does not include a requirement for a health and fitness coordinator. The rule would require an individual designated to oversee the health and fitness program, but that role can be staffed from within the ESO.
The Panel recommends that OSHA reconsider the necessity of recordkeeping of health and fitness data.	OSHA believes it is important to maintain health and fitness records for the reasons discussed in this preamble.
The Panel recommends that OSHA clarify the fitness for duty requirements and determine how to balance requirements that would improve responder safety with the necessity to allow volunteer ESOs and small ESOs of all types to adequately staff their ESO and to provide the necessary services to their constituent communities.	The proposed rule requires the WERE or ESO need only to confirm that the team member or responder can safely perform the job functions expected of them.

Recommendation	OSHA's Response
The Panel acknowledges the importance of mental health support for emergency responders. The Panel recommends that OSHA examine the costs and benefits associated with behavioral health and wellness programs as part of its assessment of whether to maintain the requirements for these programs.	The proposed rule allows the WERE or ESO to either provide behavioral health resources or identify those resources in the community. OSHA reviewed the available literature on mental health support for emergency responders and identified studies that demonstrate the effectiveness of these programs. This is further discussed in the Benefits section of the PEA and in the summary and explanation of paragraph (g).
The Panel further recommends that OSHA ensure that responder confidentiality is not compromised, and that the agency provide additional guidance and clarification on how ESOs can meet any behavioral health and wellness requirements.	Maintaining record confidentiality is a requirement in the proposed rule. OSHA has discussed the requirements of the proposed behavioral health section and how employers can comply with those requirements in the summary and explanation. Additional guidance could be provided with or subsequent to a final standard.
The Panel recommends that, unless the agency finds evidence showing that Good Samaritans and Spontaneous Unaffiliated Volunteers (SUVs) are exposing responders to an increased risk, OSHA remove the requirements related to Good Samaritans and SUVs.	As recommended, Good Samaritans and SUVs are not covered in the proposed standard.
The Panel recommends that OSHA clarify the use of NFPA provisions in the proposed rule and consider how incorporation by reference could affect small and volunteer ESOs.	Specific references to NFPA standards are explained in the preamble. The agency has only incorporated the NFPA guidance as mandatory to the extent necessary for responder safety. Relevant costs are reflected in the PEA and the economic impact has been assessed.
The agency should look closely at the feasibility of NFPA's recommendations for sun setting/retirement of PPE, vehicles, and equipment.	Sunset provisions are not included in the proposed standard.
The Panel recommends that OSHA conduct further research on the necessity and cost effectiveness of the NFPA recommended medical screenings, exams, and evaluations, and the appropriateness of requiring those screenings for responders with various levels of exposure and risk based on their duties and designated tasks.	The proposed standard's medical requirements have been modified in response to input from small entity panelists and the record as a whole. The preamble discusses the various potential options, and the PEA assesses the attendant costs and effectiveness.

Recommendation	OSHA's Response
The Panel recommends that OSHA consider replacing prescriptive provisions with performance-based provisions, where practical, and tailor, to the extent possible, certain requirements of this standard for small and volunteer ESOs.	The agency believes it has made the proposed standard as performance-oriented as reasonably possible. OSHA welcomes comment from the public on specific provisions that commenters believe could be enhanced in this regard.
OSHA should consider scaling the various analysis, planning, and written plans required by this standard to the size and complexity of the ESO and their operations.	The agency believes the proposal is sufficiently performance-oriented to accomplish this objective.

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(ii) Regulatory Alternatives

This section discusses four regulatory alternatives considered by OSHA for the proposed rule. Each regulatory alternative presented here is described and analyzed relative to the proposed rule and addresses the costs and benefits to all entities.

Alternatives 1, 2, and 3 change the threshold at which responders would qualify for the full medical exam requirement of the proposed standard. While the proposed rule sets this threshold at 15 combustion products exposure events per year, these alternatives set the threshold at one (alternative 1), ten (alternative 2), and thirty (alternative 3) combustion product exposure events per year. Alternative 4 would require that all responders, regardless of the number of times a responder is exposed to combustion products, undergo the full medical exam.

Table VII–F–4. presents the total annualized costs and incremental costs for each regulatory alternative. Alternative 4, where all responders receive the full NFPA 1582 exam, is the costliest, with ESOs incurring an additional $164.5 million annually compared to the proposed rule. The least costly alternative would set the number of exposure events at 30 per year, which results in approximately $13.2 million less in compliance costs per year.

Table VII-F-4. Costs for Regulatory Alternatives (2022$)

Alternative	Total Annualized Costs	Difference from Draft Rule
Draft Rule	$661,172,447	$0
1. Exposure threshold equals 1 event per year	$743,674,761	$82,502,314
2. Exposure threshold equals 10 events per year	$668,851,082	$7,678,634
3. Exposure threshold equals 30 events per year	$647,950,873	-$13,221,575
4. All responders receive the full NFPA 1582 exam	$825,678,832	$164,506,384

Source: OSHA.

Table VII–F–5 presents the estimated number and monetized benefits of fatalities and non-fatal injuries avoided by each of the four alternatives, compared to the proposed rule. As shown in the table, the alternatives only affect the number of fatalities that would be avoided by the proposed rule.

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Table VII-5. Summary of Benefits for Regulatory Alternatives

Alternative	Current Annual Cases	Average Annual Cases Prevented	Value of Average Annual Cases Prevented, Millions of Dollars (2022$)
Proposed Rule			
Total Fatalities	239	54	$670
Nonfatal injuries-EMTs and paramedics	7,694	3,847	$417
Nonfatal injuries-firefighters	14,335	7,168	$778
Average annualized value over 50 years, 3 percent discount rate			$2,628.5
1. Exposure threshold equals 1 event per year			
Total Fatalities	264	66	$825
Nonfatal injuries-EMTs and paramedics	7,694	3,847	$417
Nonfatal injuries-firefighters	14,335	7,168	$778
Average annualized value over 50 years, 3 percent discount rate			$2,841.6
Difference from Draft Rule			$213.0
2. Exposure threshold equals 10 events per year			
Total Fatalities	234	54	$676
Nonfatal injuries-EMTs and paramedics	7,694	3,847	$417
Nonfatal injuries-firefighters	14,335	7,168	$778
Average annualized value over 50 years, 3 percent discount rate			$2,637.2
Difference from Draft Rule			$8.7
3. Exposure threshold equals 30 events per year			
Total Fatalities	202	46	$574
Nonfatal injuries-EMTs and paramedics	7,694	3,847	$417
Nonfatal injuries-firefighters	14,335	7,168	$778
Average annualized value over 50 years, 3 percent discount rate			$2,496.6
Difference from Draft Rule			-$131.9
4. All responders receive the full NFPA 1582 exam			
Total Fatalities	264	66	$825
Nonfatal injuries-EMTs and paramedics	7,694	3,847	$417
Nonfatal injuries-firefighters	14,335	7,168	$778
Average annualized value over 50 years, 3 percent discount rate			$2,841.6
Difference from Draft Rule			$213.0

III. Net Benefits

Combining the results of the calculations in the *Costs of Compliance* and *Benefits* sections, OSHA estimates that the proposed rule would result in annualized net benefits (*i.e.,* benefits minus costs) of approximately $2 billion, with the results varying somewhat depending on the discount rate. The calculation is presented in Table VII–F–6.

Table VII-F-6. Annualized Net Benefits of Proposed Emergency Response Standard

Discount Rate	Annualized Benefits	Annualized Costs	Annualized Net Benefits
3%	$2,628,500,000	$661,172,447	$1,967,327,553
7%	$2,262,300,000	$668,538,219	$1,593,761,781

OSHA has also estimated the unannualized stream of benefits and costs over the next 50 years, as shown in Table VII–F–7.

Table VII-F-7. Unannualized Benefits and Costs by Year for a 50-Year Time Horizon

Year	Benefits	Costs
Year 1	$1,637,153,750	$832,711,890
Year 2	$1,665,803,941	$506,763,028
Year 3	$1,694,955,510	$654,055,969
Year 4	$1,724,617,232	$570,377,723
Year 5	$1,754,798,033	$643,824,865
Year 6	$1,785,506,999	$539,942,918
Year 7	$1,816,753,371	$668,350,844
Year 8	$1,848,546,555	$551,872,341
Year 9	$1,880,896,120	$628,947,752
Year 10	$2,061,898,074	$585,219,491
Year 11	$2,097,981,290	$832,711,890
Year 12	$2,134,695,963	$506,763,028
Year 13	$2,172,053,142	$654,055,969
Year 14	$2,210,064,072	$570,377,723
Year 15	$2,248,740,193	$643,824,865
Year 16	$2,288,093,147	$539,942,918
Year 17	$2,328,134,777	$668,350,844
Year 18	$2,368,877,135	$551,872,341
Year 19	$2,410,332,485	$628,947,752
Year 20	$2,745,388,364	$585,219,491
Year 21	$2,793,432,661	$832,711,890
Year 22	$2,842,317,732	$506,763,028
Year 23	$2,892,058,293	$654,055,969
Year 24	$2,942,669,313	$570,377,723
Year 25	$2,994,166,026	$643,824,865
Year 26	$3,046,563,931	$539,942,918
Year 27	$3,099,878,800	$668,350,844
Year 28	$3,154,126,679	$551,872,341
Year 29	$3,209,323,896	$628,947,752
Year 30	$3,265,487,064	$585,219,491
Year 31	$3,322,633,088	$832,711,890
Year 32	$3,380,779,167	$506,763,028

Year 33	$3,439,942,802	$654,055,969
Year 34	$3,500,141,801	$570,377,723
Year 35	$3,561,394,283	$643,824,865
Year 36	$3,623,718,683	$539,942,918
Year 37	$3,687,133,760	$668,350,844
Year 38	$3,751,658,600	$551,872,341
Year 39	$3,817,312,626	$628,947,752
Year 40	$3,884,115,597	$585,219,491
Year 41	$3,952,087,620	$832,711,890
Year 42	$4,021,249,153	$506,763,028
Year 43	$4,091,621,013	$654,055,969
Year 44	$4,163,224,381	$570,377,723
Year 45	$4,236,080,808	$643,824,865
Year 46	$4,310,212,222	$539,942,918
Year 47	$4,385,640,936	$668,350,844
Year 48	$4,462,389,652	$551,872,341
Year 49	$4,540,481,471	$628,947,752
Year 50	$4,619,939,897	$585,219,491

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VIII. Additional Requirements

A. Unfunded Mandates Reform Act

OSHA reviewed this proposed rule according to the Unfunded Mandates Reform Act of 1995 (UMRA), 2 U.S.C. 1501 *et seq.* Section 202 of the UMRA, 2 U.S.C. 1532(a), requires agencies to assess the anticipated costs and benefits of a rule before issuing ''any general notice of proposed rulemaking'' that includes a Federal mandate that may result in expenditures in any one year by State, local, and tribal governments, in the aggregate, or by the private sector, of at least $100 million, adjusted annually for inflation. In 2023, that threshold is $177 million.

This proposed rule does not place a mandate on State or local government, for purposes of the UMRA, because the agency's standards do not apply to State and local governments (29 U.S.C. 652(5)). States that have elected voluntarily to adopt a State Plan approved by the agency must adopt a standard at least as effective as the Federal standard, which must apply to State and local government agencies (29 U.S.C. 667(b), (c)(2) and (6)).

The OSH Act does not cover tribal governments in the performance of traditional governmental functions, such as firefighting, EMS, and search and rescue for the tribe in general. *Reich* v. *Mashantucket Sand & Gravel,* 95 F.3d 174, 180 (2nd Cir. 1996) (traditionally governmental activities are excepted from the rule that general Federal statutes apply to tribes); *cf. Snyder* v. *Navajo Nation,* 382 F.3d 892, 895 (9th Cir. 2004) (Fair Labor Standards Act does not apply to tribal police because the maintenance of law and order is a traditional governmental function). However, when tribes engage in activities of a commercial or service character, such as firefighting, EMS, and search and rescue for particular commercial enterprises, like casinos and sawmills, they are subject to general Federal statutes, including the OSH Act. *Menominee Tribal Enters.* v. *Solis,* 601 F.3d 669 (7th Cir. 2010) (OSH Act applies to tribal sawmill); *Mashantucket Sand & Gravel,* 95 F.3d at 180; *Smart* v. *State Farm Ins. Co.,* 868 F.2d 929 (7th Cir. 1989) (original version of Employment Retirement Income Security Act applied to tribal health center). However, this proposed rule would not require tribal governments to expend, in the aggregate, $100 million or more in any one year for these activities. As noted below, OSHA also reviewed this rulemaking in accordance with Executive Order 13175 on Consultation and Coordination with Indian Tribal Governments (65 FR 67249 (November 9, 2000)) and determined that it does not have ''tribal implications'' as defined in that Executive order.

Based on the analysis presented in the *Preliminary Economic Analysis and Initial Regulatory Flexibility Analysis,* section VII. of this preamble, OSHA concludes that the proposed rule would impose a Federal mandate on the private sector of $100 million or more annually, adjusted for inflation. The Preliminary Economic Analysis constitutes the written statement containing a qualitative and quantitative assessment of the anticipated costs and benefits required under section 202(a) of the UMRA (2 U.S.C. 1532).

B. Consultation and Coordination With Indian Tribal Governments/Executive Order 13175

OSHA reviewed this proposed rule in accordance with Executive Order 13175 (E.O. 13175), Consultation and Coordination with Indian Tribal Governments, 65 FR 67249 (Nov. 6, 2000), and determined that it does not have ''tribal implications'' as defined in that order. Section 5 of the Executive order requires agencies to consult with tribal officials early in the process of developing regulations that: (1) have tribal implications, impose substantial direct compliance costs on Indian governments, and are not required by statute; or (2) have tribal implications and preempt tribal law (E.O. 13175 section 5(b), (c)). The Executive order requires that such consultation occur to the extent practicable.

As explained above, the OSH Act does not cover tribal governments in the performance of traditional governmental functions, so the proposed rule would not have substantial direct effects on one or more Indian tribes in their sovereign capacity, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes (see E.O. 13175 section 1(a)). However, employees performing, for example, firefighting and search and rescue for particular tribal commercial enterprises,

would receive the same protections and benefits of the standard as all other covered employees.

On June 20, 2023, OSHA held a listening session with tribal representatives regarding this Emergency Response rulemaking. OSHA provided an overview of the rulemaking effort and invited comments and questions from tribal representatives. A summary of the meeting and list of attendees can be viewed in the docket (Document ID 0154).

C. Environmental Impacts/National Environmental Policy Act

OSHA reviewed the proposed rule according to the National Environmental Policy Act (NEPA) of 1969, 42 U.S.C. 4321 *et seq.,* the regulations of the Council on Environmental Quality (CEQ), 40 CFR chapter V, subchapter A, and the Department of Labor's NEPA procedures, 29 CFR part 11. The agency has preliminarily determined that the proposed rule would have no impact on air, water, or soil quality; plant or animal life; the use of land; or other aspects of the external environment. Therefore, OSHA preliminarily concludes that the proposed rule will have no significant environmental impacts.

D. Consensus Standards

OSHA must consider adopting existing national consensus standards that differ substantially from OSHA's proposed standard if the consensus standard would better effectuate the purposes of the Act (see National Technology Transfer and Advancement Act of 1995, Public Law 104–113, section 12(d), 15 U.S.C. 272 Note; see also 29 U.S.C. 655(b)(8)). Whenever an OSHA rule differs substantially from a national consensus standard, OSHA must publish in the **Federal Register** a statement of the reasons why the rule will better effectuate the purposes of the Act than the national consensus standard (29 U.S.C. 655(b)(8)). In the development of the proposed rule, OSHA relied heavily on NFPA national consensus standards. Many of the proposed provisions are based on or consistent with NFPA standards. Where a proposed provision does deviate substantially from the relevant consensus standard, OSHA has explained the departure in the *Summary and Explanation of the Proposed Rule* for that provision (see Section V. of this preamble).

E. Executive Order 13045 (Protecting Children From Environmental Health and Safety Risks)

Executive Order 13045 (E.O. 13045), on Protection of Children from Environmental Health Risks and Safety Risks, as amended by Executive Orders 13229 and 13296, requires that Federal agencies provide additional evaluation of economically significant regulatory actions that concern an environmental health or safety risk that an agency has reason to believe may disproportionately affect children. This proposed rule is intended to protect emergency responders from occupational hazards. OSHA has preliminarily determined that the proposed rule will not disproportionately affect children or have any adverse impact on children. Accordingly, E.O. 13045, Protection of Children from Environmental Health Risks and Safety Risks, requires no further agency action or analysis.

F. Federalism

The agency reviewed this proposed rule in accordance with Executive Order 13132 (E.O. 13132) on Federalism, which requires that Federal agencies, to the extent possible, refrain from limiting State policy options, consult with States before taking actions that would restrict States' policy options, and take such actions only when required by statute or when clear constitutional authority exists and the problem is of national scope (64 FR 43255, (August 10, 1999)). The Executive Order generally allows Federal agencies to preempt State law only as provided by Congress or where State law conflicts with Federal law. In such cases, Federal agencies must limit preemption of State law to the extent possible.

The Occupational Safety and Health Act is an exercise of Congress's Commerce Clause authority, and under section 18 of the Act, 29 U.S.C. 667, Congress expressly provided that States may adopt, with Federal approval, a plan for the development and enforcement of occupational safety and health standards. OSHA refers to the occupational safety and health plans that have been submitted by States and approved by OSHA as ''State Plans.'' Occupational safety and health standards developed by State Plans must be at least as effective in providing safe and healthful employment and places of employment as the Federal standards. Subject to these requirements, State Plans are free to develop and enforce their own occupational safety and health standards.

This proposed rule complies with E.O. 13132. The hazards addressed by this proposed rule and its goal of protecting firefighters and other emergency responders are national in scope. As explained in the *Need for the Standard* (Section II.A of this preamble), firefighters and other emergency responders face a significant risk of harm, and a national standard is necessary to ensure that a uniform, baseline approach is taken to protect them. Accordingly, the rulemaking establishes minimum requirements for employers in every State to protect these workers.

In States without OSHA-approved State Plans, Congress provided for OSHA standards to preempt State occupational safety and health standards for issues addressed by the Federal standards. In these States, this rulemaking limits State policy options in the same manner as every standard promulgated by the agency. Furthermore, public-sector fire departments and other public-sector emergency response providers in these States are not subject to the OSH Act. 29 U.S.C. 652(5). The following section addresses the effect of the proposed rule on States with OSHA-approved State Plans.

G. Requirements for States With OSHA-Approved State Plans

When Federal OSHA promulgates a new standard or a more stringent amendment to an existing standard, OSHA-approved State Plans must either amend their standards to be identical to or ''at least as effective as'' the new standard or amendment or show that an existing State Plan standard covering this area is already ''at least as effective'' as the new Federal standard or amendment. 29 CFR 1953.5(b). State Plan adoption must be completed within six months of the promulgation date of the final Federal rule.

OSHA preliminarily concludes that this proposed rule would increase protections beyond those provided by current standards, including 29 CFR 1910.156. Therefore, within six months of any final rule's promulgation date, State Plans would be required to adopt standards that are identical or ''at least as effective'' as this rule, unless they demonstrate that such amendments are not necessary because their existing permanent standards are already ''at least as effective'' in protecting workers. To avoid delays in worker protection, the effective date of the State standard and any of its delayed provisions must be the date of State promulgation or the Federal effective date, whichever is later. The Assistant Secretary may

permit a longer time period if the State timely demonstrates that good cause exists for extending the time limitation (29 CFR 1953.5(a)).

As with all non-identical State Plan standards, State Plans must submit to Federal OSHA for approval standards that differ from Federal standards addressing the same issues for such standards to become part of the State Plan. OSHA will review such non-identical State standards to determine whether they are at least as effective as any final rule which may be adopted.

Of the 29 States and Territories with OSHA-approved State Plans, 22 cover both public and private-sector employees: Alaska, Arizona, California, Hawaii, Indiana, Iowa, Kentucky, Maryland, Michigan, Minnesota, Nevada, New Mexico, North Carolina, Oregon, Puerto Rico, South Carolina, Tennessee, Utah, Vermont, Virginia, Washington, and Wyoming. The remaining seven States and Territories cover only State and local government employees: Connecticut, Illinois, Maine, Massachusetts, New Jersey, New York, and the Virgin Islands.

The proposed rule, if adopted, would impact municipal fire departments and other public-sector emergency response providers in States with OSHA-approved State Plans. Section 18(c)(6) of the Act, 29 U.S.C. 667(c), provides that a State Plan must ''establish and maintain an effective and comprehensive occupational safety and health program applicable to all employees of public agencies of the State and its political subdivisions, which program is as effective as the standards contained in an approved plan.'' Thus, States with OSHA-approved State Plans would be required to treat these public-sector employees the same as they do private-sector employees when adopting and enforcing a standard at least as effective as any final standard which may result from this rulemaking. *Cf.* Memorandum from Bruce Hillenbrand, Deputy Director, Federal Compliance and State Programs, to William W. Gordon, Regional Administrator-IV, Subject: Tennessee's Fire Protection Standard, Jan. 24, 1983 (Tennessee State Plan agency must apply its fire brigade standard analogue to public-sector employees as it does to private-sector employees) (Document ID 0322). Similarly, State Plans covering only State and local government employees would need to adopt and enforce a standard at least as effective as any such Federal standard.

H. OMB Review Under the Paperwork Reduction Act of 1995

I. Overview

In this NPRM, OSHA is proposing to revise its existing Fire Brigades standard, 29 CFR 1910.156. This proposal would change the title of § 1910.156 from Fire Brigades to Emergency Response as well as impose new requirements for emergency response employers. These new provisions contain collections of information that are subject to review by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (PRA), 44 U.S.C. 3501 *et seq.,* and OMB regulations at 5 CFR part 1320, with new 29 CFR 1910.156, Emergency Response. The agency is planning to revise and update the existing previously approved paperwork package under OMB control number 1218–0075 by replacing the existing collection of information requirements with the proposed collections.

The PRA defines ''collection of information'' to mean ''the obtaining, causing to be obtained, soliciting, or requiring the disclosure to third parties or the public of facts or opinions by or for an agency regardless of form or format'' (44 U.S.C. 3502(3)(A)). Under the PRA, a Federal agency cannot conduct or sponsor a collection of information unless OMB approves it and the agency displays a currently valid OMB control number (44 U.S.C. 3507). Also, notwithstanding any other provision of law, no employer shall be subject to penalty for failing to comply with a collection of information if the collection of information does not display a currently valid OMB control number (44 U.S.C. 3512).

II. Solicitation of Comments

OSHA prepared and submitted an Information Collection Request (ICR) to OMB proposing to revise certain collections of information currently contained in that paperwork package in accordance with 44 U.S.C. 3507(d). The agency is soliciting comments on the revision of these collection of information requirements, including comments on the following items:

- Whether the collections of information are necessary for the proper performance of the agency's functions, including whether the information is useful;
- The accuracy of OSHA's estimate of the burden (time and cost) of the collections of information, including the validity of the methodology and assumptions used;
- The quality, utility, and clarity of the information collected; and
- Ways to minimize the compliance burden on employers, for example, by using automated or other technological techniques for collecting and transmitting information (78 FR 56438).

III. Proposed Information Collection Requirements

As required by 5 CFR 1320.5(a)(1)(iv) and 1320.8(d)(2), the following paragraphs provide information about the ICR.

1. *Title:* Emergency Response Standard (29 CFR 1910.156).

2. *Description of the ICR:* The proposal would revise the currently approved Fire Brigades ICR by changing the title to Emergency Response ICR and revising the existing collection of information requirements currently approved by OMB.

3. *Brief Summary of the Information Collection Requirements:* This proposal would revise the collection of information contained in the existing ICR. Specifically, OSHA is proposing to (1) remove the existing language currently approved under § 1910.156(b)(1) that requires employers to develop and maintain an organizational statement that establishes the existence of a fire brigade; the basic organizational structure; the type, amount, and frequency of training to be provided to fire brigade members; the expected number of members in the brigade; and the functions that the fire brigade is to perform at the workplace; (2) remove the existing language currently approved under § 1910.156(b)(2) that requires employers to obtain a physician's certificate of certain employees' fitness to participate in fire brigade emergency activities; and (3) remove the existing language currently approved under § 1910.156(c)(4) that requires the employer to inform fire brigade members about special hazards such as storage and use of flammable liquids and gases, toxic chemicals, radioactive sources, and water reactive substances, to which they may be exposed during fire and other emergencies. In place of these collection of information requirements, the agency is proposing to add new collections contained in the proposed Emergency Response standard. See Table V–1.

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Table V-1 -- Collection of Information Requirements Being Revised in the Fire Brigades Standard[90]

Section number and title	Currently approved collection of information requirements	Proposed collection of information requirements
§ 1910.156 (b)(1)	***(1) Organizational statement.*** The employer shall prepare and maintain a statement or written policy which establishes the existence of a fire brigade; the basic organizational structure; the type, amount, and frequency of training to be provided to fire brigade members; the expected number of members in the fire brigade;	N/A

[90] Full details of the burden and cost estimates for each provision are available in the ICR's supporting statement at *reginfo.gov*.

Section number and title	Currently approved collection of information requirements	Proposed collection of information requirements
	and the functions that the fire brigade is to perform at the workplace. The organizational statement shall be available for inspection by the Assistant Secretary and by employees or their designated representatives.	
§ 1910.156 (b)(2)	(2) ***Personnel.*** The employer shall ensure that employees who are expected to do interior structural firefighting are physically capable of performing duties which may be assigned to them during emergencies. The employer shall not permit employees with known heart disease, epilepsy, or emphysema, to participate in fire brigade emergency activities unless a physician's certificate of the employees' fitness to participate in such activities is provided. For employees assigned to fire brigades before September 15, 1980, this paragraph is effective on September 15, 1990. For employees assigned to fire brigades on or after September 15, 1980, this paragraph is effective December 15, 1980.	N/A
§ 1910.156 (c)(1)	[none]	**(c) Organization of the WERT, and Establishment of the ERP and Emergency Service(s) Capability** (1) The WERE shall develop and implement a written ERP to provide protection for each of its employees (team members) who is designated to provide services at an emergency incident.
§ 1910.156 (c)(3)	[none]	**(c) Organization of the WERT, and Establishment of the ERP and Emergency Service(s) Capability** (3) The WERE shall conduct a facility vulnerability assessment for the purpose of establishing its emergency response capabilities and determining its ability to match the facility's vulnerabilities with available resources.
§ 1910.156 (c)(4)	**(c)Training and education…** (4) The employer shall inform fire brigade members about special hazards such as storage and use of flammable liquids and gases, toxic chemicals, radioactive sources, and water reactive substances, to which they may be exposed during fire and other emergencies. The fire brigade members shall also be advised of any changes that occur in relation to the special hazards. The employer shall	N/A

Section number and title	Currently approved collection of information requirements	Proposed collection of information requirements
	develop and make available for inspection by fire brigade members, written procedures that describe the actions to be taken in situations involving the special hazards and shall include these in the training and education program.	
§ 1910.156 (c)(8)	[none]	(8) The WERE shall define, and document in the ERP, the service(s) needed, based on paragraph (c)(3) of this section, that the WERE is unable to provide, and develop mutual aid agreements with other WEREs and ESOs as necessary to ensure adequate resources are available to safely mitigate foreseeable incidents.
§ 1910.156 (c)(9)	[none]	(9) Previous editions of documentation required by this section shall be maintained by the WERE for a minimum of five (5) years.
§ 1910.156 (c)(10)	[none]	(10) The WERE shall notify team members of any changes to the ERP and make the ERP and documents maintained in accordance with paragraph (c)(9) of this section available for inspection by team members, their representatives, and OSHA representatives.
§ 1910.156 (d)(1)	[none]	**(d) ESO Establishment of ERP and Emergency Service(s) Capability.** (1) The ESO shall develop and implement a written ERP to provide protection for each of its responders who is designated to operate at an emergency incident.
§ 1910.156 (d)(3)	[none]	**(d) ESO Establishment of ERP and Emergency Service(s) Capability** (3) The ESO shall perform a community or facility vulnerability assessment of hazards within the primary response area where the emergency service(s) it provides is/are expected to be performed.
§ 1910.156 (d)(8)	[none]	(8) In the ERP the ESO shall define the service(s) needed, based on paragraph (d)(4) of this section, that the ESO is unable to provide, and develop mutual aid agreements with WEREs or other ESOs as necessary to ensure adequate resources are available to safely mitigate foreseeable incidents.
§ 1910.156 (d)(9)	[none]	(9) Previous editions of documentation required by this section shall be maintained by the ESO for a minimum of five (5) years.

Section number and title	Currently approved collection of information requirements	Proposed collection of information requirements
§ 1910.156 (d)(10)	[none]	(10) The ESO shall notify responders of any changes to the ERP and make the ERP and documents maintained in accordance with paragraph (d)(9) of this section available for inspection by responders, their representatives, and OSHA representatives.
§ 1910.156 (e)(5)	[none]	**(e) Team Member and Responder Participation** (5) Encourage team members and responders to report safety and health concerns, such as hazards, injuries, illnesses, near-misses, and deficiencies in the ERP;
§ 1910.156 (e)(7)	[none]	**(e) Team Member and Responder Participation** (7) Post procedures for reporting safety and health concerns under paragraph (e)(5) of this section in a conspicuous place or places where notices to team members and responders are customarily posted.
§ 1910.156(f)(1)	[none]	**(f) WERT and ESO Risk Management Plan** (1) The WERE and the ESO shall develop and implement a written comprehensive risk management plan (RMP), based on the type and level of service(s) established in paragraphs (c) and (d) of this section[.]
§ 1910.156(g)(1)	[none]	**(g) Medical and Physical Requirements** (1) WERE and ESO medical requirements. (i) The WERE and ESO shall establish the minimum medical requirements for team members and responders, based on the type and level of service(s) established in paragraphs (c) and (d) of this section. The medical requirements will differ based on the tiers of team members and responders in accordance with paragraphs (c)(7) and (d)(7) of this section, except that team members and responders in a support tier are excluded from the requirements in paragraph (g) of this section; and (ii) The WERE and ESO shall maintain a confidential record for each team member and responder that records, at a minimum, duty restrictions based on medical evaluations; occupational illnesses and injuries; and exposures to combustion products, known or suspected toxic products, contagious diseases, and dangerous substances.

Section number and title	Currently approved collection of information requirements	Proposed collection of information requirements
§ 1910.156(g)(2)	[none]	**(g)(2)** WERE and ESO medical evaluation and surveillance. (i) The WERE and ESO shall establish a medical evaluation program for team members and responders, except for those in a support tier, based on the type and level of service(s) and tiers of team members and responders established in paragraphs (c) and (d) of this section;
§ 1910.156(g)(3)	[none]	**(g)(3)** Additional ESO medical evaluation and surveillance. (i) For ESOs whose responders are exposed to combustion products, medical evaluation and surveillance shall include a component based on the frequency and intensity of expected exposure to combustion products established in the risk management plan in paragraph (f) of this section. (ii) The ESO shall document each exposure to combustion products for each responder, for the purpose of determining the need for the medical surveillance specified in (g)(3)(i)(A) of this section, and for inclusion in the responder's confidential record, as required in (g)(1)(ii) of this section.
§ 1910.156(g)(4)	[none]	(i) The WERE and ESO shall provide, at no cost to the team member or responder, behavioral health and wellness resources for team members and responders, or identify where such resources are available at no cost in the community; (ii) The resources shall include, at minimum: (A) Diagnostic assessment; (B) Short-term counseling; (C) Crisis intervention; and (D) Referral services for behavioral health and personal problems that could affect the team member or responder's performance of emergency response duties.

Section number and title	Currently approved collection of information requirements	Proposed collection of information requirements
		(iii) The WERE and ESO shall inform each team member and responder of the resources available; and
§ 1910.156(g)(6)	[none]	(g)(6) ESO health and fitness for duty: (i) The ESO shall establish and implement a health and fitness program that enables responders to develop and maintain a level of physical fitness that allows them to safely perform their assigned functions, based on the type and level(s) of service(s) and tier of team members and responders established in paragraph (d) of this section;
§ 1910.156(i)(3)	[none]	(i) WERE Facility Preparedness – (1) General requirements. The WERE shall: . . . (3) Identify the location of each FHV, except for those clearly visible on standpipes in enclosed stairways, in a manner suitable to the location, such as with a sign, painted wall, or painted column, to ensure prompt access to FHVs.
§ 1910.156(k)(2)	[none]	(k) Equipment and PPE... (2) Personal protective equipment (PPE). The WERE and the ESO shall: (i) Conduct a PPE hazard assessment for the selection of the protective ensemble, ensemble elements, and other protective equipment for team members and responders, based on the type and level of service(s) established in paragraphs (c) and (d) of this section;
§ 1910.156(l)(2)	[none]	(2) To ensure vehicles are operated in a manner that will keep team members and responders safe, the WERE and ESO shall: … (vi) Establish and implement a procedure for operator training on vehicles with tiller steering that ensures when the instructor and trainee are both located at the tiller position, they are adequately secured to the vehicle whenever it is in motion; (viii) Establish and implement policies and procedures that provide alternative means

Section number and title	Currently approved collection of information requirements	Proposed collection of information requirements
		for ensuring the safety of team members and responders when the WERE or ESO determines it is not feasible for each team member, responder, or person to be belted in a seat, such as when reloading long lays of hose, standing as honor guards during a funeral procession, transporting people acting as holiday figures or other characters or mascots, parades, and for vehicles without seat belts; (ix) Establish and implement policies and procedures for operating vehicles not directly under the control of the WERE or ESO (i.e., privately owned/leased/operated by team members and responders), when the WERE or ESO authorizes team members or responders to respond directly to emergency incident scenes or to WERE or ESO facilities when alerted for an emergency incident response; and
§ 1910.156(m)(1)	[none]	**(m) WERE Pre-Incident Planning** (1) The WERE shall develop PIPs for locations within the facility where team members may be called to provide service, based on the facility vulnerability assessment and the type(s) and level(s) of service(s) established in paragraph (c) of this section.
§ 1910.156(n)(2) & (3)	[none]	**(n) ESO Pre-Incident Planning** (2) The ESO shall develop PIPs for facilities, locations, and infrastructure where emergency incidents may occur (3) The ESO shall prepare a PIP for each facility within the ESO's primary response area that is subject to reporting requirements under 40 CFR part 355 pursuant to the Emergency Planning and Community Right-to-Know Act (EPCRA) (also referred to as the Superfund Amendments and Reauthorization Act of 1986 (SARA), 42 U.S.C. 11001 et seq.).
§ 1910.156(n)(8)	[none]	(8) The ESO shall ensure that the most recent version of PIPs are disseminated as needed and are accessible and available to responders operating at emergency incidents.
§ 1910.156(p)(2)	[none]	(p) Emergency Incident Operations

Section number and title	Currently approved collection of information requirements	Proposed collection of information requirements
		… (2) Incident Commander. The WERE and the ESO shall ensure that: (iii) The IC conducts a comprehensive and ongoing size-up of the incident scene that places life safety as the highest priority; (iv) The IC conducts a risk assessment based on the size-up before actively engaging the incident; . . . (vi) The IC develops an Incident Action Plan (IAP) that prioritizes life safety for each incident, updates it as needed during the incident, and utilizes the information contained in the PIP.
§ 1910.156(p)(3)	[none]	(3) Control zones. The WERE and the ESO shall ensure that: … (iii) Any changes to the perimeters during the incident are communicated to all team members and responders on the scene; (iv) Control zones are established as follows: (A) Designated as no-entry, hot, warm, or cold; (B) Marked in a conspicuous manner, with colored tape, signage, or other appropriate means, unless such marking is not possible; and (C) Communicated to all team members and responders attending the incident before the team member or responder is assigned to a control zone;
§ 1910.156(q)(1)	[none]	**(q) Standard Operating Procedures** (1) The WERE and the ESO shall develop and implement SOPs for emergency events that the WERE or ESO is reasonably likely to encounter, based on the community or facility vulnerability assessment developed in accordance with paragraphs (c) and (d) of this section.

Section number and title	Currently approved collection of information requirements	Proposed collection of information requirements
§ 1910.156(r)(1) & (2)	[none]	**(r) Post-Incident Analysis** (1) The WERE or ESO shall promptly conduct a Post-Incident Analysis (PIA) to determine the effectiveness of the WERT's or ESO's response to an incident after a significant event such as a large-scale incident; a significant near-miss incident; a team member, responder or SSW injury or illness requiring off-scene treatment; or a team member, responder, or SSW fatality. (2) The PIA shall include, but not be limited to, a review and evaluation of the RMP, IMS, PIPs, SOPs, and IAPs for accuracy and adequacy.
§ 1910.156(s)(1)	[none]	**(s) Program Evaluation** (1) The WERE and ESO shall evaluate the adequacy and effectiveness of the ERP at least annually, and upon discovering deficiencies, and document when the evaluation(s) are conducted.

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4. *OMB Control Number:* 1218–0075.

5. *Affected Public:* Business or other for-profit and not for profit entities.

6. *Number of Respondents:* 22,551.

7. *Frequency of Responses:* On occasion.

8. *Number of Reponses:* 28,305,800.

9. *Average Time per Response:* Varies.

10. *Estimated Annual Total Burden Hours:* 3,896,763.

11. *Estimated Annual Total Cost (Operation and maintenance):* $104,682,854.

IV. Submitting Comments

Members of the public who wish to comment on the revisions to the paperwork requirements in this proposal must send their written comments to the Office of Information and Regulatory Affairs, Attn: OMB Desk Officer for the Department of Labor, OSHA (RIN: 1218–AD91), Office of Management and Budget, Room 10235, Washington, DC 20503, email: *OIRA_submission@omb.eop.gov*. The agency encourages commenters also to submit their comments on these paperwork requirements to the rulemaking docket (Docket Number OSHA–2007–0073) along with comments on other parts of the proposed rule. For instructions on submitting these comments to the rulemaking docket, see the sections of this **Federal Register** notice titled **DATES** and **ADDRESSES**. Comments submitted in response to this document are public records; therefore, OSHA cautions commenters about submitting personal information such as Social Security numbers and dates of birth.

V. Docket and Inquiries

To access the docket to read or download comments and other materials related to this paperwork determination, including the complete ICR (containing the Supporting Statement with attachments describing the paperwork determinations in detail), use the procedures described under the section of this document titled **ADDRESSES**.

You also may obtain an electronic copy of the complete ICR by visiting the web page at: *http://www.reginfo.gov/public/do/PRAMain.* Scroll under ''Currently Under Review'' to ''Department of Labor (DOL)'' to view all of the DOL's ICRs, including those ICRs submitted for proposed rulemakings. To make inquiries, or to request other information, contact Ms. Seleda Perryman, Directorate of Standards and Guidance, telephone (202) 693–2222.

List of Subjects in 29 CFR Part 1910

Emergency response, Emergency responder, Emergency medical service, Firefighter, Incorporation by reference, Search and rescue personal protective equipment, Occupational safety and health.

Authority and Signature

This document was prepared under the direction of Douglas L. Parker, Assistant Secretary of Labor for Occupational Safety and Health, U.S. Department of Labor, 200 Constitution Ave. NW, Washington, DC 20210. It is issued under the authority of sections 4, 6, and 8 of the Occupational Safety and Health Act of 1970 (29 U.S.C. 653, 655, 657); 5 U.S.C. 553, Secretary of Labor's Order No. 8–2020 (85 FR 58383), and 29 CFR part 1911.

Signed at Washington, DC.

Douglas L. Parker,

Assistant Secretary of Labor for Occupational Safety and Health.

Proposed Amendments

For the reasons stated in the preamble, OSHA proposes to amend 29 CFR part 1910 to read as follows:

PART 1910—OCCUPATIONAL SAFETY AND HEALTH STANDARDS

Subpart A—General

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

Authority: 29 U.S.C. 653, 655, 657; Secretary of Labor's Order Numbers 12–71 (36 FR 8754), 8–76 (41 FR 25059), 9–83 (48 FR 35736), n1–90 (55 FR 9033), 6–96 (62 FR 111), 3–2000 (65 FR 50017), 5–2002 (67 FR 65008), 5–2007 (72 FR 31159), 4–2010 (75 FR 55355), or 1–2012 (77 FR 3912), as applicable. Sections 1910.6, 1910.7, 1910.8 and 1910.9 also issued under 29 CFR 1911. Section 1910.7(f) also issued under 31 U.S.C. 9701; 29 U.S.C. 9a; 5 U.S.C. 553; Public Law 106–113 (113 Stat. 1501A–222); Public Law 11–8 and 111–317; and OMB Circular A–25 (dated July 8, 1993) (58 FR 38142, July 15, 1993).

■ 2. Amend § 1910.6 by:
■ a. Throughout the section,
■ i. Removing the text ''The following material is available for purchase from the'';
■ ii. Removing the text ''The following materials are available for purchase from the'';
■ iii. Removing the text ''The following material is available from the''; and
■ iv. Removing the text ''The following materials are available from the'';
■ b. Revising paragraph (a) and the introductory text of paragraph (e);
■ c. In paragraph (e),
■ i. Removing the second sentence of paragraphs (e)(59) and (65);
■ ii. Revising paragraphs (e)(66), (67), and (69) through (71); and
■ iii. Adding paragraph (e)(80);
■ d. Revising the introductory text of paragraph (h);
■ e. Removing and reserving paragraph (k);
■ f. Adding introductory text to paragraph (r) and removing and reserving paragraphs (r)(1) and (2);
■ g. Revising the introductory text of paragraph (t);
■ h. Redesignating paragraphs (t)(2) through (37) as set forth in the following table:

Old paragraph	New paragraph
paragraphs (t)(2) through (8)	paragraphs (t)(3) through (9)
paragraphs (t)(9) through (15)	paragraphs (t)(12) through (18)
paragraphs (t)(17) through (33)	paragraphs (t)(19) through (35)
paragraph (t)(34)	paragraph (t)(49)
paragraphs (t)(35) through (36)	paragraphs (t)(10) through (11)
paragraph (t)(37)	paragraph (t)(2)

■ i. In newly redesignated paragraph (t)(10), removing the second sentence;
■ j. Adding new paragraphs (t)(36) and (37) and adding paragraphs (t)(38) through (48);
■ k. Revising newly-redesignated paragraph (t)(49);
■ l. Adding paragraphs (t)(50) through (57); and
■ m. Removing and reserving paragraph (v)(2).

The revisions and additions read as follows:

§ 1910.6 Incorporation by reference.

(a)(1) The standards of agencies of the U.S. Government and of organizations which are not agencies of the U.S. Government, which are incorporated by reference in this part, have the same force and effect as other standards in this part. The Occupational Safety and Health Administration (OSHA) adopts only the mandatory provisions (*i.e.,* provisions containing the word ''shall'' or other mandatory language) of material incorporated by reference as standards under the Occupational Safety and Health Act.

(2) Any changes in the material incorporated by reference in this part and an official historic file of such changes are available for inspection in the Docket Office at the national office of the Occupational Safety and Health Administration, U.S. Department of Labor, Washington, DC 20210; phone: 202–693–2350 (TTY: 877–889–5627).

(3) The material listed in this section are incorporated by reference into this part with the approval of the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. To enforce any edition other than that specified in this section, OSHA must publish a document in the **Federal Register** and the material must be available to the public. All approved incorporation by reference (IBR) material is available for inspection at OSHA and at the National Archives and Records Administration (NARA). Contact OSHA at: any OSHA Regional Office or at the OSHA Docket Office, U.S. Department of Labor, 200 Constitution Avenue NW, Room N–3508, Washington, DC 20210; phone: 202–693–2350 (TTY: 877–889–5627); email: *technicaldatacenter@dol.gov;* website: *www.osha.gov/contactus/byoffice/dtsem/technical-data-center.* For information on the availability of this material at NARA, visit *www.archives.gov/federal-register/cfr/ibr-locations* or email *fr.inspection@nara.gov.* The material may be obtained from the source(s) in the following paragraph(s) of this section or through a document reseller, including:

(i) Document Center Inc., 111 Industrial Road, Suite 9, Belmont, 94002; phone: 650–591–7600; fax: 650–591–7617; email: *info@document-center.com;* website: *www.document-center.com.*

(ii) Global Engineering Documents, 15 Inverness Way East, Englewood, CO 80112; phone: 800–854–7179 or 303–397–7956; fax: 303–397–2740; email: *global@ihs.com;* website: *https://global.ihs.com;*

(iii) Techstreet, a business of Thomson Reuters, 3916 Ranchero Drive, Ann Arbor, MI 48108; phone: 800–699–9277 or 734–780–8000; fax: 734–780–2046; email: *techstreet.service@thomsonreuters.com;* website: *www.Techstreet.com.*

(iv) Linda Hall Library, 5109 Cherry Street, Kansas City, Missouri, 64110–2498; phone: 816–363–4600; email: *requests@lindahall.org;* website: *https://www.lindahall.org/.*

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(e) American National Standards Institute (ANSI), 25 West 43rd Street, 4th Floor, New York, NY 10036; phone: 212–642–4900; fax: 212–398–0023; website: *www.ansi.org.*

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(66) ANSI Z535.1–2006 (R2011), Safety Colors, reaffirmed July 19, 2011; IBR approved for §§ 1910.97(a) and 1910.145(d).

(67) ANSI Z535.2–2011, Environmental and Facility Safety Signs, published September 15, 2011; IBR approved for § 1910.261(c).

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(69) ANSI/ISEA Z87.1–2010, Occupational and Educational Personal Eye and Face Protection Devices,

Approved April 13, 2010; IBR approved for § 1910.133(b).

(70) ANSI Z87.1–2003, Occupational and Educational Eye and Face Personal Protection Devices Approved June 19, 2003; IBR approved for § 1910.133(b).

(71) ANSI Z87.1–1989 (R–1998), Practice for Occupational and Educational Eye and Face Protection, Reaffirmation approved January 4, 1999; IBR approved for § 1910.133(b).

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(80) ANSI/ISEA 207–2011, American National Standard for High-Visibility Safety Vests [2011 ed]; IBR approved for § 1910.156(k).

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(h) ASTM International, 100 Barr Harbor Drive, P.O. Box C700, West Conshohocken, PA 19428–2959; phone: 610–832–9585; fax: 610–832–9555; email: *sevice@astm.org;* website: *www.astm.org.*

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(r) International Standards Organization (ISO) through ANSI, 25 West 43rd Street, Fourth Floor, New York, NY 10036–7417; phone: 212–642–4980; fax: 212–302–1286; email: *info@ansi.org;* website: *www.ansi.org.*

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(t) National Fire Protection Association (NFPA), 1 Batterymarch Park, Quincy, MA 02269; phone: 800–344–3555 or 617–770–3000; fax: 800–593–6372 or 508–895–8301; email: *custserv@nfpa.org;* website: *www.nfpa.org.*

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(36) NFPA 1001, Standard for Structural Fire Fighter Professional Qualifications, [2019 edition]; IBR approved for § 1910.156(h).

(37) NFPA 1002, Standard for Fire Apparatus Driver/Operator Professional Qualifications, [2017 edition]; IBR approved for § 1910.156(h).

(38) NFPA 1005, Standard for Professional Qualifications for Marine Fire Fighting for Land-Based Fire Fighters, [2019 edition]; IBR approved for § 1910.156(h).

(39) NFPA 1006, Standard for Technical Rescue Personnel Professional Qualifications, [2021 edition]; IBR approved for § 1910.156(h).

(40) NFPA 1021, Standard for Fire Officer Professional Qualifications, [2020 edition]; IBR approved for § 1910.156(h).

(41) NFPA 1081, Standard for Facility Fire Brigade Member Professional Qualifications, [2018 edition]; IBR approved for § 1910.156(h).

(42) NFPA 1140, Standard for Wildland Fire Protection, [2022 edition]; IBR approved for § 1910.156(h).

(43) NFPA 1407, Standard for Training Fire Service Rapid Intervention Crews, [2020 edition]; IBR approved for § 1910.156(h).

(44) NFPA 1582, Standard on Comprehensive Occupational Medical Program for Fire Departments, [2022 edition]; IBR approved for § 1910.156(g).

(45) NFPA 1910, Standard for the Inspection, Maintenance, Refurbishment, Testing, and Retirement of In-Service Emergency Vehicles and Marine Firefighting Vessels, [2024 edition]; IBR approved for § 1910.156(l).

(46) NFPA 1951, Standard on Protective Ensembles for Technical Rescue Incidents, [2020 edition]; IBR approved for § 1910.156(k).

(47) NFPA 1952, Standard on Surface Water Operations Protective Clothing and Equipment, [2021 edition]; IBR approved for § 1910.156(k).

(48) NFPA 1953, Standard on Protective Ensembles for Contaminated Water Diving, [2021 edition]; IBR approved for § 1910.156(k).

(49) NFPA 1971, Standard on Protective Ensembles for Structural Fire Fighting and Proximity Fire Fighting, [2018 edition]; IBR approved for § 1910.156(k).

(50) NFPA 1977, Standard on Protective Clothing and Equipment for Wildland Fire Fighting and Urban Interface Fire Fighting, [2022 edition]; IBR approved for § 1910.156(k).

(51) NFPA 1981, Standard on Open-Circuit Self-Contained Breathing Apparatus (SCBA) for Emergency Services, [2019 edition]; IBR approved for § 1910.156(k).

(52) NFPA 1982, Standard on Personal Alert Safety Systems (PASS), [2018 edition]; IBR approved for § 1910.156(k).

(53) NFPA 1984, Standards on Respirators for Wildland Fire-Fighting Operations and Wildland Urban Interface Operations, [2022 edition]; IBR approved for § 1910.156(k).

(54) NFPA 1986, Standard on Respiratory Protection for Tactical and technical Operations, [2023 edition]; IBR approved for § 1910.156(k).

(55) NFPA 1987, Standard on Combination Unit Respirator Systems for Tactical and Technical Operations, [2023 edition]; IBR approved for § 1910.156(k).

(56) NFPA 1990, Standard on Protective Ensembles for Hazardous Materials and CBRN Operations, [2022 edition]; IBR approved for § 1910.156(k).

(57) NFPA 1999, Standard on Protective Clothing and Ensembles for Emergency Medical Operations, [2018 edition]; IBR approved for § 1910.156(k).

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Subpart H—Hazardous Materials

■ 3. The authority citation for subpart H continues to read as follows:

Authority: Sections 4, 6, and 8 of the Occupational Safety and Health Act of 1970 (29 U.S.C. 653, 655, 657); Secretary of Labor's Order No. 12–71 (36 FR 8754), 8–76 (41 FR 25059), 9–83 (48 FR 35736), 1–90 (55 FR 9033), 6–96 (62 FR 111), 3–2000 (65 FR 50017), or 5–2007 (72 FR 31159), 4–2010 (75 FR 55355) or 1–2012 (77 FR 3912), as applicable; and 29 CFR part 1911.

Sections 1910.103, 1910.106 through 1910.111, and 1910.119, 1910.120, and 1910.122 through 1910.126 also issued under 29 CFR part 1911.

Section 1910.119 also issued under Section 304, Clean Air Act Amendments of 1990 (Pub. L. 101–549), reprinted at 29 U.S.C.A. 655 Note.

Section 1910.120 also issued under Section 126, Superfund Amendments and Reauthorization Act of 1986 as amended (29 U.S.C.A. 655 Note), and 5 U.S.C. 553.

■ 4. Amend § 1910.120 by:

■ a. In paragraph (c)(5)(iii), removing the text ''appendix B'' and adding in its place the text ''appendix D to this subpart'';

■ b. In paragraph (f)(4)(ii), removing the text ''appendix D'' and adding in its place the text ''appendix D to this subpart'';

■ c. In paragraphs (g)(3)(iv) and (v). removing the text ''appendix B'' and adding in its place the text ''appendix B to this subpart'';

■ d. In paragraphs (g)(4)(ii) and (iii), removing the text ''appendix A'' and adding in its place the text ''appendix A to this subpart'';

■ e. Revising paragraph (q)(3)(iii);

■ f. Redesignating the note immediately following the undesignated heading ''Appendices to § 1910.120'' as paragraph (r);

■ g. Removing the undesignated heading ''Appendices to § 1910.120''; and

■ h. Redesignating appendices A through E to § 1910.120 as appendices A through E to subpart H of part 29.

The revisions and addition read as follows:

§ 1910.120 Hazardous waste operations and emergency response.

* * * * *

(q) * * *

(3) * * *

(iii) Based on the hazardous substances and/or conditions present, the individual in charge of the ICS shall implement appropriate emergency operations, and ensure that the personal

protective equipment worn is appropriate for the hazards to be encountered. However, personal protective equipment shall meet, at a minimum, the criteria contained in § 1910.156(k) when worn while performing firefighting operations beyond the incipient stage for any incident.

(r) *Appendices to this subpart—Hazardous Waste Operations and Emergency Response.* Appendices A through E to this subpart serve as non-mandatory guidelines to assist employees and employers in complying with the appropriate requirements of this section. However, paragraph (g) of this section makes mandatory in certain circumstances the use of Level A and Level B PPE protection set forth in the appendices.

* * * * *

■ 5. Amend newly redesignated appendix B to subpart H by revising Part B.IV to read as follows:

Appendix B to Subpart H of Part 1910—General Description and Discussion of the Levels of Protection and Protective Gear

* * * * *

Part B * * *

IV. *Level D*—Level D protection should be used when:

1. The atmosphere contains no known hazard; and

2. Work functions preclude splashes, immersion, or the potential for unexpected inhalation of or contact with hazardous levels of any chemicals.

Note: As stated before, combinations of personal protective equipment other than those described for Levels A, B, C, and D protection may be more appropriate and may be used to provide the proper level of protection.

As an aid in selecting suitable chemical protective clothing, it should be noted that the NFPA has developed standards on chemical protective clothing. The standards that have been adopted include:

NFPA 1990, Standard on Protective Ensembles for Hazardous Materials and CBRN Operations, [2022 ed]. (as incorporated by reference, see § 1910.6).

This standard applies documentation and performance requirements to the manufacture of chemical protective suits. Chemical protective suits meeting these requirements are labelled as compliant with the appropriate standard. It is recommended that chemical protective suits that meet these standards be used.

Appendix C to Subpart H [Amended]

■ 6. Amend newly redesignated appendix C to subpart H by:

■ a. In section 2., removing the text ''appendix D'' and adding in its place the text ''appendix D to this subpart''; and

■ b. In section 5., removing the text ''appendix B'' and adding in its place the text ''appendix B to this subpart''.

Appendix E to Subpart H [Amended]

■ 7. Amend newly redesignated appendix E to subpart H by:

■ a. In paragraph B.1.(m), removing the text ''appendices to 29 CFR 1910.120'' and adding, in its place, the text ''appendices to this subpart''; and

■ b. In section 5., removing the text ''appendix B'' and adding, in its place, the text ''appendix B to this subpart''.

Subpart I—Personal Protective Equipment

■ 8. The authority citation for subpart I continues to read as follows:

Authority: 29 U.S.C. 653, 655, 657; Secretary of Labor's Order No. 12–71 (36 FR 8754), 8–76 (41 FR 25059), 9–83 (48 FR 35736), 1–90 (55 FR 9033), 6–96 (62 FR 111), 3–2000 (65 FR 50017), 5–2002 (67 FR 65008 preview citation details), 5–2007 (72 FR 31160), 4–2010 (75 FR 55355), or 1–2012 (77 FR 3912), as applicable, and 29 CFR part 1911.

■ 9. Amend § 1910.134 by:

■ a. In paragraph (b), removing the definition for ''*Interior structural firefighting*'';

■ b. Revising paragraph (g)(4); and

■ c. Removing Notes 1 and 2 to paragraph (g).

The revision reads as follows:

§ 1910.134 Respiratory protection.

* * * * *

(g) * * *

(4) *Procedures for interior structural firefighting.* (Refer to § 1910.156)

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Subpart L—Fire Protection

■ 10. The authority citation for subpart L continues to read as follows:

Authority: Sections 4, 6, and 8 of the Occupational Safety and Health Act of 1970 (29 U.S.C. 653, 655, and 657); Secretary of Labor's Order No. 12–71 (36 FR 8754), 8–76 (41 FR 25059), 9–83 (48 FR 35736), 1–90 (55 FR 9033), 6–96 (62 FR 111), 3–2000 (65 FR 50017), 5–2002 (67 FR 65008), or 5–2007 (72 FR 31160), as applicable, and 29 CFR part 1911.

■ 11. Amend § 1910.155 by revising paragraphs (a) and (c) to read as follows:

§ 1910.155 Scope, application and definitions applicable to this subpart.

(a) *Scope.* This subpart contains requirements for Workplace Emergency Response Employers and Emergency Service Organizations (as defined in § 1910.156), and all portable and fixed fire suppression equipment, fire detection systems, and fire or employee alarm systems installed to meet the fire protection requirements of this part.

* * * * *

(c) *Definitions applicable to this subpart—*

Aqueous film forming foam (AFFF) means a fluorinated surfactant with a foam stabilizer which is diluted with water to act as a temporary barrier to exclude air from mixing with the fuel vapor by developing an aqueous film on the fuel surface of some hydrocarbons which is capable of suppressing the generation of fuel vapors.

Approved means acceptable to the Assistant Secretary under the following criteria:

(i) If it is accepted, or certified, or listed, or labeled or otherwise determined to be safe by a nationally recognized testing laboratory; or

(ii) With respect to an installation or equipment of a kind which no nationally recognized testing laboratory accepts, certifies, lists, labels, or determines to be safe, if it is inspected or tested by another Federal agency and found in compliance with the provisions of the applicable National Fire Protection Association Fire Code; or

(iii) With respect to custom-made equipment or related installations which are designed, fabricated for, and intended for use by its manufacturer on the basis of test data which the employer keeps and makes available for inspection to the Assistant Secretary.

(iv) For the purposes of paragraph (c)(3) of this section:

(A) Equipment is listed if it is of a kind mentioned in a list which is published by a nationally recognized testing laboratory which makes periodic inspections of the production of such equipment and which states that such equipment meets nationally recognized standards or has been tested and found safe for use in a specified manner;

(B) Equipment is labeled if there is attached to it a label, symbol, or other identifying mark of a nationally recognized testing laboratory which makes periodic inspections of the production of such equipment, and whose labeling indicates compliance with nationally recognized standards or tests to determine safe use in a specified manner;

(C) Equipment is accepted if it has been inspected and found by a nationally recognized testing laboratory to conform to specified plans or to procedures of applicable codes; and

(D) Equipment is certified if it has been tested and found by a nationally recognized testing laboratory to meet nationally recognized standards or to be

safe for use in a specified manner or is of a kind whose production is periodically inspected by a nationally recognized testing laboratory, and if it bears a label, tag, or other record of certification.

(E) Refer to § 1910.7 for definition of nationally recognized testing laboratory.

Assistant Secretary means the Assistant Secretary of Labor for Occupational Safety and Health or designee.

Automatic fire detection device means a device designed to automatically detect the presence of fire by heat, flame, light, smoke or other products of combustion.

Carbon dioxide means a colorless, odorless, electrically nonconductive inert gas (chemical formula CO_2) that is a medium for extinguishing fires by reducing the concentration of oxygen or fuel vapor in the air to the point where combustion is impossible.

Class A fire means a fire involving ordinary combustible materials such as paper, wood, cloth, and some rubber and plastic materials.

Class B fire means a fire involving flammable or combustible liquids, flammable gases, greases and similar materials, and some rubber and plastic materials.

Class C fire means a fire involving energized electrical equipment where safety to the employee requires the use of electrically nonconductive extinguishing media.

Class D fire means a fire involving combustible metals such as magnesium, titanium, zirconium, sodium, lithium and potassium.

Class K fire means a fire in a cooking appliance involving animal oils, vegetable oils, or fats.

Clean agent means an extinguishing agent that is odorless, colorless, electrically non-conducive, and leaves no residue.

Dry chemical means an extinguishing agent composed of very small particles of chemicals such as, but not limited to, sodium bicarbonate, potassium bicarbonate, urea-based potassium bicarbonate, potassium chloride, or monoammonium phosphate supplemented by special treatment to provide resistance to packing and moisture absorption (caking) as well as to provide proper flow capabilities. Dry chemical does not include dry powders.

Dry powder means a compound used to extinguish or control Class D fires.

Education means the process of imparting knowledge or skill through systematic instruction. It does not require formal classroom instruction.

Extinguisher classification means the letter classification given an extinguisher to designate the class or classes of fire on which an extinguisher will be effective.

Extinguisher rating means the numerical rating given to an extinguisher which indicates the extinguishing potential of the unit based on standardized tests developed by Underwriters' Laboratories, Inc.

Fixed extinguishing system means a permanently installed system that either extinguishes or controls a fire at the location of the system.

Foam means a stable aggregation of small bubbles which flow freely over a burning liquid surface and form a coherent blanket which seals combustible vapors and thereby extinguishes the fire.

Gaseous agent is a fire extinguishing agent which is in the gaseous state at normal room temperature and pressure. It has low viscosity, can expand or contract with changes in pressure and temperature, and has the ability to diffuse readily and to distribute itself uniformly throughout an enclosure.

Halogenated agent means a liquified gas extinguishing agent that chemically interrupts the combustion reaction between the fuel and oxygen to extinguish fires.

Halon 1211 means a colorless, faintly sweet smelling, electrically nonconductive liquefied gas (chemical formula $CBrC1F_2$) which is a medium for extinguishing fires by inhibiting the chemical chain reaction of fuel and oxygen. It is also known as bromochlorodifluoromethane.

Halon 1301 means a colorless, odorless, electrically nonconductive gas (chemical formula $CBrF_3$) which is a medium for extinguishing fires by inhibiting the chemical chain reaction of fuel and oxygen. It is also known as bromotrifluoromethane.

Incipient stage fire means a fire which is in the initial or beginning stage and which can be controlled or extinguished by portable fire extinguishers, Class II standpipe or small hose systems without the need for protective clothing or breathing apparatus.

Inspection means a visual check of fire protection systems and equipment to ensure that they are in place, charged, and ready for use in the event of a fire.

Interior structural firefighting means the physical activity of fire suppression, rescue or both, inside of buildings or enclosed structures which are involved in a fire situation beyond the incipient stage.

Local application system means a fixed fire suppression system which has a supply of extinguishing agent, with nozzles arranged to automatically discharge extinguishing agent directly on the burning material to extinguish or control a fire.

Maintenance means the performance of services on fire protection equipment and systems to assure that they will perform as expected in the event of a fire. Maintenance differs from inspection in that maintenance requires the checking of internal fittings, devices and agent supplies.

Multipurpose dry chemical means a dry chemical which is approved for use on Class A, Class B and Class C fires.

Pre-discharge employee alarm means an alarm which will sound at a set time prior to actual discharge of an extinguishing system so that employees may evacuate the discharge area prior to system discharge.

Sprinkler alarm means an approved device installed so that any waterflow from a sprinkler system equal to or greater than that from single automatic sprinkler will result in an audible alarm signal on the premises.

Sprinkler system means a system of piping designed in accordance with fire protection engineering standards and installed to control or extinguish fires. The system includes an adequate and reliable water supply, and a network of specially sized piping and sprinklers which are interconnected. The system also includes a control valve and a device for actuating an alarm when the system is in operation.

Standpipe systems. (i) *Class I standpipe system* means a 21/2″ (6.3 cm) hose connection for use by fire departments and those trained in handling heavy fire streams.

(ii) *Class II standpipe system* means a 11/2″ (3.8 cm) hose system which provides a means for the control or extinguishment of incipient stage fires.

(iii) *Class III standpipe system* means a combined system of hose which is for the use of employees trained in the use of hose operations and which is capable of furnishing effective water discharge during the more advanced stages of fire (beyond the incipient stage) in the interior of workplaces. Hose outlets are available for both 11/2″ (3.8 cm) and 21/2″ (6.3 cm) hose.

(iv) *Small hose system* means a system of hose ranging in diameter from 5/8″ (1.6 cm up to 11/2″ (3.8 cm) which is for the use of employees and which provides a means for the control and extinguishment of incipient stage fires.

Training means the process of making proficient through instruction and hands-on practice in the operation of equipment, including respiratory protection equipment, that is expected to be used and in the performance of assigned duties.

Total flooding system means a fixed suppression system which is arranged to automatically discharge a predetermined concentration of agent into an enclosed space for the purpose of fire extinguishment or control.

Wet chemical means an aqueous solution of organic or inorganic salts, or a combination thereof, that forms an extinguishing agent.

Wetting agent means a concentrate mixed with water that reduces the surface tension of the water which increases its ability to spread and penetrate, thus extending the efficiency of the watering extinguishing fires.

■ 12. Revise § 1910.156 to read as follows:

§ 1910.156 Emergency response.

(a) *Scope.* (1) This section applies to:

(i) Employers that have a workplace emergency response team, as defined in paragraph (b) of this section. The employees on the team, as a collateral duty to their regular daily work assignments, respond to emergency incidents to provide service such as firefighting, emergency medical service, and technical search and rescue. For the purposes of this section, this type of employer is called a Workplace Emergency Response Employer (WERE), the team is called a Workplace Emergency Response Team (WERT), and the employees assigned to the team are called team members; and

(ii) Employers that are emergency service organizations as defined in paragraph (b) of this section, that provide one or more of the following emergency response services as a primary function; or the employees perform the emergency service(s) as a primary duty for the employer: firefighting, emergency medical service, and technical search and rescue. For the purposes of this section, this type of employer is called an Emergency Service Organization (ESO), and the employees are called responders.

(2) This section does not apply to:

(i) Employers performing disaster site clean-up or recovery duties following natural disasters such as earthquakes, hurricanes, tornados, and floods; and human-made disasters such as explosions and transportation incidents.

(ii) Activities covered by § 1910.120 (Hazardous Waste Operations and Emergency Response (HAZWOPER)), § 1910.146 (Permit-Required Confined Spaces in General Industry).

(b) *Definitions.*

Combustion product means the heat, volatized liquids and solids, particulate matter (microscopic and small unburned particles), ash, and toxic gases released as a result of combustion (fire).

Community means a state, region, municipality or portion thereof, such as a village, town, township, borough, city, county, or parish.

Community vulnerability assessment means the process of identifying, quantifying, and prioritizing the potential and known vulnerabilities of the overall community that may require emergency service from the ESO, including the community's structures, inhabitants, infrastructure, organizations, and hazardous conditions or processes. The assessment is intended to include both human-created vulnerabilities and natural disasters.

Control zone means an area at an incident that is designated based upon safety and the degree of hazard to team members and responders. A control zone may be designated as cold, warm, hot, or no-entry.

(i) *Cold zone* means the area immediately outside the boundary of the established warm zone where team members and responders are not exposed to dangerous areas or contaminants from fire, toxic chemicals, or carcinogens. The cold zone typically contains the command post and such other support functions as are deemed necessary to control the incident. It may also be known as the support zone.

(ii) *Warm zone* means the area immediately outside the boundary of the hot zone that serves to transition to the cold zone. The warm zone typically is where team member and responder and equipment decontamination and hot zone support take place. It may also be known as the contamination reduction zone.

(iii) *Hot zone* means the area including and immediately surrounding the physical location of a fire or other hazardous area, having a boundary that extends far enough away to protect team members and responders outside the hot zone from being directly exposed to the hazards present in the hot zone.

(iv) *No-entry zone* means an area designated to keep out team members and responders, due to the presence of dangers such as imminent hazard(s), potential collapse, or the need to preserve the scene.

Emergency Medical Service (EMS) means the provision of patient treatment, such as basic life support, advanced life support, and other pre-hospital procedures, and may include transportation to a medical facility. It does not include the provision of first aid within the scope of § 1910.151.

Emergency Response Program (ERP) means a written program, developed by the WERE or ESO, to ensure that the WERE or ESO is prepared to safely respond to and operate at emergency incidents and non-emergency service situations, and to provide for the occupational safety and health of team members and responders. The ERP shall be composed of at least the information and documents required in this section.

Emergency Service Organization (ESO) means an organization that provides one or more of the following emergency response services as a primary function: firefighting, emergency medical service, and technical search and rescue; or the employees perform the emergency service(s) as a primary duty for the employer. Personnel (called responders in this section), as part of their regularly assigned duties, respond to emergency incidents to provide service such as firefighting, emergency medical service, and technical search and rescue. It does not include organizations solely engaged in law enforcement, crime prevention, facility security, or similar activities.

Facility means a structure or structures and surrounding locations, including industrial, commercial, mercantile, warehouse, power plant (utility), assembly occupancy, institutional or similar occupancy; and public and private as well as for-profit, not-for-profit, and governmental location, campus, compound, base, or similar establishment.

Facility vulnerability assessment means the process of identifying, quantifying, and prioritizing the potential and known vulnerabilities of the entire facility, including the facility's structures and surrounding locations, inhabitants, infrastructure, and hazardous conditions or processes.

Gross decontamination means the initial phase of the decontamination process, during which the surface contaminants and foreign materials on a team member's or responder's skin, clothing, personal protective equipment (PPE), and equipment are removed or significantly reduced, such as by brushing, rinsing, wiping, use of detergents, and use of personal hygiene wipes.

Immediately dangerous to life or health (IDLH) means an atmosphere that poses an immediate threat to life, would cause irreversible adverse health effects, or would impair an individual's ability to escape from a dangerous atmosphere.

Incident means any situation to which a WERE or an ESO responds to perform services, such as firefighting; emergency medical service; technical search and rescue; other situations such as responses to downed electrical power lines, and outside propane or natural gas leaks.

Incident action plan (IAP) means the incident objectives, strategy, and tactics necessary to manage an incident. The IAP is developed at the incident site and provides essential information for actionable incident organization, work assignments, management of resources, risk management, and team member or responder safety when operating at an incident.

Incident Commander (IC) means the team member or responder who fulfills the incident command function of the Incident Management System; who is responsible for the overall management of an incident and the safety of all team members or responders involved in the response; and who is responsible for all incident activities, including the development of strategies and tactics, the direction and control of all team members and responders at the incident, and the ordering and release of resources.

Incident Management System (IMS) means a system used for managing and directing incident scene operations and activities. It includes establishing functions for managing incidents, describes the roles and responsibilities to be assumed by team members and responders, and standard operating procedures to be utilized. Incident command is a function of the IMS.

Incident Safety Officer (ISO) means the team member or responder at an incident scene who is responsible for monitoring and assessing safety hazards and unsafe situations and for developing measures for ensuring team member and responder safety.

Incident scene means the physical location where activities related to a specific incident are conducted. It includes nearby areas that are subject to incident-related hazards or used by the WERE or ESO for team members, responders, and equipment.

Living area means the room(s) or area(s) of the ESO's facility where responders may cook, eat, relax, read, study, watch television, complete paperwork or data entry, and similar daily living activities. Examples include day room, kitchen/dining area, classroom, office, and TV room. Areas such as maintenance shops, utility and storage areas, and interior vehicle parking bays are not considered living areas.

Mayday means an emergency procedure term used to signal that a team member or responder is in distress, needs assistance and is unable to self-rescue; it is typically used when safety or life is in jeopardy.

Mutual aid agreement means a written agreement or contract between WEREs and ESOs, or between ESOs, that they will assist one another upon request by furnishing personnel, equipment, materials, expertise, or other associated services as specified.

Non-emergency service means a situation where a WERT or ESO is called upon to provide a service that does not involve an immediate threat to health, life, or property, such as assisting law enforcement with equipment and scene lighting; removing people from a stuck elevator; resetting an accidentally activated fire alarm system; or assisting a mobility-challenged person downstairs during an elevator outage.

Personal protective equipment (PPE) means the clothing and equipment worn and utilized to prevent or minimize exposure to serious workplace injuries and illnesses. Examples include gloves, safety glasses and goggles, safety shoes and boots, earplugs and muffs, hard hats and helmets, respirators and Self-Contained Breathing Apparatus (SCBA), protective coats and pants, hoods, coveralls, vests, and full body suits.

Physician or other licensed health care professional (PLHCP) means an individual whose legally permitted scope of practice (*i.e.,* license, registration, or certification) allows the individual to independently provide, or be delegated the responsibility to provide, some or all of the health care services required by paragraph (g) of this section.

Pre-incident plan (PIP) means a written document developed by gathering general and detailed data about a particular facility or other location that is used by team members or responders in effectively and safely managing an emergency incident there. It is developed before an incident occurs and is intended to be used during an incident to aid in the safe mitigation of hazards.

Rapid intervention crew (RIC) means a group of team members or responders dedicated solely to serve as a stand-by rescue team available for the immediate search and rescue of any missing, trapped, injured or unaccounted-for team member(s) or responder(s).

Responder means an employee or member of an ESO who is, or will be, assigned to perform duties at emergency incidents.

Size-up means the observation and evaluation of the influencing factors at an incident used to determine the scope of the incident and to develop strategic goals and tactical objectives.

Skilled support worker (SSW) means an employee of an employer whose primary function is not as an emergency service provider and who is skilled in certain tasks or disciplines that can support a WERT or ESO. Examples include operators of heavy-duty wrecker/rotator tow vehicles, mechanized earth moving or digging equipment, or crane and hoisting equipment; utility service employees (gas, water, electricity); public works employees; and technical experts.

Sleeping area means designated room(s) or area(s) of the ESO's facility where responders sleep in beds.

Standard operating procedure (SOP) means a written directive that establishes a course of action or administrative method to be followed routinely and explains what is expected of team members or responders in performing the prescribed action, duty, or task.

Team member means an employee of the WERE whose primary job duties are typically associated with the business of the WERE (*e.g.,* production, manufacturing, processing, warehousing, administration) and who is assigned to the WERT to perform certain designated duties at emergency incidents at the WERE facility. Emergency response is a collateral duty for team members.

Technical search and rescue/ Technical rescue means a type of service that utilizes special knowledge and skills and specialized equipment to resolve complex search and rescue situations, such as rope, vehicle/ machinery, structural collapse, trench, and technical water rescue.

Unified command (UC) means a structure for managing an incident that allows for all agencies with jurisdictional responsibility for an incident, either geographical or functional, to manage an incident by establishing a common set of incident objectives and strategies.

Workplace Emergency Response Employer (WERE) means an employer who has a workplace emergency response team; and whose employees on the team, as a collateral duty to their regular daily work assignments, respond to emergency incidents to provide service such as firefighting, emergency medical service, and technical search and rescue.

Workplace Emergency Response Team (WERT) means a group of WERE employees (known as team members) who, as a collateral duty, prepare for and respond to emergency incidents in the WERE workplace.

(c) *Organization of the WERT, and Establishment of the ERP and Emergency Service(s) Capability.* (1) The WERE shall develop and implement a written ERP that provides protection for each of its employees (team members)

who is designated to provide services at an emergency incident.

(2) In the ERP, the WERE shall establish the existence of a WERT; describe the basic organizational structure of the WERT; and include how the WERE is addressing the provisions in the following paragraphs of this section: (c), (e) through (i), (k) through (m), and (o) through (s). The ERP must include an up-to-date copy of all written plans and procedures, except for PIPs, required by this section.

(3) The WERE shall conduct a facility vulnerability assessment for the purpose of establishing its emergency response capabilities and determining its ability to match the facility's vulnerabilities with available resources.

(4) The assessment required by paragraph (c)(3) of this section shall identify structures, facilities, and other locations where PIPs are needed.

(i) The assessment shall identify each vacant structure and location at the facility that is unsafe for team members to enter due to conditions such as previous fire damage, damage from natural disasters, and deterioration due to age and lack of upkeep.

(ii) The WERE shall provide a means for notifying team members of the vacant structures and locations identified in paragraph (c)(4)(i) of this section.

(5) The WERE shall specify the resources needed, including personnel and equipment, for mitigation of emergency incidents identified in the facility vulnerability assessment.

(6) The WERE shall establish, and document in the ERP, the type(s) and level(s) of emergency service(s) that it intends for the WERT to perform.

(7) The WERE shall establish, and document in the ERP, tiers of team members based on responsibilities, qualifications, and capabilities for the type(s) and level(s) of service it intends to perform.

Examples of tiers include, but are not limited to:

(i) For firefighting types of operations, tiers such as: trainee, incipient stage, advanced exterior, interior structural, both advanced exterior and interior firefighter, support.

(ii) For technical search and rescue types of operations, tiers such as: trainee, awareness, operation, technician, support.

(iii) For emergency medical types of services, tiers such as: trainee, Emergency Medical Responder (EMR), Emergency Medical Technician (EMT), advanced EMT (EMT–A), paramedic, nurse, physician, support.

(8) The WERE shall define, and document in the ERP, the service(s) needed, based on paragraph (c)(3) of this section, that the WERE is unable to provide, and develop mutual aid agreements with other WEREs and ESOs as necessary, or contract with an ESO(s), to ensure adequate resources are available to safely mitigate foreseeable incidents.

(9) Previous editions of ERP documents required by this section shall be maintained by the WERE for a minimum of five (5) years.

(10) The WERE shall notify team members of any changes to the ERP and make the ERP and documents maintained in accordance with paragraph (c)(9) of this section available for inspection by team members, their representatives, and OSHA representatives.

(d) *ESO Establishment of ERP and Emergency Service(s) Capability.* (1) The ESO shall develop and implement a written ERP that provides protection for each of its responders who is designated to operate at an emergency incident.

(2) In the ERP the ESO shall include how the ESO is addressing the provisions in the following paragraphs of this section: (d) through (h), (j) through (l), and (n) through (s). The ERP must include an up-to-date copy of all written plans and procedures, except for PIPs, required by this section.

(3) The ESO shall perform a community or facility vulnerability assessment of hazards within the primary response area where the emergency service(s) it provides is/are expected to be performed.

Note 1 to paragraph (d)(3): An ESO whose primary response area is a community would assess the community it serves. An ESO whose primary response area is, for example: a manufacturing facility, a military facility, a research and development facility, or similar occupational facility or workplace, would assess that facility.

(4) The assessment required by paragraph (d)(3) of this section shall identify structures, facilities, and other locations where PIPs are needed.

(i) The assessment shall identify each vacant structure and location that is unsafe for responders to enter due to conditions such as previous fire damage, damage from natural disasters, and deterioration due to age and lack of upkeep.

(ii) The ESO shall provide a means for notifying responders of the vacant structures and locations identified in paragraph (d)(4)(i) of this section.

(5) All facilities within the ESO's service area that are subject to reporting requirements under 40 CFR part 355 pursuant to the Emergency Planning and Community Right-to-Know Act (EPCRA) (also referred to as the Superfund Amendments and Reauthorization Act of 1986 (SARA), 42 U.S.C. 11001 *et seq.*), shall be included in the ESO's community vulnerability assessment.

(6) The ESO shall evaluate the resources needed, including personnel and equipment, for mitigation of emergency incidents identified in the community or facility vulnerability assessment, and establish in the ERP the type(s) and level(s) of emergency service(s) it intends to perform.

(7) In the ERP the ESO shall establish tiers of responders based on responsibilities, qualifications and capabilities for the type(s) and level(s) of service it intends to perform. Examples of tiers include, but are not limited to:

(i) For firefighting types of operations, tiers such as: trainee, basic firefighter, advanced firefighter, officer/crew leader, command officer, pilot, support.

(ii) For technical search and rescue types of operations, tiers such as: awareness, operation, technician, support.

(iii) For emergency medical types of services, tiers such as: EMR, EMT, advanced EMT (EMT–A), paramedic, nurse, pilot, support.

(8) In the ERP the ESO shall define the service(s) needed, based on paragraph (d)(4) of this section, that the ESO is unable to provide, and develop mutual aid agreements with WEREs or other ESOs as necessary to ensure adequate resources are available to safely mitigate foreseeable incidents.

(9) Previous editions of documentation required by this section shall be maintained by the ESO for a minimum of five (5) years.

(10) The ESO shall notify responders of any changes to the ERP and make the ERP and documents maintained in accordance with paragraph (d)(9) of this section available for inspection by responders, their representatives, and OSHA representatives.

(e) *Team Member and Responder Participation.* Each WERE and ESO shall establish and implement a process to:

(1) Involve team members and responders in developing and updating the ERP;

(2) Involve team members and responders in implementing and evaluating the ERP, and in the review and change process;

(3) Request input from team members and responders regarding modifications to the WERE's or ESO's own facility(ies);

(4) Involve team members and responders in walkaround inspections, inspections conducted in response to a

health or safety concern raised, and incident investigations at the WERE and ESO's own facility(ies);

(5) Encourage team members and responders to report safety and health concerns, such as hazards, injuries, illnesses, near misses, and deficiencies in the ERP;

(6) Respond to reports made in accordance with paragraph (e)(5) of this section in a reasonable period; and

(7) Post procedures for reporting safety and health concerns under paragraph (e)(5) of this section in a conspicuous place or places where notices to team members and responders are customarily posted.

(f) *WERT and ESO Risk Management Plan.* (1) The WERE and the ESO shall develop and implement a written comprehensive risk management plan (RMP), based on the type and level of service(s) established in paragraphs (c) and (d) of this section, that:

(i) Covers, at a minimum, risks to team members and responders associated with the following:

(A) Activities at WERE and ESO facilities;

(B) Training;

(C) Vehicle operations;

(D) Operations at emergency incidents;

(E) Non-emergency services and activities; and

(F) Activities that lead to exposure to combustion products, carcinogens, and other incident-related health hazards.

(ii) Includes, at a minimum, the following components with respect to hazards faced by team members and responders operating at incidents:

(A) Identification of actual and reasonably anticipated hazards;

(B) Evaluation of the likelihood of occurrence of a given hazard and the severity of its potential consequences;

(C) Establishment of priorities for action based upon a particular hazard's severity and likelihood of occurrence;

(D) Risk control techniques for elimination or mitigation of potential hazards, and a plan for implementation of the most effective solutions; and

(E) A plan for post-incident evaluation of effectiveness of risk control techniques.

(iii) Includes, at a minimum, the following:

(A) A personal protective equipment (PPE) hazard assessment that meets the requirements of § 1910.132(d);

(B) A respiratory protection program that meets the requirements of § 1910.134;

(C) An infection control program that identifies and limits or prevents the exposure of team members and responders to infectious and contagious diseases; and

(D) A bloodborne pathogens exposure control plan that meets the requirements of § 1910.1030.

(2) The RMP shall include a policy for extraordinary situations when a team member or responder, after making a risk assessment determination based on the team member or responder's training and experience, is permitted to attempt to rescue a person in imminent peril, potentially without benefit of, for example, PPE or equipment.

(3) The WERE and ESO shall review the RMP when review is required by paragraph (r) or (s) of this section, but not less than annually, and update it as needed.

(g) *Medical and Physical Requirements*—(1) *WERE and ESO medical requirements.* (i) The WERE and ESO shall establish the minimum medical requirements for team members and responders, based on the type and level of service(s) established in paragraphs (c) and (d) of this section. The medical requirements will differ based on the tiers of team members and responders in accordance with paragraphs (c)(7) and (d)(7) of this section, except that team members and responders in a support tier are excluded from the requirements in paragraph (g) of this section; and

(ii) The WERE and ESO shall maintain a confidential record for each team member and responder that records, at a minimum, duty restrictions based on medical evaluations; occupational illnesses and injuries; and exposures to combustion products, known or suspected toxic products, contagious diseases, and dangerous substances.

(iii) The WERE and ESO shall ensure that medical records are maintained and made available in accordance with § 1910.1020, Access to employee exposure and medical records.

(iv) Medical evaluations, tests, and laboratory analysis required to comply with paragraph (g) of this section shall be provided at no cost to team members or responders and without loss of pay.

(2) *WERE and ESO medical evaluation and surveillance.* (i) The WERE and ESO shall establish a medical evaluation program for team members and responders, except for those in a support tier, based on the type and level of service(s), and tiers of team members and responders established in paragraphs (c) and (d) of this section;

(ii) Prior to performing emergency response duties, each team member and responder shall be medically evaluated to determine fitness for duty by a physician or other licensed health care professional (PLHCP), in accordance with paragraphs (g)(2)(iii) through (vi) of this section, and each responder shall also be evaluated in accordance with paragraph (g)(3) of this section. The WERE and ESO must make medical surveillance required by this paragraph (g) available at no cost to the team members and responders, and at a reasonable time and place, to each team member and responder;

(iii) All medical evaluations must include the following to detect any physical or medical condition(s) that could adversely affect the team member or responder's ability to safely perform the essential job functions:

(A) Medical and work history with emphasis on symptoms of cardiac and respiratory disease;

(B) Physical examination with emphasis on the cardiac, respiratory, and musculoskeletal systems;

(C) Spirometry; and

(D) An assessment of heart disease risk including blood pressure, cholesterol levels, and relevant heart disease risk factors.

(iv) Additional screening shall be provided as deemed appropriate by the PLHCP;

(v) The medical evaluation shall be repeated biennially (every two years) thereafter unless the PLHCP deems more frequent evaluations are necessary with the exception of spirometry which will be repeated when deemed appropriate by the PLHC; and

(vi) The WERE and ESO shall establish protocols regarding the length of time that absence from duty due to injury or illness requires a team member or responder to have a return-to-duty medical evaluation by a PLHCP.

(3) *Additional ESO surveillance.* (i) For ESOs whose responders are exposed to combustion products, medical surveillance shall include a component based on the frequency and intensity of expected exposure to combustion products established in the risk management plan in paragraph (f) of this section. The surveillance component shall include:

(A) For responders who are, or based on experience may be, exposed to combustion products 15 times or more a year without regard to the use of respiratory protection, medical surveillance shall be provided, at least as effective as the occupational medical examination criteria specified in a national consensus standard, such as NFPA 1582 (incorporated by reference, see § 1910.6); and

(B) For responders who, either immediately or subsequently, exhibit signs or symptoms which may have resulted from exposure to combustion products, medical consultation shall be

provided and, if medically indicated, ongoing medical surveillance.

(ii) The ESO shall document each exposure to combustion products for each responder, for the purpose of determining the need for the medical surveillance specified in paragraph (g)(3)(i)(A) of this section, and for inclusion in the responder's confidential record, as required in paragraph (g)(1)(ii) of this section.

(4) *WERE and ESO behavioral health and wellness.* (i) The WERE and ESO shall provide, at no cost to the team member or responder, behavioral health and wellness resources for team members and responders, or identify where such resources are available at no cost in the community;

(ii) The resources shall include, at minimum:

(A) Diagnostic assessment;

(B) Short-term counseling;

(C) Crisis intervention; and

(D) Referral services for behavioral health and personal problems that could affect the team member or responder's performance of emergency response duties.

(iii) The WERE and ESO shall inform each team member and responder, on a regular and recurring basis, and following each potentially traumatic event, of the resources available; and

(iv) The WERE and ESO shall ensure that if there are any records of team member or responder use of these resources in possession of the WERE or ESO, the records are kept confidential.

(5) *WERE and ESO fitness for duty.* The WERE and ESO shall establish and implement a process to evaluate and re-evaluate annually the ability of team members and responders to perform essential job functions, based on the type and level of service(s), and tiers of team members and responders established in paragraphs (c) and (d) of this section.

(6) *ESO health and fitness program.* (i) The ESO shall establish and implement a health and fitness program that enables responders to develop and maintain a level of physical fitness that allows them to safely perform their assigned functions, based on the type and level of service(s), and tiers of responders established in paragraph (d) of this section; and

(ii) The program shall include the following components:

(A) An individual designated to oversee the responder health and fitness program;

(B) A periodic (not to exceed 3 years) fitness assessment for all responders;

(C) Exercise training that is available to all responders during working hours; and

(D) Education and counseling regarding health promotion for all responders.

(h) *Training*—(1) *Minimum training.* The WERE and the ESO shall:

(i) Establish the minimum knowledge and skills required for each team member and responder to participate safely in emergency operations, based on the type and level of service(s), and tiers of team members and responders established in paragraphs (c) and (d) of this section;

(ii) Provide initial training, ongoing training, refresher training, and professional development for each team member and responder commensurate with the safe performance of expected duties and functions based on the tiers of team members and responders and the type and level of service(s) established in paragraphs (c) and (d) of this section;

(iii) Restrict the activities of each new team member and responder during emergency operations until the team member or responder has demonstrated to a trainer/instructor, supervisor/team leader/officer, the skills and abilities to safely complete the tasks expected;

(iv) Ensure each instructor/trainer has the knowledge, skills, and abilities to teach the subject matter being presented.

(v) Ensure training is provided in a language and at a literacy level that team members and responders understand, and that the training provides an opportunity for interactive questions and answers with the instructor/trainer.

(vi) Provide each team member and responder with training on the RMP established in paragraph (f)(1) of this section;

(vii) Train each team member and responder about the safety and health policy established in paragraph (f)(2) of this section and the Standard Operating Procedures (SOPs) established in paragraph (q) of this section;

(viii) Provide each team member and responder with training that covers the selection, use, limitations, maintenance, and retirement criteria for all PPE used by the team member or responder based on the type and level of service(s), and tiers of team members and responders established in paragraphs (c) and (d) of this section;

(ix) Train each team member and responder in the selection, proper use, and limitations of portable fire extinguishers provided for employee use in the WERE or ESO's facility and vehicles, in accordance with § 1910.157;

(x) Train each team member and responder in the incident management system (IMS) established in paragraph (o) of this section, in order to operate safely within the scope of the IMS.

(xi) Ensure training for each team member and responder engaged in emergency activities includes procedures for the safe exit and accountability of team members and responders during orderly evacuations, rapid evacuations, equipment failure, or other dangerous situations and events.

(xii) Ensure each team member and responder is trained to meet the requirements of § 1910.120(q)(6)(i) (HAZWOPER), First Responder Awareness Level.

(xiii) Ensure each team member and responder who is not trained and authorized to enter specific hazardous locations (*e.g.,* confined spaces, trenches, and moving water) is trained to an awareness level (similar to the requirements in § 1910.120(q)(6)(i)) to recognize such locations and their hazards and avoid entry;

(xiv) Train each team member and responder to perform cardiopulmonary resuscitation (CPR) and use an automatic external defibrillator (AED).

(2) *Vocational training.* The WERE and ESO shall:

(i) Ensure each WERT team member who is designated to perform firefighting duties is trained to safely perform the duties assigned, to a level that is at least equivalent to the job performance requirements of NFPA 1081(incorporated by reference see § 1910.6);

(ii) Ensure each ESO responder who is designated to perform interior structural firefighting duties is trained to safely perform the duties assigned, to a level that is at least equivalent to the job performance requirements of NFPA 1001 (incorporated by reference see § 1910.6);

(iii) Ensure each team member and responder who is designated to perform interior structural firefighting duties is trained to safely perform search and rescue operational capabilities at least equivalent to the job performance requirements of NFPA 1407 (incorporated by reference see § 1910.6);

(iv) Ensure each team member and responder who is a vehicle operator is trained to safely operate the vehicle at a level that is at least equivalent to the job performance requirements of NFPA 1002 (incorporated by reference see § 1910.6), or similar Emergency Vehicle Operator qualifications based on the type of vehicle the team member or responder operates;

(v) Ensure each team member and responder who is a manager/supervisor (crew leader/officer) is trained to safely perform at a level that is at least equivalent to the job performance

requirements of NFPA 1021 (incorporated by reference see § 1910.6);

(vi) Ensure each wildland ESO responder is trained to safely perform at a level that is at least equivalent to the job performance requirements of NFPA 1140 (incorporated by reference see § 1910.6), or has a ''Red Card'' in accordance with the National Wildfire Coordinating Group—Interagency Fire Qualifications;

(vii) Ensure each technical search and rescue team member and responder who is designated to perform a technical rescue is trained to safely perform at a level that is at least equivalent to the technician capabilities of the job performance requirements of NFPA 1006 (incorporated by reference see § 1910.6);

(viii) Ensure each firefighting team member and responder who operates in a marine environment is trained to safely perform at a level that is at least equivalent to the job performance requirements of NFPA 1005 (incorporated by reference see § 1910.6); and

(ix) Ensure, based on the type and level of service(s) established in paragraphs (c) and (d) of this section, that each EMS team member and responder possesses the relevant professional qualification, certification, or license required in the WERE's and ESO's jurisdiction.

(3) *Proficiency.* The WERE and ESO shall provide annual skills checks to ensure each team member and responder maintains proficiency in the skills and knowledge commensurate with the safe performance of expected duties and functions, based on the type and level of service(s) established in paragraphs (c) and (d) of this section.

(i) *WERE Facility Preparedness.* (1) The WERE shall:

(i) Ensure the facility complies with subpart E of this part;

(ii) Provide facilities for the decontamination, disinfection, cleaning, and storage of PPE and equipment. If PPE is to be decontaminated off-site, the WERE must provide for bagging and storage of contaminated PPE while it is still at the WERE facility; and

(iii) Ensure that fire detection, suppression, and alarm systems, and occupant notification systems are installed, tested, and maintained in accordance with manufacturer's instructions and subpart L of this part.

(2) Ensure that, for prompt firefighting support from mutual aid WERTs and ESOs, fire hose connections and fittings are compatible with, or adapters are provided for, firefighting infrastructure such as fire hydrants, sprinkler system and standpipe system inlet connections, and fire hose valves (FHV); and

(3) Identify the location of each FHV, except for those clearly visible on standpipes in enclosed stairways, in a manner suitable to the location, such as with a sign, painted wall, or painted column, to ensure prompt access to FHVs.

(j) *ESO Facility Preparedness*—(1) *General requirements.* The ESO shall:

(i) Ensure each ESO facility complies with subpart E of this part;

(ii) Provide facilities for the decontamination, disinfection, cleaning, and storage of PPE and equipment. If PPE is to be decontaminated off-site, the ESO must provide for bagging and storage of contaminated PPE while it is still at the ESO facility;

(iii) For fire poles, slides and chutes;

(A) Ensure each responder using a fire pole maintains contact with the pole using all four extremities and does not hold anything other than the pole;

(B) Ensure each fire pole has a landing cushion that is at least 30 inches in diameter, has a contrasting color to the surrounding floor, and has impact absorption to reduce the likelihood and severity of injury;

(C) Ensure each floor hole with a fire pole, chute, or slide that provides rapid access to a lower level is secured or protected in accordance with subpart D of this part to prevent unintended falls through the floor hole; and

(iv) Ensure fire detection, suppression, and alarm systems, and occupant notification systems are installed, tested, and maintained in accordance with manufacturer's instructions and subpart L of this part.

(2) *Sleeping and living areas.* The ESO shall:

(i) Ensure interconnected hard-wired smoke alarms with battery back-up are installed inside each sleeping area, and outside in the immediate vicinity of each opening (door) to a sleeping area, and on all levels of the facility, including basements;

(ii) Ensure each new ESO facility with one or more sleeping area(s) (approved for construction, as determined by building permit, after [2 years after date of publication of the final rule in the **Federal Register**]) is protected throughout by an automatic sprinkler system, installed in accordance with § 1910.159;

(iii) Ensure each sleeping and living area has functioning carbon monoxide alarms installed;

(iv) Prevent responder exposure to, and contamination of sleeping and living areas by, vehicle exhaust emissions; and

(v) Ensure that contaminated PPE is not worn or stored in sleeping and living areas.

(k) *Equipment and PPE*—(1) *Equipment needed for emergency operations.* The WERE and the ESO shall:

(i) Provide or ensure access to the equipment needed to train for and safely perform emergency services, at no cost to team members and responders, based on the type and level of service(s) established in paragraphs (c) and (d) of this section;

(ii) Ensure newly purchased or acquired equipment is safe for use in the manner the WERE or ESO intends to use it;

(iii) Inspect, maintain, functionally test, and service test equipment as follows:

(A) At least annually;

(B) In accordance with manufacturer's instructions and industry practices; and

(C) As necessary to ensure equipment is in safe working order; and

(iv) Immediately remove from service equipment found to be defective or in an unserviceable condition.

(2) *Personal protective equipment (PPE).* The WERE and the ESO shall:

(i) Conduct a PPE hazard assessment for the selection of the protective ensemble, ensemble elements, and other protective equipment for team members and responders, based on the type and level of service(s) established in paragraphs (c) and (d) of this section;

(ii) Provide, at no cost to team members and responders, protective ensembles, ensemble elements, and protective equipment designed to provide protection from the hazards to which the team members and responders are likely to be exposed and suitable for the task the team members and responders are expected to perform, as determined by the PPE hazard assessment in paragraph (k)(2)(i) of this section;

(iii) Ensure PPE complies with subpart I of this part;

(iv) Ensure existing PPE complies with the requirements of the edition of the respective standard, listed in paragraph (k)(2)(v) of this section, that was current when it was manufactured;

(v) Ensure new PPE complies with the appropriate following standard(s):

(A) NFPA 1951 (incorporated by reference see § 1910.6);

(B) NFPA 1952 (incorporated by reference see § 1910.6);

(C) NFPA 1953 (incorporated by reference see § 1910.6);

(D) NFPA 1971 (incorporated by reference see § 1910.6);

(E) NFPA 1977, (incorporated by reference see § 1910.6);

(F) NFPA 1981 (incorporated by reference see § 1910.6);
(G) NFPA 1982 (incorporated by reference see § 1910.6);
(H) NFPA 1984 (incorporated by reference see § 1910.6);
(I) NFPA 1986 (incorporated by reference see § 1910.6);
(J) NFPA 1987 (incorporated by reference see § 1910.6);
(K) NFPA 1990 (incorporated by reference see § 1910.6);
(L) NFPA 1999 (incorporated by reference see § 1910.6); and
(M) ANSI/ISEA 207–2011 (incorporated by reference see § 1910.6).

(vi) Ensure air-purifying respirators are not used in IDLH atmospheres and are only used for those contaminants that NIOSH certifies them against;

(vii) Ensure each team member and responder properly uses or wears the protective ensemble, ensemble elements, and protective equipment whenever the team member or responder is exposed, or potentially exposed, to the hazards for which it is provided;

(viii) Ensure protective ensembles, ensemble elements, and protective equipment are decontaminated, cleaned, cared for, inspected and maintained in accordance with the manufacturer's instructions;

(ix) Immediately remove from service any defective or damaged protective ensembles, ensemble elements, or protective equipment;

(x) Ensure, when a WERE or an ESO permits a team member or responder to provide their own protective ensemble, ensemble element, or other protective equipment for personal use, the requirements of paragraphs (k)(2)(iii) through (ix) of this section are met;

(3) *Protection from contaminants.* To the extent feasible, the WERE and ESO shall:

(i) Ensure contaminated PPE and non-PPE equipment undergo gross decontamination or are separately contained before leaving the incident scene; and

(ii) Ensure team members and responders are not exposed to contaminated PPE and non-PPE equipment in the passenger compartment(s) of vehicles.

(l) *Vehicle preparedness and operation.* (1) To ensure vehicles are prepared for safe use by team members and responders, the WERE and the ESO shall:

(i) Inspect, maintain, and repair each WERE and ESO provided vehicle operated by team members and responders, as specified by the manufacturer;

(ii) Immediately remove from service any vehicle with safety-related deficiencies; (iii) Ensure each riding position is provided with a seat and functioning seat belt or vehicle safety harness that is designed to accommodate a team member or responder with and without heavy clothing, unless the vehicle is designed, built, and intended for use without seat belts or vehicle safety harnesses;

(iv) Inspect, maintain, and service test aerial devices on vehicles, to ensure they are safe for use, as specified by the manufacturer, or to a standard at least equivalent to NFPA 1910 (incorporated by reference see § 1910.6); and

(v) Inspect, maintain, and service test vehicle-mounted water pumps as specified by the manufacturer, or to a standard at least equivalent to NFPA 1910 (incorporated by reference see § 1910.6).

(2) To ensure vehicles are operated in a manner that will keep team members and responders safe, the WERE and ESO shall:

(i) Ensure each vehicle is operated by a team member or responder who has successfully completed a training program commensurate with the type of vehicle the team member or responder will operate, or by a trainee operator who is under the supervision of a qualified operator;

(ii) Ensure each vehicle is operated in accordance with SOP developed in paragraph (q)(2)(iv) of this section;

(iii) Ensure the team member or responder operating the vehicle does not move the vehicle until all team members or responders in or on the vehicle are seated and secured with seat belts or vehicle safety harnesses in approved riding positions, other than as specifically excepted in paragraph (l)(1)(iii) of this section or as provided in paragraph (l)(2)(viii) of this section;

(iv) Ensure team members and responders remain seated and secured any time that the vehicle is in motion, except when standing as permitted in paragraphs (l)(2)(vii) and (viii) of this section, and that seat belts and vehicle safety harnesses are not released or loosened for any purpose while the vehicle is in motion, including the donning or doffing of PPE;

(v) Ensure team members and responders actively performing necessary emergency medical care while the vehicle is in motion are secured to the vehicle by a seat belt, or by a vehicle safety harness designed for occupant restraint, to the extent consistent with the effective provision of such emergency medical care;

(vi) Establish and implement a procedure for operator training on vehicles with tiller steering that ensures when the instructor and trainee are both located at the tiller position, they are adequately secured to the vehicle whenever it is in motion;

(vii) Provide a vehicle safety harness designed for occupant restraint to secure the team member or responder in a designated stand-up position during pump-and-roll operations;

(viii) Establish and implement policies and procedures that provide alternative means for ensuring the safety of team members and responders when the WERE or ESO determines it is not feasible for each team member, responder, or person to be belted in a seat, such as when reloading long lays of hose, standing as honor guards during a funeral procession, transporting people acting as holiday figures or other characters or mascots, parades, and for vehicles without seat belts;

(ix) Establish and implement policies and procedures for operating vehicles not directly under the control of the WERE or ESO (*i.e.,* privately owned/leased/operated by team members and responders), when the WERE or ESO authorizes team members or responders to respond directly to emergency incident scenes or to WERE or ESO facilities when alerted for an emergency incident response; and

(x) Ensure, where equipment or respiratory protection are carried within enclosed seating areas of vehicles, each is secured either by a positive mechanical means of holding the item in its stowed position or by placement in a compartment with an effective latching closure.

(m) *WERE Pre-Incident Planning.* (1) The WERE shall develop PIPs for locations within the facility where team members may be called to provide service, based on the facility vulnerability assessment and the type(s) and level(s) of service(s) established in paragraph (c) of this section.

(2) PIPs shall include locations of unusual hazards that team members may encounter, such as storage and use of flammable liquids and gases, explosives, toxic and biological agents, radioactive sources, water-reactive substances, permit-required confined spaces, and hazardous processes.

(3) PIPs shall include locations of fire pumps, fire hose valves, control valves, control panels, and other equipment for fire suppression systems, fire detection and alarm systems, and smoke control and evacuation systems.

(4) The WERE shall ensure that the most recent versions of PIPs are provided to the WERT and are accessible and available to team members operating at emergency incidents.

(5) To the extent feasible, PIPs shall include actions to be taken by team members if the scope of the incident is beyond the capability of the WERT.

(6) PIPs shall be reviewed annually and when conditions or hazards change at the facility. They shall be updated as needed.

(n) *ESO Pre-Incident Planning.* (1) The ESO shall determine the locations and facilities where responders may be called to provide service that need a PIP, based on the community or facility vulnerability assessment and the type(s) and level(s) of service(s) established in paragraph (d) of this section.

(2) The ESO shall develop PIPs for facilities, locations, and infrastructure where emergency incidents may occur.

(3) The ESO shall prepare a PIP for each facility within the ESO's primary response area that is subject to reporting requirements under 40 CFR part 355 pursuant to the Emergency Planning and Community Right-to-Know Act (EPCRA) (also referred to as the Superfund Amendments and Reauthorization Act of 1986 (SARA), 42 U.S.C. 11001 *et seq.*).

(4) The ESO shall ensure facility personnel consulted are knowledgeable about the facility's use, contents, processes, hazards, and occupants.

Note 2 to paragraph (n)(4): The ESO should develop and implement a written policy to protect proprietary business information.

(5) The ESO shall ensure the responder(s) responsible for PIP preparation are knowledgeable in identifying the information to be collected and included in the PIP.

(6) The PIP shall have a level of detail commensurate with the facility's complexity and hazards.

(7) PIPs shall include actions to be taken by responders if the scope of the incident is beyond the capability of the ESO.

(8) The ESO shall ensure that the most recent versions of PIPs are disseminated as needed and are accessible and available to responders operating at emergency incidents.

(9) PIPs shall be reviewed annually and updated as needed.

(o) *Incident Management System Development.* (1) The WERE and the ESO shall develop and implement an Incident Management System (IMS) to manage all emergency incidents, based on:

(i) The type and level of service(s) established in paragraphs (c) and (d) of this section;

(ii) The facility or community vulnerability assessment conducted in accordance with paragraphs (c) and (d) of this section; and

(iii) The PIPs developed in accordance with paragraphs (m) and (n) of this section.

(2) To provide structure and coordination to the management of emergency incident operations, for the safety and health of team members and responders involved in those activities, the IMS shall:

(i) Include flexible and scalable components that are adaptable to any situation;

Note 3 to paragraph (o)(2)(i): Standardization of the IMS, such as provided in the National Incident Management System and the National Response Framework, developed by the Federal Emergency Management Agency, an agency of the U.S. Department of Homeland Security; is essential to the successful coordination and function of WERTs and ESOs in incident response.

(ii) Ensure that, in the absence of a dedicated Incident Safety Officer (ISO), the Incident Commander (IC) assesses the incident scene for existing and potential hazards and oversees incident safety;

(iii) Include a means for team members and responders to notify the ISO, IC or Unified Command (UC) of unsafe conditions and unsafe actions on the incident scene; and

(iv) Consist of collaborative components that provide the basis for clear communication and effective operations.

(3) The WERE and the ESO shall designate the responsibilities of the IC. The IC shall be responsible for, at least:

(i) Front-line management of the incident;

(ii) Overall incident safety;

(iii) Tactical planning and execution; and

(iv) Determining whether additional assistance is needed and relaying requests for internal resources, mutual aid, and skilled support assistance through the communications or emergency operations center, as appropriate.

(4) The WERE and ESO shall ensure the IC has the training and authority to perform the assigned duties.

(p) *Emergency incident operations*—(1) *Incident command and management.* The WERE and the ESO shall ensure that:

(i) The IMS, developed in accordance with paragraph (o) of this section, is utilized at each emergency incident;

(ii) Each emergency incident has an IC or a UC;

(iii) The task of overseeing incident safety is addressed, or an ISO is assigned and designated to monitor and assess the incident scene for safety hazards and unsafe situations and develop measures for ensuring team member and responder safety;

(iv) If an incident escalates in size and complexity, the IC divides the incident into strategic or tactical-level management components;

(v) A UC structure is utilized on incidents where the complexity requires a shared responsibility among two or more WEREs, ESOs, or other agencies; and

(vi) The IC(s), team members, and responders are rotated or replaced during complex or extended operations, as determined by the WERE or ESO.

(2) *Incident Commander.* The WERE and the ESO shall ensure that:

(i) A team member or responder is assigned as the IC;

(ii) The identity of the IC and the location of command post are communicated to other team members or responders who are on the incident scene or responding to it;

(iii) The IC conducts a comprehensive and ongoing size-up of the incident scene that places life safety as the highest priority;

(iv) The IC conducts a risk assessment based on the size-up before actively engaging the incident;

(v) The IC coordinates and directs all activities for the duration of the incident; and

(vi) The IC develops an Incident Action Plan (IAP) that prioritizes life safety for each incident, updates it as needed during the incident, and utilizes the information contained in the PIP.

(3) *Control zones.* The WERE and the ESO shall ensure that:

(i) Control zones are established at every emergency incident to identify the level of risk to team members and responders and the appropriate protective measures needed, including PPE;

(ii) The perimeters of the control zones are designated by the IC;

(iii) Any changes to the perimeters during the incident are communicated to all team members and responders on the scene;

(iv) Control zones are established as follows:

(A) Designated as no-entry, hot, warm, or cold;

(B) Marked in a conspicuous manner, with colored tape, signage, or other appropriate means, unless such marking is not possible; and

(C) Communicated to all team members and responders attending the incident before the team member or responder is assigned to a control zone;

(v) Only team members and responders with an assigned task are permitted in the hot zone;

(vi) Where a no-entry zone is designated, team members and

responders are prohibited from entering the zone; and

(vii) The designation of appropriate protective measures, including PPE, is commensurate with the hazards in the zone the team member and responder will be operating in, and that each team member and responder appropriately uses the protective measures for that zone.

(4) *On-scene safety and health measures.* The WERE and the ESO shall:

(i) Identify minimum staffing requirements needed to ensure incidents are mitigated safely and effectively;

(ii) Ensure operations are limited to those that can be safely performed by the team members and responders available on the scene;

(iii) Ensure that at least four team members or responders are assembled before operations are initiated in an IDLH atmosphere in a structure or enclosed area, unless upon arrival at an emergency scene, the initial team member(s) or responder(s) find an imminent life-threatening situation where immediate action could prevent the loss of life or serious injury, in which case such action is permitted with fewer than four team members or responders present;

(iv) Ensure at least two team members or responders enter the structure or enclosed area with an IDLH atmosphere as a team and remain in visual or voice contact with one another at all times, unless there is insufficient space for more than one team member or responder, such as for example, in a confined space or collapsed structure;

(v) Ensure that outside the structure or enclosed area with the IDLH atmosphere, a minimum of two team members or responders are present to provide assistance to, or rescue of, the team operating in the IDLH atmosphere. One of the two team members or responders located outside the IDLH atmosphere may be assigned to an additional role, such as IC, so long as this team member or responder is able to perform assistance or rescue activities without jeopardizing the safety or health of other team members or responders operating at the incident;

(vi) Ensure each team member and responder in the IDLH atmosphere uses positive-pressure SCBA or a supplied-air respirator in accordance with the respiratory protection program specified in paragraph (f)(1)(iii)(B) of this section;

(vii) Ensure each supplied-air respirator used in an IDLH atmosphere is equipped with a NIOSH-certified emergency escape air cylinder and pressure-demand facepiece; and

(viii) Ensure each team member and responder uses NIOSH-certified respiratory protection during post–fire extinguishment activities, such as overhaul and investigation.

(5) *Communication.* The WERE and the ESO shall:

(i) Ensure, to the extent feasible, adequate dispatch and monitoring of on-scene radio transmissions by an emergency communications and dispatch center;

(ii) Ensure effective communication capability between team members or responders and the IC; and

(iii) Ensure that communications equipment allows mutual aid team members and responders to communicate with the IC and other team members and responders.

(6) The WERE and the ESO shall ensure the personnel accountability system established in paragraph (q)(2)(vii) of this section is utilized at each emergency incident.

(7) The WERE and the ESO shall implement a Rapid Intervention Crew (RIC) at each structural fire incident where team members or responders are operating in an IDLH atmosphere, in accordance with the SOP established in paragraph (q)(2)(viii) of this section.

(8) The WERE and the ESO shall implement the medical monitoring and rehabilitation procedures, as needed, in accordance with the SOP established in paragraph (q)(2)(ix) of this section.

(9) The WERE and the ESO shall implement the traffic safety procedures, as needed, in accordance with the SOP established in paragraph (q)(2)(x) of this section.

(10) Use of skilled support workers (SSW). Prior to participation by SSWs at an emergency incident, the WERE or the ESO shall ensure that:

(i) Each SSW has and utilizes PPE appropriate to the task(s) to be performed;

(ii) An initial briefing is provided to each SSW that includes, at a minimum, what hazards are involved, what safety precautions are to be taken, and what duties are to be performed by the SSW;

(iii) An effective means of communication between the IC and each SSW is provided;

(iv) Where appropriate, a team member or responder is designated and escorts the SSW at the emergency incident scene; and

(v) All other appropriate on-scene safety and health precautions provided to team members and responders are used to ensure the safety and health of each SSW.

(q) *Standard Operating Procedures.* (1) The WERE and the ESO shall develop and implement SOPs for emergency events that the WERE or ESO is reasonably likely to encounter, based on the type(s) and level(s) of service(s) established in paragraphs (c) and (d) of this section, and the community or facility vulnerability assessment developed in accordance with paragraphs (c) and (d) of this section.

(2) The WERE and ESO shall establish SOPs that:

(i) Describe the actions to be taken by team members and responders in situations involving unusual hazards, such as downed power lines, natural gas or propane leaks, flammable liquid spills, and bomb threats;

(ii) Address how team members and responders are to operate at incidents that are beyond the capability of the WERT or ESO, as specified in paragraphs (c) and (d) of this section;

(iii) Provide a systematic approach to team member and responder protection from contaminants, and for decontamination of team members, responders, PPE, and equipment, including at a minimum:

(A) Proper techniques for doffing (removing) contaminated PPE;

(B) On-scene gross decontamination, and decontamination at the WERE's or ESO's facility, of PPE, equipment, and team members and responders;

(C) Encouraging team members and responders to shower with soap and water, as soon as reasonably practicable, and change into clean clothing; and

(D) Protecting team members and responders from contaminated PPE after an incident;

(iv) Meet the requirements for vehicle operation found in paragraph (l)(2) of this section and include procedures for safely driving vehicles during both non-emergency travel and emergency response; criteria for actions to be taken at stop signs and signal lights; vehicle speed; crossing intersections; driving on the opposite side of the road with oncoming traffic; use of cross-over/turnaround areas on divided highways; traversing railroad grade crossings; the use of emergency warning devices; and the backing of vehicles. For backing vehicles with obstructed views to the rear, the SOP shall require use of at least one of the following: a spotter, a 360-degree walk-around of the vehicle by the operator, or a back-up camera;

(v) Provide for the use of standard protocols and terminology for radio communication at all types of incidents;

(vi) Establish procedures for operating at structures and locations that are identified as, or determined to be vacant, structurally unsound, or otherwise unsafe for entry by team members and responders;

(vii) Establish a system for maintaining personnel accountability and coordinating evacuation of all team members and responders operating at an incident that includes periodic accountability checks and reports; procedures for orderly evacuation of team members and responders; and procedures for rapid evacuation of team members and responders from escalating situations, such as rapid growth of fire, impending collapse, impending explosion; in case of PPE or equipment failure; and acts of active violence against team members and responders;

(viii) Establish procedures for Mayday situations, such as when a team member or responder becomes lost, trapped, injured, or ill, including the use of the radio's emergency alert button and implementation of a RIC for immediate deployment to search and rescue any missing, disoriented, injured, ill, lost, unaccounted-for, or trapped team members or responders. The SOP shall specify the minimum number of team members or responders needed for the RIC, based on the size and complexity of potential incidents; and a standard list of equipment to be assembled by the RIC, for foreseeable incidents; and

(ix) Establish a systematic approach to provide team members and responders with medical monitoring and rehabilitation at emergency incidents as needed, such as rest, medical treatment, rehydration (fluid replacement), active warming or cooling, and protection from extreme elements.

(3) The ESO shall establish SOPs that:

(i) Establish procedures for protecting responders from vehicular traffic while operating at an emergency incident on, or adjacent to, roadways and highways, including setting up a safe work zone beginning with proper placement of the first arriving ESO vehicle and subsequent ESO vehicles, a means of coordination with law enforcement and mutual aid WERTs or ESOs, and use of safety vests that have high visibility and are reflective;

(ii) Establish procedures for operating at incident scenes that are primarily related to law enforcement, such as crime scenes, active shooters, and civil disturbances; and

(iii) Establish procedures for incidents where responders are called upon to conduct non-emergency services, including a requirement for responders to present themselves in uniforms, PPE, vests, or other apparel that clearly identifies them as fire/rescue/EMS responders and a requirement that responders wear ballistic vests, if provided by the ESO and appropriate for the type of incident.

(r) *Post-Incident Analysis.* (1) The WERE or ESO shall promptly conduct a Post-Incident Analysis (PIA) to determine the effectiveness of the WERT's or ESO's response to an incident after a significant event such as a large-scale incident; a significant near-miss incident; a team member, responder or SSW injury or illness requiring off-scene treatment; or a team member, responder, or SSW fatality.

(2) The PIA shall include, but not be limited to, a review and evaluation of the RMP, IMS, PIPs, SOPs, and IAPs for accuracy and adequacy.

(3) The WERE or ESO shall promptly identify and implement changes needed to the RMP, IMS, PIPs, IAPs, and SOPs based on the lessons learned as a result of the PIA; or if the changes cannot be promptly implemented, the WERE or ESO shall develop a written timeline for implementation as soon as feasible.

(s) *Program Evaluation.* (1) The WERE and ESO shall evaluate the adequacy and effectiveness of the ERP at least annually, and upon discovering deficiencies, and document when the evaluation(s) are conducted.

(2) Review of the ERP shall include determining whether the ERP was implemented as designed and whether modifications are necessary to correct deficiencies.

(3) The WERE and ESO shall identify and implement recommended changes to the ERP, with written timelines for correcting identified deficiencies as soon as feasible, based on the review of the program, giving priority to recommendations that most significantly affect team member or responder safety and health.

(t) *Severability.* Each section of this standard, and each provision within those sections, is separate and severable from the other sections and provisions. If any provision of this standard is held to be invalid or unenforceable on its face, or as applied to any person, entity, or circumstance, or is stayed or enjoined, that provision shall be construed so as to continue to give the maximum effect to the provision permitted by law, unless such holding shall be one of utter invalidity or unenforceability, in which event the provision shall be severable from this standard and shall not affect the remainder of the standard.

■ 13. Amend § 1910.157 by:

■ a. Revising paragraph (c)(3);

■ b. Adding paragraph (d)(7); and

■ c. In paragraph (f):

■ i. Redesignating Table L–1 as table 1 to paragraph (f)(3);

■ ii. Removing the text ''Table L–1'' wherever it appears, and adding in its place the text ''table 1 to paragraph (f)(3)''; and

■ iii. Revising newly redesignated table 1 to paragraph (f)(3).

The revisions and addition read as follows:

§ 1910.157 Portable fire extinguishers.

* * * * *

(c) * * *

(3) The employer shall not provide or make available in the workplace portable fire extinguishers using carbon tetrachloride, chlorobromomethane, or methyl bromide extinguishing agents.

* * * * *

(d) * * *

(7) The employer shall distribute portable fire extinguishers of Class K extinguishing agent for use by employees so that the travel distance from the Class K hazard area to any extinguisher is 30 feet (9.15 m) or less.

* * * * *

(f) * * *

(3) * * *

TABLE 1 TO PARAGRAPH (f)(3)

Type of extinguisher	Test interval (years)
AFFF (aqueous film-forming foam)	5
Carbon dioxide	5
Dry chemical with stainless steel shells	5
FFFP (film-forming fluoroprotein foam	5
Wet chemical	5
Wetting agent	5
Stored-pressure water, water mist, loaded steam, and/or antifreeze	5
Dry chemical, cartridge- or cylinder-operated, with mild steel shells	12
Dry chemical, stored-pressure, with mild steel shells, brazed brass shells, or aluminum shells	12
Dry powder, stored-pressure, cartridge- or cylinder-operated, with mild steel shells	12
Halogenated agents	12

* * * * *

■ 14. Amend § 1910.158 by adding paragraph (c)(2)(iii) to read as follows:

§ 1910.158 Standpipe and hose systems.

* * * * *

(c) * * *

(2) * * *

(iii) The employer shall ensure that standpipe system inlet connections and fittings are compatible with, or adapters are provided for, the fire hose couplings used by the fire department(s) or Workplace Emergency Response Team(s) that pump water into the

standpipe system through the connections or fittings.

* * * * *

■ 9. Amend § 1910.159 by adding paragraph (c)(12) to read as follows:

§ 1910.159 Automatic sprinkler systems.

* * * * *

(c) * * *

(12) *Inlet connections.* The employer shall ensure that sprinkler system inlet connections and fittings are compatible with, or adapters are provided for, the fire hose couplings used by the fire department(s) or Workplace Emergency Response Team(s) that pump water into the sprinkler system through the connections or fittings.

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Part III

Commodity Futures Trading Commission

17 CFR Chapter I

Notice of Proposed Order and Request for Comment on an Application for a Capital Comparability Determination Submitted on Behalf of Nonbank Swap Dealers Subject to Capital and Financial Reporting Requirements of the United Kingdom and Regulated by the United Kingdom Prudential Regulation Authority; Proposed Rule

COMMODITY FUTURES TRADING COMMISSION

17 CFR Chapter I

Notice of Proposed Order and Request for Comment on an Application for a Capital Comparability Determination Submitted on Behalf of Nonbank Swap Dealers Subject to Capital and Financial Reporting Requirements of the United Kingdom and Regulated by the United Kingdom Prudential Regulation Authority

AGENCY: Commodity Futures Trading Commission.

ACTION: Proposed order and request for comment.

SUMMARY: The Commodity Futures Trading Commission is soliciting public comment on an application submitted by the Institute of International Bankers, International Swaps and Derivatives Association, and Securities Industry and Financial Markets Association requesting that the Commission determine that the capital and financial reporting laws and regulations of the United Kingdom applicable to CFTC-registered swap dealers organized and domiciled in the United Kingdom, which are licensed under the United Kingdom Financial Services and Markets Act 2000 as investment firms and designated for prudential supervision by the United Kingdom Prudential Regulation Authority, provide sufficient bases for an affirmative finding of comparability with respect to the Commission's swap dealer capital and financial reporting requirements adopted under the Commodity Exchange Act. The Commission is also soliciting public comment on a proposed order providing for the conditional availability of substituted compliance in connection with the application.

DATES: Comments must be received on or before March 24, 2024.

ADDRESSES: You may submit comments, identified by ''UK–PRA Swap Dealer Capital Comparability Determination,'' by any of the following methods:

- *CFTC Comments Portal: https://comments.cftc.gov.* Select the ''Submit Comments'' link for this proposed order and follow the instructions on the Public Comment Form.
- *Mail:* Send to Christopher Kirkpatrick, Secretary of the Commission, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street NW, Washington, DC 20581.
- *Hand Delivery/Courier:* Follow the same instructions as for Mail, above.

Please submit your comments using only one of these methods. To avoid possible delays with mail or in-person deliveries, submissions through the CFTC Comments Portal are encouraged.

All comments must be submitted in English, or if not, accompanied by an English translation. Comments will be posted as received to *https://comments.cftc.gov.* You should submit only information that you wish to make available publicly. If you wish the Commission to consider information that you believe is exempt from disclosure under the Freedom of Information Act (''FOIA''), a petition for confidential treatment of the exempt information may be submitted according to the procedures established in Commission Regulation 145.9.[1]

The Commission reserves the right, but shall have no obligation, to review, pre-screen, filter, redact, refuse or remove any or all of your submission from *https://comments.cftc.gov* that it may deem to be inappropriate for publication, such as obscene language. All submissions that have been redacted or removed that contain comments on the merits of the proposed determination and order will be retained in the public comment file and will be considered as required under the Administrative Procedure Act and other applicable laws, and may be accessible under the FOIA.

FOR FURTHER INFORMATION CONTACT: Amanda L. Olear, Director, 202–418–5283, *aolear@cftc.gov;* Thomas Smith, Deputy Director, 202–418–5495, *tsmith@cftc.gov;* Rafael Martinez, Associate Director, 202–418–5462, *rmartinez@cftc.gov;* Liliya Bozhanova, Special Counsel, 202–418–6232, *lbozhanova@cftc.gov;* Joo Hong, Risk Analyst, 202–418–6221, *jhong@cftc.gov;* Justin McPhee, Risk Analyst, 202–418–6223; *jmchpee@cftc.gov,* Market Participants Division; Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street NW, Washington, DC 20581.

SUPPLEMENTARY INFORMATION: The Commodity Futures Trading Commission (''Commission'' or ''CFTC'') is soliciting public comment on an application dated May 4, 2021 (the ''UK Application'') submitted by the Institute of International Bankers, International Swaps and Derivatives Association, and Securities Industry and Financial Markets Association (together, the ''Applicants'').[2] The Applicants request that the Commission determine that registered nonbank swap dealers [3] (''nonbank SDs'') organized and domiciled within the United Kingdom (''UK''), which are licensed as investment firms and designated for prudential supervision by the UK Prudential Regulation Authority (''PRA'') (''PRA-designated UK nonbank SDs''), may satisfy certain capital and financial reporting requirements under the Commodity Exchange Act (''CEA'') [4] by being subject to, and complying with, comparable capital and financial reporting requirements under UK laws and regulations.[5] The Commission also is soliciting public comment on a proposed order under which PRA-designated UK nonbank SDs would be able, subject to defined conditions, to comply with certain CFTC nonbank SD capital and financial reporting requirements in the manner set forth in the proposed order.

I. Introduction

A. Regulatory Background—Swap Dealer and Major Swap Participant Capital and Financial Reporting Requirements

Section 4s(e) of the CEA [6] directs the Commission and ''prudential regulators'' [7] to impose capital

[1] 17 CFR 145.9. Commission regulations referred to in this release are found at 17 CFR chapter I, and are accessible on the Commission's website: *https://www.cftc.gov/LawRegulation/CommodityExchangeAct/index.htm.*

[2] *See* Letter dated May 4, 2021 from Stephanie Webster, General Counsel, Institute of International Bankers, Steven Kennedy, Global Head of Public Policy, International Swaps and Derivatives Association, and Kyle Brandon, Managing Director, Head of Derivatives Policy, Securities Industry and Financial Markets Association. The UK Application is available on the Commission's website at: *https://www.cftc.gov/LawRegulation/DoddFrankAct/CDSCP/index.htm.*

[3] As discussed in Section I.A. immediately below, the Commission has the authority to impose capital requirements on registered swap dealers (''SDs'') that are not subject to regulation by a U.S. prudential regulator (*i.e.,* nonbank SDs).

[4] 7 U.S.C. 1 *et seq.* The CEA may be accessed through the Commission's website at: *https://www.cftc.gov/LawRegulation/CommodityExchangeAct/index.htm.*

[5] The Applicants also requested that the Commission determine that nonbank SDs licensed as investment firms and prudentially regulated by the UK Financial Conduct Authority (''FCA'') (''FCA-regulated UK nonbank SDs'') may satisfy certain capital and financial reporting requirements under the CEA by being subject to, and complying with, comparable capital and financial reporting requirements under UK laws and regulations. Due to the differences between the capital and financial reporting regimes applicable to PRA-designated UK nonbank SD and FCA-regulated UK nonbank SDs, the Commission anticipates assessing the comparability of the rules applicable to FCA-regulated UK nonbank SDs through a separate capital comparability determination.

[6] 7 U.S.C. 6s(e).

[7] The term ''prudential regulator'' is defined in the CEA to mean the Board of Governors of the Federal Reserve System (''Federal Reserve Board''); the Office of the Comptroller of the Currency; the Federal Deposit Insurance Corporation; the Farm

requirements on all SDs and major swap participants (''MSPs'') registered with the Commission.[8] Section 4s(e) of the CEA also directs the Commission and prudential regulators to adopt regulations imposing initial and variation margin requirements on swaps entered into by SDs and MSPs that are not cleared by a registered derivatives clearing organization (''uncleared swaps'').

Section 4s(e) applies a bifurcated approach with respect to the above Congressional directives, requiring each SD and MSP that is subject to the regulation of a prudential regulator (''bank SD'' and ''bank MSP,'' respectively) to meet the minimum capital requirements and uncleared swaps margin requirements adopted by the applicable prudential regulator, and requiring each SD and MSP that is not subject to the regulation of a prudential regulator (''nonbank SD'' and ''nonbank MSP,'' respectively) to meet the minimum capital requirements and uncleared swaps margin requirements adopted by the Commission.[9] Therefore, the Commission's authority to impose capital requirements and margin requirements for uncleared swap transactions extends to nonbank SDs and nonbank MSPs, including nonbanking subsidiaries of bank holding companies regulated by the Federal Reserve Board.[10]

The prudential regulators implemented Section 4s(e) in 2015 by amending existing capital requirements applicable to bank SDs and bank MSPs to incorporate swap transactions into their respective bank capital frameworks, and by adopting rules imposing initial and variation margin requirements on bank SDs and bank MSPs that engage in uncleared swap transactions.[11] The Commission adopted final rules imposing initial and variation margin obligations on nonbank SDs and nonbank MSPs for uncleared swap transactions on January 6, 2016.[12] The Commission also approved final capital requirements for nonbank SDs and nonbank MSPs on July 24, 2020, which were published in the **Federal Register** on September 15, 2020 with a compliance date of October 6, 2021 (''CFTC Capital Rules'').[13]

Section 4s(f) of the CEA addresses SD and MSP financial reporting requirements.[14] Section 4s(f) of the CEA authorizes the Commission to adopt rules imposing financial condition reporting obligations on all SDs and MSPs (*i.e.,* nonbank SDs, nonbank MSPs, bank SDs, and bank MSPs). Specifically, Section 4s(f)(1)(A) of the CEA provides, in relevant part, that each registered SD and MSP must make financial condition reports as required by regulations adopted by the Commission.[15] The Commission's financial reporting obligations were adopted with the Commission's nonbank SD and nonbank MSP capital requirements, and have a compliance date of October 6, 2021 (''CFTC Financial Reporting Rules'').[16]

B. Commission Capital Comparability Determinations for Non-U.S. Nonbank Swap Dealers and Non-U.S. Nonbank Major Swap Participants

Commission Regulation 23.106 establishes a substituted compliance framework whereby the Commission may determine that compliance by a non-U.S. domiciled nonbank SD or non-U.S. domiciled nonbank MSP with its home country's capital and financial reporting requirements will satisfy all or parts of the CFTC Capital Rules and all or parts of the CFTC Financial Reporting Rules (such a determination referred to as a ''Capital Comparability Determination'').[17] The availability of such substituted compliance is conditioned upon the Commission issuing a determination that the relevant foreign jurisdiction's capital adequacy and financial reporting requirements, and related financial recordkeeping requirements, for non-U.S. nonbank SDs and/or non-U.S. nonbank MSPs are comparable to the corresponding CFTC Capital Rules and CFTC Financial Reporting Rules. The Commission will issue a Capital Comparability Determination in the form of a Commission order (''Capital Comparability Determination Order'').[18]

The Commission's approach for conducting a Capital Comparability Determination with respect to the CFTC Capital Rules and the CFTC Financial Reporting Rules is a principles-based, holistic approach that focuses on whether the applicable foreign jurisdiction's capital and financial reporting requirements achieve comparable outcomes to the corresponding CFTC requirements.[19] In this regard, the approach is not a line-by-line assessment or comparison of a foreign jurisdiction's regulatory requirements with the Commission's requirements.[20] In performing the analysis, the Commission recognizes that jurisdictions may adopt differing approaches to achieving comparable outcomes, and the Commission will focus on whether the foreign

Credit Administration; and the Federal Housing Finance Agency. *See* 7 U.S.C. 1a(39).

[8] Subject to certain exceptions, the term ''swap dealer'' is generally defined as any person that: (i) holds itself out as a dealer in swaps; (ii) makes a market in swaps; (iii) regularly enters into swaps with counterparties as an ordinary course of business for its own account; or (iv) engages in any activity causing the person to be commonly known in the trade as a dealer or market maker in swaps. *See* 7 U.S.C. 1a(49). The term ''major swap participant'' is generally defined as any person who is not an SD, and: (i) subject to certain exclusions, maintains a substantial position in swaps for any of the major swap categories as determined by the Commission; (ii) whose outstanding swaps create substantial counterparty exposure that could have serious adverse effects on the financial stability of the U.S. banking system or financial markets; or (iii) maintains a substantial position in outstanding swaps in any major swap category as determined by the Commission. *See* 7 U.S.C. 1a(33).

[9] 7 U.S.C. 6s(e)(2).

[10] 7 U.S.C. 6s(e)(1) and (2).

[11] *See Margin and Capital Requirements for Covered Swap Entities,* 80 FR 74840 (Nov. 30, 2015).

[12] *See Margin Requirements for Uncleared Swaps for Swap Dealers and Major Swap Participants,* 81 FR 636 (Jan. 6, 2016).

[13] *See Capital Requirements of Swap Dealers and Major Swap Participants,* 85 FR 57462 (Sept. 15, 2020).

[14] 7 U.S.C. 6s(f).

[15] 7 U.S.C. 6s(f)(1)(A).

[16] *See* 85 FR 57462.

[17] 17 CFR 23.106. Commission Regulation 23.106(a)(1) provides that a request for a Capital Comparability Determination may be submitted by a non-U.S. nonbank SD or a non-U.S. nonbank MSP, a trade association or other similar group on behalf of its SD or MSP members, or a foreign regulatory authority that has direct supervisory authority over one or more non-U.S. nonbank SDs or non-U.S. nonbank MSPs. In addition, Commission regulations provide that any non-U.S. nonbank SD or non-U.S. nonbank MSP that is dually-registered with the Commission as a futures commission merchant (''FCM'') is subject to the capital requirements of Commission Regulation 1.17 (17 CFR 1.17) and may not petition the Commission for a Capital Comparability Determination. *See* 17 CFR 23.101(a)(5) and (b)(4), respectively. Furthermore, non-U.S. bank SDs and non-U.S. bank MSPs may not petition the Commission for a Capital Comparability Determination with respect to their respective financial reporting requirements under Commission Regulation 23.105(p) (17 CFR 23.105(p)). Commission staff has issued, however, a time-limited no-action letter stating that the Market Participants Division will not recommend enforcement action against a non-U.S. bank SD that files with the Commission certain financial information that is provided to its home country regulator in lieu of certain financial reports required by Commission Regulation 23.105(p). *See* CFTC Staff Letter 21–18, issued on August 31, 2021, and CFTC Staff Letter 23–11, issued on July 10, 2023 (extending the expiration of CFTC Staff Letter 21–18 until the earlier of October 6, 2025 or the adoption of any revised financial reporting requirements applicable to bank SDs under Regulation 23.105(p)). On December 15, 2023, the Commission issued for public comment proposed amendments to Regulation 23.105(p) addressing the financial reporting requirements applicable to bank SDs in a manner consistent with the position taken in CFTC Letters 21–18 and 23–11. *See* CFTC Press Release 8836–23 issued on December 15, 2023, available at *cftc.gov.*

[18] 17 CFR 23.106(a)(3).

[19] *See* 85 FR 57462 at 57521.

[20] *Id.*

jurisdiction's capital and financial reporting requirements are comparable to the Commission's in purpose and effect, and not whether they are comparable in every aspect or contain identical elements.

A person requesting a Capital Comparability Determination is required to submit an application to the Commission containing: (i) a description of the objectives of the relevant foreign jurisdiction's capital adequacy and financial reporting requirements applicable to entities that are subject to the CFTC Capital Rules and the CFTC Financial Reporting Rules; (ii) a description (including specific legal and regulatory provisions) of how the relevant foreign jurisdiction's capital adequacy and financial reporting requirements address the elements of the CFTC Capital Rules and CFTC Financial Reporting Rules, including, at a minimum, the methodologies for establishing and calculating capital adequacy requirements and whether such methodologies comport with any international standards; and (iii) a description of the ability of the relevant foreign regulatory authority to supervise and enforce compliance with the relevant foreign jurisdiction's capital adequacy and financial reporting requirements. The applicant must also submit, upon request, such other information and documentation as the Commission deems necessary to evaluate the comparability of the capital adequacy and financial reporting requirements of the foreign jurisdiction.[21]

The Commission may consider all relevant factors in making a Capital Comparability Determination, including: (i) the scope and objectives of the relevant foreign jurisdiction's capital and financial reporting requirements; (ii) whether the relevant foreign jurisdiction's capital and financial reporting requirements achieve comparable outcomes to the Commission's corresponding capital requirements and financial reporting requirements; (iii) the ability of the relevant foreign regulatory authority or authorities to supervise and enforce compliance with the relevant foreign jurisdiction's capital adequacy and financial reporting requirements; and (iv) any other facts or circumstances the Commission deems relevant, including whether the Commission and foreign regulatory authority or authorities have a memorandum of understanding (''MOU'') or similar arrangement that would facilitate supervisory cooperation.[22]

In performing the comparability assessment for foreign nonbank SDs, the Commission's review will include the extent to which the foreign jurisdiction's requirements address: (i) the process of establishing minimum capital requirements for nonbank SDs and how such process addresses risk, including market risk and credit risk of the nonbank SD's on-balance sheet and off-balance sheet exposures; (ii) the types of equity and debt instruments that qualify as regulatory capital in meeting minimum requirements; (iii) the financial reports and other financial information submitted by a nonbank SD to its relevant regulatory authority and whether such information provides the regulatory authority with the means necessary to effectively monitor the financial condition of the nonbank SD; and (iv) the regulatory notices and other communications between a nonbank SD and its foreign regulatory authority that address potential adverse financial or operational issues that may impact the firm. With respect to the ability of the relevant foreign regulatory authority to supervise and enforce compliance with the foreign jurisdiction's capital adequacy and financial reporting requirements, the Commission's review will include a review of the foreign jurisdiction's surveillance program for monitoring nonbank SDs' compliance with such capital adequacy and financial reporting requirements, and the disciplinary process imposed on firms that fail to comply with such requirements.

In performing the comparability assessment for foreign nonbank MSPs,[23] the Commission's review will include the extent to which the foreign jurisdiction's requirements address: (i) the process of establishing minimum capital requirements for a nonbank MSP and how such process establishes a minimum level of capital to ensure the safety and soundness of the nonbank MSP; (ii) the financial reports and other financial information submitted by a nonbank MSP to its relevant regulatory authority and whether such information provides the regulatory authority with the means necessary to effectively monitor the financial condition of the nonbank MSP; and (iii) the regulatory notices and other communications between a nonbank MSP and its foreign regulatory authority that address potential adverse financial or operational issues that may impact the firm. With respect to the ability of the relevant foreign regulatory authority to supervise and enforce compliance with the foreign jurisdiction's capital adequacy and financial reporting requirements, the Commission's review will include a review of the foreign jurisdiction's surveillance program for monitoring nonbank MSPs' compliance with such capital adequacy and financial reporting requirements, and the disciplinary process imposed on firms that fail to comply with such requirements.

Commission Regulation 23.106 further provides that the Commission may impose any terms or conditions that it deems appropriate in issuing a Capital Comparability Determination.[24] Any specific terms or conditions with respect to capital adequacy or financial reporting requirements will be set forth in the Commission's Capital Comparability Determination Order. As a general condition to all Capital Comparability Determination Orders, the Commission expects to require notification from applicants of any material changes to information submitted by the applicants in support of a comparability finding, including, but not limited to, changes in the relevant foreign jurisdiction's supervisory or regulatory regime.

The Commission's capital adequacy and financial reporting requirements are designed to address and manage risks that arise from a firm's operation as a SD or MSP. Given their functions, both sets of requirements and rules must be applied on an entity-level basis (meaning that the rules apply on a firm-wide basis, irrespective of the type of transactions involved) to effectively address risk to the firm as a whole. Therefore, in order to rely on a Capital Comparability Determination, a nonbank SD or nonbank MSP domiciled in the foreign jurisdiction and subject to supervision by the relevant regulatory authority (or authorities) in the foreign jurisdiction must file a notice with the Commission of its intent to comply with the applicable capital adequacy and financial reporting requirements of the foreign jurisdiction set forth in the Capital Comparability Determination in lieu of all or parts of the CFTC Capital Rules and/or CFTC Financial Reporting Rules.[25] Notices must be filed electronically with the Commission's

[21] 17 CFR 23.106(a)(2).

[22] *See* 17 CFR 23.106(a)(3) and 85 FR 57520–57522.

[23] Commission Regulation 23.101(b) requires a nonbank MSP to maintain positive tangible net worth. There are no MSPs currently registered with the Commission. 17 CFR 23.101(b).

[24] *See* 17 CFR 23.106(a)(5).

[25] 17 CFR 23.106(a)(4).

Market Participants Division (''MPD'').[26] The filing of a notice by a non-U.S. nonbank SD or non-U.S. nonbank MSP provides MPD staff, acting pursuant to authority delegated by the Commission,[27] with the opportunity to engage with the firm and to obtain representations that it is subject to, and complies with, the laws and regulations cited in the Capital Comparability Determination and that it will comply with any listed conditions. MPD will issue a letter under its delegated authority from the Commission confirming that the non-U.S. nonbank SD or non-U.S. nonbank MSP may comply with foreign laws and regulations cited in the Capital Comparability Determination in lieu of complying with the CFTC Capital Rules and the CFTC Financial Reporting Rules upon MPD's determination that the firm is subject to and complies with the applicable foreign laws and regulations, is subject to the jurisdiction of the applicable foreign regulatory authority (or authorities), and can meet any conditions in the Capital Comparability Determination.

Each non-U.S. nonbank SD and/or non-U.S. nonbank MSP that receives, in accordance with the applicable Commission Capital Comparability Determination Order, confirmation from the Commission that it may comply with a foreign jurisdiction's capital adequacy and/or financial reporting requirements will be deemed by the Commission to be in compliance with the corresponding CFTC Capital Rules and/or CFTC Financial Reporting Rules.[28] Accordingly, if a nonbank SD or a nonbank MSP fails to comply with the foreign jurisdiction's capital adequacy and/or financial reporting requirements, the Commission may initiate an action for a violation of the corresponding CFTC Capital Rules and or CFTC Financial Reporting Rules.[29] In addition, a non-U.S. nonbank SD or non-U.S. nonbank MSP that receives confirmation of its ability to use substituted compliance remains subject to the Commission's examination and enforcement authority.[30] A finding of a violation by a foreign jurisdiction's regulatory authority is not a prerequisite for the exercise of such examination and enforcement authority by the Commission.

The Commission will consider an application for a Capital Comparability Determination to be a representation by the applicant that the laws and regulations of the foreign jurisdiction that are submitted in support of the application are finalized and in force, that the description of such laws and regulations is accurate and complete, and that, unless otherwise noted, the scope of such laws and regulations encompasses the relevant non-U.S. nonbank SDs and/or non-U.S. nonbank MSPs domiciled in the foreign jurisdiction.[31] A non-U.S. nonbank SD or non-U.S. nonbank MSP that is not legally required to comply with a foreign jurisdiction's laws or regulations determined to be comparable in a Capital Comparability Determination may not voluntarily comply with such laws or regulations in lieu of compliance with the CFTC Capital Rules or the CFTC Financial Reporting Rules. Each non-U.S. nonbank SD or non-U.S. nonbank MSP that seeks to rely on a Capital Comparability Determination Order is responsible for determining whether it is subject to the foreign laws and regulations found comparable in the Capital Comparability Determination and the Capital Comparability Determination Order.

C. Application for a Capital Comparability Determination for PRA-Designated UK Nonbank Swap Dealers

The Applicants submitted the UK Application requesting that the Commission issue a Capital Comparability Determination finding that a PRA-designated UK nonbank SD's compliance with the capital requirements of the UK and the financial reporting requirements of the UK, as specified in the UK Application and applicable to PRA-designated UK nonbank SDs, satisfies corresponding CFTC Capital Rules and the CFTC Financial Reporting Rules applicable to a nonbank SD under sections 4s(e)–(f) of the CEA and Commission Regulations 23.101 and 23.105.[32]

To be designated for prudential supervision by the PRA, a UK-domiciled investment firm must be authorized, or have requested authorization, to deal in investments as principal.[33] For an investment firm that is authorized, or has requested authorization, to deal in investments as principal, the PRA may designate the firm for prudential supervision if the PRA determines that the dealing activities of the firm should be a PRA-regulated activity. The PRA considers the following in determining whether an investment firm should be subject to PRA supervision: (i) the assets of the investment firm; and (ii) where the investment firm is a member of a group, (a) the assets of other firms within the group that are authorized, or have sought authorization, to deal in investments as principal, (b) whether any other member of the group is subject to prudential supervision by the PRA, and (c) whether the investment firm's activities have, or might have, a material impact on the ability of the PRA to advance any of its objectives in relation to PRA-authorized person in its group.[34] The PRA also must consult with the FCA before designating a person for prudential supervision.[35]

The PRA also has issued a Statement of Policy providing further detail regarding the factors that are considered in assessing an investment firm for prudential supervision.[36] The factors include: (i) whether the firm's balance sheet exceeds an average of GBP 15 billion total gross assets over four quarters; (ii) where the investment firm is part of a group, whether the sum of the balance sheets of all firms within the group that are authorized, or have requested authorization, to deal in investments as principals exceeds an average of GBP 15 billion over four quarters; and/or (iii) where the firm is part of a group subject to PRA supervision, whether the investment firm's revenues, balance sheet and risk taking is significant relative to the group's revenues, balance sheet, and risk-taking.[37] There are currently six PRA-designated UK nonbank SDs registered with the Commission:

[26] Notices must be filed in electronic form to the following email address: *MPDFinancialRequirements@cftc.gov.*

[27] *See* 17 CFR 140.91(a)(11).

[28] 17 CFR 23.106(a)(4).

[29] *Id.*

[30] *Id.*

[31] The Commission has provided the Applicants with an opportunity to review for accuracy and completeness, and comment on, the Commission's description of relevant UK laws and regulations on which this proposed Capital Comparability Determination is based. The Commission relies on this review and any corrections received from the Applicants in making its proposal. Thus, to the extent that the Commission relies on an inaccurate description of foreign laws and regulations submitted by the Applicants, the comparability determination may not be valid.

[32] UK Application, p. 1. There are currently no MSPs registered with the Commission, and the Applicants have not requested that the Commission issue a Capital Comparability Determination concerning UK nonbank MSPs. Accordingly, the Commission's Capital Comparability Determination and proposed Capital Comparability Determination Order do not address UK nonbank MSPs.

[33] Article 3(1) and (2) of *The Financial Services and Markets Act 2000 (PRA-regulated Activities) Order 2013.*

[34] *Id.,* Article 3(4).

[35] *Id.,* Article 3(6).

[36] *See* PRA, *Statement of Policy, Designation of Investment Firms for Prudential Supervision by the Prudential Regulation Authority, December 2021,* available here: *https://www.bankofengland.co.uk/-/media/boe/files/prudential-regulation/statement-of-policy/2021/designation-of-investment-firms-for-prudential-supervision-by-the-pra-december-2021.pdf?la=en&hash=007EB17EDF2FA84714D372095F9E03627355776F.*

[37] *Id.,* at p. 5.

Citigroup Global Markets Limited, Goldman Sachs International, Merrill Lynch International, Morgan Stanley & Co. International Plc, MUFG Securities EMEA Plc, and Nomura International Plc.

The Applicants represent that the capital and financial reporting framework applicable to PRA-designated UK nonbank SDs is primarily based on the framework established by the European Union's (''EU'') Capital Requirements Regulation [38] and Capital Requirements Directive,[39] which set forth capital and financial reporting requirements applicable to ''credit institutions'' [40] and ''investment firms.'' [41] CRR, as a regulation, is directly applicable in all member states of the EU (''EU Member States'') and was, therefore, binding law in the UK during the UK's membership in the EU.[42] CRD, as a directive, was required to be transposed into EU Member States' national law, including UK law.[43] With regard to PRA-designated UK nonbank SDs, the UK implemented CRD primarily through a series of regulations, including the Capital Requirements Regulations 2013 [44] and the Capital Requirements (Capital Buffers and Macro-prudential Measures) Regulations 2014,[45] and the rules of the PRA.[46]

Following the UK's withdrawal from EU membership (''Brexit''), EU laws that were in effect and applicable as of December 31, 2020, were retained in UK law subject to certain non-substantive amendments seeking to reflect the UK's new position outside of the EU.[47] As such, directly applicable EU law, such as CRR, was converted into domestic UK law and UK legislation implementing EU directives, such as CRD, was preserved. The UK subsequently adopted additional changes, generally consistent with amendments introduced by the EU to CRR, CRD and other relevant EU provisions,[48] and incorporated certain CRR provisions in the PRA Rulebook.[49] The CRR provisions as applicable in the UK are referred hereafter as ''UK CRR.'' [50] The UK capital and financial reporting framework also comprises UK-specific requirements in respect of certain matters. Requirements applicable to PRA-designated UK nonbank SDs are included in the PRA Rulebook. In addition, Commission Delegated Regulation (EU) 2015/61,[51] which supplements UK CRR with regard to liquidity coverage requirement for credit institutions, applies to PRA-designated UK nonbank SDs and imposes separate liquidity requirements to these firms.[52]

The Applicants also represent that in addition to UK CRR and the PRA Rulebook, the Banking Act 2009 and its related secondary legislation, through which the UK transposed the Bank Recovery and Resolution Directive (''BRRD''), include relevant UK capital requirements.[53] Specifically, pursuant to the Banking Act 2009 and its secondary legislation, the Bank of England, in its role as resolution authority, requires certain investment firms, including PRA-designated UK nonbank SDs, to satisfy a firm-specific minimum requirement for own funds and eligible liabilities (''MREL'').[54]

UK CRR, Capital Requirements Regulations 2013, Capital Requirements (Capital Buffers and Macro-prudential Measures) Regulations 2014, Liquidity Coverage Delegated Regulation, the Banking Act 2009 and its secondary legislation, and relevant parts of the PRA Rulebook are referred to hereafter as the ''UK PRA Capital Rules.''

The Applicants further represent that with respect to supervisory financial reporting, the framework applicable to PRA-designated UK nonbank SDs is also based on the EU requirements. In addition, the framework comprises PRA-specific rules for matters not addressed by the EU-based requirements. Specifically, Commission Implementing Regulation (EU) 680/2014,[55] which was initially retained in UK law following Brexit, supplemented CRR with implementing technical standards (''CRR Reporting ITS'')

[38] *Regulation (EU) No 575/2013 of the European Parliament and of the Council of 26 June 2013 on prudential requirements for credit institutions and amending Regulation (EU) No 648/2012* (''Capital Requirements Regulation'' or ''CRR'').

[39] *Directive 2013/36/EU of the European Parliament and of the Council of 26 June 2013 on access to the activity of credit institutions and the prudential supervision of credit institutions, amending Directive 2002/87/EC and repealing Directives 2006/48/EC and 2006/49/EC* (''Capital Requirements Directive'' or ''CRD'').

[40] The term ''credit institution'' is defined as an entity whose business consists of taking deposits and other repayable funds from the public and granting credits. CRR, Article 4(1), as applicable in the UK. For a reference to CRR provisions applicable in the UK, *see infra* notes 49 and 50.

[41] The term ''investment firm'' is defined as an entity authorized under *Directive 2014/65/EU of the European Parliament and of the Council of 15 May 2014 on markets in financial instruments and amending Directive 2002/92/EC and Directive 2011/61/EU* (''Markets in Financial Instruments Directive'' or ''MiFID''), and whose regular business is the provision of one or more investment services to third parties and/or the performance of one or more investment-related activities on a professional basis, which includes dealing in derivatives for its own account. CRR, Article 4(1)(2) cross-referencing Article 4(1)(1) of MiFID.

[42] *Consolidated Version of the Treaty on the Functioning of the European Union,* OJ (C 326) 171, Oct. 26, 2012 (''TFEU''), Article 288.

[43] *Id.,* Article 288 (stating that a directive is binding as to the result to be achieved upon each EU Member State to which the directive is addressed, and further provides, however, that each EU Member State elects the form and method of implementing the directive). In this connection, EU Member States were required to implement and start applying amendments to CRD, introduced by *Directive (EU) 2019/878 of the European Parliament and of the Council of 20 May 2019 amending Directive 2013/36/EU as regards exempted entities, financial holding companies, mixed financial holding companies, remuneration, supervisory measures and powers and capital conservation measures* (''CRD V'') by December 29, 2020. Some CRD V provisions were subject to delayed implementation deadlines of June 28, 2021 and January 1, 2022. CRD V, Article 2.

[44] *Capital Requirements Regulations 2013,* Statutory Instrument 2013 No. 3115 (''Capital Requirements Regulations 2013'').

[45] *Capital Requirements (Capital Buffers and Macro-prudential Measures) Regulations 2014,* Statutory Instrument 2014 No. 894 (''Capital Requirements (Capital Buffers and Macro-prudential Measures) Regulations 2014'').

[46] The PRA's rules (''PRA Rulebook'') are available here: *https://www.prarulebook.co.uk/.*

[47] *See, An Act to Repeal the European Communities Act 1972 and make other provisions in connection with the withdrawal of the United Kingdom from the EU* (2018 c.16) (''European Union (Withdrawal) Act 2018'').

[48] *See* PRA, *Policy Statement 21/21—The UK Leverage Framework, October 2021,* available here: *https://www.bankofengland.co.uk/prudential-regulation/publication/2021/june/changes-to-the-uk-leverage-ratio-framework,* and *Policy Statement 22/21—Implementation of Basel standards: Final rules, October 2021,* available here: *https://www.bankofengland.co.uk/prudential-regulation/publication/2021/october/implementation-of-basel-standards.*

[49] Pursuant to the Financial Services and Markets Act 2023 (''FSMA 2023''), the UK revoked CRR and replaced it with: (i) PRA rules adopted under Section 144 of the Financial Services and Markets Act 2000 (''FSMA'') and (ii) UK regulations, adopted under Section 4 of FSMA 2023, restating CRR provisions.

[50] The UK CRR is available here: *https://www.legislation.gov.uk/eur/2013/575/contents.* The provisions that were incorporated in the PRA Rulebook are no longer part of UK CRR and appear instead in the PRA Rulebook.

[51] *Commission Delegated Regulation (EU) 2015/61 of 10 October 2014 to supplement Regulation (EU) No 575/2013 of the European Parliament and the Council with regard to liquidity coverage requirement for Credit Institutions* (''Liquidity Coverage Delegated Regulation'').

[52] *See* PRA Rulebook, CRR Firms, Liquidity Coverage Requirement—UK Designated Investment Firms Part.

[53] *Directive 2014/59/EU of the European Parliament and of the Council of 15 May 2014 establishing a framework for the recovery and resolution of credit institutions and investment firms and amending Council Directive 82/891/EEC, and Directives 2001/24/EC, 2002/47/EC, 2004/25/EC, 2005/56/EC, 2007/36/EC, 2011/35/EU, 2012/30/EU and 2013/36/EU, and Regulations (EU) No 1093/2010 and (EU) No 648/2012, of the European Parliament and of the Council. See* UK Application, p. 7.

[54] Banking Act 2009, Section 3A(4) and (4B); *Bank Recovery and Resolution (No 2) Order 2014,* Statutory Instrument No. 3348 (''Bank Recovery and Resolution (No 2) Order 2014''), Part 9.

[55] *Commission Implementing Regulation (EU) 680/2014 of 16 April 2014 laying down implementing technical standards with regard to supervisory reporting of institutions according to Regulation (EU) No 575/2013 of the European Parliament and of the Council.*

specifying, among other things, uniform formats and frequencies for the financial and capital requirements reporting required under CRR.[56] CRR Reporting ITS included templates for the common reporting (''COREP'') and the financial reporting (''FINREP'') that specify the contents of the EU-based supervisory reporting requirements. As part of the regulatory reforms that followed Brexit and sought to implement Basel III standards, the PRA incorporated the entire body of the UK version of COREP and FINREP requirements into the PRA Rulebook to create a single source for reporting requirements for firms.[57] For PRA-designated UK nonbank SDs that are not subject to the EU-based FINREP requirements, the PRA Rulebook includes PRA-specific requirements.[58]

The Applicants also represent that the Companies Act 2006 contains provisions related to financial reporting, including a mandate that entities of a certain size be required to prepare annual audited financial statements and a strategic report.[59] UK CRR, relevant provisions of the PRA Rulebook, and relevant provisions of the Companies Act 2006, are collectively referred to hereafter as the ''UK PRA Financial Reporting Rules.''

The Applicants also note that the U.S. Securities and Exchange Commission (''SEC'') has issued orders permitting an SEC-registered nonbank security-based swap dealer domiciled in the UK (''UK nonbank SBSD'') [60] to satisfy SEC capital [61] and financial reporting requirements via substituted compliance with applicable UK capital and financial reporting.[62] The UK Order conditioned substituted compliance for capital requirements on a UK nonbank SBSD complying with specified laws and regulations, including relevant parts of UK CRR and the PRA Rulebook, and also maintaining total liquid assets in an amount that exceeds the UK nonbank SBSD's total liabilities by at least $100 million and by at least $20 million after applying certain deductions to the value of the liquid assets to reflect market, credit, and other potential risks to the value of the assets.[63]

II. General Overview of Commission and UK PRA Nonbank Swap Dealer Capital Rules

A. General Overview of the CFTC Nonbank Swap Dealer Capital Rules

The CFTC Capital Rules provide nonbank SDs with three alternative capital approaches: (i) the Tangible Net Worth Capital Approach (''TNW Approach''); (ii) the Net Liquid Assets Capital Approach (''NLA Approach''); and (iii) the Bank-Based Capital Approach (''Bank-Based Approach'').[64]

Nonbank SDs that are ''predominantly engaged in non-financial activities'' may elect the TNW Approach.[65] The TNW Approach requires a nonbank SD to maintain a level of ''tangible net worth'' [66] equal to or greater than the higher of: (i) $20 million plus the amount of the nonbank SD's ''market risk exposure requirement'' [67] and ''credit risk exposure requirement'' [68] associated with the nonbank SD's swap and related hedge positions that are part of the nonbank SD's swap dealing activities; (ii) 8 percent of the nonbank SD's ''uncleared swap margin'' amount; [69] or (iii) the amount of capital required by a registered futures association of which the nonbank SD is a member.[70] The TNW Approach is intended to ensure the safety and soundness of a qualifying nonbank SD by requiring the firm to maintain a minimum level of tangible net worth that is based on the nonbank SD's swap dealing activities to provide a sufficient level of capital to absorb losses resulting from its swap dealing and other business activities.

The TNW approach requires a nonbank SD to compute its market risk exposure requirement and credit risk

[56] UK Application, p. 24 and Responses to Staff Questions dated October 5, 2023.

[57] PRA Rulebook, CRR Firms, Reporting (CRR) Part.

[58] PRA Rulebook, CRR Firms, Regulatory Reporting Part.

[59] UK Application, p.7. Companies Act 2006, Part 15 and 16. The Companies Act 2006 is available here: *https://www.legislation.gov.uk/ukpga/2006/46/contents.*

[60] All six of the PRA-designated UK nonbank SDs currently registered with the Commission are also UK nonbank SBSDs.

[61] Section 15F(e)(1)(B) of the Exchange Act (15 U.S.C. 78o–10) directs the SEC to adopt capital rules for security-based swap dealers (''SBSDs'') that do not have a prudential regulator.

[62] *See Order Granting Conditional Substituted Compliance in Connection with Certain Requirements Applicable to Non-U.S. Security-Based Swap Dealers and Major Security-Based Swap Participants Subject to Regulation in the United Kingdom,* 86 FR 43318 (July 30, 2021) (''Final UK Order''); *Amended and Restated Order Granting Conditional Substituted Compliance in Connection with Certain Requirements Applicable to Non-U.S. Security-Based Swap Dealers and Major Security-Based Swap Participants Subject to Regulation in the Federal Republic of Germany; Amended Orders Addressing Non-U.S. Security-Based Swap Entities Subject to Regulation in the French Republic or the United Kingdom; and Order Extending the Time to Meet Certain Conditions Relating to Capital and Margin,* 86 FR 59797 (Oct. 28, 2021) (''Amended UK Order,'' together with the Final UK Order, ''UK Order''); *and Order Specifying the Manner and Format of Filing Unaudited Financial and Operational Information by Security-Based Swap Dealers and Major Security-Based Swap Participants that are not U.S. Persons and are Relying on Substituted Compliance with Respect to Rule 18a–7,* 86 FR 59208 (Oct. 26, 2021) (''SEC Order on Manner and Format of Filing Unaudited Financial and Operational Information'').

[63] The conditioning of the UK substituted compliance order on UK nonbank SBSDs maintaining liquid assets in an amount that exceeds the UK nonbank SBSD's total liabilities by at least $100 million and by at least $20 million after applying certain deductions to the value of the liquid assets reflects that the SEC's capital rule for nonbank SBSDs is a liquidity-based requirement and that the SEC capital requirements are not based on the Basel bank capital standards. *See* 17 CFR 240.18a–1(a)(1) (requiring a SBSD to maintain, in relevant part, net capital of $20 million or, if approved to use capital models, $100 million of tentative net capital and $20 million of net capital).

[64] 17 CFR 23.101.

[65] 17 CFR 23.101(a)(2). The term ''predominantly engaged in non-financial activities'' is defined in Commission Regulation 23.100 and generally provides that: (i) the nonbank SD's, or its parent entity's, annual gross financial revenues for either of the previous two completed fiscal years represents less than 15 percent of the nonbank SD's or the nonbank SD's parent's, annual gross revenues for all operations (*i.e.,* commercial and financial) for such years; and (ii) the nonbank SD's, or its parent entity's, total financial assets at the end of its two most recently completed fiscal years represents less than 15 percent of the nonbank SD's, or its parent's, total consolidated financial and nonfinancial assets as of the end of such years. 17 CFR 23.100.

[66] The term ''tangible net worth'' is defined in Commission Regulation 23.100 and generally means the net worth (*i.e.,* assets less liabilities) of a nonbank SD, computed in accordance with applicable accounting principles, with assets further reduced by a nonbank SD's recorded goodwill and other intangible assets. 17 CFR 23.100.

[67] The terms ''market risk exposure'' and ''market risk exposure requirement'' are defined in Commission Regulation 23.100 and generally mean the risk of loss in a financial position or portfolio of financial positions resulting from movements in market prices and other factors. 17 CFR 23.100. Market risk exposure is the sum of: (i) general market risks including changes in the market value of a particular asset that results from broad market movements, which may include an additive for changes in market value under stressed conditions; (ii) specific risk, which includes risks that affect the market value of a specific instrument but do not materially alter broad market conditions; (iii) incremental risk, which means the risk of loss on a position that could result from the failure of an obligor to make timely payments of principal and interest; and (iv) comprehensive risk, which is the measure of all material price risks of one or more portfolios of correlation trading positions.

[68] The term ''credit risk exposure requirement'' is defined in Commission Regulation 23.100 and generally reflects the amount at risk if a counterparty defaults before the final settlement of a swap transaction's cash flows. 17 CFR 23.100.

[69] The term ''uncleared swap margin'' is defined in Commission Regulation 23.100 to generally mean the amount of initial margin that a nonbank SD would be required to collect from each counterparty for each outstanding swap position of the nonbank SD. 17 CFR 23.100. A nonbank SD must include all swap positions in the calculation of the uncleared swap margin amount, including swaps that are exempt or excluded from the scope of the Commission's uncleared swap margin regulations. A nonbank SD must compute the uncleared swap margin amount in accordance with the Commission's margin rules for uncleared swaps. *See* 17 CFR 23.154.

[70] The National Futures Association (''NFA'') is currently the only entity that is a registered futures association. The Commission will refer to NFA in this document when referring to the requirements or obligations of a registered futures association.

exposure requirement using standardized capital charges set forth in SEC Rule 18a–1[71] that are applicable to entities registered with the SEC as SBSDs or standardized capital charges set forth in Commission Regulation 1.17 applicable to entities registered as FCMs or entities dually-registered as an FCM and nonbank SD.[72] Nonbank SDs that have received Commission or NFA approval pursuant to Commission Regulation 23.102 may use internal models to compute market risk and/or credit risk capital charges in lieu of the SEC or CFTC standardized capital charges.[73]

A nonbank SD that elects the NLA Approach is required to maintain ''net capital'' in an amount that equals or exceeds the greater of: (i) $20 million; (ii) 2 percent of the nonbank SD's uncleared swap margin amount; or (iii) the amount of capital required by NFA.[74] The NLA Approach is intended to ensure the safety and soundness of a nonbank SD by requiring the firm to maintain at all times at least one dollar of highly liquid assets to cover each dollar of the nonbank SD's liabilities.

A nonbank SD is required to reduce the value of its highly liquid assets by the market risk exposure requirement and/or the credit risk exposure requirement in computing its net capital.[75] A nonbank SD that does not have Commission or NFA approval to use internal models must compute its market risk exposure requirement and/or credit risk exposure requirement using the standardized capital charges contained in SEC Rule 18a–1 as modified by the Commission's rule.[76]

A nonbank SD that has obtained Commission or NFA approval, may use internal market risk and/or credit risk models to compute market risk and/or credit risk capital charges in lieu of the standardized capital charges.[77] A nonbank SD that is approved to use internal market risk and/or credit risk models is further required to maintain a minimum of $100 million of ''tentative net capital.'' [78]

The Commission's NLA Approach is consistent with the SEC's SBSD capital rule, and is based on the Commission's capital rule for FCMs and the SEC's capital rule for securities broker-dealers (''BDs''). The quantitative and qualitative requirements for NLA Approach internal market and credit risk models are also consistent with the quantitative and qualitative requirements of the Commission's Bank-Based Approach as described below.

The Commission's Bank-Based Approach for computing regulatory capital for nonbank SDs is based on certain capital requirements imposed by the Federal Reserve Board for bank holding companies.[79] The Bank-Based Approach also is consistent with the Basel Committee on Banking Supervision's (''BCBS'') international framework for bank capital requirements.[80] The Bank-Based Approach requires a nonbank SD to maintain regulatory capital equal to or in excess of each of the following requirements: (i) $20 million of common equity tier 1 capital; (ii) an aggregate of common equity tier 1 capital, additional tier 1 capital, and tier 2 capital (including qualifying subordinated debt) equal to or greater than 8 percent of the nonbank SD's risk-weighted assets (provided that common equity tier 1 capital comprises at least 6.5 percent of the 8 percent minimum requirement); (iii) an aggregate of common equity tier 1 capital, additional tier 1 capital, and tier 2 capital equal to or greater than 8 percent of the nonbank SD's uncleared swap margin amount; and (iv) an amount of capital required by NFA.[81] The Bank-Based Approach is intended to ensure that the safety and soundness of a nonbank SD by requiring the firm to maintain at all times qualifying capital in an amount sufficient to absorb unexpected losses, expenses, decrease in firm assets, or increases in firm liabilities without the firm becoming insolvent.

The terms used in the Commission's Bank-Based Approach are defined by reference to regulations of the Federal Reserve Board.[82] Specifically, the term ''common equity tier 1 capital'' is defined for purposes of the CFTC Capital Rules to generally mean the sum of a nonbank SD's common stock instruments and any related surpluses, retained earnings, and accumulated other comprehensive income.[83] The term ''additional tier 1 capital'' is defined to include equity instruments that are subordinated to claims of general creditors and subordinated debt holders, but contain certain provisions that are not available to common stock, such as the right of nonbank SD to call the instruments for redemption or to convert the instruments to other forms of equity.[84] The term ''tier 2 capital'' is defined to include certain types of instruments that include both debt and equity characteristics (*e.g.,* certain perpetual preferred stock instruments and subordinated term debt instruments).[85] Subordinated debt also must meet certain requirements to qualify as tier 2 capital, including that the term of the subordinated debt instrument is for a minimum of one year (with the exception of approved revolving subordinated debt agreements which may have a maturity term that is less than one year), and the debt instrument is an effective subordination of the rights of the lender to receive any payment, including accrued interest, to other creditors.[86]

Common equity tier 1 capital, additional tier 1 capital, and tier 2 capital are unencumbered and generally long-term or permanent forms of capital that help ensure that a nonbank SD will be able to absorb losses resulting from its operations and maintain confidence in the nonbank SD as a going concern. In addition, in setting an equity ratio requirement, this limits the amount of asset growth and leverage a nonbank SD can incur, as a nonbank SD must fund its asset growth with a certain percentage of regulatory capital.

A nonbank SD also must compute its risk-weighted assets using standardized capital charges or, if approved, internal models. Risk-weighting assets involves adjusting the notional or carrying value of each asset based on the inherent risk of the asset. Less risky assets are

[71] 17 CFR 240.18a–1.

[72] 17 CFR 23.101(a)(2)(ii)(A).

[73] *Id.*

[74] 17 CFR 23.101(a)(1)(ii)(A). ''Net capital'' consists of a nonbank SD's highly liquid assets (subject to haircuts) less all of the firm's liabilities, excluding certain qualified subordinated debt. *See* 17 CFR 240.18a–1 for the calculation of ''net capital.''

[75] *See* 17 CFR 240.18a–1(c) and (d).

[76] *See* 17 CFR 23.101(a)(1)(ii).

[77] *See* 17 CFR 23.102.

[78] 17 CFR 23.101(a)(1)(ii)(A)(*1*). The term ''tentative net capital'' is defined in Commission Regulation 23.101(a)(1)(ii)(A)(*1*) by reference to SEC Rule 18a–1 and generally means a nonbank SD's net capital prior to deducting market risk and credit risk capital charges.

[79] *See* 17 CFR 23.101(a)(1)(i).

[80] The BCBS is the primary global standard-setter for the prudential regulation of banks and provides a forum for cooperation on banking supervisory matters. Institutions represented on the BCBS include the Federal Reserve Board, the European Central Bank, Deutsche Bundesbank, Bank of England, Bank of France, Bank of Japan, Banco de Mexico, and Bank of Canada. The BCBS framework is available at *https://www.bis.org/basel_framework/index.htm.*

[81] 17 CFR 23.101(a)(1)(i).

[82] *Id.* Commission Regulation 23.101(a)(1)(i) references Federal Reserve Board Rule 217.20 for purposes of defining the terms used in establishing the minimum capital requirements under the Bank-Based Approach. 17 CFR 23.101(a)(1)(i) and 12 CFR 217.20.

[83] *See* 12 CFR 217.20(b).

[84] *See* 12 CFR 217.20(c).

[85] *See* 12 CFR 217.20(d).

[86] The subordinated debt must meet the requirements set forth in SEC Rule 18a–1d (17 CFR 240.18a–1d). *See* 17 CFR 23.101(a)(1)(i)(B) providing that the subordinated debt used by a nonbank SD to meet its minimum capital requirement under the Bank-Based Approach must satisfy the conditions for subordinated debt under SEC Rule 18a–1d.

adjusted to lower values (*i.e.,* have less risk-weight) than more risky assets. As a result, nonbank SDs are required to hold lower levels of regulatory capital for less risky assets and higher levels of regulatory capital for riskier assets.

Nonbank SDs not approved to use internal models to risk-weight their assets must compute market risk capital charges using the standardized charges contained in Commission Regulation 1.17 and SEC Rule 18a–1, and must compute their credit risk charges using the standardized capital charges set forth in regulations of the Federal Reserve Board for bank holding companies in subpart D of 12 CFR part 217.[87]

Standardized market risk charges are computed under Commission Regulation 1.17 and SEC Rule 18a–1 by multiplying, as appropriate to the specific asset schedule, the notional value or market value of the nonbank SD's proprietary financial positions (such as swaps, security-based swaps, futures, equities, and U.S. Treasuries) by fixed percentages set forth in the Regulation or Rule.[88] Standardized credit risk charges require the nonbank SD to multiply on-balance sheet and off-balance sheet exposures (such as receivables from counterparties, debt instruments, and exposures from derivatives) by predefined percentages set forth in the applicable Federal Reserve Board regulations contained in subpart D of 12 CFR part 217.

A nonbank SD also may apply to the Commission or NFA for approval to use internal models to compute market risk exposure and/or credit risk exposure for purposes of determining its total risk-weighted assets.[89] Nonbank SDs approved to use internal models for the calculation of credit risk or market risk, or both, must follow the model requirements set forth in Federal Reserve Board regulations for bank holding companies codified in subpart E and F, respectively, of 12 CFR part 217. Credit risk and market risk capital charges computed with internal models require the estimation of potential losses, with a certain degree of likelihood, within a specified time period, of a portfolio of assets. Internal models allow for consideration of potential co-movement of prices across assets in the portfolio, leading to offsets of gains and losses. Internal credit risk models can also further include estimation of the likelihood of default of counterparties.

B. General Overview of UK PRA Capital Rules for PRA-Designated UK Nonbank SDs

The Applicants state that the UK PRA Capital Rules impose bank-like capital requirements on a PRA-designated UK nonbank SD that are consistent with the BCBS framework for international bank-based capital standards.[90] The Applicants further state that the UK PRA Capital Rules are intended to require each PRA-designated UK nonbank SD to hold a sufficient amount of qualifying equity capital and subordinated debt based on the PRA-designated UK nonbank SD's activities, to absorb decreases in the value of firm assets, increases in the value of firm liabilities, and to cover losses from business activities, including possible counterparty defaults and margin collateral shortfalls associated with swap dealing activities, without the firm becoming insolvent.[91]

The UK PRA Capital Rules require each PRA-designated UK nonbank SD to hold and maintain regulatory capital in the form of qualifying common equity tier 1 capital, additional tier 1 capital, and tier 2 capital in an aggregate amount that equals or exceeds 8 percent of the PRA-designated UK nonbank SD's total risk exposure amount, which is calculated as a sum of the firm's risk-weighted assets and exposures.[92] Common equity tier 1 capital must comprise a minimum of 4.5 percent of the 8 percent capital ratio,[93] and tier 1 capital (which is the aggregate of common equity tier 1 capital and additional tier 1 capital) must comprise a minimum of 6 percent of the total 8 percent capital ratio.[94] Tier 2 capital may comprise a maximum of 2 percent of the total 8 percent capital ratio.[95]

Under the UK PRA Capital Rules, common equity tier 1 capital is composed of common equity capital instruments, retained earnings, accumulated other comprehensive income, and other reserves of the PRA-designated UK nonbank SD.[96] Additional tier 1 capital is composed of capital instruments other than common equity and retained earnings (*i.e.,* common equity tier 1 capital), and includes certain long-term convertible debt securities.[97] Tier 2 capital instruments, which provide an additional layer of supplementary capital, include other reserves, hybrid capital instruments, and certain subordinated debt.[98]

To qualify as tier 2 regulatory capital, capital instruments and subordinated debt must meet certain conditions including that: (i) the capital instruments are issued by the PRA-designated UK nonbank SD and are fully paid-up; (ii) the capital instruments are not purchased by the PRA-designated UK nonbank SD or its subsidiaries; (iii) the claims on the principal amount of the capital instruments rank below any claim from instruments that are ''eligible liabilities,'' [99] meaning that they are effectively subordinated to claims of all non-subordinated creditors of the PRA-designated UK nonbank SD; (iv) the capital instruments have an original maturity of at least five years; and (v) the provisions governing the capital instruments do not include any incentive for the principal amount to be redeemed or repaid by the PRA-designated UK nonbank SD prior to the capital instruments' respective maturities.[100]

In addition to the requirement to maintain total regulatory capital in an amount equal to or in excess of 8 percent of its risk-weighted assets, the UK PRA Capital Rules also require a PRA-designated UK nonbank SD to maintain a capital conservation buffer composed exclusively of common equity tier 1 capital in an amount equal to 2.5 percent of the firm's total risk-

[87] *See* 17 CFR 23.101(a)(1)(i)(B) and the definition of the term *BHC risk-weighted assets* in 17 CFR 23.100.

[88] *See* 17 CFR 1.17(c)(5) and 17 CFR 240.15c3–1(c)(2).

[89] *See* 17 CFR 23.102.

[90] *See* UK Application, p. 12.

[91] *See* UK Application, pp. 7 and 12.

[92] UK CRR, Articles 26, 28, 50–52, 61–63 and 92.

[93] *Id.,* Article 92(1)(a).

[94] *Id.,* Article 92(1)(b).

[95] *Id.,* Article 92(1)(c) (providing that the total capital ratio must be equal to or greater than 8 percent, with a minimum common equity and additional tier 1 capital comprising at least 6 percent of the 8 percent minimum requirement). In addition to the requirement to maintain minimum capital ratios, a PRA-designated UK nonbank SD must maintain at all times capital resources equal to or in excess of GBP 750,000. PRA Rulebook, CRR Firms, Definition of Capital Part, Chapter 12 Base Capital Resource Requirement, Rule 12.1.

[96] UK CRR, Articles 26 and 28. Retained earnings, accumulated other comprehensive income and other reserves qualify as common equity tier 1 capital only where the funds are available to the PRA-designated UK nonbank SD for unrestricted and immediate use to cover risks or losses as such risks or losses occur. *See* UK CRR, Article 26(1).

[97] *Id.,* Articles 51–52.

[98] *Id.,* Articles 62–63.

[99] ''Eligible liabilities'' are non-capital instruments, including instruments that are directly issued by the PRA-designated UK nonbank SD and fully paid up with remaining maturities of at least a year. Bank Recovery and Resolution (No. 2) Order 2014, Article 123. In addition, the liabilities cannot be owned, secured, or guaranteed, by the PRA-designated UK nonbank SD itself, and the PRA-designated UK nonbank SD cannot have either directly or indirectly funded their purchase. *Id.*

[100] UK CRR, Article 63 (listing the conditions that capital instruments must meet to qualify as tier 2 instruments) and Bank Recovery and Resolution (No. 2) Order 2014, Article 123. *See also infra* note 121.

weighted assets.[101] The common equity tier 1 capital used to meet the 2.5 percent capital conservation buffer must be separate and independent of the 4.5 percent of common equity tier 1 capital used to meet the 8 percent core capital requirement.[102]

The UK PRA Capital Rules also impose a 3.25 percent leverage ratio floor on PRA-designated UK nonbank SDs that hold significant amounts of non-UK assets, as an additional element to the capital requirements.[103] Specifically, a PRA-designated UK nonbank SD that has non-UK assets equal to or greater than GBP 10 billion is required to maintain an aggregate amount of common equity tier 1 capital and additional tier 1 capital equal to or in excess of 3.25 percent of the firm's on-balance sheet and off-balance sheet exposures, including exposures on uncleared swaps but excluding certain exposures to central banks, without regard to any risk-weighting.[104] The leverage ratio is a non-risk based minimum capital requirement that is intended to prevent a PRA-designated UK nonbank SD from engaging in excessive leverage, and complements the risk-based minimum capital requirement that is based on the PRA-designated UK nonbank SD's risk-weighted assets.

As noted above, the amount of regulatory capital that a PRA-designated UK nonbank SD is required to hold is determined by calculating the firm's total risk exposure, which requires the PRA-designated UK nonbank SD to risk-weight its on-balance sheet and off-balance sheet assets and exposures using specified standardized weights or, if approved for use by the PRA, internal model-based methodologies.[105] Risk-weighting assets and exposures involves adjusting the notional or carrying value of each asset and risk exposure based on the inherent risk of the asset or exposure. Less risky assets and exposures are adjusted to lower values (*i.e.,* have less weight) than more risky assets or exposures. As a result, PRA-designated UK nonbank SDs are required to hold lower levels of regulatory capital for less risky assets and exposures and higher levels of regulatory capital for riskier assets and exposures. The categories of risk charges that a PRA-designated UK nonbank SD must include in determining its total risk exposure include charges reflecting: (i) market risk; (ii) credit risk; (iii) settlement risk; (iv) CVA risk of OTC derivative instruments; and (v) operational risk.[106] The methods for calculating such risk charges are based on the BCBS framework.[107]

Standardized market risk charges are generally calculated by multiplying the notional or carrying amount of net positions or of adjusted net positions by risk-weighting factors, which are based on the underlying market risk of each asset or exposure. The sum of the calculated amounts comprises the portion of the risk exposure amount attributable to market risk.[108] Standardized credit risk charges are generally calculated by multiplying the notional or carrying value of the PRA-designated UK nonbank SD's on-balance sheet and off-balance sheet assets and exposures by clearly defined risk-weighting factors, which are based on the underlying credit risk of each asset or exposure. The sum of the calculated amounts comprises the portion of the risk exposure amount attributable to credit risk.[109]

Settlement risk charges are intended to account for the price difference to which a PRA-designated UK nonbank SD is exposed if its transactions remain unsettled after the respective transaction's due delivery date.[110] CVA risk charges reflect the current market value of the credit risk of the counterparty to the PRA-designated UK nonbank SD in an OTC derivatives transaction.[111] Operational risk charges reflect the risk of loss resulting from inadequate or failed internal processes, people and systems or from external events, and includes legal risk.[112]

As noted above, PRA-designated UK nonbank SDs may use internal model-based methodologies to calculate certain categories of risk charges in lieu of standardized charges if they have obtained the requisite regulatory approval.[113] The UK PRA Capital Rules set out quantitative and qualitative requirements that internal models must meet in order to obtain and maintain approval.[114] Quantitative and qualitative requirements address, among other issues, governance, validation, monitoring, and review. Modeled risk charges generally require the estimation of potential losses, with a certain degree of likelihood, within a specified time

[101] PRA Rulebook, CRR Firms, Capital Buffers Part, Chapter 2 Capital Conservation Buffer, Rule 2.1.

[102] *Id.* In effect, the UK PRA Capital Rules require a PRA-designated UK nonbank SD to hold common equity tier 1 capital equal to or in excess of 7 percent of the firm's risk-weighted assets, and total capital equal to or in excess of 10.5 percent of the firm's risk-weighted assets.

In addition, a PRA-designated nonbank SD may also be subject to a firm-specific countercyclical capital buffer, whose rate consists of the weighted average of the countercyclical buffer rates that apply to exposures in the jurisdictions where the firm's relevant credit exposures are located. The rate for each jurisdiction is determined by the UK Financial Policy Committee or a third country countercyclical buffer authority, as applicable. *See* PRA Rulebook, CRR Firms, Capital Buffers Part, Chapter 3 Countercyclical Capital Buffer, Rule 3.1., and Capital Requirements (Capital Buffers and Macro-prudential Measures) Regulations 2014, Articles 7–20. The sum of the capital conservation buffer and the countercyclical buffer is referred to as the ''combined buffer.'' PRA Rulebook, CRR Firms, Capital Buffers Part, Chapter 1 Application and Definitions, Rule 1.2. To meet these additional capital buffer requirements, the PRA-designated UK nonbank SD must maintain a level of common equity tier 1 capital that is in addition to the common equity tier 1 capital required to meet its core capital requirement of 4.5 percent of its risk-weighted assets and the common equity tier 1 capital required to meet its capital conservation buffer. *See* PRA Rulebook, CRR Firms, Capital Buffers Part, Chapter 1 Application and Definitions, Rule 1.2, and Capital Buffers Part, Chapter 4 Capital Conservation Measures, Rule 4.1. In practice, the countercyclical buffer rate in the UK, as of July 2023, is 2 percent of risk-weighted assets. Several EU Member States of relevance to the UK have also implemented countercyclical capital buffers with rates ranging from 0.5 percent to 2.5 percent of risk-weighted assets. The countercyclical capital buffer rate is published by the Bank of England, and is available at: *https://bankofengland.co.uk/financial-stability/the-countercyclical-capital-buffer.*

[103] PRA Rulebook, CRR Firms, Leverage Ratio—Capital Requirements and Buffers Part, Chapter 1 Application and Definitions and Chapter 3 Minimum Leverage Ratio. The Applicants represented that the six PRA-designated UK nonbank SDs currently registered with the Commission are subject to a leverage ratio floor requirement. *See* Responses to Staff Questions dated October 5, 2023.

[104] Total exposures are required to be computed in accordance with PRA Rulebook, CRR Firms, Leverage Ratio (CRR) Part, Chapter 3 Leverage Ratio (Part Seven CRR), Article 429 *et seq.* A PRA-designated UK nonbank SD may also be subject to a countercyclical leverage ratio buffer of common equity tier 1 capital equal to the firm's institution-specific countercyclical capital buffer rate multiplied by 35 percent, multiplied by the firm's total exposures. PRA Rulebook, CRR Firms, Leverage Ratio—Capital Requirements and Buffers Part, Chapter 4 Countercyclical Leverage Ratio Buffer.

[105] With regulator permission, PRA-designated UK nonbank SDs may use internal models to calculate credit risk (UK CRR, Article 143), including certain counterparty credit risk exposures (UK CRR, Article 283), operational risk (UK CRR, Article 312(2)), market risk (UK CRR, Article 363), and credit valuation adjustment risk (''CVA risk'') of over-the-counter (''OTC'') derivatives instruments (UK CRR, Article 383). The permission to use, and continue using, internal models is subject to strict criteria and supervisory oversight by the PRA.

[106] UK CRR, Article 92(3).

[107] UK Application, pp. 12–15.

[108] UK CRR, Articles 326–361.

[109] *Id.,* Articles 111–134 and PRA Rulebook, CRR Firms, Standardised Approach and Internal Ratings Based Approach to Credit Risk (CRR) Part, Chapter 3 Credit Risk (Part Three Title Two Chapters Two and Three CRR), Article 132.

[110] UK CRR, Article 378.

[111] *Id.,* Article 381.

[112] *Id.,* Article 4(1)(52).

[113] *Id.,* Articles 143 (credit risk), 283 (counterparty credit risk); 312(2) (operational risk), 363 (market risk), and 383 (CVA risk).

[114] *See e.g.,* UK CRR, Articles 144, 283; 321–322 and 365–369.

period, of a portfolio of assets.[115] Internal models allow for consideration of potential co-movement of prices across assets in the portfolio, leading to offsets of gains and losses. Credit risk models can also further include estimation of the likelihood of default of counterparties.

Furthermore, the UK PRA Capital Rules also impose separate requirements on an PRA-designated UK nonbank SD to address liquidity risk. More specifically, PRA-designated UK nonbank SDs are subject to the liquidity coverage requirement applicable under UK CRR to credit institutions.[116] The liquidity coverage requirement provides that PRA-designated UK nonbank SDs must hold liquid assets in an amount sufficient to cover liquidity outflows (less liquidity inflows) under stressed conditions over a period of 30 days.[117] For purposes of the liquidity coverage requirement, the term ''stressed'' means a sudden or severe deterioration in the solvency or liquidity position of a firm due to changes in market conditions or idiosyncratic factors as a result of which there is a significant risk that the firm becomes unable to meet its commitments as they become due within the next 30 days.[118]

In addition, Article 413 of UK CRR, which has been incorporated into the PRA Rulebook, establishes a general requirement that firms ensure that long-term obligations and off-balance sheet items are adequately met with a diverse set of funding instruments that are stable under both normal and stressed conditions.[119]

In addition, the Bank of England, in its capacity of resolution authority,[120] requires that PRA-designated UK nonbank SDs satisfy a firm-specific MREL pursuant to provisions of the Banking Act 2009 and the Bank Recovery and Resolution (No. 2) Order 2014, which transposed BRRD.[121] The MREL requirement is separate from the minimum capital requirements imposed on PRA-designated UK nonbank SDs under UK CRR and PRA Rulebook and is designed to ensure that PRA-designated UK nonbank SDs maintain at all times sufficient eligible instruments to facilitate resolution consistently with the resolution objectives under the preferred resolution strategy.[122] Specifically, the MREL is intended to permit loss absorption, where appropriate, such that the PRA-designated UK nonbank SD's capital ratio could be restored to the level necessary for compliance with its capital requirements.[123] The Bank of England calculates a firm's baseline MREL as the sum of two component: a loss absorption amount and a recapitalization amount.[124] The loss absorption amount is equal to a firm's capital requirements plus its capital buffers.[125] The Bank of England has some discretion to adjust the amount. The MREL amount varies depending on the entity's size, funding model, and risk profile, among other considerations.[126]

III. Commission Analysis of the Comparability of the UK PRA Capital Rules and UK PRA Financial Reporting Rules With CFTC Capital Rules and CFTC Financial Reporting Rules

The following section provides a description and comparative analysis of the regulatory requirements of the UK PRA Capital Rules and UK PRA Financial Reporting Rules to the CFTC Capital Rules and CFTC Financial Reporting Rules. Immediately following a description of the requirement(s) of the CFTC Capital Rules or the CFTC Financial Reporting Rules for which a comparability determination was requested by the Applicants, the Commission provides a description of the UK's corresponding laws, regulations, or rules. The Commission then provides a comparative analysis of the UK PRA Capital Rules or the UK PRA Financial Reporting Rules with the corresponding CFTC Capital Rules or CFTC Financial Reporting Rules and identifies any material differences between the respective rules.

The Commission performed this proposed Capital Comparability Determination by assessing the comparability of the UK PRA Capital Rules for PRA-designated UK nonbank SDs as set forth in the UK Application with the Commission's Bank-Based Approach. For clarity, the Commission did not assess the comparability of the UK PRA Capital Rules to the Commission's TNW Approach or NLA Approach as the Commission understands that PRA-designated UK nonbank SDs, as of the date of the UK Application, are subject to bank-based capital requirements pursuant to the UK

[115] The UK PRA Capital Rules require PRA-designated UK nonbank SDs with internal model approval for market risk to use a VaR model with a 99 percent, one-tailed confidence interval with: (i) price change equivalent to 10 business-day movement in rates and prices; (ii) effective historical observation periods of at least one year; and (iii) at least monthly data set updates. *See* UK CRR, Article 365(1). PRA-designated UK nonbank SDs approved to use internal ratings-based credit risk models must support the assessment of credit risk, the assignment of exposures to rating grades or pools, and the quantification of default and loss estimates that have been developed for a certain type of exposures, among other conditions. *See* UK CRR, Articles 142–144. In addition, when PRA-designated UK nonbank SDs are approved to use a model to calculate counterparty credit risk exposures for OTC derivatives transactions, the model must specify the forecasting distribution for changes in the market value of a netting set attributable to joint changes in relevant market variables and calculate the exposure value for the netting set at each of the future dates on the basis of the joint changes in the market variables. *See* UK CRR, Article 284. PRA-designated nonbank SDs allowed to follow the ''advanced method'' of calculating CVA risk charges for OTC derivatives transactions must also use an internal market risk model to simulate changes in the credit spreads of counterparties, applying a 99 percent confidence interval and a 10-day equivalent holding period. *See* UK CRR, Article 383. Finally, PRA-designated UK nonbank SDs using ''advanced measurement approaches'' based on their own measurement systems to compute operational risk exposures must calculate capital requirements as comprising both expected loss and unexpected loss and capture potentially severe tail events, achieving a sound standard comparable to a 99.9 confidence interval over a one-year period. *See* UK CRR, Article 322.

[116] PRA Rulebook, CRR Firms, Liquidity (CRR) Part and PRA Rulebook, CRR Firms, Liquidity Coverage Requirement—UK Designated Investment Firms Part.

[117] PRA Rulebook, CRR Firms, Liquidity (CRR) Part, Chapter 4 Liquidity (Part Six CRR), Article 412(1).

[118] PRA Rulebook, CRR Firms, Liquidity (CRR) Part, Chapter 4 Liquidity (Part Six CRR), Article 411(10).

[119] PRA Rulebook, CRR Firms, Liquidity (CRR) Part, Chapter 4 Liquidity (Part Six CRR), Article 413(1).

[120] In application of BRRD, Article 3, EU Member States designate resolution authorities that are empowered to apply the resolution tools and exercise the resolution powers described in BRRD. In the UK, the resolution authority is the Bank of England.

[121] Banking Act 2009, Section 3A(4) and (4B) and the Bank Recovery and Resolution (No. 2) Order 2014, Part 9. Eligible liabilities include, among others items, instruments that are directly issued by the PRA-designated UK nonbank SD and fully paid up with remaining maturities of at least a year. *See* Bank Recovery and Resolution (No. 2) Order 2014, Part 9, Article 123(4). In addition, the liabilities cannot arise from a derivative, be owned, secured or guaranteed by the PRA-designated UK nonbank SD itself, and the PRA-designated UK nonbank SD cannot have either directly or indirectly funded its purchase. *Id.*

[122] The Bank of England's Approach to Setting a Minimum Requirement for Own Funds and Eligible Liabilities (MREL), Statement of Policy, 3 December 2021, at 3, available at: *https://www.bankofengland.co.uk/-/media/boe/files/paper/2021/mrel-statement-of-policy-december-2021-updating-2018.pdf. See also* The Minimum Requirement for Own Funds and Eligible Liabilities (MREL)—Buffers and Threshold Conditions, Supervisory Statement 16/16, 28 December 2020, available at: *https://www.bankofengland.co.uk/-/media/boe/files/prudential-regulation/supervisory-statement/2020/ss1616-update-dec-2020.pdf.*

[123] Bank Recovery and Resolution (No. 2) Order 2014, Part 9, Article 123(6).

[124] *See* The Bank of England's Approach to Setting a Minimum Requirement for Own Funds and Eligible Liabilities (MREL), Statement of Policy, Dec. 3, 2021, at 5.

[125] *Id.* The reference to ''capital requirements'' in this context means the amount of capital the PRA thinks the firm should maintain at all times under PRA Rulebook, CRR Firms, Internal Capital Adequacy Assessment.

[126] Bank Recovery and Resolution (No. 2) Order 2014, Part 9, Article 123(6).

PRA Capital Rules. In addition, as noted above, due to the differences between the capital and financial reporting regimes applicable to PRA-designated UK nonbank SD and FCA-regulated UK nonbank SDs, the Commission anticipates assessing the comparability of the rules applicable to FCA-regulated UK nonbank SDs through a separate capital comparability determination.[127] Accordingly, when the Commission makes a preliminary determination herein regarding the comparability of the UK PRA Capital Rules with the CFTC Capital Rules, the determination solely pertains to the comparability of the UK PRA Capital Rules as applicable to PRA-designated UK nonbank SD with the Bank-Based Approach under the CFTC Capital Rules.

As described below, it is proposed that any material changes to the UK PRA Capital Rules would require notification to the Commission. Therefore, if there are subsequent material changes to the UK PRA Capital Rules to include, for example, another capital approach, the Commission will review and assess the impact of such changes on the Capital Comparability Determination Order as it is then in effect, and may amend or supplement the Order.[128]

In addition, although the BCBS bank capital standards establish minimum capital standards that are consistent with the requirements of the Commission's Bank-Based Approach, the Commission notes that consistency with the international standards is not determinative of a finding of comparability with the CFTC Capital Rules. In the Commission's view, a foreign jurisdiction's consistency with the BCBS international bank capital standards is an element in the Commission's comparability assessment, but, in and of itself, it may not be sufficient to demonstrate comparability with the CFTC Capital Rules without an assessment of the individual elements of the foreign jurisdiction's capital framework.

Capital and financial reporting regimes are complex structures comprised of a number of interrelated regulatory components. Differences in how jurisdictions approach and implement these regimes are expected, even among jurisdictions that base their requirements on the principles and standards set forth in the BCBS international bank capital framework. Therefore, the Commission's comparability determination involves a detailed assessment of the relevant requirements of the foreign jurisdiction and whether those requirements, viewed in the aggregate, lead to an outcome that is comparable to the outcome of the CFTC's corresponding requirements. Consistent with this approach, the Commission has grouped the CFTC Capital Rules and CFTC Financial Reporting Rules into the key categories that focus the analysis on whether the UK PRA capital and financial reporting requirements are comparable to the Commission's SD requirements in purpose and effect, and not whether the UK PRA requirements meet every aspect or contain identical elements as the Commission's requirements.

Specifically, as discussed in detail below, the Commission used the following key categories in its review: (i) the quality of the equity and debt instruments that qualify as regulatory capital, and the extent to which the regulatory capital represents committed and permanent capital that would be available to absorb unexpected losses or counterparty defaults; (ii) the process of establishing minimum capital requirements for a PRA-designated UK nonbank SD and how such process addresses market risk and credit risk of the firm's on-balance sheet and off-balance sheet exposures; (iii) the financial reports and other financial information submitted by a PRA-designated nonbank SD to the PRA to effectively monitor the financial condition of the firm; and (iv) the regulatory notices and other communications between the PRA-designated UK nonbank SD and the PRA that detail potential adverse financial or operational issues that may impact the firm. The Commission also reviewed the manner in which compliance by a PRA-designated UK nonbank SD with the UK PRA Capital Rules and UK PRA Financial Reporting rules is monitored and enforced. The Commission invites public comment on all aspects of the UK Application and on the Commission's proposed Capital Comparability Determination discussed below.

A. Regulatory Objectives of CFTC Capital Rules and CFTC Financial Reporting Rules and UK PRA Capital Rules and UK PRA Financial Reporting Rules

1. Regulatory Objectives of CFTC Capital Rules and CFTC Financial Reporting Rules

The regulatory objectives of the CFTC Capital Rules and the CFTC Financial Reporting Rules are to further the Congressional mandate to ensure the safety and soundness of nonbank SDs to mitigate the greater risk to nonbank SDs and the financial system arising from the use of swaps that are not cleared.[129] A primary function of the nonbank SD's capital is to protect the solvency of the firm from decreases in the value of firm assets, increases in the value of firm liabilities, and from losses, including losses resulting from counterparty defaults and margin collateral failures, by requiring the firm to maintain an appropriate level of quality capital, including qualifying subordinated debt, to absorb such losses without becoming insolvent. With respect to swap positions, capital and margin perform complementary risk mitigation functions by protecting nonbank SDs, containing the amount of risk in the financial system as a whole, and reducing the potential for contagion arising from uncleared swaps.

The objective of the CFTC Financial Reporting Rules is to provide the Commission with the means to monitor and assess a nonbank SD's financial condition, including the nonbank SD's compliance with minimum capital requirements. The CFTC Financial Reporting Rules are designed to provide the Commission and NFA, which, along with the Commission, oversees nonbank SDs' compliance with Commission regulations, with a comprehensive view of the financial health and activities of the nonbank SD. The Commission's rules require nonbank SDs to file financial information, including periodic unaudited and annual audited financial statements, specific financial position information, and notices of certain events that may indicate a potential financial or operational issue that may adversely impact the nonbank SD's ability to meet its obligations to counterparties and other creditors in the

[127] *See supra* note 5.

[128] The Commission also may amend or supplement the Capital Comparability Determination Order to address any material changes to the CFTC Capital Rules and CFTC Financial Reporting Rules that are adopted after a final Order is issued.

The Commission is aware that the UK PRA is considering changes to the PRA Capital Rules to implement Basel 3.1 standards. *See* PRA, *PS17/23—Implementation of the Basel 3.1 Standards Near-Final Part 1, December 12, 2023,* available here: *https://www.bankofengland.co.uk/news/2023/december/pra-publishes-first-of-two-policy-statements-for-basel-3-1-standards-implementation*. If the UK PRA proceeds with the implementation of the Basel 3.1 standards as proposed, the regulatory changes would be applicable after July 1, 2025 with a 4.5-year transitional period ending on January 1, 2030. The Commission will monitor progress on the UK PRA's proposed regulatory changes and may amend or supplement the Capital Comparability Determination Order, as appropriate, after a final Order is issued. As noted, the Commission proposes to require notification of any material changes to the UK PRA Capital Rules, including any Basel 3.1 implementing provisions.

[129] *See* 7 U.S.C. 6s(e)(3)(A).

swaps market, or impact the firm's solvency.[130]

2. Regulatory Objective of UK PRA Capital Rules and UK PRA Financial Reporting Rules

The regulatory objective of the UK PRA Capital Rules is to ensure the safety and soundness of PRA-designated UK nonbank SDs.[131] The UK PRA Capital Rules are designed to preserve the financial stability and solvency of a PRA-designated UK nonbank SD by requiring the firm to maintain a sufficient amount of qualifying equity capital and subordinated debt based on the PRA-designated UK nonbank SD's activities to absorb decreases in the value of firm assets, increases in the value of firm liabilities, and to cover losses from business activities, including possible counterparty defaults and margin collateral shortfalls associated with the firm's swap dealing activities.[132] The UK PRA Capital Rules are also designed to ensure that the PRA-designated UK nonbank SDs have sufficient liquidity to meet their financial obligations to counterparties and other creditors in a distress scenario by requiring each firm to hold an amount of liquid assets to ensure that the firm could face any possible imbalance between liquidity inflows and outflows under gravely stressed conditions over a period of 30 days [133] and to hold a diversity of stable funding instruments sufficient to meet long-term obligations under both normal and stressed conditions.[134]

With respect to financial reporting, the objective of the UK PRA Financial Reporting Rules is to enable the PRA to assess the financial condition and safety and soundness of PRA-designated UK nonbank SDs.[135] The UK PRA Financial Reporting Rules aim to achieve this objective by requiring a PRA-designated nonbank SD to provide financial reports and other financial position and capital information to the PRA on a regular basis.[136] The financial reporting by a PRA-designated UK nonbank SD provides the PRA with information necessary to effectively monitor the PRA-designated UK nonbank SD's overall financial condition and its ability to meet its regulatory obligations as a nonbank SD.

3. Commission Analysis

The Commission has reviewed the UK Application and the relevant UK laws and regulations, and has preliminarily determined that the overall objectives of the UK PRA Capital Rules and CFTC Capital Rules are comparable in that both sets of rules are intended to ensure the safety and soundness of nonbank SDs by establishing a regulatory regime that requires nonbank SDs to maintain a sufficient amount of qualifying regulatory capital to absorb losses, including losses from swaps and other trading activities, and to absorb decreases in the value of firm assets and increases in the value of firm liabilities without the nonbank SDs becoming insolvent. The UK PRA Capital Rules and CFTC Capital Rules are also based on, and consistent with, the BCBS international bank capital framework, which is designed to ensure that banking entities hold sufficient levels of capital to absorb losses and decreases in the value of assets without the banks becoming insolvent.

The Commission further preliminarily believes that the UK PRA Financial Reporting Rules have comparable objectives with the CFTC Financial Reporting Rules as both sets of rules require nonbank SDs to file and/or publish, as applicable, periodic financial reports, including unaudited financial reports and an annual audited financial report, detailing their financial operations and demonstrating their compliance with minimum capital requirements, with the goal of providing the PRA and the CFTC staff with information necessary to comprehensively assess the financial condition of a nonbank SD on an ongoing basis. In addition, to achieve this objective, the financial reports further provide the CFTC and the PRA with information regarding potential changes in a nonbank SD's risk profile by disclosing changes in account balances reported over a period of time. Such changes in account balances may indicate that the nonbank SD has entered into new lines of business, has increased its activity in an existing line of business relative to other activities, or has terminated a previous line of business.

The prompt and effective monitoring of the financial condition of nonbank SDs through the receipt and review of periodic financial reports supports the Commission and the PRA in meeting their respective objectives of ensuring the safety and soundness of nonbank SDs. In connection with these objectives, the early identification of potential financial issues provides the Commission and the PRA with an opportunity to address such issues with the nonbank SD before the issues develop to a state where the financial condition of the firm is impaired such that it may no longer hold a sufficient amount of qualifying regulatory capital to absorb decreases in the value of firm assets or increases in the value of firm liabilities, or to cover losses from the firm's business activities, including the firm's swap dealing activities and obligations to swap counterparties.

The Commission invites public comment on its analysis above, including comment on the UK Application and relevant UK laws and regulations.

B. Nonbank Swap Dealer Qualifying Capital

1. CFTC Capital Rules: Qualifying Capital Under Bank-Based Approach

The CFTC Capital Rules require a nonbank SD electing the Bank-Based Approach to maintain regulatory capital in the form of common equity tier 1 capital, additional tier 1 capital, and tier 2 capital in amounts that meet certain stated minimum requirements set forth in Commission Regulation 23.101.[137] Common equity tier 1 capital, additional tier 1 capital, and tier 2 capital are composed of certain defined forms of equity of the nonbank SD, including common stock, retained earnings, and qualifying subordinated debt.[138] The Commission's requirement for a nonbank SD to maintain a minimum amount of defined qualifying capital and subordinated debt is intended to

[130] *See* 17 CFR 23.105.

[131] *See* PRA, *The Prudential Regulation Authority's Approach to Banking Supervision, July 2023,* available here: *https://www.bankofengland.co.uk/prudential-regulation/publication/pras-approach-to-supervision-of-the-banking-and-insurance-sectors.*

[132] *Id.*

[133] PRA Rulebook, CRR Firms, Liquidity (CRR) Part, Chapter 4 Liquidity (Part Six CRR), Article 412 (Liquidity Coverage Requirement). Liquid assets primarily include cash, exposures to central banks, government-backed assets and other highly liquid assets with high credit quality. PRA Rulebook, CRR Firms, Liquidity (CRR) Part, Chapter 4 Liquidity (Part Six CRR), Article 416 (Reporting on Liquid Assets).

[134] PRA Rulebook, CRR Firms, Liquidity (CRR) Part, Chapter 4 Liquidity (Part Six CRR), Article 413 (Stable Funding Requirement). Stable funding instruments include common equity tier 1 capital instruments, additional tier 1 capital instruments, tier 2 capital instruments, and other preferred shares and capital instruments in excess of the tier 2 allowable amount with an effective maturity of one year or greater. PRA Rulebook, CRR Firms Liquidity (CRR) Part, Chapter 4 Liquidity (Part Six CRR), Article 427 (Reporting on Stable Funding).

[135] *See generally* PRA, *The Prudential Regulation Authority's Approach to Banking Supervision, July 2023,* available here: *https://www.bankofengland.co.uk/prudential-regulation/publication/pras-approach-to-supervision-of-the-banking-and-insurance-sectors.*

[136] PRA Rulebook, CRR Firms, Reporting (CRR) Part.

[137] *See* 17 CFR 23.101(a)(1)(i).

[138] The terms ''common equity tier 1 capital,'' ''additional tier 1 capital,'' and ''tier 2 capital'' are defined in the bank holding company regulations of the Federal Reserve Board. *See* 12 CFR 217.20.

ensure that the firm maintains a sufficient amount of regulatory capital to absorb decreases in the value of the firm's assets and increases in the value of the firm's liabilities, and to cover losses resulting from the firm's swap dealing and other activities, including possible counterparty defaults and margin collateral shortfalls, without the firm becoming insolvent.

Common equity tier 1 capital is generally composed of an entity's common stock instruments and any related surpluses, retained earnings, and accumulated other comprehensive income, and is a more conservative or permanent form of capital than additional tier 1 and tier 2 capital.[139] Additional tier 1 capital is generally composed of equity instruments such as preferred stock and certain hybrid securities that may be converted to common stock if triggering events occur.[140] Total tier 1 capital is composed of common equity tier 1 capital and further includes additional tier 1 capital.[141] Tier 2 capital includes certain types of instruments that include both debt and equity characteristics such as qualifying subordinated debt.[142]

Subordinated debt must meet certain conditions to qualify as tier 2 capital under the CFTC Capital Rules. Specifically, subordinated debt instruments must have a term of at least one year (with the exception of approved revolving subordinated debt agreements which may have a maturity term that is less than one year), and contain terms that effectively subordinate the rights of lenders to receive any payments, including accrued interest, to other creditors of the firm.[143]

Common equity tier 1 capital, additional tier 1 capital, and tier 2 capital are permitted to be included in a nonbank SD's regulatory capital and used to meet the firm's minimum capital requirement due to their characteristics of being permanent forms of capital that are subordinate to the claims of other creditors, which ensures that a nonbank SD will have this regulatory capital to absorb decreases in the value of the firm's assets and increases in the value of the firm's liabilities, and to cover losses from business activities, including swap dealing activities, without the firm becoming insolvent.

2. UK PRA Capital Rules: Qualifying Capital

The UK PRA Capital Rules require a PRA-designated nonbank SD to maintain an amount of regulatory capital (*i.e.,* equity capital and qualifying subordinated debt) equal to or greater than 8 percent of the PRA-designated UK nonbank SD's total risk exposure, which is calculated as the sum of the firm's: (i) capital charges for market risk; (ii) risk-weighted exposure amounts for credit risk; (iii) capital charges for settlement risk; (iv) CVA risk of OTC derivatives instruments; and (v) capital charges for operational risk.[144] The UK Capital Rules limit the composition of regulatory capital to common equity tier 1 capital, additional tier 1 capital, and tier 2 capital in a manner consistent with the BCBS bank capital framework.[145] In this regard, the UK PRA Capital Rules provide that a PRA-designated UK nonbank SD's regulatory capital may be composed of: (i) common equity tier 1 capital instruments, which generally include the PRA-designated UK nonbank SD's common equity, retained earnings, and accumulated other comprehensive income; [146] (ii) additional tier 1 capital instruments, which include other forms of capital instruments and certain long-term convertible debt instruments; [147] and (iii) tier 2 capital instruments, which includes other reserves, hybrid capital instruments, and certain qualifying subordinated term debt.[148]

Furthermore, subordinated debt instruments must meet certain conditions to qualify as tier 2 regulatory capital under the UK PRA Capital Rules, including that the: (i) loans are not granted by the PRA-designated UK nonbank SD or its subsidiaries; (ii) claims on the principal amount of the subordinated loans under the provisions governing the subordinated loan agreement rank below any claim from eligible liabilities instruments (*i.e.,* certain non-capital instruments), meaning that they are effectively subordinated to claims of all non-subordinated creditors of the PRA-designated UK nonbank SD; (iii) subordinated loans are not secured, or subject to a guarantee that enhances the seniority of the claim, by the PRA-designated UK nonbank SD, its subsidiaries, or affiliates; (iv) loans have an original maturity of at least five years; and (v) provisions governing the loans do not include any incentive for the principal amount to be repaid by the PRA-designated UK nonbank SD prior to the loans' maturity.[149]

A PRA-designated UK nonbank SD must also maintain a capital conservation buffer equal to 2.5 percent of the firm's total risk exposure in addition to the requirement to maintain qualifying regulatory capital in excess of 8 percent of its total risk exposure.[150] The 2.5 percent capital conservation buffer must be met with common equity tier 1 capital.[151] Common equity tier 1 capital, as noted above, is limited to the

[139] 12 CFR 217.20.

[140] *Id.*

[141] *Id.*

[142] *Id.*

[143] The subordinated debt must meet the requirements set forth in SEC Rule 18a–1d (17 CFR 240.18a–1d). *See* 17 CFR 23.101(a)(1)(i)(B) (providing that the subordinated debt used by a nonbank SD to meet its minimum capital requirement under the Bank-Based Approach must satisfy the conditions for subordinated debt under SEC Rule 18a–1d).

[144] UK CRR, Article 92.

[145] *Id.*

[146] UK CRR, Articles 26 and 28. Capital instruments that qualify as common equity tier 1 capital under the UK PRA Capital Rules include instruments that: (i) are issued directly by the PRA-designated UK nonbank SD; (ii) are paid in full and not funded directly or indirectly by the PRA-designated UK nonbank SD; and (iii) are perpetual. In addition, the principal amount of the instruments may not be reduced or repaid, except in the liquidation of the PRA-designated UK nonbank SD.

[147] *Id.,* Articles 51–52. To qualify as additional tier 1 capital, the instruments must meet certain conditions including: (i) the instruments are issued directly by the PRA-designated UK nonbank SD and paid in full; (ii) the instruments are not owned by the PRA-designated UK nonbank SD or its subsidiaries; (iii) the purchase of the instruments is not funded directly or indirectly by the PRA-designated UK nonbank SD; (iv) the instruments rank below tier 2 instruments in the event of the insolvency of the PRA-designated UK nonbank SD; (v) the instruments are not secured or guaranteed by the PRA-designated UK nonbank SD or an affiliate; (vi) the instruments are perpetual and do not include an incentive for the PRA-designated UK nonbank SD to redeem them; and (vii) distributions under the instruments are pursuant to defined terms and may be cancelled under the full discretion of the PRA-designated UK nonbank SD.

[148] *Id.,* Articles 62–63.

[149] UK CRR, Article 63.

[150] PRA Rulebook, CRR Firms, Capital Buffers Part, Chapter 2 Capital Conservation Buffer, Rule 2.1. In addition, a PRA-designated nonbank SD may also be subject to a firm-specific countercyclical capital buffer, which requires the PRA-designated UK nonbank SD to hold an additional amount of common equity tier 1 capital equal to its total risk-weighted assets multiplied by the weighted average of the countercyclical buffer rates that apply to exposures in the jurisdictions where the firm's relevant credit exposures are located. The rate for each jurisdiction is determined by the UK Financial Policy Committee or a third country countercyclical buffer authority, as applicable. *See* PRA Rulebook, CRR Firms, Capital Buffers Part, Chapter 3 Countercyclical Capital Buffer, Rule 3.1., and Capital Requirements (Capital Buffers and Macro-prudential Measures) Regulations 2014, Articles 7–20. In practice, the countercyclical buffer rate in the UK, as of July 2023, is 2 percent of risk-weighted assets. The countercyclical capital buffer rate is published by the Bank of England, and is available at: *https://bankofengland.co.uk/financial-stability/the-countercyclical-capital-buffer.* Several EU Member States of relevance to the UK have also implemented countercyclical capital buffers with rates ranging from 0.5 percent to 2.5 percent of risk-weighted assets.

[151] PRA Rulebook, CRR Firms, Capital Buffers Part, Chapter 2 Capital Conservation Buffer, Rule 2.1.

PRA-designated UK nonbank SD's common equity, retained earnings, and accumulated other comprehensive income, and represents a more permanent form of capital than equity instruments that qualify as additional tier 1 capital and tier 2 capital.

The UK PRA Capital Rules also impose different ratios for the various components of regulatory capital that are consistent with the BCBS bank capital framework.[152] In this regard, the UK PRA Capital Rules provide that a PRA-designated UK nonbank SD's minimum regulatory capital must satisfy the following requirements: (i) common equity tier 1 capital ratio of 4.5 percent of the firm's total risk exposure amount; (ii) total tier 1 capital (*i.e.,* common equity tier 1 capital plus additional tier 1 capital) ratio of 6 percent of the firm's total risk exposure amount; and (iii) total capital (*i.e.,* an aggregate amount of common equity tier 1 capital, additional tier 1 capital, and tier 2 capital) ratio of 8 percent of the firm's total risk exposure amount. As noted above, a PRA-designated UK nonbank SD must also maintain a capital conservation buffer of 2.5 percent of its total risk exposure amount that must be met with common equity tier 1 capital.[153] With the addition of the capital conservation buffer, each PRA-designated UK nonbank SD is required to maintain minimum regulatory capital that equals or exceeds 10.5 percent of the firm's total risk exposure amount, with common equity tier 1 capital comprising at least 7 percent of the 10.5 percent minimum regulatory capital requirement.[154]

Common equity tier 1 capital, additional tier 1 capital, and tier 2 capital are permitted to be included in a PRA-designated UK nonbank SD's regulatory capital and used to meet the firm's minimum capital requirement due to their characteristics of being permanent forms of capital that are subordinate to the claims of other creditors, which ensures that a PRA-designated UK nonbank SD will have this regulatory capital to absorb decreases in the value of the firm's assets and increases in the value of the firm's liabilities, and to cover losses from business activities, including swap dealing activities, without the firm becoming insolvent.

3. Commission Analysis

The Commission has reviewed the UK Application and the relevant UK laws and regulations, and has preliminarily determined that the UK PRA Capital Rules are comparable in purpose and effect to the CFTC Capital Rules with regard to the types and characteristics of a nonbank SD's equity that qualifies as regulatory capital in meeting its minimum requirements. The UK PRA Capital Rules and the CFTC Capital Rules for nonbank SDs both require a nonbank SD to maintain a quantity of high-quality capital and permanent capital, all defined in a manner that is consistent with the BCBS international bank capital framework, that based on the firm's activities and on-balance sheet and off-balance sheet exposures, is sufficient to absorb losses and decreases in the value of the firm's assets and increases in the value of the firm's liabilities without resulting in the firm becoming insolvent. Specifically, equity instruments that qualify as common equity tier 1 capital and additional tier 1 capital under the UK PRA Capital Rules and the CFTC Capital Rules have similar characteristics (*e.g.,* the equity must be in the form of high-quality, committed and permanent capital) and the equity instruments generally have no priority in distribution of firm assets or income with respect to other shareholders or creditors of the firm, which makes the equity available to a nonbank SD to absorb unexpected losses, including counterparty defaults.[155]

In addition, the Commission has preliminarily determined that the conditions imposed on subordinated debt instruments under the UK PRA Capital Rules and the CFTC Capital Rules are comparable and are designed to ensure that the subordinated debt has qualities that support its recognition by a nonbank SD as equity for regulatory capital purposes. Specifically, in both sets of rules, the conditions include a requirement that the debt holders have effectively subordinated their claims for repayment of the debt to the claims of other creditors of the nonbank SD.[156]

Having reviewed the UK Application and the relevant UK laws and regulations, the Commission has made a preliminary determination that the UK PRA Capital Rules and CFTC Capital Rules impose comparable requirements on PRA-designated UK nonbank SDs with respect to the types and characteristics of equity capital that must be used to meet minimum regulatory capital requirements. The Commission invites public comment on its analysis above, including comment on the UK Application and relevant UK laws and regulations.

C. Nonbank Swap Dealer Minimum Capital Requirement

1. CFTC Capital Rules: Nonbank SD Minimum Capital Requirement

The CFTC Capital Rules require a nonbank SD electing the Bank-Based Approach to maintain regulatory capital that satisfies each of the following criteria: (i) an amount of common equity tier 1capital of at least $20 million; (ii) an aggregate of common equity tier 1 capital, additional tier 1 capital, and tier 2 capital in an amount equal to or in excess of 8 percent of the nonbank SD's uncleared swap margin amount; (iii) an aggregate amount of common equity tier 1 capital, additional tier 1 capital, and tier 2 capital equal to or greater than 8 percent of the nonbank SD's total risk-weighted assets, provided that common equity tier 1 capital comprises at least 6.5 percent of the 8 percent; and (iv) the amount of capital required by the NFA.[157]

Prong (i) above requires each nonbank SD electing the Bank-Based Approach to maintain a minimum of $20 million of common equity tier 1 capital to operate as a nonbank SD. The requirement that each nonbank SD electing the CFTC Bank-Based Approach maintain a minimum of $20 million of common equity tier 1 capital is also consistent with the minimum capital requirement for nonbank SDs electing the NLA Approach and the TNW Approach.[158] The Commission adopted this minimum requirement as it believed that the role a nonbank SD performs in the financial

[152] UK CRR, Article 92(1).

[153] PRA Rulebook, CRR Firms, Capital Buffers Part, Chapter 2 Capital Conservation Buffer, Rule 2.1.

[154] The countercyclical capital buffer is not included in the analysis given that it is firm-specific and its rate depends on the location of the firm's exposures.

[155] *Compare* 12 CFR 217.20(b) (defining capital instruments that qualify as common equity tier 1 capital under the rules of the Federal Reserve Board) and 12 CFR 217.20(c) (defining capital instruments that qualify as additional tier 1 capital under the rules of the Federal Reserve Board) with UK CRR, Articles 26 and 28 (defining items and capital instruments that qualify as common equity tier 1 capital under the UK PRA Capital Rules) and UK CRR, Article 52 (defining capital instruments that qualify as additional tier 1 capital under the UK PRA Capital Rules).

[156] *Compare* 17 CFR 240.18a–1d with UK CRR, Article 63(d).

[157] *See* 17 CFR 23.101(a)(1)(i). NFA has adopted the CFTC minimum capital requirements for nonbank SDs, but has not adopted additional capital requirements at this time.

[158] Nonbank SDs electing the NLA Approach are subject to a minimum capital requirement that includes a fixed minimum dollar amount of net capital of $20 million. *See* 17 CFR 23.101(a)(1)(ii)(A)(*1*). Nonbank SDs electing the TNW Approach are required to maintain levels of tangible net worth that equals or exceeds $20 million plus the amount of the nonbank SDs' market risk and credit risk associated with the firms' dealing activities. *See* 17 CFR 23.101(a)(2)(ii)(A).

markets by engaging in swap dealing activities warranted a minimum level of capital, stated as a fixed dollar amount that does not fluctuate with the level of the firm's dealing activities to help ensure the safety and soundness of the nonbank SD.[159]

Prong (ii) above is a minimum capital requirement that is based on the amount of uncleared margin for swap transactions entered into by the nonbank SD and is computed on a counterparty by counterparty basis. The requirement for a nonbank SD to maintain minimum capital equal to or greater than 8 percent of the firm's uncleared swap margin provides a capital floor based on a measure of the risk and volume of the swap positions, and the number of counterparties and the complexity of operations, of the nonbank SD. The intent of the minimum capital requirement based on a percentage of the nonbank SD's uncleared swap margin was to establish a minimum capital requirement that would help ensure that the nonbank SD meets all of its obligations as a SD to market participants, and to cover potential operational risk, legal risk, and liquidity risk in addition to the risks associated with its trading portfolio.[160]

Prong (iii) above is a minimum capital requirement that is based on the Federal Reserve Board's capital requirements for bank holding companies and is consistent with the BCBS international capital framework for banking institutions. As noted above, a nonbank SD under prong (iii) must maintain an aggregate of common equity tier 1 capital, additional tier 1 capital, and tier 2 capital in an amount equal to or greater than 8 percent of the nonbank SD's total risk-weighted assets, with common equity tier 1 capital comprising at least 6.5 percent of the 8 percent. Risk-weighted assets are a nonbank SD's on-balance sheet and off-balance sheet exposures, including proprietary swap, security-based swap, equity, and futures positions, weighted according to risk. The Bank-Based Approach requires each nonbank SD to maintain regulatory capital in an amount that equals or exceeds 8 percent of the firm's total risk-weighted assets to help ensure that the nonbank SD's level of capital is sufficient to absorb decreases in the value of the firm's assets and increases in the value of the firm's liabilities, and to cover unexpected losses resulting from business activities, including uncollateralized defaults from swap counterparties, without the nonbank SD becoming insolvent.

A nonbank SD must compute its risk-weighted assets using standardized market risk and/or credit risk charges, unless the nonbank SD has been approved by the Commission or NFA to use internal models.[161] For standardized market risk charges, the Commission incorporates by reference the standardized market risk charges set forth in Commission Regulation 1.17 for FCMs and SEC Rule 18a–1 for nonbank SBSDs.[162] The standardized market risk charges under Commission Regulation 1.17 and SEC Rule 18a–1 are calculated as a percentage of the market value or notional value of the nonbank SD's marketable securities and derivatives positions, with the percentages applied to the market value or notional value increasing as the expected or anticipated risk of the positions increases.[163] The resulting total market risk exposure amount is multiplied by a factor of 12.5 to cancel the effect of the 8 percent multiplication factor applied to all of the nonbank SD's risk-weighted assets, which effectively requires a nonbank SD to hold qualifying regulatory capital equal to or greater than 100 percent of the amount of its market risk exposure.[164]

With respect to standardized credit risk charges for exposures from non-derivatives positions, a nonbank SD computes its on-balance sheet and off-balance sheet exposures in accordance with the standardized credit risk charges adopted by the Federal Reserve Board and set forth in subpart D of 12 CFR 217 as if the SD itself were a bank holding company subject to subpart D.[165] Standardized credit risk charges are computed by multiplying the amount of the exposure by defined counterparty credit risk factors that range from 0 percent to 150 percent.[166] A nonbank SD with off-balance sheet exposures is required to calculate a credit risk charge by multiplying each exposure by a credit conversion factor that ranges from 0 percent to 100 percent, depending on the type of exposure.[167] In addition to the risk-weighted assets for general credit risk, a nonbank SD calculating risk charges under subpart D of 12 CFR 217 must also calculate risk-weighted assets for unsettled transactions involving securities, foreign exchange instruments, and commodities that have a risk of delayed settlement or delivery.

A nonbank SD may compute standardized credit risk charges for derivatives positions, including uncleared swaps and non-cleared security-based swaps, using either the current exposure method (''CEM'') or the standardized approach for measuring counterparty credit risk (''SA–CCR'').[168] Both CEM and SA–CCR are non-model, rules-based, approaches to calculating counterparty credit risk exposures for derivatives positions. Credit risk exposure under CEM is the sum of: (i) the current exposure (*i.e.,* the positive mark-to-market) of the derivatives contract; and (ii) the potential future exposure, which is calculated as the product of the notional principal amount of the derivatives contract multiplied by a standard credit risk conversion factor set forth in the rules of the Federal Reserve Board.[169] Credit risk exposure under SA–CCR is defined as the exposure at default amount of a derivatives contract, which is computed by multiplying a factor of 1.4 by the sum of: (i) the replacement costs of the contract (*i.e.,* the positive mark-to market); and (ii) the potential future exposure of the contract.[170]

A nonbank SD may also obtain approval from the Commission or NFA to use internal models to compute market risk and/or credit risk charges in lieu of the standardized charges. A nonbank SD seeking approval to use an internal model is required to submit an

[159] *See, e.g.,* 85 FR 57492.

[160] *See* 85 FR 57462.

[161] *See* 17 CFR 23.101(a)(1)(i)(B) and the definition of the term *BHC equivalent risk-weighted assets* in 17 CFR 23.100.

[162] *See* paragraph (3) of the definition of the term *BHC equivalent risk-weighted assets* in 17 CFR 23.100.

[163] *See* 17 CFR 240.18a–1(c)(1).

[164] *See* 17 CFR 23.100 (Definition of *BHC equivalent risk-weighted assets*). As noted, a nonbank SD is required to maintain qualifying capital (*i.e.,* an aggregate of common equity tier 1 capital, additional tier 1 capital, and tier 2 capital) in an amount that exceeds 8 percent of its market risk-weighted assets and credit-risk-weighted assets. The regulations, however, require the nonbank SD to effectively maintain qualifying capital in excess of 100 percent of its market risk-weighted assets by requiring the nonbank SD to multiply its market-risk-weighted assets by 12.5.

[165] *See* 17 CFR 23.101(a)(1)(i)(B) and paragraph (1) of the definition of the term *BHC equivalent risk-weighted assets* in 17 CFR 23.100.

[166] *See* 17 CFR 217.32. Lower credit risk factors are assigned to entities with lower credit risk and higher credit risk factors are assigned to entities with higher credit risk. For example, a credit risk factor of 0% is applied to exposures to the U.S. government, the Federal Reserve Bank, and U.S. government agencies (*see* 12 CFR 217.32 (a)(1)), and a credit risk factor of 100% is assigned to an exposure to foreign sovereigns that are not members of the Organization of Economic Co-operation and Development (*see* 12 CFR 217.32(a)(2)).

[167] *See* 17 CFR 217.33.

[168] *See* 17 CFR 217.34. *See also,* Commission Regulation 23.100 (17 CFR 23.100) defining the term *BHC risk-weighted assets,* which provides that a nonbank SD that does not have model approval may use either CEM or SA–CCR to compute its exposures for over-the-counter derivative contracts without regard to the status of its affiliate entities with respect to the use of a calculation approach under the Federal Reserve Board's capital rules.

[169] *See* 12 CFR 217.34.

[170] *See* 12 CFR 217.132(c).

application to the Commission or NFA.[171] The application is required to include, among other things, a list of categories of positions that the nonbank SD holds in its proprietary accounts and a brief description of the methods that the nonbank SD will use to calculate market risk and/or credit risk charges for such positions, as well as a description of the mathematical models used to compute market risk and credit risk charges.

A nonbank SD approved by the Commission or NFA to use internal models to compute market risk is required to comply with subpart F of the Federal Reserve Board's Part 217 regulations (''Subpart F'').[172] Subpart F is based on models that are consistent with the BCBS Basel 2.5 capital framework.[173] The Commission's qualitative and quantitative requirements for internal capital models are also comparable to the SEC's existing internal capital model requirements for broker-dealers in securities and SBSDs,[174] which are broadly based on the BCBS Basel 2.5 capital framework.

A nonbank SD approved to use internal models to compute credit risk charges is required to perform such computation in accordance with subpart E of the Federal Reserve Board's Part 217 regulations [175] as if the SD itself were a bank holding company subject to subpart E.[176] The internal credit risk modeling requirements are also based on the Basel 2.5 capital framework and the Basel 3 capital framework. A nonbank SD that computes its credit risk charges using internal models must multiply the resulting capital requirement by a factor of 12.5.[177]

In adopting the final Bank-Based Approach rules, the Commission also noted that in choosing an alternative calculation, the nonbank SD must adopt the entirety of the alternative. As such, if the nonbank SD is calculating its risk-weighted assets using the regulations in subpart E of 12 CFR 217, the nonbank SD must include charges reflecting all categories of risk-weighted assets applicable under these regulations, which include among other things, charges for operational risk, CVA of OTC derivatives contracts, and unsettled transactions involving securities, foreign exchange instruments, and commodities that have a risk of delayed settlement or delivery.[178] The capital charge for operational risk and CVA of OTC derivatives contracts calculated in accordance with subpart E of 12 CFR 217 must also be multiplied by a factor of 12.5.[179]

Under the Basel 2.5 capital framework, nonbank SDs have flexibility in developing their internal models, but must follow certain minimum standards. Internal market risk and credit risk models must follow a Value-at-Risk (''VaR'') structure to compute, on a daily basis, a 99th percentile, one-tailed confidence interval for the potential losses resulting from an instantaneous price shock equivalent to a 10-day movement in prices (unless a different time-frame is specifically indicated). The simulation of this price shock must be based on a historical observation period of minimum length of one year, but there is flexibility on the method used to render simulations, such as variance-covariance matrices, historical simulations, or Monte Carlo.

The Commission and the Basel standards for internal models also have requirements on the selection of appropriate risk factors as well as on data quality and update frequency.[180] One specific concern is that internal models must capture the non-linear price characteristics of options positions, including but not limited to, relevant volatilities at different maturities.[181]

In addition, BCBS standards for market risk models include a series of additive components for risks for which the broad VaR is ill-suited or that may need targeted calculation. These include the calculation of a Stressed VaR measure (with the same specifications as the VaR, but calibrated to historical data from a continuous 12-month period of significant financial stress relevant to the firm's portfolio); a Specific Risk measure (which includes the effect of a specific instrument); an Incremental Risk measure (which addresses changes in the credit rating of a specific obligor which may appear as a reference in an asset); and a Comprehensive Risk measure (which addresses risk of correlation trading positions).

2. UK PRA Capital Rules: PRA-Designated UK Nonbank Swap Dealer Minimum Capital Requirements

The UK PRA Capital Rules impose bank-like capital requirements on a PRA-designated UK nonbank SD that, consistent with the BCBS international bank capital framework, require the PRA-designated UK nonbank SD to hold a sufficient amount of qualifying equity capital and subordinated debt based on the PRA-designated UK nonbank SD's activities to absorb decreases in the value of firm assets and increases in the value of the firm's liabilities, and to cover losses from its business activities, including possible counterparty defaults and margin collateral shortfalls associated with the firm's swap dealing activities, without the firm becoming insolvent. Specifically, the UK PRA Capital Rules require each PRA-designated UK nonbank SD to maintain sufficient levels of capital to satisfy the following capital ratios, expressed as a percentage of the PRA-designated UK nonbank SD's total risk exposure amount (*i.e.,* the sum of the PRA-designated UK nonbank SD's risk-weighted assets and exposures): (i) a common equity tier 1 capital ratio of 4.5 percent; [182] (ii) a tier 1 capital ratio of 6 percent; [183] and (iii) a total capital ratio of 8 percent.[184] The UK PRA Capital Rules further require a PRA-designated UK nonbank SD to maintain a capital conservation buffer composed of common equity capital tier 1 capital in amount equal to 2.5 percent of the firm's total risk exposure.[185] The common equity tier 1 capital used to

[171] *See* 17 CFR 23.102(c).

[172] *See* paragraph (4) of the definition of *BHC equivalent risk-weighted assets* in 17 CFR 23.100.

[173] Compare 17 CFR 23.100 (providing for a nonbank SD that is approved to use internal models to calculate market and credit risk to calculate its risk-weighted assets using subparts E and F of 12 CFR part 217), subpart F of 12 CFR, 17 CFR 23.101(a)(1)(ii) (providing for an SD that elects the Net Liquid Assets Approach to calculate its net capital in accordance with Rule 18a–1), and 17 CFR 23.102(a), with Basel Committee on Banking Supervision, Revisions to the Basel II Market Risk Framework (2011), *https://www.bis.org/publ/bcbs193.pdf* (describing the revised internal model approach under Basel 2.5).

[174] The SEC internal model requirements for SBSDs are listed in 17 CFR 240.18a–1(d).

[175] 12 CFR 217 subpart E.

[176] *See* 85 FR 57462 at 57496.

[177] 12 CFR 217.131(e)(1)(iii), 217.131(e)(2)(iv), and 217.132(d)(9)(iii).

[178] Settlement risk for OTC derivatives contracts is addressed as part of the counterparty-credit risk calculation methodology described in 12 CFR 217.132.

[179] 12 CFR 217.162(c) (operational risk) and 217.132(e)(4) (CVA of OTC derivative contracts).

[180] *See* 17 CFR appendix A to subpart E of part 23(i)(2)(iii), and Basel Committee on Banking Supervision, Revisions to the Basel II Market Risk Framework (2011), paragraph 718(Lxxvi)(e), available at: *https://www.bis.org/publ/bcbs193.pdf.*

[181] The Commission's requirement is set forth in paragraph (i)(2)(iv)(A) of appendix A to subpart E of 17 CFR part 23. *See also,* Basel Committee on Banking Supervision, Revisions to the Basel II Market Risk Framework (2011), paragraph 718(Lxxvi)(h), available at: *https://www.bis.org/publ/bcbs193.pdf.*

[182] UK CRR, Article 92(1)(a).

[183] *Id.,* Article 92(1)(b). Tier 1 capital is the sum of the PRA-designated UK nonbank SD's common equity tier 1 capital and additional tier 1 capital.

[184] *Id.,* Article 92(1)(c). The total capital is the sum of the PRA-designated UK nonbank SD's tier 1 capital and tier 2 capital.

[185] PRA Rulebook, CRR Firms, Capital Buffers Part, Chapter 2 Capital Conservation Buffer, Rule 2.1.

meet the capital conservation buffer must be separate and in addition to the 4.5 percent of common equity tier 1 capital that the PRA-designated UK nonbank is required to maintain in meeting its core 8 percent capital requirement.[186] Thus, a PRA-designated UK nonbank SD is required to maintain regulatory capital equal to at least 10.5 percent of its total risk exposure amount, with common equity tier 1 capital comprising at least 7 percent of the regulatory capital (4.5 percent of the core capital plus the 2.5 percent capital conservation buffer).

A PRA-designated UK nonbank SD's total risk exposure amount is calculated as the sum of the firm's: (i) capital requirements for market risk; (ii) risk-weighted exposure amounts for credit risk; (iii) capital requirements for settlement risk; (iv) capital requirements for CVA risk of OTC derivatives instruments; and (v) capital requirements for operational risk.[187] Capital charges for market risk and risk-weighted exposures for credit risk are computed based on the PRA-designated UK nonbank SD's on-balance sheet and off-balance sheet exposures, including proprietary swap, security-based swap, equity, and futures positions, weighted according to risk.[188] Settlement risk capital charges reflect the price difference to which a PRA-designated UK nonbank SD is exposed if its transactions in debt instruments, equity, foreign currency, and commodities remain unsettled after the respective product's due delivery date.[189] CVA is an adjustment to the mid-market value of the portfolio of OTC derivative transactions with a counterparty and reflects the current market value of the credit risk of the counterparty to the PRA-designated UK nonbank SD.[190] Operational risk capital charges reflect the risk of loss resulting from inadequate or failed internal processes, people and systems or from external events, and includes legal risk.[191]

To compute its total risk exposure amount, a PRA-designated UK nonbank SDs is also required to multiply the capital requirements for market risk, settlement risk, CVA risk, and operational risk, calculated in accordance with the UK PRA Capital Rules, by a factor of 12.5, which effectively requires a PRA-designated UK nonbank SD to hold qualifying regulatory capital equal to or greater than the full amount of the relevant risk exposures.[192] The formulae for calculating risk-weighted exposure amounts for credit risk also include a 12.5 multiplication factor.[193]

Consistent with the Commission's Bank-Based Approach and the BCBS capital framework, the UK PRA Capital Rules require PRA-designated UK nonbank SDs to compute market risk exposures and credit risk exposures using a standardized approach or, if approved by the PRA, internal risk models.[194] In addition, UK PRA Capital Rules, consistent with the BCBS capital framework, require PRA-designated UK nonbank SDs to compute capital charges for CVA risk and operational risk using standardized approaches, unless approved to use internal models by the PRA.[195]

PRA-designated UK nonbank SDs calculate standardized market risk charges generally by multiplying the notional or carrying amount of net positions by risk-weighting factors, which are based on the underlying market risk of each asset or exposure and increase as the expected risk of the positions increase. Market risk requirements for debt instruments and equity instruments are calculated separately under the standardized approach, and are each calculated as the sum of specific risk and general risk of the positions.[196] Securitizations are treated as debt instruments for market risk requirements,[197] whereas derivative positions are generally treated as exposures on their underlying assets,[198] with options being delta-adjusted.[199]

The UK PRA Capital Rules also require PRA-designated UK nonbank SDs to include in their risk-weighted assets market risk exposures to certain foreign currency and gold positions. Specifically, a PRA-designated UK nonbank SD with net positions in foreign exchange and gold that exceed 2 percent of the firm's total capital must calculate capital requirements for foreign exchange risk.[200] The capital requirement for foreign exchange risk under the standardized approach is 8 percent of the PRA-designated UK nonbank SD's net positions in foreign exchange and gold.[201]

The UK PRA Capital Rules further require PRA-designated UK nonbank SDs to include exposures to commodity positions in calculating the firm's risk-weighted assets. The standardized calculation of commodity risk exposures may follow one of three approaches depending on type of position or exposure. The first is the sum of a flat percentage rate for net positions, with netting allowed among tightly defined sets, plus another flat percentage rate for the gross position.[202] The other two standardized approaches are based on maturity-ladders, where unmatched portions of each maturity band (*i.e.,* portions that do not net out to zero) are charged at a step-up rate in comparison

[186] *Id.* A PRA-designated UK nonbank SD may also be required to maintain a countercyclical capital buffer composed of common equity tier 1 capital equal to the firm's total risk exposure multiplied by an institution-specific countercyclical buffer rate. The institution-specific countercyclical capital buffer rate is determined by calculating the weighted average of the countercyclical buffer rates that apply in the jurisdictions in which the PRA-designated UK nonbank SD has relevant credit exposures. *See* PRA Rulebook, CRR Firms, Capital Buffers Part, Chapter 3 Countercyclical Capital Buffer. The rate for each jurisdiction is determined by the UK Financial Policy Committee or a third country countercyclical buffer authority, as applicable. *See* PRA Rulebook, CRR Firms, Capital Buffers Part, Chapter 3 Countercyclical Capital Buffer, Rule 3.1., and Capital Requirements (Capital Buffers and Macro-prudential Measures) Regulations 2014, Articles 7–20. In practice, the countercyclical buffer rate in the UK, as of July 2023, is 2 percent of risk-weighted assets. The countercyclical capital buffer rate is published by the Bank of England, and is available at: *https://bankofengland.co.uk/financial-stability/the-countercyclical-capital-buffer.* Several EU Member States of relevance to the UK have also implemented countercyclical capital buffers with rates ranging from 0.5 percent to 2.5 percent of risk-weighted assets.

[187] UK CRR, Article 92(3).

[188] To compute capital requirements for market risk, PRA-designated UK nonbank SDs are required to calculate capital charges for all trading book positions and non-trading book positions that are subject to foreign exchange or commodity risk. *See* UK CRR, Article 325. The risk-weighted exposure amounts for credit risk include: (i) risk-weighted exposure amounts for credit risk and dilution risk in respect of all the business activities of the PRA-designated UK nonbank SD, excluding risk-weighted exposure amounts from the trading book business of the firm; and (ii) risk-weighted exposure amounts for counterparty risk arising from the trading book business for certain derivatives transactions, repurchase agreements, securities or commodities lending or borrowing transactions, margin lending or long settlement transactions. *See* UK CRR, Article 92(3)(a) and (f).

[189] UK CRR, Article 378. Settlement risk is calculated as 8 percent, 50 percent, 75 percent, or 100 percent of the price difference for transactions that are not settled within 5 to 15 business days, 16 to 30 business days, 31 to 45 business days, or 46 or more business days, respectively, from the due settlement date.

[190] *Id.,* Article 381.

[191] *Id.,* Article 4(1)(52).

[192] *Id.,* Article 92(4).

[193] *Id.,* Article 153 *et seq.*

[194] With the permission of the PRA, a PRA-designated UK nonbank SD may use internal models to calculate market risk (*see* UK CRR, Article 363) and credit risk (*see* UK CRR, Articles 143 and 283).

[195] *See* UK CRR, Articles 382–384 for CVA risk calculations; and Article 312(2) for operational risk.

[196] *Id.,* Article 326.

[197] *Id. See also* UK CRR, Articles 334–340 (provisions related to debt instruments) and 341–343 (provisions related to equities).

[198] *Id.,* Articles 328–330, 358.

[199] *Id.,* Article 329.

[200] *Id.,* Article 351.

[201] *Id.*

[202] *Id.,* Article 360.

to the base charges for matched portions.[203]

With respect to credit risk, the UK PRA Capital Rules require a PRA-designated UK nonbank SD to calculate its standardized credit risk exposure in a manner aligned with the Commission's Bank-Based Approach and the BCBS framework by taking the carrying value or notional value of each of the PRA-designated UK nonbank SD's on-balance sheet and off-balance sheet exposures, making certain additional credit risk adjustments, and then applying specific risk-weights based on the type of counterparty and the asset's credit quality.[204] For instance, credit exposures to the ECB, the UK government, and the Bank of England carry a zero percent risk-weight; exposures to other central governments and central banks may carry risk-weights between 0 and 150, depending on the credit rating available for the central government or central bank; and exposures to banks, PRA-designated investment firms, or other businesses may carry risk-weights between 20 percent and 150 percent depending on the credit ratings available for the entity or, for exposures to banks and investment firms, for the central government of the jurisdiction in which the entity is incorporated.[205] If no credit rating is available, the PRA-designated UK nonbank SD must generally apply a 100 percent risk-weight, meaning the total accounting value of the exposure is used.[206]

With respect to counterparty credit risk for derivatives transactions and certain other agreements that give rise to bilateral credit risk, the UK PRA Capital Rules require a PRA-designated UK nonbank SD that is not approved to use credit risk models to calculate its exposure using the standardized approach for counterparty credit risk (*i.e.,* SA–CCR),[207] which is one of the methods that a nonbank SD may use to calculate its credit risk exposure under a derivatives transaction pursuant to the Commission's Bank-Based Approach.[208] The exposure amount under the SA–CCR is computed, under both the UK PRA Capital Rules and the Commission's Bank-Based Approach, as the sum of the replacement cost of the contract and the potential future exposure of the contract, multiplied by a factor of 1.4.[209]

UK PRA Capital Rules also require a PRA-designated UK nonbank SD to calculate capital requirements for settlement risk.[210] Consistent with the BCBS framework, the capital charge for settlement risk for transactions settled on a delivery-versus-payment basis is computed by multiplying the price difference to which a PRA-designated UK nonbank SD is exposed as a result of an unsettled transaction by a percentage factor that varies from 8 percent to 100 percent based on the number of working days after the due settlement date during which the transaction remains unsettled.[211] The CFTC's Bank-Based Approach provides for a similar calculation methodology for risk-weighted asset amounts for unsettled transactions involving securities, foreign exchange instruments, and commodities.[212]

Consistent with the BCBS framework, a PRA-designated UK nonbank SD is also required to calculate capital charges for CVA risk for OTC derivative instruments [213] to reflect the current market value of the credit risk of the counterparty to the PRA-designated UK nonbank SD.[214] CVA can be calculated following similar methodologies as those described in subpart E of the Federal Reserve Board's part 217 regulations.[215]

A PRA-designated UK nonbank SD's total risk exposure amount also includes operational risk charges. Consistent with the BCBS framework, PRA-designated UK nonbank SDs may calculate standardized operational risk charges using either one of two approaches—the Basic Indicator Approach or the Standardized Approach.[216] Both the Basic Indicator Approach and the Standardized Approach use as a calculation basis the three-year average of the ''relevant indicator,'' which is the sum of certain items on the statement of income/loss (*i.e.,* the firm's net interest income and net non-interest income). Under the Basic Indicator Approach, PRA-designated UK nonbank SDs are required to multiply the relevant indicator by a factor of 15 percent. When using the Standardized Approach, firms need to allocate the relevant indicator into eight business lines specified by regulation (*e.g.,* trading and sales; retail brokerage; corporate finance) and multiply the corresponding portion by a percentage factor ranging from 12 to 18 percent depending on the business line. The capital requirements for operational risk are calculated as the sum of the individual business lines' charges.

As noted above, if approved by the PRA, a PRA-designated UK nonbank SD may use internal models to calculate its market risk charges, credit risk charges, including counterparty credit risk charges, CVA risk charges, and operational risk charges in lieu of using a standardized approach.[217] To obtain permission, a PRA-designated UK nonbank SD must demonstrate to the satisfaction of the PRA that it meets

[203] *Id.,* Articles 359 and 361.

[204] *Id.,* Articles 111 and 113(1).

[205] *Id.,* Articles 114–122.

[206] *Id.,* Articles 121(2) and 122(2).

[207] UK CRR, Articles 92(3)(f) and PRA Rulebook, CRR Firms, Counterparty Credit Risk (CRR) Part, Chapter 3 Counterparty Credit Risk (Part Three, Title Two, Chapter Six CRR). PRA-designated UK nonbank SDs with smaller-sized derivatives business may also use a ''simplified standardized approach to counterparty credit risk'' or an ''original exposure method'' as simpler methods for calculating exposure values. PRA Rulebook, CRR Firms, Counterparty Credit Risk (CRR) Part, Chapter 3 Counterparty Credit Risk (Part Three, Title Two, Chapter Six CRR), Articles 281–282. To use either of these alternative methods, an entity's on-and off-balance sheet derivatives business must be equal or less than 10 percent of the entity's total assets and GBP 260 million or 5 percent of the entity's total assets and GBP 88 million, respectively. PRA Rulebook, CRR Firms, Counterparty Credit Risk (CRR) Part, Chapter 3 Counterparty Credit Risk (Part Three, Title Two, Chapter Six CRR), Article 273a.

[208] 12 CFR 217.34.

[209] PRA Rulebook, CRR Firms, Counterparty Credit Risk (CRR) Part, Chapter 3 Counterparty Credit Risk (Part Three, Title Two, Chapter Six CRR), Article 274 and 12 CFR 217.132(c).

[210] UK CRR, Article 378 (indicating that if transactions in which debt instruments, equities, foreign currencies and commodities excluding repurchase transactions and securities or commodities lending and securities or commodities borrowing are unsettled after their due delivery dates, a PRA-designated UK nonbank SD must calculate the price difference to which it is exposed).

[211] *Id.* The price difference to which a PRA-designated UK nonbank SD is exposed is the difference between the agreed settlement price for an instrument (*i.e.,* a debt instrument, equity, foreign currency or commodity) and the instrument's current market value, where the difference could involve a loss for the firm. UK CRR, Article 378.

[212] 17 CFR 23.100 (definition of *BHC equivalent risk-weighted assets*), 12 CFR 217.38 and 12 CFR 217.136.

[213] UK CRR, Article 382 (1). CVA risk charges need not be calculated for credit derivatives recognized to reduce risk-weighted exposure amounts for credit risk. *Id.*

[214] *Id.,* Article 381. CVA is defined to exclude debit valuation adjustment.

[215] *See* UK CRR, Articles 383–384 and 12 CFR 217.132(e)(5) and (6). Under the CFTC's Bank-Based Approach, nonbank SDs calculating their credit risk-weighted assets using the regulations in subpart D of the Federal Reserve Board's part 217 regulations, do not calculate CVA of OTC derivatives instruments.

[216] UK CRR, Article 312 and PRA Rulebook, CRR Firms, Operational Risk (CRR) Part.

[217] UK CRR, Articles 143 (credit risk), 283 (counterparty credit risk), 312 (operational risk), 363 (market risk) and 383 (CVA risk). PRA-designated UK nonbank SDs are not permitted, however, to calculated counterparty credit risk charges using internal models when calculating large exposures. PRA Rulebook, CRR Firms, Large Exposures (CRR) Part, Chapter 4 Large Exposures (Part Four CRR), Article 390.

certain conditions for the use of models.[218]

With respect to market risk, the PRA may grant a PRA-designated UK nonbank SD permission to use internal models to calculate one or more of the following risk categories: (i) general risk of equity instruments, (ii) specific risk of equity instruments, (iii) general risk of debt instruments, (iv) specific risk of debt instruments, (v) foreign exchange risk, or (vi) commodities risk,[219] along with interest rate risk on derivatives.[220] To obtain approval to use a market risk model, a PRA-designated UK nonbank SD must meet conditions related to specified model elements and controls including risk and stressed risk calculations,[221] back-testing and multiplication factors,[222] risk measurement requirements,[223] governance and qualitative requirements,[224] internal validation,[225] and specific requirements by risk categories.[226] A PRA-designated UK nonbank SD approved to use models must also obtain approval from the PRA to implement a material change to the model or make a material extension to the use of the model.[227] The UK PRA Capital Rules' market risk model-based methodology is based on the Basel 2.5 standard [228] and incorporates relevant aspects of the BCBS framework in terms of requiring PRA-designated UK nonbank SDs with model approval to use a VaR model with a 99 percent, one-tailed confidence level with: (i) price changes equivalent to a 10-business day movement in rates and prices, (ii) effective historical observation periods of at least one year, and (iii) at least monthly data set updates.[229] The UK PRA Capital Rules also include a framework for governance that includes requirements related to the implementation of independent risk management,[230] senior management's involvement in the risk-control process,[231] establishment of procedures for monitoring and ensuring compliance with a documented set of internal policies and controls,[232] and the conducting of independent review of the models as part of the internal audit process.[233]

With regulatory permission, PRA-designated UK nonbank SDs may also use models to calculate credit risk exposures.[234] Credit risk models may include internal ratings based on the estimation of default probabilities and loss given default, consistent with the BCBS framework and subject to similar model risk management guidelines.[235] To obtain approval for the use of internal ratings-based models, a PRA-designated UK nonbank SD must meet requirements related to, among other things, the structure of its rating systems and its criteria for assigning exposures to grades and pools within a rating system, the parameters of risk quantification, the validation of internal estimates, and the internal governance and oversight of the rating systems and estimation processes.[236]

In addition, subject to regulatory approval, PRA-designated UK nonbank SDs may use internal models to calculate counterparty credit risk exposures for derivatives, securities financing, and long settlement transactions.[237] The prerequisites for approval for such models include requirements related to the establishment and maintenance of a counterparty credit risk management framework, stress testing, the integrity of the modelling process, the risk management system, and validation.[238] The UK PRA Capital Rules' internal counterparty credit risk model-based methodology is also based on the Basel 2.5 standard.[239] The UK PRA Capital Rules allow for the estimation of expected exposure as a measure of the average of the distribution of exposures at a particular future date,[240] with adjustments to the period of risk, as appropriate to the asset and counterparty.

PRA-designated UK nonbank SDs may also obtain regulatory permission to use ''advanced measurement approaches'' based on their own operational risk measurement systems, to calculate capital charges for operational risk. To obtain such permission, PRA-designated UK nonbank SDs must meet qualitative and quantitative standards, as well as general risk management standards set forth in the UK PRA Capital Rules.[241] Specifically, among other qualitative standards, PRA-designated UK nonbank SDs must meet requirements related to the governance and documentation of their operational risk management processes and measurement systems.[242] In addition, PRA-designated UK nonbank SDs must meet quantitative standards related to process, data, scenario analysis, business environment and internal control factors laid down in the UK PRA Capital Rules.[243]

As an additional element to the capital requirements, the UK PRA Capital Rules further impose a 3.25 percent leverage ratio floor on PRA-designated UK nonbank SDs that hold significant amounts of non-UK assets.[244] Specifically, a PRA-designated UK nonbank SD that has non-UK assets equal to or greater than GBP 10 billion is required to maintain an aggregate amount of common equity tier 1 capital and additional tier 1 capital equal to or in excess of 3.25 percent of the firm's on-balance sheet and off-balance sheet exposures, including exposures on uncleared swaps but excluding certain exposures to central banks, without regard to any risk-weighting.[245] For the purposes of complying with the leverage ratio requirement, at least 75 percent of the firm's tier 1 capital must consist of common equity tier 1 capital.[246] The leverage ratio is a non-risk based minimum capital requirement that is intended to prevent a PRA-designated

[218] UK CRR, Articles 143, 283, 312(2) and 363(1).

[219] *Id.,* Article 363(1).

[220] *Id.,* Article 331(1), using sensitivity models.

[221] *Id.,* Articles 364–365.

[222] *Id.,* Article 366.

[223] *Id.,* Article 367.

[224] *Id.,* Article 368.

[225] *Id.,* Article 369.

[226] *Id.,* Articles 364–377.

[227] *Id.,* Article 363(3).

[228] Compare UK CRR, Articles 362–377 with Revisions to the Basel II Market Risk Framework.

[229] UK CRR, Article 365(1).

[230] *Id.,* Articles 368 (1)(b).

[231] *Id.,* Articles 368 (1)(c).

[232] *Id.,* Articles 368 (1)(e).

[233] *Id.,* Articles 368 (1)(h).

[234] *Id.,* Article 143.

[235] *Id.*

[236] *Id.,* Articles 170–177 (rating systems), 178–184 (risk quantification), 185 (validation of internal estimates), and 189–191 (internal governance and oversight).

[237] *Id.,* Article 283. As noted above, however, PRA-designated UK nonbank SDs are not permitted to calculate counterparty credit risk charges using internal models when calculating large exposures. PRA Rulebook, CRR Firms, Large Exposures (CRR) Part, Chapter 4 Large Exposures (Part Four CRR), Article 390.

[238] *Id.,* Articles 283–294.

[239] Compare UK CRR, Article 362–377 with Revisions to the Basel II Market Risk Framework.

[240] UK CRR, Article 272(19), 283–285.

[241] UK CRR, Article 312(1), cross-referencing UK CRR, Articles 321 and 322; PRA Rulebook, CRR Firms, General Organizational Requirements Part, Rules 2.1 and 2.2; and PRA Rulebook, CRR Firms, Internal Liquidity Adequacy Assessment Part.

[242] UK CRR, Article 321.

[243] *Id.,* Article 322.

[244] PRA Rulebook, CRR Firms, Leverage Ratio—Capital Requirements and Buffers Part, Chapter 1 Application and Definitions and Chapter 3 Minimum Leverage Ratio.

[245] Total exposures are required to be computed in accordance with PRA Rulebook, CRR Firms, Leverage Ratio (CRR) Part, Chapter 3 Leverage Ratio (Part Seven CRR), Article 429 *et seq.* A PRA-designated UK nonbank SD may also be subject to a countercyclical leverage ratio buffer of common equity tier 1 capital equal to the firm's institution-specific countercyclical capital buffer rate multiplied by 35 percent, multiplied by the firm's total exposures. PRA Rulebook, CRR Firms, Leverage Ratio—Capital Requirements and Buffers Part, Chapter 4 Countercyclical Leverage Ratio Buffer.

[246] PRA Rulebook, CRR Firms, Leverage Ratio—Capital Requirements and Buffers Part, Chapter 3 Minimum Leverage Ratio, Rule 3.2.

UK nonbank SD from engaging in excessive leverage, and complements the risk-based minimum capital requirement that is based on the PRA-designated UK nonbank SD's risk-weighted assets.

Furthermore, the UK PRA Capital Rules also impose a separate liquidity coverage requirement on a PRA-designated UK nonbank SD to address liquidity risk. The liquidity coverage requirement provides that PRA-designated UK nonbank SDs must hold liquid assets in an amount sufficient to cover liquidity outflows (less liquidity inflows) under stressed conditions over a period of 30 days.[247] For purposes of the liquidity coverage requirement, the term ''stressed'' means a sudden or severe deterioration in the solvency or liquidity position of a firm due to changes in market conditions or idiosyncratic factors as a result of which there is a significant risk that the firm becomes unable to meet its commitments as they become due within the next 30 days.[248] In addition, Article 413 of UK CRR, which has been incorporated into the PRA Rulebook, establishes a general requirement that firms ensure that long-term obligations and off-balance sheet items are adequately met with a diverse set of funding instruments that are stable under both normal and stressed conditions.[249]

The UK PRA Capital Rules also require PRA-designated UK nonbank SDs to maintain at all times a minimum base capital requirement of GBP 750,000.[250]

3. Commission Analysis

The Commission has reviewed the UK Application and the relevant UK laws and regulations, and has preliminarily determined that the UK PRA Capital Rules are comparable in purpose and effect to the CFTC Capital Rules with regard to the establishment of the nonbank SD's minimum capital requirement and the calculation of the nonbank SD's amount of regulatory capital to meet that requirement.[251] Although there are differences between the UK PRA Capital Rules and the CFTC Capital Rules, as discussed below, the Commission preliminarily believes that the UK PRA Capital Rules and the CFTC Capital Rules are designed to ensure the safety and soundness of a nonbank SD and, subject to the proposed conditions discussed below, will achieve comparable outcomes by requiring the firm to maintain a minimum level of qualifying regulatory capital, including subordinated debt, to absorb losses from the firm's business activities, including swap dealing activities, and decreases in the value of the firm's assets and increases in the value of the firm's liabilities, without the nonbank SD becoming insolvent. The Commission's preliminary finding of comparability is based on a comparative analysis of the three minimum capital requirements thresholds of the CFTC Capital Rules' Bank-Based Approach (*i.e.,* the three prongs recited in Section III.C.1. above) and the respective elements of the UK PRA Capital Rules' requirements, as discussed below.

a. Fixed Amount Minimum Capital Requirement

CFTC Capital Rules and the UK PRA Capital Rules both require nonbank SDs to hold a minimum amount of regulatory capital that is not based on the risk-weighted assets of the firms. Prong (i) of the CFTC Capital Rules requires each nonbank SD electing the Bank-Based Approach to maintain a minimum of $20 million of common equity tier 1 capital. The CFTC's $20 million fixed-dollar minimum capital requirement is intended to ensure that each nonbank SD maintains a level of regulatory capital, without regard to the level of the firm's dealing and other activities, sufficient to meet its obligations to swap market participants given the firm's status as a CFTC-registered nonbank SD and to help ensure the safety and soundness of the nonbank SD.[252] The UK PRA Capital Rules also contain a requirement that a PRA-designated UK nonbank SD maintain a fixed amount of minimum initial capital of GBP 750,000.[253]

The Commission recognizes that the $20 million fixed-dollar minimum capital required under the CFTC Capital Rules is substantially higher than the GBP 750,000 minimum base capital required under the UK PRA Capital Rules and the Commission preliminarily believes that the $20 million represents a more appropriate level of minimum capital to help ensure the safety and soundness of the nonbank SD that is engaging in uncleared swap transactions. Accordingly, the Commission is proposing to condition the Capital Comparability Determination Order to require each PRA-designated UK nonbank SD to maintain, at all times, a minimum level of $20 million regulatory capital in the form of common equity tier 1 items as defined in Article 26 of UK CRR.[254] The proposed condition would require each PRA-designated UK nonbank SD to maintain an amount of common equity tier 1 capital denominated in British pound that is equivalent to the $20 million in U.S. dollars.[255] The Commission is also proposing that a PRA-designated UK nonbank SD may convert the pound-denominated common equity tier 1 capital amount to the U.S. dollar equivalent based on a commercially reasonable and observable exchange rate.

b. Minimum Capital Requirement Based on Risk-Weighted Assets

Prong (iii) of the CFTC Capital Rules requires each nonbank SD to maintain an aggregate of common equity tier 1 capital, additional tier 1 capital, and tier 2 capital in an amount equal to or

[247] PRA Rulebook, CRR Firms, Liquidity (CRR) Part, Chapter 4 Liquidity (Part Six CRR), Article 412(1).

[248] PRA Rulebook, CRR Firms, Liquidity (CRR) Part, Chapter 4 Liquidity (Part Six CRR), Article 411(10).

[249] PRA Rulebook, CRR Firms, Liquidity (CRR) Part, Chapter 4 Liquidity (Part Six CRR), Article 413(1).

[250] PRA Rulebook, CRR Firms, Definition of Capital Part, Chapter 12 Base Capital Resource Requirement, Rule 12.1.

[251] The Commission notes that pursuant to Article 7 of UK CRR, the PRA may exempt an entity subject to UK CRR from the applicable capital requirements, provided certain conditions are met. In such case, the relevant requirements would apply to the entity's parent entity, on a consolidated basis. The Commission's assessment does not cover the application of Article 7 of UK CRR and therefore an entity that benefits from an exemption under Article 7 of UK CRR would not qualify for substituted compliance under the Capital Comparability Determination Order.

[252] 85 FR 57492.

[253] PRA Rulebook, CRR Firms, Definition of Capital Part, Chapter 12 Base Capital Resource Requirement, Rule 12.1.

[254] The Commission notes that the proposed requirement that PRA-designated UK nonbank SDs maintain a minimum level of $20 million of common equity tier 1 capital is consistent with conditions set forth in the proposed Capital Comparability Determination Orders for Japan, Mexico, and the EU, respectively. *See, Notice of Proposed Order and Request for Comment on an Application for a Capital Comparability Determination from the Financial Services Agency of Japan,* 87 FR 48092 (Aug. 8, 2022) (''Proposed Japan Order''); *Notice of Proposed Order and Request for Comment on an Application for a Capital Comparability Determination Submitted on behalf of Nonbank Swap Dealers subject to Regulation by the Mexican Comision Nacional Bancaria y de Valores,* 87 FR 76374 (Dec. 13, 2022) (''Proposed Mexico Order''); and *Notice of Proposed Order and Request for Comment on an Application for a Capital Comparability Determination Submitted on Behalf of Nonbank Swap Dealers Domiciled in the French Republic and Federal Republic of Germany and Subject to Capital and Financial Reporting Requirements of the European Union* (June 27, 2023) (''Proposed EU Order'').

[255] Each of the six current PRA-designated UK nonbank SDs currently maintains common equity tier 1 capital in excess of $20 million based on financial filings made with the Commission. Therefore, the Commission does not anticipate that the proposed condition would have any material impact on the PRA-designated UK nonbank SDs currently registered with the Commission. Nonetheless, the Commission requests comment on the proposed condition.

greater than 8 percent of the nonbank SD's total risk-weighted assets, with common equity tier 1 capital comprising at least 6.5 percent of the 8 percent.[256] Risk-weighted assets are a nonbank SD's on-balance sheet and off-balance sheet market risk and credit risk exposures, including exposures associated with proprietary swap, security-based swap, equity, and futures positions, weighted according to risk. The requirements and capital ratios set forth in prong (iii) are based on the Federal Reserve Board's capital requirements for bank holding companies and are consistent with the BCBS international bank capital adequacy framework. The requirement for each nonbank SD to maintain regulatory capital in an amount that equals or exceeds 8 percent of the firm's total risk-weighted assets is intended to help ensure that the nonbank SD's level of capital is sufficient to absorb decreases in the value of the firm's assets and increases in the value of the firm's liabilities, and to cover unexpected losses resulting from the firm's business activities, including losses resulting from uncollateralized defaults from swap counterparties, without the nonbank SD becoming insolvent.

The UK PRA Capital Rules contain capital requirements for PRA-designated UK nonbank SDs that the Commission preliminarily believes are comparable to the requirements contained in prong (iii) of the CFTC Capital Rules. Specifically, the UK PRA Capital Rules require a PRA-designated UK nonbank SD to maintain: (i) common equity tier 1 capital equal to at least 4.5 percent of the PRA-designated UK nonbank SD's total risk exposure amount; (ii) total tier 1 capital (*i.e.,* common equity tier 1 capital plus additional tier 1 capital) equal to at least 6 percent of the PRA-designated UK nonbank SD's total risk exposure amount; and (iii) total capital (*i.e.,* an aggregate amount of common equity tier 1 capital, additional tier 1 capital, and tier 2 capital) equal to at least 8 percent of the PRA-designated UK nonbank SD's total risk exposure amount.[257] In addition, the UK PRA Capital Rules further require each PRA-designated UK nonbank SD to maintain an additional capital conservation buffer equal to 2.5 percent of the PRA-designated UK nonbank SD's total risk exposure amount, which must be met with common equity tier 1 capital.[258] Thus, a PRA-designated UK nonbank SD is effectively required to maintain total qualifying regulatory capital in an amount equal to or in excess of 10.5 percent of the market risk, credit risk, CVA risk, settlement risk and operational risk of the firm (*i.e.,* total capital requirement of 8 percent of risk-weighted assets and an additional 2.5 percent of risk-weighted assets as a capital conservation buffer), which is higher than the 8 percent required of nonbank SDs under prong (iii) of the CFTC Capital Rules.[259]

The Commission also preliminarily believes that the UK PRA Capital Rules and the CFTC Capital Rules are comparable with respect to the calculation of capital charges for market risk and credit risk (including as it relates to aspects of settlement risk and CVA risk), in determining the nonbank SD's risk-weighted assets. More specifically, with respect to the calculation of market risk charges and general credit risk charges, both regimes require a nonbank SD to use standardized approaches to compute market and credit risk, unless the firms are approved to use internal models. The standardized approaches follow the same structure that is now the common global standard: (i) allocating assets to categories according to risk and assigning each a risk-weight; (ii) allocating counterparties according to risk assessments and assigning each a risk factor; (iii) calculating gross exposures based on valuation of assets; (iv) calculating a net exposure allowing offsets following well-defined procedures and subject to clear limitations; (v) adjusting the net exposure by the market risk-weights; and (vi) finally, for credit risk exposures, multiplying the sum of net exposures to each counterparty by their corresponding risk factor.

Internal market risk and credit risk models under the UK PRA Capital Rules and the CFTC Capital Rules are based on the BCBS framework and contain comparable quantitative and qualitative requirements, covering the same risks, though with slightly different categorization, and including comparable model risk management requirements. As both rule sets address the same types of risk, with similar allowed methodologies and under similar controls, the Commission preliminarily believes that these requirements are comparable.

The Commission also preliminarily believes that the UK PRA Capital Rules and CFTC Capital Rules are comparable in that nonbank SDs are required to account for operational risk in computing their minimum capital requirements. In this connection, the UK PRA Capital Rules require a PRA-designated UK nonbank SD to calculate an operational risk exposure as a component of the firm's total risk exposure amount.[260] PRA-designated UK nonbank SDs may use either a standardized approach or, if the PRA-designated UK nonbank SD has obtained regulatory permission, an internal approach based on the firm's own measurement systems, to calculate their capital charges for operational risk. The CFTC Capital Rules address operational risk both as a stand-alone, separate minimum capital requirement that a nonbank SD is required to meet under prong (ii) of the Bank-Based Approach [261] and as a component of the calculation of risk-weighted assets for nonbank SDs that use subpart E of the Federal Reserve Board's Part 217 regulations to calculate their credit risk-weighted assets via internal models.[262]

c. Minimum Capital Requirement Based on the Uncleared Swap Margin Amount

As noted above, prong (ii) of the CFTC Capital Rules' Bank-Based Approach requires a nonbank SD to maintain regulatory capital in an amount equal to or greater than 8 percent of the firm's total uncleared swaps margin amount associated with its uncleared swap transactions to address potential operational, legal, and liquidity risks.

The UK PRA Capital Rules differ from the CFTC Capital Rules in that they do not impose a capital requirement on PRA-designated UK nonbank SDs based

[256] 17 CFR 23.101(a)(1)(B).

[257] UK CRR, Article 92(1).

[258] PRA Rulebook, CRR Firms, Capital Buffers Part, Chapter 2 Capital Conservation Buffer.

[259] UK CRR, Article 92(1) and PRA Rulebook, CRR Firms, Capital Buffers Part, Chapter 2 Capital Conservation Buffer.

[260] UK CRR, Article 92(3).

[261] Specifically, as further discussed below, prong (ii) of the CFTC Capital Rules' Bank-Based Approach requires a nonbank SD to maintain regulatory capital in an amount equal to or greater than 8 percent of the firm's total uncleared swaps margin amount associated with its uncleared swap transactions to address potential operational, legal, and liquidity risks. 17 CFR 101(a)(i)(C). The term ''uncleared swap margin'' is defined by Commission Regulation 23.100 as the amount of initial margin, computed in accordance with the Commission's margin rules for uncleared swaps, that a nonbank SD would be required to collect from each counterparty for each outstanding swap position of the nonbank SD. 17 CFR 23.100 and 23.154. A nonbank SD must include all swap positions in the calculation of the uncleared swap margin amount, including swaps that are exempt or excluded from the scope of the Commission's margin regulations for uncleared swaps pursuant to Commission Regulation 23.150, exempt foreign exchange swaps or foreign exchange forwards, or netting set of swaps or foreign exchange swaps, for each counterparty, as if that counterparty was an unaffiliated swap dealer. 17 CFR 23.100 and 23.150. Furthermore, in computing the uncleared swap margin amount, a nonbank SD may not exclude any de minis thresholds contained in Commission Regulation 23.151. 17 CFR 23.100 and 23.151.

[262] 17 CFR 23.101(a)(1)(i) and 17 CFR 23.100 (definition of *BHC equivalent risk-weighted assets*).

on a percentage of the margin for uncleared swap transactions. The Commission notes, however, that the UK PRA Capital Rules impose capital and liquidity requirements that may compensate for the lack of direct analogue to the 8 percent uncleared swap margin requirement. Specifically, as discussed above, under the UK PRA Capital Rules, the total risk exposure amount is computed as the sum of the PRA-designated UK nonbank SD's capital charges for market risk, credit risk, settlement risk, CVA risk of OTC derivatives instruments, and operational risk.[263] Notably, the UK PRA Capital Rules require that PRA-designated UK nonbank SDs, including firms that do not use internal models, calculate capital charges for operational risk as a separate component of the total risk exposure amount. The UK PRA Capital Rules also impose separate liquidity requirements designed to ensure that the PRA-designated UK nonbank SDs can meet both short- and long-term obligations, in addition to the general requirement to maintain processes and systems for the identification of liquidity risk.[264] In comparison, the Commission requires nonbank SDs to maintain a risk management program covering liquidity risk, among other risk categories, but does not have a distinct liquidity requirement.[265]

As such, the Commission preliminarily believes the inclusion of an operational risk charge in the PRA-designated UK nonbank SD's total risk exposure amount in all circumstances, and the existence of separate liquidity requirements, will achieve a comparable outcome to the Commission's requirement for nonbank SDs to hold regulatory capital in excess of 8 percent of its uncleared swap margin amount. In that regard, the Commission, in establishing the requirement that a nonbank SD must maintain a level of regulatory capital in excess of 8 percent of the uncleared swap margin amount associated with the firm's swap transactions, stated that the intent of the requirement was to establish a method of developing a minimum amount of required capital for a nonbank SD to meet its obligations as an SD to market participants, and to cover potential operational, legal, and liquidity risks.[266]

d. Preliminary Finding of Comparability

Based on a principles-based, holistic assessment, the Commission has preliminarily determined, subject to the proposed condition below, and further subject to its consideration of public comments to the proposed Capital Comparability Determination and Order, that the purpose and effect of the UK PRA Capital Rules and the CFTC Capital Rules are comparable. In this regard, the UK PRA Capital Rules and the CFTC Capital Rules are both designed to require a nonbank SD to maintain a sufficient amount of qualifying regulatory capital and subordinated debt to absorb losses resulting from the firm's business activities, and decreases in the value of firm assets, without the nonbank SD becoming insolvent.

The Commission invites comment on the UK Application, the relevant UK laws and regulations, and the Commission's analysis above regarding its preliminary determination that, subject to the $20 million minimum capital requirement, the UK PRA Capital Rules and the CFTC Capital Rules are comparable in purpose and effect and achieve comparable outcomes with respect to the minimum regulatory capital requirements and the calculation of regulatory capital for nonbank SDs. The Commission also specifically seeks public comment on the question of whether the requirements under the UK PRA Capital Rules that PRA-designated UK nonbank SDs calculate an operational risk exposure as part of the firm's total risk exposure amount and meet separate liquidity requirements are sufficiently comparable in purpose and effect to the Commission's requirement for a nonbank SD to hold regulatory capital equal to or greater than 8 percent of its uncleared swap margin amount.

D. Nonbank Swap Dealer Financial Reporting Requirements

1. CFTC Financial Recordkeeping and Reporting Rules for Nonbank Swap Dealers

The CFTC Financial Reporting Rules impose financial recordkeeping and reporting requirements on nonbank SDs. The CFTC Financial Reporting Rules require each nonbank SD to prepare and keep current ledgers or similar records summarizing each transaction affecting the nonbank SD's asset, liability, income, expense, and capital accounts.[267] The nonbank SD's ledgers and similar records must be prepared in accordance with generally accepted accounting principles as adopted in the United States (''U.S. GAAP''), except that if the nonbank SD is not otherwise required to prepare financial statements in accordance with U.S. GAAP, the nonbank SD may prepare and maintain its accounting records in accordance with International Financial Reporting Standards (''IFRS'') issued by the International Accounting Standards Board.[268]

The CFTC Financial Reporting Rules also require each nonbank SD to prepare and file with the Commission and with NFA periodic unaudited and annual audited financial statements.[269] A nonbank SD that elects the TNW Approach is required to file unaudited financial statements within 17 business days of the close of each quarter, and its annual audited financial statements within 90 days of its fiscal year-end.[270] A nonbank SD that elects the NLA Approach or the Bank-Based Approach is required to file unaudited financial statements within 17 business days of the end of each month, and to file its annual audited financial statements within 60 days of its fiscal year-end.[271]

The CFTC Financial Reporting Rules provide that a nonbank SD's unaudited financial statements must include: (i) a statement of financial condition; (ii) a statement of income/loss; (iii) a statement of changes in liabilities subordinated to claims of general creditors; (iv) a statement of changes in ownership equity; (v) a statement demonstrating compliance with and calculation of the applicable regulatory requirement; and (vi) such further material information necessary to make the required statements not misleading.[272] The annual audited

[263] UK CRR, Article 92(3).

[264] More specifically, the UK PRA Capital Rules impose separate liquidity buffers and ''stable funding'' requirements designed to ensure that PRA-designated UK nonbank SDs can cover both long-term obligations and short-term payment obligations under stressed conditions for 30 days. PRA Rulebook, CRR Firms, Liquidity (CRR) Part, Chapter 4 Liquidity (Part Six CRR), Article 412–413. In addition, PRA-designated UK nonbank SDs are required to maintain robust strategies, policies, processes, and systems for the identification of liquidity risk over an appropriate set of time horizons, including intra-day. PRA Rulebook, CRR Firms, Internal Liquidity Adequacy Assessment Part.

[265] Specifically, CFTC Regulation 23.600(b) requires each SD to establish, document, maintain, and enforce a system of risk management policies and procedures designed to monitor and manage the risks related to swaps, and any products used to hedge swaps, including futures, options, swaps, security-based swaps, debt or equity securities, foreign currency, physical commodities, and other derivatives. The elements of the SD's risk management program are required to include the identification of risks and risk tolerance limits with respect to applicable risks, including operational, liquidity, and legal risk, together with a description of the risk tolerance limits set by the SD and the underlying methodology in written policies and procedures. 17 CFR 23.600.

[266] *See* 85 FR 57462 at 57485.

[267] 17 CFR 23.105(b).

[268] *Id.*

[269] 17 CFR 23.105(d) and (e).

[270] 17 CFR 23.105(d)(1) and (e)(1).

[271] *Id.*

[272] 17 CFR 23.105(d)(2).

financial statements must include: (i) a statement of financial condition; (ii) a statement of income/loss; (iii) a statement of cash flows; (iv) a statement of changes in liabilities subordinated to claims of general creditors; (v) a statement of changes in ownership equity; (vi) a statement demonstrating compliance with and calculation of the applicable regulatory capital requirement; (vii) appropriate footnote disclosures; and (viii) a reconciliation of any material differences from the unaudited financial report prepared as of the nonbank SD's year-end date.[273]

A nonbank SD that has obtained approval from the Commission or NFA to use internal capital models also must submit certain model metrics, such as aggregate VaR and counterparty credit risk information, each month to the Commission and NFA.[274] A nonbank SD also is required to provide the Commission and NFA with a detailed list of financial positions reported at fair market value as part of its monthly unaudited financial statements.[275] Each nonbank SD is also required to provide information to the Commission and NFA regarding its counterparty credit concentration for the 15 largest exposures in derivatives, a summary of its derivatives exposures by internal credit ratings, and the geographical distribution of derivatives exposures for the 10 largest countries.[276]

CFTC Financial Reporting Rules also require a nonbank SD to attach to each unaudited and audited financial report an oath or affirmation that to the best knowledge and belief of the individual making the affirmation the information contained in the financial report is true and correct.[277] The individual making the oath or affirmation must be a duly authorized officer if the nonbank SD is a corporation, or one of the persons specified in the regulation for business organizations that are not corporations.[278]

The CFTC Financial Reporting Rules further require a nonbank SD to make certain financial information publicly available by posting the information on its public website.[279] Specifically, a nonbank SD must post on its website a statement of financial condition and a statement detailing the amount of the nonbank SD's regulatory capital and the minimum regulatory capital requirement based on its audited financial statements and based on its unaudited financial statements that are as of a date that is six months after the nonbank SD's audited financial statements.[280] Such public disclosure is required to be made within 10 business days of the filing of the audited financial statements with the Commission, and within 30 calendar days of the filing of the unaudited financial statements required with the Commission.[281] A nonbank SD also must obtain written approval from NFA to change the date of its fiscal year-end for financial reporting.[282]

The CFTC Financial Reporting Rules also require a nonbank SD to provide the Commission and NFA with information regarding the custodianship of margin for uncleared swap transactions (''Margin Report'').[283] The Margin Report must contain: (i) the name and address of each custodian holding initial margin or variation margin that is required for uncleared swaps subject to the CFTC margin rules (''uncleared margin rules''), on behalf of the nonbank SD or its swap counterparties; (ii) the amount of initial and variation margin required by the uncleared margin rules held by each custodian on behalf of the nonbank SD and on behalf its swap counterparties; and (iii) the aggregate amount of initial margin that the nonbank SD is required to collect from, or post with, swap counterparties for uncleared swap transactions subject to the uncleared margin rules.[284] The Commission requires this information in order to monitor the use of custodians by nonbank SDs and their swap counterparties. Such information assists the Commission in monitoring the safety and soundness of a nonbank SD by verifying whether the firm is current with its swap counterparties with respect to the posting and collecting of margin required by the uncleared margin rules. By requiring the nonbank SD to report the required amount of margin to be posted and collected, and the amount of margin that is actually posted and collected, the Commission could identify potential issues with the margin practices and compliance by nonbank SDs that may hinder the ability of the firm to meet its obligations to market participants. The Margin Report also allows the Commission to identify custodians used by nonbank SDs and their counterparties, which may permit the Commission to assess potential market issues, including a concentration of custodial services by a limited number of banks.

2. PRA-Designated UK Nonbank Swap Dealer Financial Reporting Requirements

The UK PRA Financial Reporting Rules impose financial reporting requirements on a PRA-designated UK nonbank SD that are designed to provide the PRA with a comprehensive view of the financial information and capital position of the firm.

Specifically, Article 430 of the Reporting (CRR) Part of the PRA Rulebook requires a PRA-designated UK nonbank SD to report information concerning its capital and financial condition, including information on the firm's capital requirements, leverage ratio, large exposures, and liquidity requirements.[285] PRA-designated UK nonbank SDs must follow the templates and instructions provided in the PRA Rulebook for purposes of the prudential requirements reporting referred to COREP.[286] Under the COREP requirements, PRA-designated UK nonbank SDs are required to provide, on a quarterly basis,[287] calculations in relation to the PRA-designated UK nonbank SD's capital and capital requirements,[288] capital ratios and capital levels,[289] and market risk,[290] among other items.

In addition to the prudential requirements reporting, Article 430(3) of the Reporting (CRR) Part of the PRA Rulebook imposes financial information reporting on PRA-designated UK nonbank SDs that are subject to Section 403(1) of the Companies Act 2006 (*i.e.,* entities that are parent companies [291] and report on a consolidated basis using UK-adopted IFRS and that issue securities admitted to trading on a UK-

[273] 17 CFR 23.105(e)(4).

[274] 17 CFR 23.105(k) and (l) and appendix B to subpart E of part 23.

[275] 17 CFR 23.105(l) and appendix B to subpart E of part 23.

[276] 17 CFR 23.105(l) in Schedules 2, 3, and 4, respectively.

[277] 17 CFR 23.105(f).

[278] *Id.*

[279] 17 CFR 23.105(i).

[280] *Id.*

[281] *Id.*

[282] 17 CFR 23.105(g).

[283] 17 CFR 23.105(m).

[284] *Id.*

[285] PRA Rulebook, CRR Firms, Reporting (CRR) Part, Chapter 4 Reporting (Part Seven A CRR), Rule 1.

[286] PRA Rulebook, CRR Firms, Reporting (CRR) Part, Chapter 6 Templates and Instructions.

[287] PRA Rulebook, CRR Firms, Reporting (CRR) Part, 5 Reporting Requirements, Chapter 3 Format and Frequency of Reporting on Own Funds, Own Funds Requirements.

[288] PRA Rulebook, CRR Firms, Reporting (CRR) Part, Chapter 6 Templates and Instructions, Annex I, Templates C 01.00 and C 02.00.

[289] PRA Rulebook, CRR Firms, Reporting (CRR) Part, Chapter 6 Templates and Instructions, Annex I, Template C 03.00.

[290] PRA Rulebook, CRR Firms, Reporting (CRR) Part, Chapter 6 Templates and Instructions, Annex I, Template C 02.00.

[291] A parent company (*i.e.,* ''parent undertaking'') is defined in Companies Act 2006, Section 1162.

regulated market).[292] The relevant reporting templates and instructions, referred to as FINREP, are included in Chapter 6 of the Reporting (CRR) Part of the PRA Rulebook. Under the FINREP requirements, PRA-designated UK nonbank SDs subject to the requirements of Article 430(3) of the Reporting (CRR) Part of the PRA Rulebook are required to provide the following documents to the PRA, among other items: (i) on a quarterly basis, a balance sheet statement (or statement of financial position) that reflects the PRA-designated UK nonbank SD's financial condition; [293] (ii) on a quarterly basis, a statement of profit or loss; [294] (iii) on a quarterly basis, a breakdown of financial liabilities by product and by counterparty sector; [295] (iv) on a quarterly basis, a listing of subordinated financial liabilities; [296] and (v) on an annual basis, a statement of changes in equity.[297]

Under the FINREP requirements, a PRA-designated UK nonbank SD subject to the requirements of Article 430(3) of the Reporting (CRR) Part of the PRA Rulebook is also required to provide the PRA with additional financial information, including a breakdown of its loans and advances by product and type of counterparty,[298] as well as detailed information regarding its derivatives trading activities,[299] collateral and guarantees.[300]

For PRA-designated UK nonbank SD that are not subject to financial information reporting under Article 430(3) of the Reporting (CRR) Part of the PRA Rulebook, the Regulatory Reporting Part of the PRA Rulebook dictates the applicable reporting requirements.[301] Specifically, as firms that fall into Regulated Activity Group 3 (''RAG 3''), PRA-designated UK nonbank SDs are required to provide the following documents to the PRA, among other items: (i) on a quarterly basis, a balance sheet statement (or statement of financial position) that reflects the PRA-designated UK nonbank SD's financial condition; [302] (ii) on a quarterly basis, a statement of profit or loss; [303] and (iii) on an annual basis, an annual report and accounts.[304] The Applicants represented that the six UK PRA-designated nonbank SDs currently registered with the Commission are designated as RAG 3 firms and are required to provide the aforementioned documents.[305]

Furthermore, all PRA-designated UK nonbank SDs are required to prepare annual audited accounts and a strategic report (together, ''annual audited financial report'') pursuant to Parts 15 and 16 of the Companies Act 2006.[306] The audit of the accounts and report is required to be performed by one or more independent statutory auditors, which have the required skill, resources, and experience to perform their duties based on the complexity of the firm's business and the regulatory requirements to which the firm is subject.[307] PRA-designated UK nonbank SDs must submit the annual audited financial report to the PRA within 80 business days from the firm's accounting reference date.[308] In addition, under generally applicable company law requirements, PRA-designated UK nonbank SDs are required to submit the annual audited financial report to the UK Registrar of Companies.[309] The registrar makes the report available to the public on its website, free of charge.[310]

The annual audited accounts must comprise, at a minimum, a balance sheet, a profit and loss statement, and notes about the accounts.[311] The auditor's audit report must include: (i) a description of the annual accounts subject to the audit and the financial reporting framework that was applied in their preparation; (ii) a description of the scope of the audit, which must specify the auditing standards used to conduct the audit; (iii) an audit opinion stating whether the annual accounts give a true and fair view of the state of affairs and/or the profit and loss of the firm, as applicable, and whether the annual accounts have been prepared in accordance with the relevant financial reporting framework; and (iv) a

[292] PRA Rulebook, CRR Firms, Reporting (CRR) Part, Chapter 4 Reporting (Part Seven A CRR), Article 430, Rule 3.

[293] PRA Rulebook, CRR Firms, Reporting (CRR) Part, Chapter 6 Templates and Instructions, Templates 1.1., 1.2., and 1.3 at Annex III (for reporting according to IFRS) and Templates 1.1., 1.2., and 1.3 at Annex IV (for reporting according to national accounting frameworks).

[294] PRA Rulebook, CRR Firms, Reporting (CRR) Part, Chapter 6 Templates and Instructions, Template 2 at Annex III (for reporting according to IFRS) and Template 2 at Annex IV (for reporting according to national accounting frameworks).

[295] PRA Rulebook, CRR Firms, Reporting (CRR) Part, Chapter 6 Templates and Instructions, Template 8.1 at Annex III (for reporting according to IFRS) and Template 8.1 at Annex IV (for reporting according to national accounting frameworks).

[296] PRA Rulebook, CRR Firms, Reporting (CRR) Part, Chapter 6 Templates and Instructions, Template 8.2 at Annex III (for reporting according to IFRS) and Template 8.2. at Template 8.2 at Annex IV (for reporting according to national accounting frameworks).

[297] PRA Rulebook, CRR Firms, Reporting (CRR) Part, Chapter 6 Templates and Instructions, Template 46 at Annex III (for reporting according to IFRS) and Template 46 at Annex IV (for reporting according to national accounting frameworks).

[298] PRA Rulebook, CRR Firms, Reporting (CRR) Part, Chapter 6 Templates and Instructions, Templates 5.1 and 6.1 at Annex III (for reporting according to IFRS) and Templates 5.1 and 6.1 at Annex IV (for reporting according to national accounting frameworks).

[299] PRA Rulebook, CRR Firms, Reporting (CRR) Part, Chapter 6 Templates and Instructions, Template 10 at Annex III (for reporting according to IFRS) and Template 10 at Annex IV (for reporting according to national accounting frameworks).

[300] PRA Rulebook, CRR Firms, Reporting (CRR) Part, Chapter 6 Templates and Instructions, Template 13 at Annex III (for reporting according to IFRS) and Template 13 at Annex IV (for reporting according to national accounting frameworks).

[301] As indicated by the Applicants, the Regulatory Reporting Part of the PRA Rulebook applies to all PRA-designated UK nonbank SDs. *See* Responses to Staff Questions dated October 5, 2023.

[302] PRA Rulebook, CRR Firms, Regulatory Reporting Part, Chapter 9 Regulated Activity Group 3, Rule 9.2 (referencing Templates 1.1., 1.2., and 1.3 at Annex III and Templates 1.1., 1.2., and 1.3 at Annex IV of Chapter 6 of the Reporting (CRR) Part) and Rule 9.3.

[303] PRA Rulebook, CRR Firms, Regulatory Reporting Part, Chapter 9 Regulated Activity Group 3, Rule 9.2 (referencing Template 2 at Annex III and Template 2 at Annex IV of Chapter 6 of the Reporting (CRR) Part) and Rule 9.3.

[304] PRA Rulebook, CRR Firms, Regulatory Reporting Part, Chapter 9 Regulated Activity Group 3, Rule 9.2 and Rule 9.3.

[305] *See* Response to Staff Questions of October 5, 2023. For the avoidance of doubt, as represented by the Applicants, the six PRA-designated UK nonbank SDs currently registered with the Commission are subject to the RAG 3 requirements in the Regulatory Reporting Part of the PRA Rulebook but are not subject the FINREP requirements set forth in Article 430(3) of the Reporting (CRR) Part of the PRA Rulebook. As such, the six PRA-designated UK nonbank SDs currently registered with the Commission are required to submit to the PRA only Templates 1 through 3 of FINREP.

[306] Companies Act 2006, Sections 393 to 414D and 475. Section 475 provides for an exemption from the audit requirement for certain entities (*i.e.,* ''small companies'', qualifying ''subsidiary companies'' and ''dormant companies.'') None of the six PRA-designated UK nonbank SD, however, falls into the exempt categories. *See* Responses to Staff Questions dated October 5, 2023.

[307] Companies Act 2006, Section 485 et *seq.; see also* PRA Rulebook, CRR Firms, Auditors Part, Rule 3 Auditors' Qualifications, and Rule 4 Auditors' Independence.

[308] PRA Rulebook, CRR Firms, Regulatory Reporting Part, Chapter 9 Regulatory Activity Group 3, Rules 9.1. and 9.4. The ''accounting reference date'' is determined in accordance with Section 391 of the Companies Act 2006 and depending on the firm's date of incorporation.

[309] *See* Companies Act 2006, Section 441. The deadline for filing the annual audited financial report with the UK Registrar of Companies is nine months from the firm's accounting reference date for private companies and six months from the firm's accounting reference date for public companies. *Id.,* Articles 442 (setting forth the filing deadlines by category of firm) and 391 (defining the terms ''accounting reference period'' and accounting reference date'').

[310] *See* Companies Act 2006, Sections 1080 and 1085. Information filed with the UK Registrar of Companies is available at: *https://www.gov.uk/government/organisations/companies-house.*

[311] Companies Act 2006, Section 396.

reference to any matters emphasized by the auditor that did not qualify the audit opinion.[312]

The strategic report is required to include a review of the development and performance of the PRA-designated UK nonbank SD's during the financial year and a description of the principal risks and uncertainties that the firm faces.[313] The auditors are required to express an opinion on whether the strategic report is consistent with the accounts for the same financial year, and whether the strategic report has been prepared in accordance with applicable legal requirements.[314] The opinion also must state whether the auditor has identified material misstatements in the strategic report and, if so, describe the misstatement.[315]

In addition, the SEC's UK Order granting substituted compliance for financial reporting to UK nonbank SBSDs, as supplemented by the SEC Order on Manner and Format of Filing Unaudited Financial and Operational Information, require a UK nonbank SBSD to file an unaudited SEC Form X–17A–5 Part II (''FOCUS Report'') with the SEC on a monthly basis.[316] The FOCUS Report is required to include, among other statements and schedules: (i) a statement of financial condition; (ii) a statement of the UK nonbank SBSD's capital computation in accordance with home country Basel-Based requirements; (iii) a statement of income/loss; and (iv) a statement of capital withdrawals.[317] A UK nonbank SBDS is required to file its FOCUS Report with the SEC within 35 calendar days of the month end.[318]

3. Commission Analysis

The Commission has reviewed the UK Application and the relevant UK laws and regulations, and has preliminarily determined that, subject to the proposed conditions described below, the financial reporting requirements of the UK PRA Financial Reporting Rules are comparable to CFTC Financial Reporting Rules in purpose and effect as they are intended to provide the PRA and the Commission, respectively, with financial information to monitor and assess the financial condition of nonbank SDs and their ability to absorb decreases in firm assets and increases in firm liabilities, and to cover losses from business activities, including swap dealing activities, without the firm becoming insolvent.

The UK PRA Financial Reporting Rules require PRA-designated UK nonbank SDs to prepare and submit to the PRA on a quarterly basis unaudited financial information that includes a statement of financial condition and a statement of profit or loss. Under the FINREP reporting requirements, a PRA-designated UK nonbank SD subject to the requirements set forth in Article 430(3) of the Reporting (CRR) Part of the PRA Rulebook is also required to provide the PRA with additional financial information, including: (i) a schedule of the breakdown of financial liabilities by product and by counterparty sector; (ii) a breakdown of its loans and advances by product and type of counterparty; and (iii) detailed information regarding its derivatives trading activities, collateral, and guarantees. PRA-designated UK nonbank SDs subject to the Regulatory Reporting Part of the PRA Rulebook are not required to submit such additional financial information. To the extent the Commission believes some of this additional information is necessary to the exercise of its and NFA's oversight function, the Commission is proposing, as noted below, to require the submission of such information as a condition to the Capital Comparability Determination Order.

In addition, under the COREP reporting requirement, all PRA-designated UK nonbank SDs are required to provide the PRA on a quarterly basis with calculations in relation to the PRA-designated UK nonbank SD's capital requirements and capital ratios, among other items. The UK PRA Financial Reporting Rules further require all PRA-designated UK nonbank SDs to prepare and publish an annual audited financial report. The annual audited financial report is required to include a statement of financial condition and a statement of profit or loss, and must also include relevant notes to the financial statements.[319]

The Commission preliminarily finds that the UK PRA Financial Reporting Rules impose reporting requirements that are comparable with respect to overall form and content to the CFTC Financial Reporting Rules, which require each nonbank SD to file, among other items, periodic unaudited financial reports with the Commission and NFA that contain at a minimum: (i) a statement of financial condition; (ii) a statement of profit or loss; and (iii) a statement demonstrating compliance with the capital requirements. Accordingly, the Commission has preliminarily determined that a PRA-designated UK nonbank SD may comply with the financial reporting requirements contained in Commission Regulation 23.105 by complying with the corresponding UK PRA Financial Reporting Rules, subject to the conditions set forth below.[320]

The Commission is proposing to condition the Capital Comparability Determination Order on a PRA-designated UK nonbank SD providing the Commission and NFA with copies of the relevant templates of the FINREP reports and COREP reports that correspond to the PRA-designated UK nonbank SD's statement of financial condition, statement of income/loss, and statement of regulatory capital, total risk exposure, and capital ratios. These templates consist of FINREP templates 1.1 (Balance Sheet Statement: assets), 1.2 (Balance Sheet Statement: liabilities), 1.3 (Balance Sheet Statement: equity), and 2 (Statement of profit or loss), and COREP templates 1 (Own Funds), 2 (Own Funds Requirements) and 3 (Capital Ratios).

The Commission also notes that PRA-designated UK nonbank SDs submit COREP templates in addition to the ones listed above to the PRA. These templates generally provide supporting detail to the core templates that the Commission is proposing to require from each PRA-designated UK nonbank SD. The Commission is not proposing to require a PRA-designated UK nonbank SD to file these additional COREP templates as a condition to the Capital Comparability Order, and alternatively would exercise its authority under Commission Regulation 23.105(h) to direct PRA-designated UK nonbank SDs to provide such additional information to the Commission and NFA on an ad hoc basis as necessary to oversee the financial condition of the firms.[321]

As noted in Section D.2. of this Determination, the UK PRA Financial Reporting Rules require PRA-designated UK nonbank SDs to submit the unaudited FINREP and COREP templates to PRA on a quarterly basis.

[312] *Id.,* Section 495.

[313] *Id.,* Section 414C.

[314] *Id.,* Section 496.

[315] *Id.*

[316] *See,* UK Order. *See also,* SEC Order on Manner and Format of Filing Unaudited Financial and Operational Information.

[317] *See,* SEC Order on Manner and Format of Filing Unaudited Financial and Operational Information.

[318] *Id.*

[319] Companies Act 2006, Section 396.

[320] A PRA-designated UK nonbank SD that qualifies and elects to seek substituted compliance with the UK PRA Capital Rules must also seek substituted compliance with the UK PRA Financial Reporting Rules.

[321] Commission Regulation 23.105(h) provides that the Commission or NFA may, by written notice, require any nonbank SD to file financial or operational information as may be specified by the Commission or NFA. 17 CFR 23.105(h).

The CFTC Financial Reporting Rules contain a more frequent reporting requirement by requiring nonbank SDs that elect the Bank-Based Approach to file unaudited financial information with the Commission and NFA, on a monthly basis.[322] The financial statement reporting requirements are an integral part of the Commission's and NFA's oversight programs to effectively and timely monitor nonbank SDs' compliance with capital and other financial requirements, and for Commission and NFA staff to assess the overall financial condition and business operations of nonbank SDs. The Commission has extensive experience with monitoring the financial condition of registrants through the receipt of financial statements, including FCMs and, more recently, nonbank SDs. Both FCMs and nonbank SDs that elect the Bank-Based Approach or NLA Approach file financial statements with the Commission and NFA on a monthly basis. The Commission preliminarily believes that receiving financial information from PRA-designated UK nonbank SDs on a quarterly basis is not comparable with the CFTC Financial Reporting Rules and would impede the Commission's and NFA's ability to effectively and timely monitor the financial condition of PRA-designated UK nonbank SDs for the purposes of assessing their safety and soundness, as well as their ability to meet obligations to creditors and counterparties without becoming insolvent. Therefore, the Commission is preliminarily proposing to include a condition in the Capital Comparability Determination Order to require PRA-designated UK nonbank SDs to file the applicable templates of the FINREP reports and COREP reports with the Commission and NFA on a monthly basis. The Commission also is proposing to condition the Capital Comparability Determination Order on the PRA-designated UK nonbank SD filing the above-listed templates of the FINREP reports and COREP reports with the Commission and NFA within 35 calendar days of the end of each month.[323]

The Commission is further proposing that in lieu of filing such FINREP and COREP reports, PRA-designated UK nonbank SDs that are registered with the SEC as UK nonbank SBSDs could satisfy this condition by filing with the CFTC and NFA, on a monthly basis, copies of the unaudited FOCUS Reports that the PRA-designated UK nonbank SDs are required to file with the SEC pursuant to the SEC UK Order, as supplemented by the SEC Order on Manner and Format of Filing Unaudited Financial and Operational Information. The FOCUS Report is required to include, among other statements and schedules: (i) a statement of financial condition; (ii) a statement of the UK nonbank SBSD's capital computation in accordance with home country Basel-Based requirements; (iii) a statement of income/loss; and (iv) a statement of capital withdrawals.[324]

The filing of a FOCUS Report would be at the election of the PRA-designated UK nonbank SD as an alternative to the filing of unaudited FINREP and COREP templates that such firms would otherwise be required to file with the Commission and NFA pursuant to the proposed Order. All six of the PRA-designated UK nonbank SDs are currently registered with the SEC as UK nonbank SBSDs and would be eligible to file copies of their monthly FOCUS Report with the Commission and NFA in lieu of the FINREP and COREP templates and Schedule 1. A PRA-designated UK nonbank SD electing to file copies of its monthly FOCUS Report would be required to submit the reports to the Commission and NFA within 35 calendar days of the end of each month.[325]

In addition, the Commission is proposing to condition the Capital Comparability Determination Order on a PRA-designated UK nonbank SD submitting to the Commission and NFA copies of the PRA-designated UK nonbank SD's annual audited financial report that is required to be prepared pursuant to the Companies Act 2006.[326] PRA-designated UK nonbank SDs would be required to file the annual audited financial report with the Commission and NFA on the earlier of the date the report is filed with the PRA or the date the report is required to be filed with the PRA.[327]

The Commission is also proposing to condition the Capital Comparability Determination Order on the PRA-designated UK nonbank SD providing the reports and statements with balances converted to U.S. dollars.[328] The Commission, however, recognizes that the requirement to convert accounts denominated in British pound to U.S. dollars on the annual audited financial report may impact the opinion provided by the independent auditor. The Commission is therefore proposing to accept the annual audited financial report denominated in British pound.

The Commission is proposing to impose these conditions as they are necessary to ensuring that the CFTC Financial Reporting Rules and UK PRA Financial Reporting Rules, supplemented by the proposed conditions, are comparable and provide the Commission and NFA with appropriate financial information to effectively monitor the financial condition of PRA-designated UK nonbank SDs. Frequent financial reporting is a central component of the Commission's and NFA's programs for monitoring and assessing the safety and soundness of nonbank SDs as required under section 4s(e) of the CEA. Although, as further discussed in Section F.2. below, the Commission preliminarily believes that the PRA has the necessary powers to supervise and enforce compliance by PRA-designated UK nonbank SDs with applicable capital and financial reporting requirements, the Commission is proposing the conditions to facilitate the timely access to information allowing the Commission and NFA to effectively monitor and assess the ongoing financial condition of all nonbank SDs, including PRA-designated UK nonbank SDs, to help ensure their safety and soundness and their ability to meet their financial obligations to customers, counterparties, and creditors.

The Commission preliminarily considers that its approach of requiring

[322] Commission Regulation 23.105(d) (17 CFR 23.105(d)).

[323] The proposed condition for PRA-designated UK nonbank SDs to file monthly unaudited financial information with the Commission and NFA is consistent with proposed conditions contained in the Commission's proposed Capital Comparability Determinations for Japanese nonbank SDs, Mexican nonbank SDs, and EU nonbank SDs. *See* Proposed Japan Order, Proposed Mexico Order, and Proposed EU Order.

[324] *See,* SEC Order on Manner and Format of Filing Unaudited Financial and Operational Information.

[325] Commission Regulation 23.105(d)(3) currently provides that a nonbank SD or nonbank MSP that is also registered with the SEC as a broker or dealer, an SBSD, or a major security-based swap participant may elect to file a FOCUS Report in lieu of the financial reports required by the Commission. In a separate rulemaking, the Commission has proposed to amend Regulation 23.105(d)(3) to mandate the filing of a FOCUS Report by such dually-registered entities, including dually-registered non-U.S. nonbank SDs, in lieu of the Commission's financial reports. *See* CFTC Press Release 8836–23 issued on December 15, 2023, available at *cftc.gov.* If the Commission adopts such a requirement, the Commission would also require PRA-designated UK nonbank SDs that are registered with the SEC as UK nonbank SBSDs to file FOCUS Reports with the Commission.

[326] Companies Act 2006, Parts 15 and 16.

[327] PRA-designated UK nonbank SDs are required to submit the annual audited financial report to the PRA within 80 business days of the firm's accounting reference date. *See* PRA Rulebook, Regulatory Reporting Part, Rule 9.1.

[328] The conversion of account balances from British pound to U.S. dollars is not required to be subject to the audit of the independent auditor. A PRA-designated UK nonbank SD must report the exchange rate that it used to convert balances from British pound to U.S. dollars to the Commission and NFA as part of the financial reporting.

PRA-designated UK nonbank SDs to provide the Commission and NFA with the selected FINREP and COREP templates and the annual audited financial report that the firms currently file with the PRA strikes an appropriate balance of ensuring that the Commission receives the financial reporting necessary for the effective monitoring of the financial condition of the nonbank SDs, while also recognizing the existing regulatory structure of the UK PRA Financial Reporting Rules. Under the proposed conditions, with limited exceptions, the PRA-designated UK nonbank SD would not be required to prepare different financial reports and statements for filing with the Commission, but would be required to prepare selected reports and statements in the content and format used for submissions to the PRA and convert the balances to U.S. dollars so that Commission staff may efficiently analyze the financial information. Although the Commission is proposing to require submission of certain reports (*i.e.,* selected FINREP and COREP templates) on a more frequent basis (monthly instead of quarterly as required by the UK PRA Financial Reporting Rules), the proposed conditions provide the PRA-designated UK nonbank SDs with 35 calendar days from the end of each month to convert balances to U.S. dollars. In addition, PRA-designated UK nonbank SDs that are registered as SBSDs with the SEC would have the option of filing a copy of the FOCUS Report they submit to the SEC in lieu of the FINREP and COREP templates. The Commission preliminarily believes that by requiring that PRA-designated UK nonbank SDs file unaudited financial reports on a monthly basis instead of quarterly, the Commission would help ensure that the CFTC Financial Reporting Rules and the UK PRA Financial Reporting Rules achieve a comparable outcome.

The Commission is also proposing to condition the Capital Comparability Determination Order on PRA-designated UK nonbank SDs filing with the Commission and NFA, on a monthly basis, the aggregate securities, commodities, and swap positions information set forth in Schedule 1 of appendix B to subpart E of part 23.[329] The Commission is proposing to require that Schedule 1 be filed with the Commission and NFA as part of the PRA-designated UK nonbank SD's monthly submission of selected FINREP and COREP templates or FOCUS Report, as applicable. Schedule 1 provides the Commission and NFA with detailed information regarding the financial positions that a nonbank SD holds as of the end of each month, including the firm's swap positions, which will allow the Commission and NFA to monitor the types of investments and other activities that the firm engages in and will enhance the Commission's and NFA's ability to monitor the safety and soundness of the firm.

The Commission is also proposing to condition the Capital Comparability Determination Order on a PRA-designated UK nonbank SD submitting with each set of selected FINREP and COREP templates, annual audited financial report, and the applicable Schedule 1, a statement by an authorized representative or representatives of the PRA-designated UK nonbank SD that to the best knowledge and belief of the person(s) the information contained in the respective reports and statements is true and correct, including the conversion of balances in the statements to U.S. dollars, as applicable. The statement by the authorized representative or representatives of the PRA-designated UK nonbank SD is in lieu of the oath or affirmation required of nonbank SDs under Commission Regulation 23.105(f), and is intended to ensure that reports and statements filed with the Commission and NFA are prepared and submitted by firm personnel with knowledge of the financial reporting of the firm who can attest to the accuracy of the reporting and translation.

The Commission is further proposing to condition the Capital Comparability Determination Order on a PRA-designated UK nonbank SD filing the Margin Report specified in Commission Regulation 23.105(m) with the Commission and NFA. The Margin Report contains: (i) the name and address of each custodian holding initial margin or variation margin on behalf of the nonbank SD or its swap counterparties; (ii) the amount of initial and variation margin held by each custodian on behalf of the nonbank SD and on behalf its swap counterparties; and (iii) the aggregate amount of initial margin that the nonbank SD is required to collect from, or post with, swap counterparties for uncleared swap transactions.[330]

The Commission preliminarily believes that receiving this margin information from PRA-designated UK nonbank SDs will assist in the Commission's assessment of the safety and soundness of the PRA-designated UK nonbank SDs. Specifically, the Margin Report would provide the Commission with information regarding a PRA-designated UK nonbank SD's swap book, the extent to which it has uncollateralized exposures to counterparties or has not met its financial obligations to counterparties. This information, along with the list of custodians holding both the firms' and counterparties' collateral for swap transactions, is expected to assist the Commission in assessing and monitoring potential financial impacts to the nonbank SD resulting from defaults on its swap transactions. The Commission is further proposing to require a PRA-designated UK nonbank SD to file the Margin Report with the Commission and NFA within 35 calendar days of the end of each month, which corresponds with the proposed timeframe for the PRA-designated UK nonbank SD to file the selected FINREP and COREP templates or FOCUS Report, as applicable, and proposing to require the Margin Report to be provided with balances reported in U.S. dollars.

The Commission notes that the proposed conditions in the UK PRA Capital Comparability Determination Order are consistent with the proposed conditions set forth in the proposed Capital Comparability Determination Orders for Japan, Mexico, and the EU,[331] and reflects the Commission's approach of preliminarily determining that non-U.S. nonbank SDs could meet their financial statement reporting obligations to the Commission by filing financial reports currently prepared for home country regulators, albeit in the case of certain financial reports under a more frequent submission schedule, and, in certain circumstances, with balances expressed in U.S. dollars. The Commission's proposed conditions also include certain financial information and notices that the Commission believes are necessary for effective monitoring of PRA-designated UK nonbank SDs that are not currently part of the PRA's supervision regimes.

The Commission is not proposing to require that a PRA-designated UK nonbank SD that has been approved by the PRA to use capital models files with the Commission or NFA the monthly model metric information contained in

[329] Schedule 1 of appendix B to subpart E of part 23 includes a nonbank SD's holding of U.S Treasury securities, U.S. government agency debt securities, foreign debt and equity securities, money market instruments, corporate obligations, spot commodities, cleared and uncleared swaps, cleared and non-cleared security-based swaps, and cleared and uncleared mixed swaps in addition to other position information.

[330] 17 CFR 23.105(m).

[331] *See* Proposed Japan Order, Proposed Mexico Order, and Proposed EU Order.

Commission Regulation 23.105(k) [332] or that a PRA-designated UK nonbank SD files with the Commission or NFA the monthly counterparty credit exposure information specified in Commission Regulation 23.105(l) and Schedules 2, 3, and 4 of appendix B to subpart E of part 23.[333]

The Commission, in making the preliminary determination to not require a PRA-designated UK nonbank SD to file the model metrics and counterparty exposures required by Commission Regulations 23.105(k) and (l), respectively, recognizes that NFA's current risk monitoring program requires each bank SD and each nonbank SD, including each PRA-designated UK nonbank SD, to file risk metrics addressing market risk and credit risk with NFA on a monthly basis. NFA's monthly risk metric information includes: (i) VaR for interest rates, credit, foreign exchange, equities, commodities, and total VaR; (ii) total stressed VaR; (iii) interest rate, credit spread, foreign exchange market, and commodity sensitivities; (iv) total swaps current exposure both before and after offsetting against collateral held by the firm; and (v) a list of the 15 largest swaps counterparty current exposures before collateral and net of collateral.[334]

Although there are differences in the information required under Commission Regulations 23.105(k) and (l), the NFA risk metrics provide a level of information that allows NFA to identify SDs that may pose heightened risk and to allocate appropriate NFA regulatory oversight resources. The Commission preliminarily believes that the proposed financial statement reporting set forth in the proposed Capital Comparability Determination Order, and the risk metric and counterparty exposure information currently reported by nonbank SDs (including PRA-designated UK nonbank SDs) under NFA rules, provide the appropriate balance of recognizing the comparability of the UK PRA Financial Reporting Rules to the CFTC Financial Reporting Rules while also ensuring that the Commission and NFA receive sufficient data to monitor and assess the overall financial condition of PRA-designated UK nonbank SDs. The Commission has access to the monthly risk metric filings collected by NFA. In addition, the Commission retains authority to request PRA-designated UK nonbank SDs to provide information regarding their model metrics and counterparty exposures on an ad hoc basis.

Furthermore, the Commission notes that although the UK PRA Financial Reporting Rules do not contain an analogue to the CFTC's requirements for nonbank SDs to file monthly model metric information and counterparty exposures information, the PRA has access to comparable information. More specifically, under the UK PRA Financial Reporting Rules, the PRA has broad powers to request any information necessary for the exercise of its functions.[335] As such, the PRA has access to information allowing it to assess the ongoing performance of risk models and to monitor the PRA-designated UK nonbank SD's credit exposures, which may be comprised of credit exposures to primarily other UK and EU counterparties. In addition, the COREP reports, which PRA-designated UK nonbank SDs are required to file with the PRA on a quarterly basis, include information regarding the PRA-designated UK nonbank SD's risk exposure amounts, including risk-weighted exposure amounts for credit risk.[336]

The Commission invites public comment on its analysis above, including comment on the UK Application and relevant UK PRA Financial Reporting Rules. The Commission also invites comment on the proposed conditions listed above and on the Commission's proposal to exclude PRA-designated UK nonbank SDs from certain reporting requirements outlined above. Specifically, the Commission requests comment on its preliminary determination to not require PRA-designated UK nonbank SDs to submit the information set forth in Commission Regulations 23.105(k) and (l). Are there specific elements of the data required under Commission Regulations 23.105(k) and (l) that the Commission should require of PRA-designated UK nonbank SDs for purposes of monitoring model performance?

The Commission requests comment on the proposed filing dates for the reports and information specified above. Specifically, do the proposed filing dates provide sufficient time for PRA-designated UK nonbank SDs to prepare the reports, and, where required, convert balances into U.S. dollars? If not, what period of time should the Commission consider imposing on one or more of the reports?

The Commission also requests specific comment regarding the setting of compliance dates for any new reporting obligations that the proposed Capital Comparability Determination Order would impose on PRA-designated UK nonbank SDs. In this connection, if the Commission were to require PRA-designated UK nonbank SDs to file the Margin Report discussed above and included in the proposed Order below, how much time would PRA-designated UK nonbank SDs need to develop new systems or processes to capture information that is required? Would PRA-designated UK nonbank SDs need a period of time to develop any systems or processes to meet any other reporting obligations in the proposed Capital Comparability Determination Order? If so, what would be an appropriate amount of time for a PRA-designated UK nonbank SD to develop and implement such systems or processes?

E. Notice Requirements

1. CFTC Nonbank SD Notice Reporting Requirements

The CFTC Financial Reporting Rules require nonbank SDs to provide the Commission and NFA with written notice of certain defined events.[337] The notice provisions are intended to provide the Commission and NFA with an opportunity to assess whether the information contained in the notices indicates the existence of actual or potential financial and/or operational issues at a nonbank SD, and, when necessary, allows the Commission and NFA to engage the nonbank SD in an effort to minimize potential adverse impacts on swap counterparties and the larger swaps market. The notice provisions are part of the Commission's overall program for helping to ensure the safety and soundness of nonbank SDs and the swaps markets in general.

[332] Commission Regulation 23.105(k) requires a nonbank SD that has obtained approval from the Commission or NFA to use internal capital models to submit to the Commission and NFA each month information regarding its risk exposures, including VaR and credit risk exposure information when applicable. The model metrics are intended to provide the Commission and NFA with information that would assist with the ongoing oversight and assessment of internal market risk and credit risk models that have been approved for use by a nonbank SD. 17 CFR 23.105(k).

[333] Commission Regulation 23.105(l) requires each nonbank SD to provide information to the Commission and NFA regarding its counterparty credit concentration for the 15 largest exposures in derivatives, a summary of its derivatives exposures by internal credit ratings, and the geographic distribution of derivatives exposures for the 10 largest countries in Schedules 2, 3, and 4, respectively. 17 CFR 23.105(l).

[334] *See* NFA Financial Requirements, Section 17—*Swap Dealer and Major Swap Participant Reporting Requirements,* and Notice to Members—*Monthly Risk Data Reporting for Swap Dealers* (May 30, 2017).

[335] *See* FSMA, Part XI (indicating that the PRA has broad information gathering powers).

[336] *See* PRA Rulebook, CRR Firms, Reporting (CRR) Part, Chapter 6 Templates and Instructions, Annex I.

[337] 17 CFR 23.105(c).

The CFTC Financial Reporting Rules require a nonbank SD to provide written notice within specified timeframes if the firm is: (i) undercapitalized; (ii) fails to maintain capital at a level that is in excess of 120 percent of its minimum capital requirement; or (iii) fails to maintain current books and records.[338] A nonbank SD is also required to provide written notice if the firm experiences a 30 percent or more decrease in excess regulatory capital from its most recent financial report filed with the Commission.[339] A nonbank SD also is required to provide notice if the firm fails to post or collect initial margin for uncleared swap and non-cleared security-based swap transactions or exchange variation margin for uncleared swap and non-cleared security-based swap transactions as required by the Commission's uncleared swaps margin rules or the SEC's non-cleared security-based swaps margin rules, respectively, if the aggregate is equal to or greater than: (i) 25 percent of the nonbank SD's required capital under Commission Regulation 23.101 calculated for a single counterparty or group of counterparties that are under common ownership or control; or (ii) 50 percent of the nonbank SD's required capital under Commission Regulation 23.101 calculated for all of the firm's counterparties.[340]

The CFTC Financial Reporting Rules further require a nonbank SD to provide notice two business days prior to a withdrawal of capital by an equity holder that would exceed 30 percent of the firm's excess regulatory capital.[341] Finally, a nonbank SD that is dually-registered with the SEC as an SBSD or major security based swap participant (''MSBSP'') must file a copy of any notice with the Commission and NFA that the SBSD or MSBSP is required to file with the SEC under SEC Rule 18a–8 (17 CFR 240.18a–8).[342] SEC Rule 18a–8 requires SBSDs and MSBSPs to provide written notice to the SEC for comparable reporting events as in the CFTC Capital Rule in Commission Regulation 23.105(c), including if a SBSD or MSBSP is undercapitalized or fails to maintain current books and records.

2. PRA-Designated UK Nonbank Swap Dealer Notice Requirements

The UK capital and resolution frameworks require PRA-designated UK nonbank SDs to provide certain notices to the PRA concerning the firm's compliance with relevant laws and regulations. Specifically, the UK PRA Financial Reporting Rules require a PRA-designated UK nonbank SD to provide notice to the PRA within five business days if the firm fails to meet its combined buffer requirement, which at a minimum consists of a capital conservation buffer of 2.5 percent of the PRA-designated UK nonbank SD's total risk exposure amount.[343] As noted earlier, to meet its capital buffer requirements, a PRA-designated UK nonbank SDs must hold common equity tier 1 capital in addition to the minimum common equity tier 1 ratio requirement of 4.5 percent of the firm's core capital requirement of 8 percent of the firm's total risk exposure amount. The notice to the PRA must be accompanied by a capital conservation plan that sets out how the PRA-designated UK nonbank SD will restore its capital levels.[344] The capital conservation plan is required to include: (i) the ''maximum distributable amount'' calculated in accordance with the PRA rules; (ii) estimates of income and expenditures and a forecast balance sheet; (iii) measures to increase the capital ratios of the PRA-designated UK nonbank SD; and (iv) a plan and timeframe for the increase in the capital of the PRA-designated UK nonbank SD with the objective of meeting fully the combined buffer requirement.[345]

The PRA assesses the capital conservation plan and will approve the plan only if it considers that the plan would be reasonably likely to conserve or raise sufficient capital to enable the PRA-designated UK nonbank SD to meet its combined capital buffer requirement within a timeframe that the PRA considers to be appropriate.[346] A PRA-designated UK nonbank SD is required to notify the PRA as early as possible where it has identified a material risk to its ability to meet the combined buffer according to the capital conservation plan and timeframe approved by the PRA.[347]

In addition, a PRA-designated UK nonbank SD must notify the PRA if the firm's management considers that the firm is failing or will in the near future fail to satisfy one or more of the ''threshold conditions,'' which are the minimum requirements that a PRA-designated UK nonbank SD must meet in order to be permitted to carry the regulated activities in which it engages.[348] In broad terms, the PRA's threshold conditions include, among other things, requirements that the firm has appropriate financial resources and capacity to measure, monitor and manage risks.[349]

3. Commission Analysis

The Commission has reviewed the UK Application and the relevant UK laws and regulations, and has preliminarily determined that the UK PRA Financial Reporting Rules related to notice provisions, subject to the conditions specified below, are comparable to the notice provisions of the CFTC Financial Reporting Rules. The Commission is therefore proposing to issue a Capital Comparability Determination Order providing that a PRA-designated UK nonbank SD may comply with the notice provisions required under UK laws and regulations in lieu of certain notice provisions required of nonbank SDs under Commission Regulation 23.105(c),[350] subject to the conditions set forth below.

The notice provisions contained in Commission Regulation 23.105(c) are intended to provide the Commission and NFA with information in a prompt manner regarding actual or potential financial or operational issues that may adversely impact the safety and soundness of a nonbank SD by impairing the firm's ability to meet its obligations to counterparties, creditors, and the general swaps market. Upon the receipt of a notice from a nonbank SD under Commission Regulation 23.105(c), the Commission and NFA initiate reviews of the facts and circumstances that resulted in the notice being filed including, as appropriate, communicating with personnel of the nonbank SD. The review of the facts and the interaction with the personnel of the nonbank SD provide the Commission and NFA with information to develop an assessment of whether it is necessary for the nonbank SD to take remedial

[338] 17 CFR 23.105(c)(1), (2), and (3).

[339] 17 CFR 23.105(c)(4).

[340] 17 CFR 23.105(c)(7).

[341] 17 CFR 23.105(c)(5).

[342] 17 CFR 23.105(c)(6).

[343] PRA Rulebook, CRR Firms, Capital Buffers Part, Chapter 4 Capital Conservation Measures, Rule 4.4. The combined capital buffer requirement is the total common equity tier 1 capital required to meet the sum of the capital conservation buffer and the institution-specific countercyclical capital buffer. PRA Rulebook, Capital Buffers Part, Chapter 1 Application and Definitions, Rule 1.2.

[344] PRA Rulebook, CRR Firms, Capital Buffers Part, Chapter 4 Capital Conservation Measures, Rules 4.4 and 4.5.

[345] PRA Rulebook, CRR Firms, Capital Buffers Part, Chapter 4 Capital Conservation Measures, Rule 4.5.

[346] Supervisory Statement SS6/14 Implementing Capital Buffers, Prudential Regulation Authority, January 2021 (''SS6/14''), available here: *https://www.bankofengland.co.uk/prudential-regulation/publication/2014/implementing-crdiv-capital-buffers-ss.*

[347] *See id.*

[348] PRA Rulebook, CRR Firms, Notifications Part, Chapter 8 Specific Notifications, Rule 8.3.

[349] FSMA, Part 4A and Schedule 6.

[350] 17 CFR 23.105(c).

action to address potential financial or operational issues, and whether the remedial actions instituted by the nonbank SD properly address the issues that are the root cause of the operational or financial issues. Such actions may include the infusion of additional capital into the firm, or the development and implementation of additional internal controls to address operational issues. The notice filings further allow the Commission and NFA to monitor the firm's performance after the implementation of remedial actions to assess the effectiveness of such actions.

The UK PRA Financial Reporting Rules require a PRA-designated UK nonbank SD to provide notice to the PRA if the firm fails to maintain a minimum capital ratio of common equity tier 1 capital to risk-weighted assets equal or greater than 7 percent (4.5 percent of the core capital requirement plus the 2.5 percent capital conservation buffer requirement, assuming no other capital buffer requirements apply). The PRA-designated UK nonbank SD is also required to file a capital conservation plan with its notice to the PRA. The capital conservation plan is required to contain information regarding actions that the PRA-designated UK nonbank SD will take to ensure proper capital adequacy.

The Commission has preliminarily determined that the requirement for a PRA-designated UK nonbank SD to provide notice of a breach of its capital buffer requirements to the PRA is not sufficiently comparable in purpose and effect to the CFTC notice provisions contained in Commission Regulation 23.105(c)(1) and (2),[351] which require a nonbank SD to provide notice to the Commission and to NFA if the firm fails to meet its minimum capital requirement or if the firm's regulatory capital falls below 120 percent of its minimum capital requirement (''Early Warning Level''). The requirement for a PRA-designated UK nonbank SD to provide notice of a breach of its capital buffer requirements does not achieve a comparable outcome to the CFTC's Early Warning Level requirement due to the difference in the thresholds triggering a notice requirement in the respective rule sets.

The requirement for a nonbank SD to file notice with the Commission and NFA if the firm becomes undercapitalized or if the firm experiences a decrease of excess regulatory capital below defined levels is a central component of the Commission's and NFA's oversight program for nonbank SDs.[352] Therefore, the Commission preliminarily believes that it is necessary for the Commission and NFA to receive copies of notices filed under the Capital Buffers Part of the PRA Rulebook by PRA-designated UK nonbank SDs alerting the PRA of a breach of the PRA-designated UK nonbank SD's combined capital buffer. The notice must be filed by the PRA-designated UK nonbank SD within 24 hours of the filing of the notice with the PRA, and the Commission expects that, upon the receipt of a notice, Commission staff and NFA staff will engage with staff of the PRA-designated UK nonbank SD to obtain an understanding of the facts that led to the filing of the notice and will discuss with the PRA-designated UK nonbank SD the firm's capital conservation plan. The proposed condition would not require the PRA-designated UK nonbank SD to file copies of its capital conservation plan with the Commission or NFA. To the extent Commission staff needs further information from the PRA-designated UK nonbank SD, the Commission expects to request such information as part of its assessment of the notice and its communications with the PRA-designated UK nonbank SD.

In addition, due to the lack of a sufficiently comparable analogue to the CFTC Financial Reporting Rules' Early Warning Level requirement, the Commission is proposing to condition the Capital Comparability Determination Order to require a PRA-designated UK nonbank SD to file a notice with the Commission and NFA if the firm's capital ratio does not equal or exceed 12.6 percent.[353] The proposed condition would further require the PRA-designated UK nonbank SD to file the notice with the Commission and NFA within 24 hours of when the firm knows or should have known that its regulatory capital was below 120 percent of its minimum capital requirement. The timing requirement for the filing of the proposed notice with the Commission and NFA is consistent with the Commission's requirements for an FCM or a nonbank SD, which are both required to file an Early Warning Level notice with the Commission and NFA when the firm knows or should have known that its regulatory capital is below specified reporting levels.[354] The requirement for a firm to file a notice with the Commission when it knows or should have known that its capital is below the reporting level is designed to prevent a situation where a firm's deficient recordkeeping leads to an inadequate monitoring of the Early Warning Level threshold. More generally, the ''should have known'' part of the timing standard for the filing of the proposed notice is intended to cover facts and circumstances that should reasonably lead the firm to believe that its regulatory capital is below 120 percent of the minimum requirement.[355] In practice, even if the PRA-designated UK nonbank SD's books and records do not reflect a decrease of regulatory capital below 120 percent of the minimum requirement or if the computations that may reveal a decrease of regulatory capital below 120 percent have not been made yet, the firm would be expected to provide notice if it became aware of deficiencies in its recordkeeping processes that could result in inaccurate recording of the firm's capital levels or if it had other reasons to believe its regulatory capital is below the Early Warning Level threshold.[356]

As noted above, a purpose of the proposed Early Warning Level notice provision is to allow the Commission and NFA to initiate conversations and fact finding with a registrant that may be experiencing operational or financial issues that may adversely impact the firm's ability to meet its obligations to

[351] 17 CFR 23.105(c)(1) and (2).

[352] *See* Commission Regulation 23.105(c)(4), which requires a nonbank SD to file notice with the Commission and NFA if it experiences decrease in excess capital of 30 percent or more from the excess capital reported in its last financial filing with the Commission. 17 CFR 23.105(c)(4).

[353] The Commission's proposed reporting level of 12.6 percent reflects the aggregate of the PRA-designated UK nonbank SD's core capital requirement of 8 percent and capital conservation buffer requirement of 2.5 percent, multiplied by a factor of 1.20. For purposes of the calculation, the Commission proposes that the 20 percent capital increase must be comprised of common equity tier 1 capital *(i.e.,* common equity tier 1 capital must comprise a minimum of 8.4 percent, which reflects the aggregate of the 4.5 percent core common equity tier 1 capital requirement and the 2.5 percent capital conservation buffer requirement, multiplied by a factor of 1.20).

[354] 17 CFR 1.12(b) and 17 CFR 23.105(c)(ii)(2).

[355] This interpretation is consistent with the Commission's discussion of the timing standard in the preamble to the 1998 final rule adopting amendments to Commission Regulation 1.12, where the Commission noted that the part of the standard requiring an FCM to report when it ''should know'' of a problem may be defined as the point at which a party, in the exercise of reasonable diligence, should become aware of an event. *See* 63 FR 45711 at 45713.

[356] To that point, in discussing the standard applicable to the timing requirement for the filing of a notice by an FCM to report an undersegregated or undersecured condition (*i.e.,* situation where the FCM has insufficient funds in accounts segregated for the benefit of customers trading on U.S. contract markets or has insufficient funds set aside for customers trading on non-U.S. markets to meet the FCM's obligations to its customers), the Commission noted that an obligation to file a notice could arise even before the required computations that would reveal deficiencies must be made. *See id.*

market participants, including customers or swap counterparties. The notice filing is a central component of the Commission's and NFA's oversight program, and the Commission believes that a firm that is experiencing operational challenges that prevent the firm from definitively computing its capital level during a period when it recognizes from the facts and circumstances that the firm's capital level may be below the reporting threshold should file the notice with the Commission and NFA. Therefore, the Commission preliminarily deems it appropriate to include a similar early warning notice condition in the Capital Comparability Determination Order.

The UK PRA Financial Reporting Rules also do not contain an explicit requirement for a PRA-designated UK nonbank SD to notify the PRA if the firm fails to maintain current books and records, experiences a decrease in regulatory capital over levels previously reported, or fails to collect or post initial margin with uncleared swap counterparties that exceed certain threshold levels.[357] The UK PRA Financial Reporting Rules also do not require a PRA-designated UK nonbank SD to provide the PRA with advance notice of equity withdrawals initiated by equity holders that exceed defined amounts or percentages of the firm's excess regulatory capital.[358]

To ensure that the Commission and NFA receive prompt information concerning potential operational or financial issues that may adversely impact the safety and soundness of a PRA-designated UK nonbank SD, the Commission is proposing to condition the Capital Comparability Determination Order to require PRA-designated UK nonbank SDs to file certain notices required under the CFTC Financial Reporting Rules with the Commission and NFA. In this connection, the Commission is proposing to condition the Capital Comparability Determination Order on a PRA-designated UK nonbank SD providing the Commission and NFA with notice if the firm fails to maintain current books and records with respect to its financial condition and financial reporting requirements. For avoidance of doubt, in this context the Commission believes that books and records would include current ledgers or other similar records which show or summarize, with appropriate references to supporting documents, each transaction affecting the PRA-designated UK nonbank SD's asset, liability, income, expense, and capital accounts in accordance with the accounting principles accepted by the relevant authorities.[359] The Commission preliminarily believes that the maintenance of current books and records is a fundamental and essential component of operating as a registered nonbank SD and that the failure to comply with such a requirement may indicate an inability of the firm to promptly and accurately record transactions and to ensure compliance with regulatory requirements, including regulatory capital requirements. Therefore, the proposed Order would require a PRA-designated UK nonbank SD to provide the Commission and NFA with a written notice within 24 hours if the firm fails to maintain books and records on a current basis.

The proposed Capital Comparability Determination Order would also require a PRA-designated UK nonbank SD to file notice with the Commission and NFA if: (i) a single counterparty, or group of counterparties under common ownership or control, fails to post required initial margin or pay required variation margin on uncleared swap and security-based swap positions that, in the aggregate, exceeds 25 percent of the PRA-designated UK nonbank SD's minimum capital requirement; (ii) counterparties fail to post required initial margin or pay required variation margin to the PRA-designated UK nonbank SD for uncleared swap and security-based swap positions that, in the aggregate, exceeds 50 percent of the PRA-designated UK nonbank SD's minimum capital requirement; (iii) a PRA-designated UK nonbank SD fails to post required initial margin or pay required variation margin for uncleared swap and security-based swap positions to a single counterparty or group of counterparties under common ownership and control that, in the aggregate, exceeds 25 percent of the PRA-designated UK nonbank SD's minimum capital requirement; and (iv) a PRA-designated UK nonbank SD fails to post required initial margin or pay required variation margin to counterparties for uncleared swap and security-based swap positions that, in the aggregate, exceeds 50 percent of the PRA-designated UK nonbank SD's minimum capital requirement. The Commission is proposing to require this notice so that it and the NFA may commence communication with the PRA-designated UK nonbank SD and the PRA in order to obtain an understanding of the facts that have led to the failure to exchange material amounts of initial margin and variation margin in accordance with the applicable margin rules, and to assess whether there is a concern regarding the financial condition of the firm that may impair its ability to meet its financial obligations to customers, counterparties, creditors, and general market participants, or otherwise adversely impact the firm's safety and soundness.

The proposed Capital Determination Order would not require a PRA-designated UK nonbank SD to file notices with the Commission and NFA concerning withdrawals of capital or changes in capital levels as such information will be reflected in the financial statement reporting filed with the Commission and NFA as conditions of the Order, and because the PRA-designated UK nonbank SD's capital levels are monitored by the PRA, which the Commission preliminarily believes renders the separate reporting to the Commission superfluous.

The proposed Capital Comparability Determination Order would require a PRA-designated UK nonbank SD to file any notices required under the Order with the Commission and NFA reflecting any balances, where applicable, in U.S. dollars. Each notice required by the proposed Capital Comparability Determination Order must be filed in accordance with instructions issued by the Commission or NFA.[360]

The Commission invites public comment on its analysis above, including comment on the UK Application and relevant UK Financial Reporting Rules. The Commission also invites comment on the proposed conditions to the Capital Comparability Determination Order that are listed above.

The Commission requests comment on the timeframes set forth in the proposed conditions for PRA-designated UK nonbank SDs to file notices with the Commission and NFA. In this regard,

[357] 17 CFR 23.105(c)(3), (4), and (7).

[358] Commission Regulation 23.105(c)(5) requires a nonbank SD to provide written notice to the Commission and NFA two business days prior to the withdrawal of capital by action of the equity holders if the amount of the withdrawal exceeds 30 percent of the nonbank SD's excess regulatory capital. 17 CFR 23.105(c)(5).

[359] For comparison, see Commission Regulation 23.105(b), which similarly defines the term ''current books and records'' as used in the context of the Commission's requirements. 17 CFR 23.105(b).

[360] The proposed conditions for PRA-designated UK nonbank SDs to file a notice with the Commission and NFA if the firm fails to maintain current books and records or fails to collect or post margin with uncleared swap counterparties that exceed the above-referenced threshold levels are consistent with the proposed conditions in the proposed Capital Comparability Determination Orders for Japan, Mexico, and the EU. *See* Proposed Japan Order, Proposed Mexico Order, and Proposed EU Order.

the proposed conditions would require PRA-designated UK nonbank SDs to file certain written notices with the Commission within 24 hours of the occurrence of a reportable event or of being alerted to a reportable event by the PRA. The Commission requests comment on the issues PRA-designated UK nonbank SDs may face meeting the filing requirements given time-zone difference or governance issues. The Commission also requests specific comment regarding the setting of compliance dates for the notice reporting conditions that the proposed Capital Comparability Determination Order would impose on PRA-designated UK nonbank SDs.

F. Supervision and Enforcement

1. Commission and NFA Supervision and Enforcement of Nonbank SDs

The Commission and NFA conduct ongoing supervision of nonbank SDs to assess their compliance with the CEA, Commission regulations, and NFA rules by reviewing financial reports, notices, risk exposure reports, and other filings that nonbank SDs are required to file with the Commission and NFA. The Commission and/or NFA also conduct periodic examinations as part of the supervision of nonbank SDs, including routine onsite examinations of nonbank SDs' books, records, and operations to ensure compliance with CFTC and NFA requirements.[361]

As noted in Section D.1. above, financial reports filed by a nonbank SD provide the Commission and NFA with information necessary to ensure the firm's compliance with minimum capital requirements and to assess the firm's overall safety and soundness and its ability to meet its financial obligations to customers, counterparties, and creditors. A nonbank SD is also required to provide written notice to the Commission and NFA if certain defined events occur, including that the firm is undercapitalized or maintains a level of capital that is less than 120 percent of the firm's minimum capital requirements.[362] The notice provisions, as stated in Section E.1. above, are intended to provide the Commission and NFA with information of potential issues at a nonbank SD that may impact the firm's ability to maintain compliance with the CEA and Commission regulations. The Commission and NFA also have the authority to require a nonbank SD to provide any additional financial and/or operational information on a daily basis or at such other times as the Commission or NFA may specify to monitor the safety and soundness of the firm.[363]

The Commission also has authority to take disciplinary actions against a nonbank SD for failing to comply with the CEA and Commission regulations. Section 4b–1(a) of the CEA [364] provides the Commission with exclusive authority to enforce the capital requirements imposed on nonbank SDs adopted under section 4s(e) of the CEA.[365]

2. PRA's Supervision and Enforcement of PRA-Designated UK Nonbank SDs

The PRA has supervision, audit, and investigation powers with respect to PRA-designated UK nonbank SDs, which include the powers to obtain specified information reasonably required in connection with the exercise of the PRA's functions, the power to conduct or order investigations, and the power to impose sanctions on PRA-designated UK nonbank SDs that breach their regulatory obligations, including those deriving from the UK PRA Capital Rules and the UK PRA Financial Reporting Rules.[366]

The PRA also monitors the capital adequacy of PRA-designated UK nonbank SDs through supervisory measures on an ongoing basis. The monitoring includes assessing the notices and the capital conservation plan discussed in Section E.2. above. In addition, the PRA is empowered with a variety of measures to address a PRA-designated UK nonbank SD's financial deterioration.[367] Under its general supervisory powers, the PRA may impose new requirements to a PRA-designated UK nonbank SD if the firm is failing, or likely to fail, to satisfy the threshold conditions for which the PRA is responsible.[368] More specifically, a breach in a PRA-designated UK nonbank SD's capital buffers automatically triggers restrictions on the firm's ability to make certain distributions (*e.g.,* pay certain dividends or employee bonuses).[369] In addition, the PRA may impose administrative penalties or other administrative measures, including prudential charges, if a PRA-designated nonbank SD's liquidity position falls below the liquidity and stable funding requirements.[370]

In case of non-compliance with the capital and liquidity thresholds, the PRA may also order PRA-designated UK nonbank SDs to comply with additional requirements, including: (i) maintaining additional capital in excess of the minimum requirements, if certain conditions are met; (ii) requiring that the PRA-designated UK nonbank SD submit a plan to restore compliance with applicable capital or liquidity thresholds; (iii) imposing restrictions on the business or operations of the PRA-designated UK nonbank SD; (iv) imposing restrictions or prohibitions on distributions or interest payments to shareholders or holders of additional tier 1 capital instruments; (v) requiring additional or more frequent reporting requirements; and (vi) imposing additional specific liquidity requirements.[371] The PRA may also sanction the PRA-designated UK nonbank SD if the firm's capital or liquidity fall below the applicable thresholds or the PRA has evidence that the firm will breach such thresholds in the next 12 months.[372] The PRA may also withdraw a PRA-designated UK nonbank SD's authorization if the firm no longer meets its minimum capital requirements.[373]

In addition, if the capital and liquidity requirements are breached, the PRA may take early measures to intervene, such as requiring management to take certain actions, order members of management to be removed or replaced, or require changes to the firm's business strategy or legal or

[361] Section 17(p)(2) of the CEA requires NFA as a registered futures association to establish minimum capital and financial requirements for non-bank SDs and to implement a program to audit and enforce compliance with such requirements. 7 U.S.C. 21(p)(2). Section 17(p)(2) further provides that NFA's capital and financial requirements may not be less stringent than the capital and financial requirements imposed by the Commission.

[362] *See* 17 CFR 23.105(c).

[363] *See* 17 CFR 23.105(h).

[364] 7 U.S.C. 6b–1(a).

[365] 7 U.S.C. 6s(e).

[366] FSMA, Parts 4A, XI, and XIV.

[367] *See* PRA, *The Prudential Regulation Authority's approach to banking supervision,* July 2023, available at: *https://www.bankofengland.co.uk/prudential-regulation/publication/pras-approach-to-supervision-of-the-banking-and-insurance-sectors.*

[368] FSMA, Part 4A, Section 55M.

[369] *See* PRA Rulebook, CRR Firms, Capital Buffers Part, Chapter 4 Capital Conservation Measures, Rule 4.3.

[370] *See* Capital Requirements Regulations 2013, Regulation 35B and FSMA, Part XIV Disciplinary Measures (setting forth the PRA's disciplinary power with respect to all rules adopted under FSMA). The Applicants represented that ''CRR rules'' (*i.e.,* general PRA rules applying to CRR firms, including PRA-designated UK nonbank SDs) are adopted pursuant to FSMA, Part 9D, and as such the PRA has power to impose disciplinary measures in connection with these rules. *See* Response to Staff Questions dated October 5, 2023.

[371] FSMA, Parts 4A, Sections 55M and 55P, and Capital Requirements Regulation 2013, Regulation 35B.

[372] FSMA, Parts 4A and XIV.

[373] FSMA, Part 4A, Sections 55J–55K.

operational structure, among other measures.[374]

Although the PRA generally has broad discretion as to what powers it may exercise, the UK PRA Capital Rules and the UK PRA Financial Reporting Rules specifically mandate that the PRA require PRA-designated UK nonbank SDs to hold increased capital when: (i) risks or elements of risks are not covered by the capital requirements imposed by the UK PRA Capital Rules; (ii) the PRA-designated UK nonbank SD lacks robust governance arrangements, appropriate resolution and recovery plans, processes to manage large exposures or effective processes to maintain on an ongoing basis the amounts, types, and distribution of capital needed to cover the nature and level of risks to which they might be exposed; or (iii) the sole application of other administrative measures would be unlikely to timely and sufficiently improve the firm's arrangements and processes.[375]

3. Commission Analysis

Based on the above, the Commission preliminarily finds that the PRA has the necessary powers to supervise, investigate, and discipline PRA-designated UK nonbank SDs for compliance with the applicable capital, financial and reporting requirements, and to detect and deter violations of, and ensure compliance with, the applicable capital and financial reporting requirements in the UK.

The Commission would expect to communicate and consult, to the fullest extent permissible under applicable law, with the PRA regarding the supervision of the financial and operational condition of the PRA-designated UK nonbank SDs. An appropriate MOU or similar arrangement with the PRA would facilitate cooperation and information sharing in the context of supervising the PRA-designated UK nonbank SDs. Such an arrangement would enhance communication with respect to entities within the arrangement's scope (''Covered Firms''), as appropriate, regarding: (i) general supervisory issues, including regulatory, oversight, or other related developments; (ii) issues relevant to the operations, activities, and regulation of Covered Firms; and (iii) any other areas of mutual supervisory interest, and would anticipate periodic meetings to discuss relevant functions and regulatory oversight programs. The arrangement would provide for the Commission and the PRA to inform each other of certain events, including any material events that could adversely impact the financial or operational stability of a Covered Firm, and would provide a procedure for any on-site examinations of Covered Firms.

In the absence of an MOU or similar information sharing arrangement, the Commission is proposing to condition the Capital Comparability Determination Order on a PRA-designated UK nonbank SD providing notice to the Commission and NFA if the PRA has required the PRA-designated UK nonbank SD to: (i) maintain additional capital in excess of the minimum requirements; (ii) require that the PRA-designated UK nonbank SD submit a plan to restore compliance with applicable capital or liquidity thresholds; (iii) impose restrictions on the business or operations of the PRA-designated UK nonbank SD; (iv) impose restrictions or prohibitions on distributions or interest payments to shareholders or holders of additional tier 1 capital instruments; (v) require additional or more frequent reporting requirements; or (vi) impose additional specific liquidity requirements.[376] Upon receipt of such notice, the Commission and NFA would communicate with the PRA-designated UK nonbank SD to obtain further information regarding the underlying issues that prompted the PRA to direct the PRA-designated UK nonbank SD to take such actions and would obtain information regarding how the PRA-designated UK nonbank SD would address the underlying issues.

The Commission invites public comment on the UK Application, the UK laws and regulations, and the Commission's analysis above regarding its preliminary determination that the PRA and the CFTC have supervision programs and enforcement authority that are comparable in that the purpose of the relevant programs and authority is to ensure that nonbank SDs maintain compliance with applicable capital and financial reporting requirements.

IV. Proposed Capital Comparability Determination Order

A. Commission's Proposed Comparability Determination

The Commission's preliminary view, based on the UK Application and the Commission's review of applicable UK laws and regulations, is that the UK PRA Capital Rules and the UK PRA Financial Reporting Rules, subject to the conditions set forth in the proposed Capital Comparability Determination Order below, achieve comparable outcomes and are comparable in purpose and effect to the CFTC Capital Rules and CFTC Financial Reporting Rules. In reaching this preliminary conclusion, the Commission recognizes that there are certain differences between the UK PRA Capital Rules and CFTC Capital Rules and certain differences between the UK PRA Financial Reporting Rules and the CFTC Financial Reporting Rules. The proposed Capital Comparability Determination Order is subject to proposed conditions that are preliminarily deemed necessary to promote consistency in regulatory outcomes, or to reflect the scope of substituted compliance that would be available notwithstanding certain differences. In the Commission's preliminary view, the differences between the two rules sets would not be inconsistent with providing a substituted compliance framework for PRA-designated UK nonbank SDs subject to the conditions specified in the proposed Order below.

Furthermore, the proposed Capital Comparability Determination Order is limited to the comparison of the UK PRA Capital Rules to the Bank-Based Approach contained within the CFTC Capital Rules. As noted previously, the Applicants have not requested, and the Commission has not performed, a comparison of the UK PRA Capital Rules to the Commission's NAL Approach or TNW Approach. In addition, as discussed in Section I.C. above, due to the differences between the capital and financial reporting regimes applicable to PRA-designated UK nonbank SD and FCA-regulated UK nonbank SDs, the Commission anticipates assessing the comparability of the rules applicable to FCA-regulated UK nonbank SDs through a separate capital comparability determination.

[374] Bank Recovery and Resolution (No. 2) Order 2014, Article 2 (defining ''conditions for early intervention'' in case of breach of UK CRR requirements or requirements derived from CRD) and Part 8 (laying down the procedure to be followed by the PRA to determine whether early intervention measures should be taken under FSMA). If additional requirements are met, it is also possible that the Bank of England, as the resolution authority, may assess the PRA-designated UK nonbank SD as ''failing or likely to fail,'' triggering a resolution action, which could occur even before the firm actually breached its minimum capital requirements. Banking Act 2009, Sections 4 to 83.

[375] Capital Requirements Regulation 2013, Section 34.

[376] PRA's authority to impose such conditions or requirements is set forth in FSMA, Part 4A, Sections 55M and 55P, and Capital Requirements Regulation 2013, Regulation 35B.

B. Proposed Capital Comparability Determination Order

The Commission invites comments on all aspects of the UK Application, relevant UK laws and regulations, the Commission's preliminary views expressed above, the question of whether requirements under the UK PRA Capital Rules are comparable in purpose and effect to the Commission's requirement for a nonbank SD to hold regulatory capital equal to or greater than 8 percent of its uncleared swap margin amount, and the Commission's proposed Capital Comparability Determination Order, including the proposed conditions included in the proposed Order, set forth below.

C. Proposed Order Providing Conditional Capital Comparability Determination for PRA-Designated UK Nonbank Swap Dealers

It is hereby determined and ordered, pursuant to Commodity Futures Trading Commission (''CFTC'' or ''Commission'') Regulation 23.106 (17 CFR 23.106) under the Commodity Exchange Act (''CEA'') (7 U.S.C. 1 *et seq.*) that a swap dealer (''SD'') subject to the Commission's capital and financial reporting requirements under sections 4s(e) and (f) of the CEA (7 U.S.C. 6s(e) and (f)), that is organized and domiciled in the United Kingdom (''UK'') and designated for prudential supervision by the UK Prudential Regulation Authority (''PRA''), may satisfy the capital requirements under section 4s(e) of the CEA and Commission Regulation 23.101(a)(1)(i) (17 CFR 23.101(a)(1)(i)) (''CFTC Capital Rules''), and the financial reporting rules under section 4s(f) of the CEA and Commission Regulation 23.105 (17 CFR 23.105) (''CFTC Financial Reporting Rules''), by complying with certain specified requirements of the UK laws and regulations cited below and otherwise complying with the following conditions, as amended or superseded from time to time:

(1) The SD is not subject to regulation by a prudential regulator defined in section 1a(39) of the CEA (7 U.S.C. 1a(39));

(2) The SD is organized under the laws of the UK and is domiciled in the UK;

(3) The SD is licensed as an investment firm in the UK and is designated for prudential supervision by the PRA (''PRA-designated UK nonbank SD'');

(4) The PRA-designated UK nonbank SD is subject to and complies with: *Regulation (EU) No 575/2013 of the European Parliament and of the Council of 26 June 2013 on prudential requirements for credit institutions and amending Regulation (EU) No 648/2012* as restated and applicable in the UK (''UK CRR''), the provisions implementing the *Directive 2013/36/EU of the European Parliament and of the Council of 26 June 2013 on access to the activity of credit institutions and the prudential supervision of credit institutions, amending Directive 2002/87/EC and repealing Directives 2006/48/EC and 2006/49/EC* (''CRD''), including *Capital Requirements Regulations 2013* and *Capital Requirements (Capital Buffers and Macro-prudential Measures) Regulations 2014, Commission Delegated Regulation (EU) 2015/61 of 10 October 2014 to supplement Regulation (EU) No 575/2013 of the European Parliament and the Council with regard to liquidity coverage requirement for Credit Institutions* (''Liquidity Coverage Delegated Regulation''), the Banking Act 2009 and its secondary legislation, and the rules of the PRA as reflected in the PRA Rulebook (collectively the ''UK PRA Capital Rules'');

(5) The PRA-designated UK nonbank SD satisfies at all times applicable capital ratio and leverage ratio requirements set forth in Article 92 of UK CRR and the rules in PRA Rulebook, CRR Firms, Leverage Ratio—Capital Requirements and Buffers Part, Chapter 3 Minimum Leverage Ratio, the capital conservation buffer requirements set forth in PRA Rulebook, CRR Firms, Capital Buffers Part, and applicable liquidity requirements set forth in PRA Rulebook, CRR Firms, Liquidity Coverage Requirement—UK Designated Investment Firms Part and PRA Rulebook, CRR Firms, Liquidity (CRR) Part, and otherwise complies with the requirements to maintain a liquidity risk management program as required under PRA Rulebook, CRR Firms, Internal Liquidity Adequacy Assessment Part;

(6) The PRA-designated UK nonbank SD is subject to and complies with: Reporting (CRR) and Regulatory Reporting parts of the PRA Rulebook and the Companies Act 2006, Parts 15 and 16 (collectively and together with UK CRR, the ''UK PRA Financial Reporting Rules'');

(7) The PRA-designated UK nonbank SD maintains at all times an amount of regulatory capital in the form of common equity tier 1 capital as defined in Article 26 of UK CRR, equal to or in excess of the equivalent of $20 million in United States dollars (''U.S. dollars''). The PRA-designated UK nonbank SD shall use a commercially reasonable and observable British pound/U.S. dollar exchange rate to convert the value of the pound-denominated common equity tier 1 capital to U.S. dollars;

(8) The PRA-designated UK nonbank SD has filed with the Commission a notice stating its intention to comply with the UK PRA Capital Rules and the UK PRA Financial Reporting Rules in lieu of the CFTC Capital Rules and the CFTC Financial Reporting Rules. The notice of intent must include the PRA-designated UK nonbank SD's representation that the firm is organized and domiciled in the UK, is a licensed investment firm designated for prudential supervision by the PRA, and is subject to, and complies with, the UK PRA Capital Rules and UK PRA Financial Reporting Rules. A PRA-designated UK nonbank SD may not rely on this Capital Comparability Determination Order until it receives confirmation from Commission staff, acting pursuant to authority delegated by the Commission, that the PRA-designated UK nonbank SD may comply with the applicable UK PRA Capital Rules and UK PRA Financial Reporting Rules in lieu of the CFTC Capital Rules and CFTC Reporting Rules. Each notice filed pursuant to this condition must be submitted to the Commission via email to the following address: *MPDFinancialRequirements@cftc.gov;*

(9) The PRA-designated UK nonbank SD prepares and keeps current ledgers and other similar records in accordance with the PRA Rulebook, General Organisational Requirements Part, Rule 2.2 and Record Keeping Part, Rule 2.1 and 2.2, and conforming with the applicable accounting principles;

(10) The PRA-designated UK nonbank SD files with the Commission and with the National Futures Association (''NFA'') a copy of templates 1.1 (Balance Sheet Statement: assets), 1.2 (Balance Sheet Statement: liabilities), 1.3 (Balance Sheet Statement: equity), and 2 (Statement of profit or loss) of the financial reports (''FINREP'') that PRA-designated UK nonbank SDs are required to submit pursuant to PRA Rulebook, CRR Firms, Regulatory Reporting Part, Chapter 9 Regulatory Activity Group 3, Rule 9.2, and templates 1 (Own Funds), 2 (Own Funds Requirements) and 3 (Capital Ratios) of the common reports (''COREP'') that PRA-designated UK nonbank SDs are required to submit pursuant to PRA Rulebook, CRR Firms, Reporting (CRR) Part, Chapter 4 Reporting (Part Seven A CRR), Article 430 Reporting on Prudential Requirements and Financial Information, Rule 1. The FINREP and COREP templates must be provided with balances converted to U.S. dollars and must be filed with the Commission

and NFA within 35 calendar days of the end of each month. PRA-designated UK nonbank SDs that are registered as security-based swap dealers (''SBSDs'') with the U.S. Securities and Exchange Commission (''SEC'') may comply with this condition by filing with the Commission and NFA a copy of Form X–17A–5 (''FOCUS Report'') that the PRA-designated UK nonbank SD is required to file with the SEC or its designee pursuant to an order granting conditional substituted compliance with respect to Securities Exchange Act of 1934 Rule 18a–7. The copy of the FOCUS Report must be filed with the Commission and NFA within 35 calendar days after the end of each month in the manner, format and conditions specified by the SEC in Order Specifying the Manner and Format of Filing Unaudited Financial and Operational Information by Security-Based Swap Dealers and Major Security-Based Swap Participants that are not U.S. Persons and are Relying on Substituted Compliance with Respect to Rule 18a–7, 86 FR 59208 (Oct. 26, 2021);

(11) The PRA-designated UK nonbank SD files with the Commission and with NFA a copy of its annual audited accounts and strategic report (together, ''annual audited financial report'') that are required to be prepared and published pursuant to Parts 15 and 16 of Companies Act 2006. The annual audited financial report may be reported in British pound. The annual audited financial report must be filed with the Commission and NFA on the earlier of the date the report is filed with the PRA or the date the report is required to be filed with the PRA pursuant to the UK PRA Financial Reporting Rules;

(12) The PRA-designated UK nonbank SD files Schedule 1 of appendix B to subpart E of part 23 of the CFTC's regulations (17 CFR 23 subpart E—appendix B) with the Commission and NFA on a monthly basis. Schedule 1 must be prepared with balances reported in U.S. dollars and must be filed with the Commission and NFA within 35 calendar days of the end of each month;

(13) The PRA-designated UK nonbank SD submits with each set of FINREP and COREP templates, annual audited financial report, and Schedule 1 of appendix B to subpart E of part 23 of the CFTC's regulations, a statement by an authorized representative or representatives of the PRA-designated UK nonbank SD that to the best knowledge and belief of the representative or representatives, the information contained in the reports, including the conversion of balances in the reports to U.S. dollars, is true and correct;

(14) The PRA-designated UK nonbank SD files a margin report containing the information specified in Commission Regulation 23.105(m) (17 CFR 23.105(m)) with the Commission and with NFA within 35 calendar days of the end of each month. The margin report balances must be reported in U.S. dollars;

(15) The PRA-designated UK nonbank SD files a notice with the Commission and NFA within 24 hours of being informed by the PRA that the firm is not in compliance with any component of the UK PRA Capital Rules or the UK PRA Financial Reporting Rules;

(16) The PRA-designated UK nonbank SD files a notice within 24 hours with the Commission and NFA if it fails to maintain regulatory capital in the form of common equity tier 1 capital as defined in Article 26 of UK CRR, equal to or in excess of the U.S. dollar equivalent of $20 million using a commercially reasonable and observable British pound/U.S. dollar exchange rate;

(17) The PRA-designated UK nonbank SD provides the Commission and NFA with notice within 24 hours of filing a capital conservation plan with the PRA pursuant to PRA Rulebook, CRR Firms, Capital Buffers Part, Chapter 4 Capital Conservation Measures, Rule 4.4, indicating that the firm has breached its combined capital buffer requirement;

(18) The PRA-designated UK nonbank SD provides the Commission and NFA with notice within 24 hours if it is required by the PRA to maintain additional capital or additional liquidity requirements, or to restrict its business operations, or to comply with other requirements pursuant to Financial Services and Markets Act 2000, Part 4A or the Capital Requirements Regulation 2013, Regulation 35B;

(19) The PRA-designated UK nonbank SD files a notice with the Commission and NFA within 24 hours if it fails to maintain its minimum requirement for own funds and eligible liabilities (''MREL''), if the PRA-designated UK nonbank SD is subject to such requirement as set forth by the Bank of England pursuant to the Banking Act 2009, Section 3A and the Bank Recovery and Resolution (No. 2) Order 2014, Part 9;

(20) The PRA-designated UK nonbank SD files a notice with the Commission and NFA within 24 hours of when the firm knew or should have known that its regulatory capital fell below 120 percent of its minimum capital requirement, comprised of the firm's core capital requirements and any applicable capital buffer requirements. For purposes of the calculation, the 20 percent excess capital must be in the form of common equity tier 1 capital;

(21) The PRA-designated UK nonbank SD files a notice with the Commission and NFA within 24 hours if it fails to make or keep current the financial books and records;

(22) The PRA-designated UK nonbank SD files a notice with the Commission and NFA within 24 hours of the occurrence of any of the following:

(i) A single counterparty, or group of counterparties under common ownership or control, fails to post required initial margin or pay required variation margin on uncleared swap and non-cleared security-based swap positions that, in the aggregate, exceeds 25 percent of the PRA-designated UK nonbank SD's minimum capital requirement;

(ii) Counterparties fail to post required initial margin or pay required variation margin to the PRA-designated UK nonbank SD for uncleared swap and non-cleared security-based swap positions that, in the aggregate, exceeds 50 percent of the PRA-designated UK nonbank SD's minimum capital requirement;

(iii) The PRA-designated UK nonbank SD fails to post required initial margin or pay required variation margin for uncleared swap and non-cleared security-based swap positions to a single counterparty or group of counterparties under common ownership and control that, in the aggregate, exceeds 25 percent of the PRA-designated UK nonbank SD's minimum capital requirement; or

(iv) The PRA-designated UK nonbank SD fails to post required initial margin or pay required variation margin to counterparties for uncleared swap and non-cleared security-based swap positions that, in the aggregate, exceeds 50 percent of the PRA-designated UK nonbank SD's minimum capital requirement;

(23) The PRA-designated UK nonbank SD files a notice with the Commission and NFA of a change in its fiscal year-end approved or permitted to go into effect by the PRA. The notice required by this paragraph will satisfy the requirement for a nonbank SD to obtain the approval of NFA for a change in fiscal year-end under Commission Regulation 23.105(g) (17 CFR 23.105(g)). The notice of change in fiscal year-end must be filed with the Commission and NFA at least 15 business days prior to the effective date of the PRA-designated UK nonbank SD's change in fiscal year-end;

(24) The PRA-designated UK nonbank SD or an entity acting on its behalf

notifies the Commission of any material changes to the information submitted in the application for capital comparability determination, including, but not limited to, material changes to the UK PRA Capital Rules or UK PRA Financial Reporting Rules imposed on PRA-designated UK nonbank SDs, the PRA's supervisory authority or supervisory regime over PRA-designated UK nonbank SDs, and proposed or final material changes to the UK PRA Capital Rules or UK PRA Financial Reporting Rules as they apply to PRA-designated UK nonbank SDs; and

(25) Unless otherwise noted in the conditions above, the reports, notices, and other statements required to be filed by the PRA-designated UK nonbank SD with the Commission and NFA pursuant to the conditions of this Capital Comparability Determination Order must be submitted electronically to the Commission and NFA in accordance with instructions provided by the Commission or NFA.

Issued in Washington, DC, on January 29, 2024, by the Commission.

Christopher Kirkpatrick,

Secretary of the Commission.

Note: The following appendices will not appear in the Code of Federal Regulations.

Appendices to Notice of Proposed Order and Request for Comment on an Application for a Capital Comparability Determination Submitted on Behalf of Nonbank Swap Dealers Subject to Capital and Financial Reporting Requirements of the United Kingdom and Regulated by the United Kingdom Prudential Regulation Authority—Commission Voting Summary, Chairman's Statement, and Commissioners' Statements

Appendix 1—Commission Voting Summary

On this matter, Chairman Behnam and Commissioners Johnson, Goldsmith Romero, Mersinger, and Pham voted in the affirmative. No Commissioner voted in the negative.

Appendix 2—Statement of Support of Chairman Rostin Behnam

I support the Commission's proposed order and request for comment on an application for a preliminary capital comparability determination on behalf of six nonbank swap dealers that are domiciled in the United Kingdom (UK) and registered with the CFTC. All six of these UK nonbank SDs are subject to, and comply with, the UK capital and financial reporting rules as implemented by the UK Prudential Regulation Authority, which the Commission has preliminarily determined are comparable to certain capital and financial reporting requirements under the Commodity Exchange Act and the Commission's regulations, subject to certain conditions. This preliminary capital comparability determination for these UK nonbank SDs is the fourth proposed order and request for comment to come before the Commission since it adopted its substituted compliance framework for non-U.S. domiciled nonbank swap dealers in July 2020.

I greatly appreciate the work of staff in the Market Participant Division, the Office of the General Counsel, and the Office of International Affairs on this matter.

I look forward to reviewing the public's comments on the proposed rule. The 60-day comment period will begin upon the Commission's publication of the proposed rule on its website.

Appendix 3—Statement of Support of Commissioner Kristin N. Johnson

I support the Commodity Futures Trading Commission's (Commission or CFTC) issuance of the proposed conditional capital comparability determination order for comment (Proposed Comparability Determination) pursuant to Commission Regulation 23.106.[1] The Proposed Comparability Determination, if approved, will allow registered nonbank swap dealers (SDs) organized and domiciled in the United Kingdom (UK) and designated for prudential supervision by the UK Prudential Regulation Authority (PRA-designated non-bank SDs) to satisfy certain capital and financial reporting requirements under the Commodity Exchange Act (CEA) by complying with comparable capital and financial reporting requirements under UK laws and regulations.

It is imperative that we carefully review the capital and financial reporting requirements for PRA-designated non-bank SDs in a manner consistent with the Commission's mandate under the Dodd-Frank Wall Street Reform and Consumer Protection Act (Dodd-Frank Act) to ensure that foreign swap activities that have a ''direct and significant'' effect on U.S. markets are subject to regulatory requirements as sufficiently robust as our own.[2]

In 2010, the Dodd-Frank Act amended the CEA to create a new regulatory framework for swaps, including adding Section 2(i) to address the cross-border application of the CEA's swap provisions. In recognition of the value of global regulatory coordination in the swaps markets and international comity, the Commission in 2020 set out a framework for substituted compliance and comparability determinations for a given foreign jurisdiction that afforded ''due consideration [to] international comity principles'' while being ''consistent with . . . the Commission's interest in focusing its authority on potential significant risks to the U.S. financial system.''[3]

Sections 4s(e) and 4s(f) of the CEA instruct the Commission to impose capital requirements on non-bank SDs and financial condition reporting obligations on all registered SDs, which have been codified by the Commission.[4] These requirements aim to ensure the integrity of domestic and foreign entities operating in our markets, to facilitate the rapid identification and remediation of liquidity crises, and to mitigate the threat of systemic risks that may threaten the stability of domestic and global financial markets. As I previously stated:

The Commission's capital and financial reporting requirements adopted pursuant to these sections of the CEA are critical to ensuring the safety and soundness of our markets by addressing and managing risks that arise from a firm's operation as an SD. Ensuring necessary levels of capital, as well as accurate and timely reporting about financial conditions, helps to protect [SDs] and the broader financial markets ecosystem from shocks, thereby ensuring solvency and resiliency. This, in turn, protects the financial system as a whole, reducing the risk of contagion that could arise from uncleared swaps. Financial reporting requirements work with the capital requirements by allowing the Commission to monitor and assess an SD's financial condition, including compliance with minimum capital requirements. The Commission uses the information it receives pursuant to these requirements to detect potential risks before they materialize. Capital adequacy and financial reporting are pillars of risk management oversight for any business, and, for firms operating in our markets, it is of the utmost importance that rules governing these risk management tools are effectively calibrated, continuously assessed, and fit for purpose.[5]

[1] The application here is by three trade associations (the Institute of International Bankers, the International Swaps and Derivatives Association, and the Securities Industry and Financial Markets Association). There are currently six PRA-designated non-bank SDs eligible to take advantage of a comparability determination, if the Commission approves the Proposed Comparability Determination. These six PRA-designated non-bank SDs include Citigroup Global Markets Limited, Goldman Sachs International, Merrill Lynch International, Morgan Stanley & Co. International Plc, MUFG Securities EMEA Plc, and Nomura International Plc.

[2] 7 U.S.C. 2(i). Section 2(i)(1) of the CEA applies the swaps provisions of both the Dodd-Frank Act and Commission regulations promulgated under those provisions to activities outside the United States that have a direct and significant connection with activities in, or effect on, commerce of the United States.

[3] Cross-Border Application of the Registration Thresholds and Certain Requirements Applicable to Swap Dealers and Major Swap Participants, 85 FR 56924, 56924 (Sept. 14, 2020); *see* Capital Requirements of Swap Dealers and Major Swap Participants, 85 FR 57462 (Sept. 15, 2020).

[4] 7 U.S.C. 6s(e), (f); 17 CFR part 23, subpart E.

[5] Kristin N. Johnson, Commissioner, CFTC, Statement in Support of Notice and Order on EU Capital Comparability Determination (June 7, 2023), *https://www.cftc.gov/PressRoom/SpeechesTestimony/johnsonstatement060723c.*

Systemic risks transcend national borders. Successful mitigation of systemic risks, therefore, requires careful, engaged collaboration.

I support acknowledging market participants' compliance with the laws and regulations of their UK regulator when the requirements lead to an outcome that is comparable to the outcome of complying with the CFTC's corresponding requirements. Mutual understanding and respect for partner regulators in other countries advances the Commission's goal of setting a global standard for sound derivatives regulation that both enhances market stability and is also deeply rigorous, reflecting the Commission's commitment to safe swaps markets.

As global standard setting authorities and federal prudential regulators refine and reinforce the regulatory framework for capital requirements globally, it will be important to ensure continued alignment among jurisdictions, as with the ongoing implementation of the Basel III capital framework (Basel III).

While prudential regulators continue to debate the implementation of a final set of regulations under Basel III, the Commission's capital comparability determinations closes a gap in our regulatory framework. Today's successful adoption of the Proposed Comparability Determination enables the Commission to deploy an enforceable regime immediately in the context of our UK-based registrants and is reflective of a desire to engage and harmonize regulation globally.

I commend the work of the staff of the Market Participants Division—Amanda Olear, Tom Smith, Rafael Martinez, Liliya Bozhanova, Joo Hong, and Justin McPhee, as well as the members of the Office of International Affairs—for their careful consideration of this application.

The Commission's efforts in considering the Proposed Comparability Determination reflect thoughtful evaluation of the comparability of relevant standards and an attempt to coordinate our efforts to bring transparency to the swaps market and reduce its risks to the public. I look forward to reviewing the comments that the Commission will receive in response to the Proposed Comparability Determination.

Appendix 4—Statement of Commissioner Christy Goldsmith Romero

Today [January 23, 2024], the Commission considers a proposal intended to safeguard the resilience of six swap dealers in the United Kingdom (''UK'') supervised by the Prudential Regulation Authority (''PRA'').[1] The proposal is part of the Commission's ''substituted compliance'' framework.

Substituted compliance must leave U.S. markets at no greater risk than full compliance with our rules. It is a framework that promotes global harmonization with like-minded foreign regulators that have rules, supervision, and enforcement that are comparable in purpose and effect to the CFTC. Our capital rules are a critical pillar of the Dodd-Frank Act reforms, ones that continue to evolve with the risks that our financial system faces. We must ensure that our comparability assessments are sound and do not increase risk to U.S. markets.

The CFTC's capital framework for swap dealers heeds the lessons of the 2008 financial crisis.

The 2008 financial crisis precipitated the failure or near-failure of almost every major investment bank and a number of systemically important banks. It demonstrated all too clearly the financial stability risks presented by undercapitalized financial institutions, including a sprawling network of globally interconnected derivatives dealers. That is why Congress mandated that the Commission establish capital requirements for non-bank swap dealers. The Dodd-Frank Act provided that swap dealer capital requirements should ''offset the greater risk to the swap dealer. . . and the financial system arising from the use of swaps that are not cleared'' [2] and ''help ensure the safety and soundness of the swap dealer.'' [3] The Commission's capital requirements, adopted in 2020,[4] are intended to do exactly that.

Our capital requirements promote the resilience of swap dealers and protect the U.S. financial system. They ensure that swap dealers can weather economic downturns, and remain resilient during periods of stress to continue their critical market functions. Our capital requirements also help prevent contagion of losses spreading to other financial institutions.

The CFTC must ensure that capital requirements eligible for substituted compliance are comparable in outcomes, supervision, and enforcement.

The Commission has to proceed cautiously in making a substituted compliance determination given the importance of capital to financial stability and the complexity of capital frameworks. The Commission also has to consider the interconnected nature of global derivatives markets, and the speed of contagion in the global financial system.

Four of the swap dealers who would be able to avail themselves of our determination today are affiliated with the largest Troubled Asset Relief Program recipients. That fact alone is a good reminder of what is at stake in terms of risk. It is not just danger to financial institutions, but also American families and businesses. Under this proposal in addition to the Commission's three prior capital comparability proposals,[5] 16 of 106 registered swap dealers would be eligible to rely on substituted compliance.[6] We have a responsibility to ensure that our substituted compliance framework recognizes only those frameworks that are legitimately a *substitute* for the capital protections provided by U.S. law.

The fact that a foreign regulator may have comparable capital rules will not be enough on its own. We have to look beyond the four corners of rules. Substituted compliance requires a like-minded foreign regulator with comparable supervision and enforcement to the CFTC. The CFTC and the Prudential Regulation Authority (PRA) are already cooperating on supervision and oversight of clearinghouses.[7] The PRA also has a long history of regulatory and supervisory coordination with the U.S. banking regulators. I am cognizant that the PRA recently received a secondary mandate to promote the UK economy's international competitiveness and growth. The PRA issued a statement that it will only advance this mandate when it does not conflict with safety and soundness of regulated entities.[8] I expect our staff will continue to work closely with the PRA to understand how it will implement this mandate, and work with the PRA to safeguard the safety and soundness of non-bank swap dealers and the stability of our global financial system.

Our substituted compliance decisions should not allow for regulatory arbitrage for swap dealers to escape strong U.S. capital rules—a situation that could erode Dodd-Frank Act post-crisis reforms. Today's determination is grounded in the PRA's capital rules being comparable to the CFTC's ''Bank-Based Capital Approach'' to swap dealer capital requirements, which reflects requirements the Federal Reserve imposes for bank holding companies.

The Federal Reserve and other U.S. prudential banking regulators have proposed updates to the U.S. capital rules to implement international standards known as ''Basel Endgame'' or Basel 3.1.[9] The U.S.

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[1] The six swap dealers are Citigroup Global Markets Limited, Goldman Sachs International, Merrill Lynch International, Morgan Stanley & Co. International Plc, MUFG Securities EMEA Plc, and Nomura International Plc. The determination does not cover other UK nonbank swap dealers supervised by the Financial Conduct Authority.

[2] 7 U.S.C. 6s(e)(3)(A).

[3] 7 U.S.C. 6s(e)(3)(A)(i). The capital requirements also must ''be appropriate to the risk associated with non-cleared swaps.'' 7 U.S.C. 6s(e)(3)(A)(ii).

[4] *See* Commodity Futures Trading Commission, *Capital Requirements of Swap Dealers and Major Swap Participants,* 85 FR 57462 (Sept. 15, 2020).

[5] *See* Commodity Futures Trading Commission, *Notice of Proposed Order and Request for Comment on an Application for a Capital Comparability Determination from the Financial Services Agency of Japan,* 87 FR 48092 (Aug. 8, 2022); *see also* Commodity Futures Trading Commission, *Notice of Proposed Order and Request for Comment on an Application for a Capital Comparability Determination Submitted on behalf of Nonbank Swap dealers subject to Regulation by the Mexican Comision Nacional Bancaria y de Valores,* 87 FR 76374 (Dec. 13, 2022); *see also Notice of Proposed Order and Request for Comment on an Application for a Capital Comparability Determination Submitted on Behalf of Nonbank Swap Dealers Domiciled in the French Republic and Federal Republic of Germany and Subject to Capital and Financial Reporting Requirements of the European Union,* 88 FR 41774 (June 27, 2023).

[6] 55 of the 107 swap dealers are subject to U.S. prudential regulatory capital requirements.

[7] *See* CFTC, CFTC and BoE Sign New MOU for Supervision of Cross-Border Clearing Organizations, *https://www.cftc.gov/PressRoom/PressReleases/8289-20* (Oct. 20, 2020).

[8] Prudential Regulation Authority, The Prudential Regulation Authority's Approach to Policy, DP4/22, *https://www.bankofengland.co.uk/prudential-regulation/publication/2022/september/pra-approach-to-policy* (Sept. 2022).

[9] Federal Reserve System, Federal Deposit Insurance Corporation, and Comptroller of the Currency, Regulatory Capital Rule: Large Banking Organizations and Banking Organizations with Significant Trading Activity, 88 FR 64028 (Sept. 18, 2023).

updates are also informed by the failure of several banks in early 2023.[10] The current proposal includes proposed changes that could affect capital requirements for swap dealers subject to prudential regulation. I would expect the Commission to monitor these changes and update its own capital rules for swap dealers to remain harmonized with the U.S. prudential regulators. The PRA is also updating its capital requirements to implement the Basel standards.[11] As updates are finalized in the U.S. and globally, the Commission should review whether capital requirements imposed by jurisdictions with comparability determinations remain aligned with capital requirements imposed by other U.S. financial regulators and with the changes that the Commission makes to align its own capital requirements.

Strong capital requirements and areas where the Commission would particularly benefit from public comment.

All six of the UK swap dealers are dual-registered with the U.S. Securities and Exchange Commission (''SEC''). The SEC has issued final comparability determination orders permitting them to satisfy certain SEC capital requirements through substituted compliance with applicable UK requirements.[12]

In conducting the CFTC's own analysis, it is important to remember that substituted compliance is not an all-or-nothing proposition. The Commission retains examinations and enforcement authority and it can, should, and will, impose any conditions and take all actions appropriate to protect the safety and soundness of swap dealers and the U.S. financial system. Today, the Commission proposes 25 conditions, including conditions requiring capital reporting and Commission notification that are essential to monitoring the financial condition and capital adequacy of swap dealers.

Just as with swap dealers in Japan, Mexico and the European Union,[13] one of the most important conditions is that the Commission will continue to require compliance with the CFTC's minimum capital requirement of $20 million in common equity tier 1 capital.[14] This is one of the most critical components of the CFTC's capital requirements. It helps to ensure that each nonbank swap dealer, whether current or a future new entrant, maintains at all times, $20 million of the highest quality capital to meet its financial obligations without becoming insolvent.

Today, the Commission preliminarily finds that UK capital rules requiring 8 percent of risk-weighted assets and an additional 2.5 percent buffer, for a total of 10.5 percent, are higher than the CFTC's requirement of 8 percent of risk-weighted assets. This capital requirement helps ensure that the swap dealer has sufficient capital levels to cover for example, unexpected losses from business activities.

There are proposed deviations from the Commission's bank-based capital requirements that should be closely scrutinized. Some of these deviations are similar to those raised by commenters to other proposed determinations.[15] For example, the Commission proposes to permit compliance with UK capital rules that are not necessarily anchored by a threshold percentage of uncleared swap margin as the CFTC requires. The proposed determination discusses that UK capital rules address liquidity, operational risks, as well as other risks arising from derivatives exposures, through other mechanisms. I look forward to public comment on the comparability of the approaches and expect the Commission to publish additional analysis to address concerns raised by commenters as part of any final determination.

In these areas, and others, public comments will be tremendously beneficial. I approve.

Appendix 5—Statement of Support of Commissioner Caroline D. Pham

I support the Commission's proposed order and request for comment on a comparability determination for nonbank swap dealers subject to capital and financial reporting requirements of the United Kingdom and regulated by the United Kingdom Prudential Regulation Authority (PRA). I would like to thank Justin McPhee, Joo Hong, Liliya Bozhanova, Rafael Martinez, Tom Smith, and Amanda Olear in the Market Participants Division (MPD) for their hard work on these technical and detailed requirements.

This proposal is the staff's fourth proposed capital adequacy and financial reporting comparability determination.[1] Each involves significant engagement with the corresponding authority, in this case the UK Prudential Regulation Authority, as well as CFTC registrants. As I have previously said, the Commission, its staff, and our regulatory counterparts around the world need to adhere to the recommendations in IOSCO's 2020 report on *Good Practices on Processes for Deference,* which was developed to provide solutions to the challenges and drivers of market fragmentation.[2] As set forth in the IOSCO 2020 report, such processes for deference [3] are typically outcomes-based; risk sensitive; transparent; cooperative; and sufficiently flexible.

I continue to stress that this work by CFTC staff creates the underpinnings of global markets that enable governments, central banks and commercial banks, asset managers and investors, and companies to manage the risks inherent in international flows of capital that fuel economic growth and prosperity in both developed and developing economies.[4] I am pleased to continue to support this work, and also encourage staff to finalize these proposals in 2024.

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[10] *See* Statement by Vice Chair for Supervision Michael S. Barr, *https://www.federalreserve.gov/newsevents/pressreleases/barr-statement-20230727.htm* (July 27, 2023) (''Additionally, following the banking turmoil in March 2023, the proposal seeks to further strengthen the banking system by applying a broader set of capital requirements to more large banks.'').

[11] Prudential Regulation Authority, PS17/23—Implementation of the Basel 3.1 standards near-final part 1, *https://www.bankofengland.co.uk/prudential-regulation/publication/2023/december/implementation-of-the-basel-3-1-standards-near-final-policy-statement-part-1* (Dec. 12, 2023).

[12] *See Order Granting Conditional Substituted Compliance in Connection with Certain Requirements Applicable to Non-U.S. Security-Based Swap Dealers and Major Security-Based Swap Participants Subject to Regulation in the United Kingdom,* 86 FR 43318 (July 30, 2021); *Amended and Restated Order Granting Conditional Substituted Compliance in Connection with Certain Requirements Applicable to Non-U.S. Security-Based Swap Dealers and Major Security-Based Swap Participants Subject to Regulation in the Federal Republic of Germany; Amended Orders Addressing Non-U.S. Security-Based Swap Entities Subject to Regulation in the French Republic or the United Kingdom; and Order Extending the Time to Meet Certain Conditions Relating to Capital and Margin,* 86 FR 59797 (Oct. 28, 2021); and *Order Specifying the Manner and Format of Filing Unaudited Financial and Operational Information by Security-Based Swap Dealers and Major Security-Based Swap Participants that are not U.S. Persons and are Relying on Substituted Compliance with Respect to Rule 18a–7,* 86 FR 59208 (Oct. 26, 2021).

[13] *See* CFTC Commissioner Christy Goldsmith Romero, *Proposal for Strong Capital Requirements and Financial Reporting for Swap Dealers in Japan, https://www.cftc.gov/PressRoom/SpeechesTestimony/romerostatement072722b* (July 27, 2022); *See also* CFTC Commissioner Christy Goldsmith Romero, *Promoting the Resilience of Swap Dealers in Mexico Through Strong Capital Requirements and Financial Reporting, https://www.cftc.gov/PressRoom/SpeechesTestimony/romerostatment111022b* (Nov. 10, 2022); CFTC Commissioner Christy Goldsmith Romero, *Promoting the Resilience of Swap Dealers in Europe Through Strong Capital Requirements and Financial Reporting, https://www.cftc.gov/PressRoom/SpeechesTestimony/romerostatement060723e* (June 7, 2023).

[14] This CFTC capital rule substantially exceeds the EUR 5 million minimum capital required under EU capital rules.

[15] *See Notice of Proposed Order and Request for Comment on an Application for a Capital Comparability Determination Submitted on Behalf of Nonbank Swap Dealers Domiciled in the French Republic and Federal Republic of Germany and Subject to Capital and Financial Reporting Requirements of the European Union,* 88 FR 41774 (June 27, 2023) (Comment of Better Markets).

[1] The prior three were for Japan, Mexico, and the EU. The Commission maintains its list of comparability determinations for substituted compliance purposes at *https://www.cftc.gov/LawRegulation/DoddFrankAct/CDSCP/index.htm.*

[2] Statement of Commissioner Caroline D. Pham in Support of Proposed Order and Request for Comment on Comparability Determination for EU Nonbank Swap Dealer Capital and Financial Reporting Requirements (June 9, 2023); IOSCO Report, ''Good Practices on Processes for Deference'' (June 2020).

[3] IOSCO uses ''deference'' as an ''overarching concept to describe the reliance that authorities place on one another when carrying out regulation or supervision of participants operating cross-border.'' *Id.* at 1. The CFTC's use of substituted compliance for swaps regulation is an example of regulatory deference mechanisms.

[4] Statement of Commissioner Caroline D. Pham in Support of Proposed Order and Request for Comment on Comparability Determination for EU Nonbank Swap Dealer Capital and Financial Reporting Requirements (June 9, 2023); *see also* Concurring Statement of Commissioner Caroline D. Pham Regarding Proposed Swap Dealer Capital and Financial Reporting Comparability Determination (July 27, 2022); Concurring Statement of Commissioner Caroline D. Pham Regarding Proposed Order and Request for Comment on an Application for a Capital Comparability Determination (Nov. 10, 2022).

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